



DETERMINATION

Case reference: ADA3319

Objector: The governing body of Ditchling (St Margaret's) Church of England Primary School, Ditchling, East Sussex

Admission Authority: East Sussex County Council for Ditchling (St Margaret's) Church of England Primary School

Date of decision: 25 October 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by East Sussex County Council for Ditchling (St Margaret's) Church of England Primary School in Ditchling, East Sussex. I uphold the objection to the local authority's decision to determine the published admission number at 20.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Ditchling (St Margaret's) Church of England Primary School concerning the admission arrangements for September 2018 (the arrangements) for Ditchling (St Margaret's) Church of England Primary School, a voluntary controlled school for children aged 4 to 11 years. The objection relates to the published admission number (PAN).
2. The parties involved in this objection are:
 - a. the governing body for Ditchling (St Margaret's) Church of England Primary School which made the objection (the school);
 - b. East Sussex County Council which is the local authority area in which the school is situated and the admission authority for the school (the local authority);
 - c. The Diocese of Chichester (the diocese) which is the religious authority for the school.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority. The school submitted its objection to these determined arrangements on 13 May 2017. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

- a. the school's form of objection dated 13 May 2017, subsequent communications, further information provided to me by the school such as the West Sussex County Council's document on school place planning dated February 2017 and information on the school's website;
- b. the local authority's response to the objection, supporting documents, responses to my questions, a school site plan, a Department for Education form, which provides information on the net capacity of school buildings, completed for this school in 2014, and information on the local authority's website;
- c. maps of the area showing relevant schools and catchment areas;
- d. the response of the diocese to the objection;
- e. *'Making 'prescribed alterations' to maintained schools: Statutory guidance for proposers and decision-makers'* and *'Guidance for decision makers: statutory guidance for decision-makers deciding prescribed alteration and establishment and discontinuance proposals,'* both issued in April 2016 by the Department for Education;
- f. copies of the minutes of the meeting of the local authority at which the arrangements were determined, and
- g. a copy of the determined arrangements.

6. I have also taken account of information received during a meeting I convened on 26 September 2017 at the school with representatives of the school, the local authority and the diocese. The meeting was preceded by a tour of the school site to help me understand the context.

The Objection

7. The local authority set the PAN for admission at reception (Year R) at 20, which is lower than the school wishes. The school said a higher PAN will make the school viable financially and would help secure its long term future.

Paragraph 1.3 of the Code says, “*Community and voluntary controlled schools have the right to object to the Schools Adjudicator if the PAN set for them is lower than they would wish.*”

8. The school also questioned the validity of the consultation on the arrangements undertaken by the local authority. Paragraph 1.44 of the Code relates to this matter.

Background

9. The school is located in the village of Ditchling which is on the western edge of East Sussex and very close to the county boundary with West Sussex. Ditchling is a rural village. The village of Keymer, part of the town of Hassocks, is about a kilometre away in the local authority area of West Sussex County Council. It is possible to walk between the two villages along a pavement.

10. The local authority determined a catchment area for the school as part of its strategy of seeking to ensure that every child in its area has priority for at least one school. The catchment area for the school is long and thin stretching north to south. The boundary to the west is also the border with the local authority area of West Sussex.

11. The local authority determined the admission arrangements for all community and voluntary controlled schools in its area for 2018 on 28 February 2017. The oversubscription criteria for this school, and the majority of community and voluntary controlled schools in the local authority area, were determined, in summary, as:

- 1) Looked after children and previously looked after children.
- 2) Children who live in the catchment area and who will have a sibling at the school who lives at the same address within the catchment area.
- 3) Other children living within the catchment area.
- 4) Children who will have a sibling at the school who lives at the same address outside of the catchment area.
- 5) Other children.

12. I note that children who live outside the catchment area and who have a sibling who joined the school prior to 1 September 2017 and who is still on roll will be treated in terms of priority as if they lived in the catchment area, that is to say they will be included within category 2 above. This is in recognition of a change in the arrangements for 2017 as in earlier years the arrangements gave priority to all siblings whether they lived within the catchment area or not.

13. The current PAN of 20 means that if the school were full in all year groups it would have 140 children on roll. The local authority has admitted over the PAN of 20 when there has been local demand and so, for example, the current Year 3 (Y3) group has 30 pupils.

