



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** VAR832

**Admission authority:** Harrow Council for Elmgrove Primary School and  
Nursery

**Date of decision:** 28 March 2019

### **Determination**

**In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Harrow Council for Elmgrove Primary School and Nursery for September 2019.**

### **The referral**

1. Harrow Council (the local authority) has referred a proposal for a variation to the admission arrangements for Elmgrove Primary School and Nursery (the school) for September 2019 to the Office of the Schools Adjudicator. The school is a community school for children aged 3 to 11 in Kenton.
2. The proposed variation is to reduce the published admission number (PAN) from 120 to 90.

### **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 4 March 2019 and supporting documents;
- the determined arrangements for September 2019 and the proposed variation to those arrangements;
- a copy of the local authority's booklet (the composite prospectus) for parents seeking admission to schools in the area in September 2019, which includes a map showing the location of schools;
- details, provided by the local authority, of the likely allocation of school places in September 2019;
- a letter from the headteacher of the school; and
- a copy of the letter notifying the appropriate bodies about the proposed variation.

## The proposed variation

7. The school has capacity for 120 children in each of the seven primary year groups, that is, from the reception year (YR) to year 6 (Y6). This allows for four classes in each year group. As the table below shows, in recent years the number of admission applications making the school the first preference has declined steadily.

**Table 1: First preferences and allocations 2015-2018**

September	PAN	Number of first preferences	Number of places allocated
2015	120	87	120
2016	120	81	120
2017	120	74	120
2018	120	69	87*

*\* There are currently 95 pupils on roll in YR following the admission of additional pupils in year.*

8. The school currently has 95 pupils in YR, in four classes. By the closing date for applications for admission in September 2019, 82 applicants making the school the first preference had been received by the local authority. This is a higher figure than in each of the three previous years. Having analysed all applications, the local authority expects that 95 pupils will be allocated a place in YR at the school in September, the same number that are currently in that year group. The local authority believes that,

*“If the school were to open four classes with this number of pupils, this will have significant impact on the school’s ability to manage their budget with 25 vacancies.”*

9. The local authority requests, by way of variation, that the PAN for September 2019 is reduced to 90 from the figure of 120 that it determined in February 2018. For admissions in September 2020, the local authority has determined a PAN of 120 for the school.

10. In accordance with the requirements of the Code, the local authority has notified the appropriate bodies about its request for a variation. Apart from the support from the school’s governing board, I have not been made aware of any other responses.

## **Consideration of the case**

11. Paragraph 3.6 of the Code states that,

*“Admission authorities may propose...variations where they consider such changes to be necessary in view of a major change of circumstances.”*

In a letter to the school’s headteacher and chair of governors, the local authority wrote,

*“Elmgrove Primary School has received more applications than they did last year; however the school currently only has 95 pupils on roll in their current reception class. The number of pupils that the school are expected to recruit for Reception for 2019 will be similar. This is a significant change for the school.”*

12. The local authority believes that the change in the number of pupils expected to enrol in the YR at the school, from 120 in 2015-17 to 95 in September 2019, justifies a variation to reduce the PAN. It explains how the fall in pupil numbers has caused difficulties for the school and how the proposed variation will address those difficulties in this way,

*“The school have [sic] a high number of vacancies in their current Reception classes with only 95 pupils on roll. This means that the school has had to open four classes but will only receive sufficient funding for 3 classes...The proposed reduction in the PAN will enable the school to plan the use of resources across 3 classes providing a more stable context for financial management.”*

13. The headteacher makes similar points in her letter,

*“This year we opened 4 classes in Reception and our admission number has not gone over 95 pupils all year. As a result we lost the funding for 25 early years places*

*but have had to fund a class teacher and a NNEB [National Nursery Education Board]. We have similar figures forecast for this coming year and it would have a significant detrimental effect on our budget planning if this situation was to continue.”*

14. I recognise the benefits to the school that the proposed variation would bring. If the school could restrict its intake to 90 pupils in September 2019, it would be able to operate with three classes of 30 pupils, each with a single teacher. If the PAN were to remain at 120 but the number of children allocated places in YR exceeded 90, even by a small margin, such as the figure of five that the local authority is anticipating, a structure of three classes with three teachers could not be put in place, due to the regulations relating to the size of infant classes. In these circumstances, I presume that the school would operate with four classes and four teachers in YR, with an average size of around 24 pupils per class. Funding for schools is principally determined by the number of pupils on roll. It is not strictly accurate for the school to say that it has “*lost the funding for 25 places*” (that is, the difference between the 95 on roll in YR and its PAN of 120). Mainstream schools are not funded on the basis of their capacity but on the number of children who attend. Thus, the school has received less funding than would have been the case if it had been fully subscribed. Nonetheless, I understand that the school is emphasising the obvious financial advantages in maintaining a three-class structure in YR, with “full” classes of 30 pupils. I can see that to be required again to establish four classes in September 2019, with proportionally less funding than for three classes, might be a situation the school would wish to avoid.

