



Office of  
the Schools  
Adjudicator

## Determination

<b>Case reference:</b>	<b>STP640</b>
<b>Proposals:</b>	<b>To change the age range and to enlarge the premises of St Nicholas Church of England Infant School, Strood</b>
<b>Proposers:</b>	<b>The governing board of the school (change of age range) and Medway Council (enlargement of premises)</b>
<b>Date of decision:</b>	<b>30 March 2020</b>

## Determination

**Under the powers conferred on me in section 21 of the Education and Inspections Act 2006 and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, I hereby approve conditionally and with modifications the proposals to change the age range and to enlarge the premises of St Nicholas Church of England Infant School, Rochester, with effect from 1 September 2023.**

## The referral

1. On 23 January 2020 the Assistant Director of Education of Medway Council (the local authority) wrote to the Office of the Schools Adjudicator referring to the adjudicator for a decision proposals made by the governing board of St Nicholas Church of England Infant School, Strood (the school) to change the age range of the school from 4 to 7 to 4 to 11 and by the local authority to enlarge the school by increasing its capacity from 120 pupils to 210 pupils (the proposals).
2. The school is a voluntary controlled school with a Church of England religious character for boys and girls. It is maintained by Medway Council. The Diocese of Rochester (the diocese) is the religious authority for the school.

## Jurisdiction

3. On 24 June 2019, having carried out appropriate consultation, the local authority and the governing board published the proposals. The representation period concerning the proposals ended on 21 July 2019. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the Regulations) stipulate that the local authority is the decision-maker for such proposals. However, the local authority failed to determine the proposals within two months of the end of the representation period, which is the timescale specified in the Regulations for the local authority to determine proposals. In accordance with those Regulations, the local authority has referred the proposals to the adjudicator for determination.

4. I am satisfied that the proposals have been properly referred to me in accordance with the Education and Inspections Act 2006 and the Regulations.

## Procedure

5. In considering this matter I have had regard to all relevant legislation and the statutory guidance for proposers and decision-makers: “*Making significant changes ('prescribed alterations') to maintained schools*”, published in October 2018 (the statutory guidance).

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

- a) the referral of the proposals from the local authority, including the public notice as it appeared in the local press;
- b) details of the consultation undertaken by the proposers;
- c) reports to the local authority's Cabinet following the consultation and the representation period and the decision of the Cabinet;
- d) the local authority's determined admission arrangements for admission to community and voluntary controlled schools in September 2020;
- e) the local authority's School Place Planning Strategy 2018-2022;
- f) the school's three-year budget plan;
- g) the most recent OfSTED and denominational inspection reports for the school; and
- h) responses to my enquiries from the local authority, the school and the diocese.

7. I convened a meeting to be held on 10 March 2020 at the school to be attended by representatives of the school, the local authority and the diocese. Unfortunately, I encountered severe travel disruption, which caused this meeting to be postponed. It was

not possible to re-schedule the meeting due to the coronavirus pandemic. The parties made written responses to the enquiries I would have made at a meeting. I was able to have a telephone conversation with the local authority's School Organisation and Capital Services Programme Lead. I am grateful to all parties for their prompt responses at a very difficult and challenging time.

## Background

8. St Nicholas Infant School currently has a Published Admission Number (PAN) of 40. It therefore has the capacity to accommodate a total of 120 children in the reception year and years 1 and 2. A nearby infant school, Gordon Infant School, has a PAN of 60. Children from these two schools generally transfer at the age of seven (the end of year 2 (Y2)) to Gordon Junior School, which has a PAN of 100. The proposals, if approved and implemented, would enable children to remain at St Nicholas School for the whole of their primary education. The local authority intends to reduce the PAN at the school to 30, giving an overall capacity of 210, across the seven primary year groups. It is also envisaged that the PANs of the two Gordon schools would be changed to 90, thereby providing a total of 120 places in each primary year group at St Nicholas and the Gordon Schools, an increase of 20 on current numbers. The Gordon schools are academies and are part of The Thinking Schools Academy Trust, which is a multi-academy trust responsible for 17 academies. The schools are, in fact, now named "Gordons Children's Academy, Infant" and "Gordons Children's Academy, Junior", but I will refer to them by the names used in the proposals.

9. The proposers say that the effect of the proposals will be beneficial in two ways. First, they will mean that children at St Nicholas School will not need to change schools at the age of seven. The proposers say that they will,

*"benefit from a cohesive, seamless, and co-ordinated primary education journey without any transitions. It is expected that the proposals will result in improved outcomes for the pupils who attend St Nicholas CEVC School and the Gordon Federation Schools."*

It is also stated that some parents would prefer the option of their children completing all of their primary education at a Church of England School.

10. Second, the proposers draw attention to a number of ongoing and proposed housing developments in the Strood area. The effect of the proposals would be to add a total of 90 extra primary school places at St Nicholas School. Changes in the PANs at the Gordon schools (and associated increases in their physical capacity) would enable them to accommodate a further 50 extra pupils. These increases will, it is said, help to ensure that there are sufficient school places in the area. For the avoidance of doubt, I should make clear that I am not the decision-maker for any proposed changes to the Gordon schools.