14. The local authority placed a temporary classroom on the site to

accommodate this larger year group. In the past there was another temporary classroom on the site which was removed in 2007 when a previous larger year group had left the school. The existing temporary classroom was placed on the site in 2009 for another larger year group. It was due to be removed in 2014 but was retained when the current Y3 joined Year R. The planning permission for the temporary siting is due for renewal in 2019. The current capacity, with the temporary classroom on site is 170 places organised into a six class structure. There would be five classrooms in use if the temporary classroom were not on site and the school would have a capacity of 140 places.

Consideration of Case

15. The governing body explained in its objection that it had reviewed how best to prepare the school for the future and make the school sustainable in the light of expected changes to school funding. It had concluded that a PAN of 30, which would allow it to organise itself as a one form entry primary school with seven classes with one class for each year group, would help it achieve financial viability and make it secure for the future.

16. At an early stage of my investigation it became clear that the PAN could not be set at 30. This was because an increase of PAN of this magnitude (from 20 to 30) would require a statutory proposal to make a prescribed alteration to the school. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the regulations) made in accordance with the Education and Inspections Act 2006 provide that certain enlargements of a maintained school's premises require statutory proposals. These are described in Schedule 2 paragraph 1 of the regulations as: *"An enlargement of the premises of the school which would increase the capacity of the school by—*

(a) more than 30 pupils; and

(b) by 25% or 200 pupils (whichever is the lesser),

except where the enlargement is a temporary one, which it is anticipated will be in place for no more than three years."

17. For this school a PAN of 30 would result in a school with 210 places, which is an additional 70 places (seven year groups of an additional 10 children) from the current permanent capacity of 140 places. This means the school would increase its capacity by more than 30 pupils and more than 25 per cent (as it would be an increase of 33 per cent) and therefore require a statutory proposal for an enlargement of the premises. The making of a statutory proposal is a separate process from that which applies to the determining of admission arrangements and the making of an objection to such determined arrangements. The statutory proposal would also have to be made by the local authority as the regulations provide that this type of proposal for a maintained school can be made only by the local authority.

18. The local authority told me, on 23 May 2017, that *"the demand from within the designated community area this year amounted to a total of seven*

children.” In addition it said that “other local East Sussex schools have capacity for all the children resident in their areas, (so) there is no clear justification for extending the school. This is reflected in our pupil forecasts for Ditchling which indicate that a PAN of 20 will be sufficient to serve in-area demand in the future. For this reason, Ditchling is not a basic need priority area for the local authority.” In further correspondence the local authority told me that the anticipated increased demand for school places in West Sussex would be met by the development of schools in West Sussex. For these reasons, the local authority will not make the necessary statutory proposal required to support an increase in the PAN from 20 to 30.

19. The school acknowledged the local authority’s position and asked, on 21 June 2017, that I should consider an increase in the PAN to 24 rather than 30. This total increase of 28 children (140 to 168) would not require statutory proposals as it is under the limit of 30 set by the regulations described above. The governing body also said that this can be achieved without external capital investment and so requires no capital funding by the local authority. The school said that it was not making this objection to its PAN in order to attempt to secure capital funding from the local authority as it appreciated that the local authority’s priorities for the use of available capital lay elsewhere.

20. I considered whether this was another referral received after the 30 May (so not within the timeframe for objections which I must consider) and whether I should base my determination on the original wish to have a PAN of 30. Paragraph 1.3 of the Code gives a community and voluntary controlled school the right *“to object to the Schools Adjudicator if the PAN set for them is lower than they would wish.”* This means that the school may object to the setting of the PAN if it is lower than the school wishes and I have viewed this objection in that light.

21. The school made a number of arguments in its objection to support its case for increasing the PAN. Below is a summary of the points raised by the school.

- a. There are significant housing developments to the west of the school which are increasing demand for school places. These developments are in the local authority area of West Sussex but there may not be sufficient capacity in West Sussex schools and the travel routes to the school from this area are very good. Families living on the near eastern edges of West Sussex find the school local and convenient.
- b. While birth rates locally are not rising significantly, these are not a good indicator of future pupil population. This is because, the school considers, the relatively high cost of housing means that families with primary school aged children are more likely to move in locally than families planning to have children.
- c. One quarter of the school’s existing pupil population resides outside the local authority area. This demonstrates demand from beyond the catchment area for places at the school, so when

estimating future demand for places it is not appropriate to consider only the catchment area and the local authority area.