15. The local authority says that it is confident that it will,

*“be able to offer pupils who are not offered a place at Elmgrove a place at an alternative local school.”*

The local authority has identified two local schools that it expects to have places available in YR in September. These are Kenmore Park Infant School and Belmont Primary School. Each of these schools is between 1 and 1.5 miles from Elmgrove Primary School. This reassures me that pupils for whom late applications are made, or who move into the area in the future, would not face an unreasonably long journey to school, if no places remained available at Elmgrove as a result of the proposed variation.

16. The local authority makes clear that 95 pupils will be allocated places at the school if the PAN is not reduced from 120 to 90. I asked the local authority for details of the preferences expressed by the parents of the five pupils who would not be allocated places if the PAN were reduced to 90. The information I received is summarised below.

**Table 2: Pupils who will not be allocated a place at the school if the PAN is reduced to 90 (distances in miles)**

Pupil	Preference for Elmgrove	Distance from home to Elmgrove	Preference of school allocated	Distance from home to allocated school
A	1st	0.933	3rd	0.081
B	6th	0.949	None	0.19
C	1st	1.426	2nd	0.41
D	1st	1.794	2nd	0.168
E	5th	2.227	6th	2.585

17. As can be seen in Table 2, for three of the five pupils Elmgrove was their parents' first preference. Due to the operation of the co-ordinated admissions system, it is sometimes the case that not all pupils for whom a school is their parents' first preference can be allocated a place there, even if the number of first preferences is lower than the PAN. With the exception of Pupil E, all of the pupils would be allocated a place at a school closer to their home than Elmgrove, if the PAN is reduced. Nonetheless, I consider that it is reasonable to expect that the parents would be disappointed not to have been allocated a place for their child at the school, particularly those who had made it their first preference. Due to the rules about infant class sizes, it is highly unlikely that an admission appeal would be successful.

18. It is important to bear in mind that an admission authority has the responsibility of determining its arrangements, including the PAN, in accordance with the timescale set out in the Code, which allows for consultation with appropriate stakeholders (if arrangements are proposed to change) and objections to be considered, prior to the time when applications for admission are made. When the parents of Pupils A to E made their applications for admission, they would reasonably have expected that the admission number for the school would be the one that was published by the local authority and included in the composite prospectus. They, and other local parents, may well have decided upon the expression of preferences for schools on the basis of the admission numbers published at the time when they made their applications.

19. It is a fundamental principle of the law relating to admissions, laid out in section 86 of the School Standards and Framework Act 1998, that admission authorities should comply with preferences expressed by parents, except when compliance with the preference would prejudice the provision of efficient education or the efficient use of resources. The school's current PAN of 120, which has been calculated with reference to its physical capacity, allows for all parental preferences to be met. A reduction in the PAN to 90 for September 2019 would mean that some parental preferences, including first preferences, would not be

complied with. In this respect, this variation request is significantly different to the situation when all parental preferences can be met within the figure to which the PAN is proposed to be reduced. This was the case at Cedars Manor School in the same local authority, where I approved a recent application to reduce the PAN by way of variation (VAR812).

20. The importance of complying with parental preference and the school's need for financial stability are competing priorities. However, in my view, only in exceptional circumstances would it be appropriate for the outcome of a variation request, submitted after the closing date for admission applications, to be that parents of children who have expressed a preference for a school, and who would otherwise have been allocated a place there, are not, in fact, allocated that place. Such circumstances would involve a wholly unexpected event or outcome, for example, a fire that rendered parts of the school premises unusable. I do not consider that anything of this significance has affected the school. I do recognise that maintaining a PAN of 120 may cause the school difficulties, possibly severe, but these are not of a nature to override the requirement to meet parental preferences at such a late stage in the admissions process, effectively by-passing the processes of consultation and objection, which are designed to give parents opportunities to have their say. It is the local authority's responsibility to make plans for the provision of school places in its area and to set PANs for the schools for which it is the admission authority in accordance with the published timescales. I appreciate that this is not an exact science and that demographic trends can be volatile, but I do not consider that the undersubscription in this case justifies the proposed reduction in PAN, which would deny parents a place at their preferred school. I do not approve the variation.

## **Summary**

21. The local authority believes that a reduction in PAN from 120 to 90 would provide financial stability for the school. However, the effect of such a reduction would be that some parents who have expressed a preference for a place for their child at the school, including some first preferences, would not be allocated places there. I do not consider that the potential difficulties the school might face are sufficient to justify overriding parental preference at such a late stage in the admissions process. I do not approve the variation.

## **Determination**

22. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Harrow Council for Elmgrove Primary School and Nursery for September 2019.

Dated: 28 March 2019

Signed:

Schools Adjudicator: Peter Goringe