



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** VAR795

**Admission Authority:** Hampshire County Council for The Henry Cort Community College, Fareham.

**Date of decision:** 30 November 2018

### **Determination**

**In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Hampshire County Council for The Henry Cort Community College for September 2019. I do not approve the proposed variation to the admission arrangements determined for September 2018.**

**I determine that the published admission number (PAN) for September 2019 shall be 180. The PAN for the remainder of the 2018/2019 academic year shall be 210, as originally determined.**

### **The referral**

1. Hampshire County Council (the local authority) has referred a proposal for a variation to the admission arrangements for The Henry Cort Community College (the school), for September 2018 and September 2019 to the Office of the Schools Adjudicator. The school is a community school for children aged 11 to 16 in Fareham.
2. The proposed variations are to reduce the published admission number (PAN) for the remainder of the 2018/2019 academic year and for September 2019 from 210 to 180.

### **Jurisdiction**

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

*“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of*

*variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.*

4. I am satisfied that the proposed variation is within my jurisdiction.

### **Procedure**

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

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

- the referral from the local authority dated 22 October 2018 and supporting documents;
- the determined arrangements for September 2018 and September 2019 and the proposed variations to those arrangements;
- a copy of the local authority’s booklet for parents seeking admission to schools in the area in September 2019;
- minutes of the meeting of the governing board at which the proposed variation was considered;
- a letter from the headteacher and the chair of governors of the school;
- details provided by the local authority of the allocation of places at the school in September 2018;
- a copy of the local authority’s Fair Access Protocol (FAP); and
- a copy of an email notifying the appropriate bodies about the proposed variation.

### **The proposed variation**

7. The local authority is seeking a variation, by way of a reduction of the PAN, to two sets of arrangements determined for the school, that is, those that apply to the remainder of the 2018/19 academic year and those relating to admission to the school in September 2019. The reduction sought is from 210 to 180 in both cases.

8. The variation form submitted by the local authority indicates that it was expected that a significantly higher number of places would be required at the school in year 7 in September 2018 than was reflected in the number of pupils actually admitted. The reason given for this is that in February 2018, the local authority agreed to offer an additional 30 places at a neighbouring community school (Swanmore College), in excess of that school’s PAN of 270. These places were offered on the national allocation day for secondary admissions (1 March 2018) with the effect that 26 pupils living in the catchment area of The Henry Cort Community College, who were originally expected to be

allocated a place at that school, were allocated places at Swanmore College. In September 2018 180 pupils were admitted into year 7 at The Henry Cort Community College.

9. In accordance with paragraph 3.6 of the Code, the local authority considers that this reduction in the number of pupils admitted to the school, as a result of the agreement made with Swanmore College at a late stage in the admissions process, represents “a major change in circumstances” necessitating a variation to the school’s admission arrangements, that is, a reduction in its PAN. The local authority submits that a reduction in PAN will benefit the school financially. It says,

*“The variation will make it possible for the school to plan a timetable based on 6 groups, making it more affordable.*

*It will also help with recruitment and retention of staff, as the school will know exactly what is needed for the following year.”*

10. The minutes of a meeting of the governing board of the school, held on 18 July 2018, indicate support for the proposed reduction in the PAN. The local authority has notified the appropriate bodies to inform them of the proposed variation, as required by paragraph 3.7 of the Code. I have not been aware of any responses, although the headteacher and chair of governors of the school have written to me emphasising the school’s “full support of the application.”

### **Consideration of the case**

11. I will consider the two proposed variations in turn, beginning with that relating to the remainder of the 2018/19 academic year.

*The proposed variation for the remainder of the 2018/19 academic year*

12. I note that the numbers of pupils allocated a place at the school by the local authority in the previous three years were 173, 172 and 125 respectively. Indeed, the school reports that, although its PAN is 210, the number of pupils admitted into year 7 has been significantly below this figure “for over a decade.”