- d. The school community is willing to contribute to the costs of the building work necessary to adapt the school's existing buildings to accommodate a higher PAN.
- e. The admission criteria introduced in 2017 gives siblings of those who live outside the catchment area a lower priority than children living inside the catchment area. In the school's view, this is discouraging families who live outside the catchment area from putting the school as a first preference. This is because they are concerned that even if they secure a place for their eldest child, younger siblings may not gain a place there if the school has a higher demand from those who live in the catchment area in the later years when a younger child needs a place. Most parents do not like having primary aged children at different schools so, even if they would really like their children to go to the school, they will opt for a school where there is a higher chance that younger siblings will also be able to go there. At the meeting the school expanded this point and explained that a PAN which was considerably higher than the likely demand for places from within the catchment area may assuage such concerns and mean the parents who lived outside of the catchment area would be more willing to apply for places at the school.
- f. The school is the only small village Church of England voluntary controlled primary school for some distance and the school was of the view that some parents prefer such a school. The next closest such schools are a drive of about 20 minutes away.

22. For the purposes of considering the objection I made the potential increase of the PAN to 24, as proposed by the school, my focus. I considered:

- a. the physical capacity of the school buildings, both with and without the temporary classroom, to accommodate a PAN of 24;
- b. the potential effects of a higher PAN on class organisation; and
- c. the demand for school places.

23. A PAN of 24 does not, of course, mean that the school would actually admit 24 to every year group. In the first place, the PAN for 2018 only applies to admission to Year R in 2018 and, in the second place, the number admitted will depend on the numbers who apply. A PAN of 24, which remained in place for seven years, would mean that the school might need to accommodate 168 children rather than 140. That said, PANs must be set annually and, following the necessary consultation, can be set at a lower level than was the case in the previous year. The school has made it clear that its wish for a higher PAN is part of a long term strategy. My jurisdiction is only for the arrangements for 2018 but it is reasonable to consider the longer term implications because consultation would be required to lower the PAN if that were desired in a future year.

24. The local authority provided a school site plan and a Department for Education form, which provides information on the net capacity of school buildings, completed for this school in 2014, in order to assist considering the physical capacity. At the meeting I also viewed the site and the available space. The school said that the school was built in 1982 on the principle of a central hall as a hub surrounded by small classrooms with large activity areas around them. The hall is multi-purpose as it is the main thoroughfare, the dining room, the gym and assembly hall.

25. The removal of the temporary classroom will reduce the capacity of the school to 140 based on five classrooms. It became clear during the tour and through discussion at the meeting that the school has two spaces which were originally classrooms and are now used for other purposes. One space is currently the staffroom. The other space had been a computer suite and is no longer required for that purpose. Either or both of these rooms could be refurbished to become classrooms again. Adapting one of these spaces would give the school six classrooms. The school explained that, while all of the permanent classroom spaces are quite small, they have each accommodated groups of up to 28 children. We discussed 28 children to a class because a PAN of 24 would mean a total maximum pupil number of 168 children in the school and one possible model of organisation would be six classes with 28 children in each. The school said it was possible to accommodate 168 children in the existing permanent school structure with some alterations paid for through its delegated funding. The school also said at the meeting that it would *“have the capacity to move to 7 classes of 24 children if necessary.”* The evidence I considered assured me that it would be possible for the school to accommodate a PAN of 24 in 2018. It would also be possible to accommodate 168 children if were decided to retain the PAN at 24 for future years.

26. I questioned whether the school wished up to 24 children to be admitted. The local authority is, of course, the admission authority and its approach appears to be to admit above PAN with the school's agreement where there is demand from within catchment to support this. Paragraph 1.6 of the Code says, *“If the school is not oversubscribed, all applicants **must** be offered a place.”* If the PAN were 24 then the local authority would have no choice but to admit the children and the school would have to manage the situation. The school told me that it is experienced in teaching in mixed age classes. Every year it gives considerable thought as to how the classes are best organised to meet the needs of the children and the class structures will vary from year to year accordingly. At the time of the meeting there were six classes with a class per year group except for Year 5 and Year 6, which are taught together in a class of 32. It would be possible for the school to operate with a PAN of 24.