## The statutory process

11. The statutory guidance sets out the steps that must be taken for proposals both to enlarge the premises and to increase the age range of a school. In the case of St Nicholas School, as the proposed enlargement would increase the capacity of the school both by more than 30 pupils and 25 per cent of the current figure and because the change in its age range is by three years or more, a statutory process must be followed for both elements of the proposals. The process has four stages: publication of the proposals, representation, decision and implementation. The statutory guidance makes clear that there is also a strong expectation that schools and local authorities will consult interested parties in developing proposals prior to publication.

12. The proposers undertook a consultation from 28 January to 3 March 2019. A document was produced explaining the proposals; this was distributed widely and made available online. A wide range of stakeholders was invited to respond. A 'drop-in' meeting at the school was attended by a small number of people. A total of 31 written responses was received. Of these, 24 expressed support for the proposals and six opposed them. The most frequently quoted concern was potential parking and traffic issues arising from the increased numbers of children at the school.

13. I consider that the proposers met the expectations of appropriate consultation before publishing the proposals. At a meeting on 11 June 2019, the council's Cabinet authorised the publication of the statutory notice. This took place on 24 June. In accordance with the requirements, a brief notice was published in the local press and the full proposals were posted on the council's website.

14. The publication of the proposals initiated a representation period of four weeks, concluding on 21 July. Four representations were received; three of these expressed support for the proposals and one objected to them. Cabinet considered the representations at a meeting on 17 December. As the two-month time limit for the local authority to determine the proposals had expired by this time, they were referred to the Office of the Schools Adjudicator for a decision. The referral was received on 23 January 2020. The local authority explained when it made the referral,

*"The objection meant that the proposals had to go to Children & Adults Overview and Scrutiny Committee, and then to Cabinet for approval. This pushed the decision past the 2-month limit."*

15. I asked the local authority to explain why it had not been possible to schedule its decision-making processes in a way that would ensure that it could take a decision within two months. The Programme Lead indicated that this had been its intention but that events took an unexpected turn following local elections. It is unfortunate that it was not possible for the local authority to reach a decision on these proposals but it does not affect my consideration of the case.

## The proposals

16. Before addressing the factors set out in the statutory guidance for decision-makers to consider, I must address a concern about the proposals themselves. The notice published in the press states that the extension of the school's age range and the enlargement of its premises will "*take effect from 1 September 2020.*" The full proposals say that these changes will "*take effect on 1 September 2020.*" (My emphasis).

17. My initial reading of the proposals led me to conclude that the proposers intended that in September 2020 the children currently in Y2 would continue at the school into year 3 (Y3), rather than transfer to junior school. The school's age range would be extended by one year group each year until these children reached year 6. A progressive enlargement of the premises would be required as the age range and the number on roll at the school grew.

18. Further discussion of the proposal with the local authority revealed that I was, in fact, mistaken in my initial understanding. I was then provided with details of the proposed changes in the age range and roll of the school over time, which Table One below summarises.

**Table One: Proposed numbers of pupils on roll at St Nicholas CE Infant School**

	R	1	2	3	4	5	6	Total
2019	40	40	40					120
2020	30	40	40					110
2021	30	30	40					100
2022	30	30	30					90
2023	30	30	30	30				120
2024	30	30	30	30	30			150
2025	30	30	30	30	30	30		180
2026	30	30	30	30	30	30	30	210

The table shows that it is not proposed that children continue their education at the school in Y3 until 1 September 2023. Until that date, children will transfer at the end of Y2 to junior school.

19. I was concerned that parents and other interested parties reading the proposals as published would misunderstand them as I had. The plain reading of the statement that the changes would "*take effect from 1 September 2020*" is that the age range and the capacity of the school would alter from that date. In fact, there is no change proposed then, other than the reduction in the school's PAN from 40 to 30, which is necessary to ensure that, when the process of change is complete in 2026, the school can operate with seven classes – one for each primary school year group. The route for securing a reduction of a previously determined PAN at a maintained school is by means of a request to the adjudicator for a variation of those arrangements. This is separate from and does not form part of the statutory proposal. I shall have more to say about a variation later.

20. The school responded to my concerns by confirming that it had been made clear to parents of children currently in Y2 that they would not be able to continue into Y3 at the school. All had made applications to other schools. The local authority clarified that the statement that the changes “*take effect from 1 September 2020*” was intended to convey that the intake of pupils at the school on that date would be the first who would remain at the school for their entire primary education. I note that the, in contrast to the proposals themselves, the material distributed during the informal consultation does make the position much clearer, explaining, for example, that there would not be a year 4 class until September 2024.

21. I consider that the proposals are inaccurate in stating that the changes will take effect from 1 September 2020. No change in the school’s age range is proposed to occur until September 2023, nor will the premises be expanded until some point after September 2020. Indeed, the local authority has confirmed that September 2023 is the date by which it intends to complete the enlargement of the school’s premises. Therefore, in my view, it is correct to say that the proposals would take effect from 1 September 2023. Although it appears to be understood locally that children would not be able to continue into Y3 at the school in September 2020, I do not consider that the proposals make this clear. The statutory guidance indicates an expectation that proposals should include an “*implementation plan*.” In my view, this expectation is not met by the published proposals. The details of the transition of the school from an infant school to a primary school, as summarised in Table One, should have been provided.