13. The local authority has supplied me with its forecast of pupil places for the school. The forecast shows the numbers of pupils actually admitted into year 7 from 2015 to 2017 and those forecast to be admitted each year from 2018 to 2027. This document indicates that the number of pupils expected to be admitted into year 7 at the school in September 2018 (based on the number of pupils in year 6 in the area and historic transfer rates) was, at the time the forecast was produced, 159, a figure significantly below the number that were actually admitted. The forecast provides no reason to expect that a figure significantly in excess of 180 would be admitted. Furthermore, minutes of the meeting of the governing board of the school held on 18 July 2018 do not suggest to me that the governors were surprised or disappointed by the number of pupils due to join the school,

*“At the last count we are expecting 184 in September which is testament to the excellent work done in marketing Henry Cort over the last year but an awkward number as we are required to put on 7 classes, whereas 180 would allow for 6 classes of 30 students and a corresponding saving in staffing costs.”*

14. It is for the admission authority to decide if there has been a major change in circumstances and it then falls to me to consider if this necessitates the proposed variation to the admission arrangements. I am not convinced that the chain of events described by the local authority does justify the reduction in PAN for the remainder of the 2018/19 academic year. Although there may well have been a point in the admissions process when a larger figure was expected, the number of pupils eventually admitted to the school in September 2018 was largely consistent both with past experience and the local authority’s forecast. By mid-July 2018, when the governing board gave their approval to the local authority seeking a reduction in the school’s PAN, staffing decisions for September 2018 would already have been made.

15. If the number of pupils in year 7 were to remain at 180, the effect of the proposed variation would be to enable the local authority to argue that admitting further pupils during the remainder of the 2018/19 school year would cause prejudice to the provision of efficient education or the efficient use of resources. It is not possible by virtue of section 86(5) of the Act to make such an argument in a normal year of admission where the number of pupils is lower than the PAN.

16. The local authority has not suggested that there is likely to be a high demand for places in year 7 at the school during the remainder of the academic year. The financial benefits of a reduction in the school’s PAN outlined by the local authority, which I have quoted in paragraph 9 above, do not apply to the current academic year; they relate to planning for the following year. The timetable for the current year, for example, is in place. In my view, the possibility of a small number of “in-year” admissions into year 7 would not appear to have significant immediate financial consequences. It is for the school to decide how to provide an appropriate education for any additional pupils who may be admitted but I have not been led to believe that the physical capacity of the school or the size of teaching groups would make this especially problematic.

17. I conclude, therefore, that I have not been provided with evidence that the change in the school’s circumstances causes a problem so significant that a reduction in its PAN for the remainder of the current academic year is justified. I do not approve the first proposed variation.

#### *The proposed variation for September 2019*

18. I turn now to the second variation proposed by the local authority, that is, the reduction in the PAN determined for September 2019, from 210 to 180.

19. The minutes of the meeting of the governing board held in July 2018 indicate that there was considerable discussion about the school’s financial position. This reveals that the school is facing significant challenges; it has a

deficit budget and appears to have exhausted its options for making reductions in costs in areas as diverse as special educational needs provision, insurance and grounds maintenance.

20. I agree that, for the reasons quoted in paragraphs 9 and 13 above, the ability to plan with confidence on the basis that six classes (that is, to accommodate a maximum of 180 pupils) will be needed in year 7 is financially advantageous to the school. I therefore consider that the case for making a reduction in PAN by way of a variation for September 2019 is much stronger than that for varying the PAN for the remainder of the current academic year. The school's financial circumstances do appear to be deteriorating significantly and such a reduction would allow the governing board to make budgetary decisions in the knowledge that they will not need to provide for seven classes, which might become necessary if the number enrolled were to exceed 180.