27. I will now consider the demand for places at the school. At the time of the meeting on 26 September 2017 there were 145 pupils on roll in the following year groups:

Year R	15
Year 1	21

Year 2	23
Year 3	30
Year 4	24
Year 5	19
Year 6	13

28. These figures suggest that demand for places has fluctuated significantly in the past. Four of the seven school years are over the PAN of 20 and three are below the PAN. The school also explained that there was a pattern of children moving into the village and joining the school after the normal point of entry and told me that 12 children had joined years 1, 2, 3 and 4 after the normal point of entry in the academic year beginning in September 2016. The school also referred to the thriving private school sector in the area and described how, previously, a few children in the older year groups had left to attend a private school. The school told me that the children now tended to stay and complete their primary education at the school.

29. The local authority data shows that from known births that there are likely to be about 12 or 13 children a year from within the catchment area. This is broadly consistent with admissions to the school to Year R in 2017. At the meeting the local authority said that 65 per cent of the 145 children attending the school were from within its catchment area, 30 per cent were from outside of the local authority area and about five per cent from other areas of East Sussex. The evidence does not show that there is a demand for a PAN higher than 20 from within the catchment area; the current Y3 is an exception to this.

30. At the meeting the school said that it was part of its vision “*to lead demand, not just to respond to it.*” It is my view that the school would have to attract more children who do not live in the catchment area in order to admit more than 20 children a year and largely they would live in West Sussex and the nearby town of Hassocks where new houses are being built. The local authority told me that West Sussex County Council has proposed additional school places to accommodate likely demand from these new homes. I note that the duty to secure the provision of school places for these children does not fall on East Sussex County Council but on West Sussex County Council. The school remained of the view that a small village Church of England school providing outstanding education, as is its ambition, would be very attractive to parents. I therefore note that there is insufficient demand from within the catchment area to support a higher PAN but that there could be demand for additional places at the school from outside the catchment area and from parents living in the local authority area of West Sussex in particular.

31. Taking all the factors into consideration I conclude that:

- a. the school could accommodate a PAN of 24 for admissions in 2018 and, albeit with some changes and building work paid for by the school, accommodate the 168 children potentially created by a PAN of 24 year on year; and
- b. the school is not oversubscribed by those who live in the catchment area or the local authority area and is unlikely to be so but there

may be a growing demand from those who live in areas such as the neighbouring town.

32. Paragraph 1.3 of the Code says, “*Community and voluntary controlled schools have the right to object to the Schools Adjudicator if the PAN set for them is lower than they would wish. There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering any such objection.*” If the governing body wishes the PAN to be higher, I must have regard to the presumption in favour of an increase in the PAN stated as a requirement in the Code. I uphold this part of the objection. It is for the admission authority to set the PAN and I do not have the power to state what the PAN should be.

33. I turn now to the aspect of the objection concerned with the consultation on the arrangements. The governing body said that it was not sure whether the consultation on the arrangements was valid as, “*ESCC (East Sussex County Council) post notification of agreed PAN to schools through a Virtual Mail Bag and it is at that time we are given the opportunity to object or discuss the decision further. We did not avail of this opportunity as the Head Teacher /Bursar/ Chair of Governors were not aware of the notification and therefore missed the deadline.*”

34. Paragraph 1.3 of the Code says, “*For a community or voluntary controlled school, the local authority (as admission authority) **must** consult at least the governing body of the school where it proposes either to increase or keep the same PAN.*”

35. The local authority said, “*the consultation (was) published on our website for the period 7 November 2016 - 15 January 2017 with details of how to comment, as required by the School Admissions Code 2014, the attention of school staff and governors was drawn to it by two electronic mailouts dated 8 November 2016 and 12 December 2016, and a link was emailed to the diocesan representative.*” It appears to me that the local authority took reasonable steps to bring the attention of the school to the consultation. I therefore believe that this aspect of the consultation was valid and met the requirements of the Code. I do not uphold this part of the objection.

Summary of Findings

36. The school is able to accommodate additional children above the PAN of 20 for 2018 without capital investment by the local authority or statutory proposals and wishes to do so. I therefore uphold the part of the objection concerning the PAN set by the local authority.

37. The evidence is that the local authority did consult the school appropriately on its PAN. I do not uphold this part of the objection.

Determination

38. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by East Sussex County

Council for Ditchling (St Margaret's) Church of England Primary School in Ditchling, East Sussex. I uphold the objection to the local authority's decision to determine the published admission number at 20.

39. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 25 October 2017

Signed:

Schools Adjudicator: Deborah Pritchard