21. For the avoidance of doubt, I should make clear that there is no legal requirement for secondary schools to restrict class or teaching group sizes to a maximum of 30, but I recognise that many schools are extremely reluctant for educational reasons to exceed this figure across year groups. Whilst a small number of additional pupils in excess of 180 might be able to be accommodated in six classes (as may possibly have to be the case in the current academic year), there is what can be termed a "tipping point" at which seven classes will be required. The figure at which such a tipping point is reached is a matter for the school, but the decision does have significant financial consequences. By way of example only, it might be that a school would decide it needed a seven class structure if the number in the year group exceeded 186 (that is, when there would need to be more than 31 pupils in some classes in a six class structure). However, the cost of providing a seventh class would be far greater than the income generated by the additional pupils, as schools are funded principally on the basis of the number of pupils on their roll, rather than the number of classes they require.

22. I therefore accept the argument that a PAN of 180 is likely to be beneficial to the school in its current financial position and that it may well provide greater certainty for staff. I also need to be satisfied that such a figure is appropriate in the light of the likely demand for places.

23. The local authority forecasts that the number of pupils who will be admitted to the school in September 2019 is 174. This figure is, of course, close to the proposed PAN of 180. The first main priority for places within the school's admission arrangements is for pupils living within its catchment area (within this group those with siblings at the school have higher priority), followed by those living outside the catchment area with siblings at the school. The distribution of pupils allocated places in year 7 for September 2018 against the school's oversubscription criteria was as follows:

Looked after children and previously looked after children	0
Children with medical, physical or psychological needs	0

Children of staff	0
Children living in the catchment area with a sibling at the school	54
Children living in the catchment area	93
Children with a sibling at the school	10
Children attending a feeder school	4
Other children	19
<b>Total</b>	<b>180</b>

24. In my view, the proposed variation, if it is to be approved, must not, in the normal admission round, come at the expense of reducing the scope for those who live in the catchment area or have siblings at the school to obtain a place. I consider that it would be a reasonable expectation of families who have expressed a preference for a place at the school in year 7 for September 2019 that all pupils in these groups will be allocated one if the school has capacity to admit them. The figures from September 2018 suggest that if, contrary to the local authority's forecast, a PAN of 180 would result in the school being slightly oversubscribed, this will be the case.

25. In respect of "in year" applications, I would also be concerned if the effect of the proposed variation would be that pupils who could not obtain a place at the school (because the reduced PAN had been reached) would face an unreasonably long journey to an alternative school, particularly those moving into the area after places have been allocated. The local authority reports that there is another secondary school in Fareham that currently has spaces in year 7. This school is 2.7 miles away from Henry Cort College. There is no guarantee that this would be the case in September 2019, but I note the local authority's statement that,

*"The Fair Access Protocol will also be used to admit children to full schools, including Henry Cort, where appropriate."*

26. The local authority's FAP covers a larger number of categories of children than the minimum requirement set out in paragraph 3.15 of the Code. One of the additional groups that is included is:

*"Any other children who arrive outside the normal admissions round who may have difficulty securing a place."*

Although there are, rightly in my view, several conditions relating to the use of the FAP for such children, I do derive some reassurance from the fact that the local authority would be prepared to exceed the PAN if the circumstances made it appropriate to do so.

27. I conclude, therefore, that, in respect of the variation proposed to the arrangements for September 2019, that the deterioration in the school's finances justifies a reduction in its PAN. I do not expect the reduction to cause unreasonable difficulty to any pupils who may not be able to obtain a place at the school either in the normal admission round or as an in-year applicant. I approve the second proposed variation.

28. The approval of the request to vary the school's PAN for September 2019 should not be understood as an endorsement of any longer-term change. The school has the physical capacity to admit a larger number of pupils. The local authority is the body charged with ensuring that there is sufficient provision of school places in its area. It will no doubt continue to monitor closely the pattern of admissions to local schools, which appears to be somewhat fluid, and could decide to increase the PAN in future years, if necessary.

### **Determination**

29. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Hampshire County Council for The Henry Cort Community College for September 2019. I do not approve the proposed variation to the admission arrangements determined for September 2018.

30. I determine that the published admission number (PAN) for September 2019 shall be 180. The PAN for the remainder of the 2018/2019 academic year shall be 210, as originally determined.

Dated: 30 November 2018

Signed:

Schools Adjudicator: Peter Goringe