22. I have considered whether I should reject the proposals on the basis that they do not accurately and sufficiently describe the alterations that the proposers intend to make. I have decided not to do so. I am satisfied that parents and other parties in the area did understand what was being proposed, thanks to the information provided by the school and the detail that appears in the consultation material.

23. Paragraph 6(1)(c) of Schedule 3 to the Regulations gives adjudicators the option of approving proposals, “*with such modifications as the adjudicator thinks desirable, having consulted the governing body and the local authority*.” I consider it would be possible to modify the proposals by changing the implementation date from 1 September 2020 to 1 September 2023 and by including the information in Table One as an implementation plan. Such modifications do not alter in any way what the proposers intended, but provide clarity and remove the potential for misunderstanding. I have made the proposers aware that I am minded to require these modifications and they have not expressed any concern. My approval of the proposals with these modifications depends, of course, on whether they meet the other requirements set out in the statutory guidance, to which I now turn.

## Consideration of factors

### *Education standards and diversity of provision*

24. The statutory guidance states that decision-makers should,

*“consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the needs of parents, raise local standards and narrow attainment gaps.”*

25. St Nicholas School was rated “Outstanding” at its most recent inspection by OfSTED in January 2013. The proposers say that,

*“The proposals are in line with current local and national policy, which allows good and outstanding schools to expand.”*

The proposals also emphasise the benefits of removing a change of school for pupils at St Nicholas at the age of seven, thereby causing “less disruption” and “a seamless education pathway.” Furthermore, the proposals mention potential advantages for the Gordon schools. Gordon Junior School would no longer need to admit pupils from two schools.

*“Children at Gordon Infants would continue to Gordon Juniors, and the two Gordon schools would operate as if they were a primary school. The two Gordon schools are part of the same trust, and share teaching and management styles. Therefore there would be a continuous journey for the children throughout their primary education.”*

The proposers expect that,

*“the proposals will result in improved outcomes for the pupils who attend St Nicholas CEVC School and the Gordon Federation Schools.”*

26. Amongst the comments from respondents to the informal consultation, the most frequent reason given in support of the proposals was that they would “extend the school ethos” and provide for a “Church of England education” across the full primary age range. The proposals themselves state that they,

*“will increase the balance of faith based places as well as improving parental choice for those parents who want a full faith based primary education for their children.”*

27. Although there is no guarantee that it will be the case, many education experts concur with the proposers’ view that the removal of a change of schools at the age of seven can lead to a raising of educational standards. I consider that the proposals have the potential to contribute to improved outcomes for children. There is parental support for the extension of the age range, which will increase the diversity of provision in the area.

#### *Equal opportunities issues*

28. The statutory guidance stipulates that,

*“The decision-maker must comply with the Public Sector Equality Duty (PSED), which requires them to have ‘due regard’ to the need to:*

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;*

- *advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and*
- *foster good relations between people who share a relevant protected characteristic and people who do not share it.”*

29. The local authority carried out a Diversity Impact Assessment (the DIA) in order to assess the impact of the proposals on “*the protected characteristic groups.*” The DIA did not identify the likelihood of any adverse impacts and concluded that the proposals could advance equality of opportunity in respect of the protected characteristics of “*age*” and “*religion/belief*”, as primary aged pupils would be able to complete their education in one school. I consider that the DIA has been carried out appropriately and agree with its conclusions.

### *Community cohesion*

30. As decision-maker, I am also required to consider the proposals’ impact on community cohesion. The local authority believes that the impact will be positive. The report made to the council’s Cabinet, following the period of informal consultation, states that,

*“The proposals should result in a stronger community feeling at the school as the pupils will be at the school for seven years rather than a short three year period, which does not support the improved community cohesion the proposals are expected to deliver.”*

31. I do not doubt that the sense of community at the school will be enhanced by the extension of its age range. However, “community cohesion” relates not only to schools as communities, but the effect that schools have on the wider communities they serve,

*“by encouraging through their teaching, an understanding of, and respect for, other cultures, faiths and communities.”* (From the statutory guidance).

The proposals do not address this matter directly, but I note that the school’s most recent statutory denominational inspection (March 2018), in which provision was graded as “outstanding”, found that,

*“In collaboration with the local community, there are growing links with schools in Uganda and Zimbabwe. Pupils’ knowledge of similarities and differences in cultures has grown. Good progress has been made in supporting pupils’ understanding of Christianity as a multi-cultural world faith.”*

I am therefore confident that the school has a positive impact on community cohesion, as defined in the statutory guidance, and that its enlargement will contribute further to that impact.



## *Travel and accessibility*

32. Decision-makers must be satisfied that proposals have properly taken into account accessibility planning. Proposals should also not unreasonably extend journey times to school or prevent too many children from travelling sustainably to school, by walking or cycling.

33. Almost all of the relatively few responses to the informal consultation that did not support the proposals made reference to the potential increase in traffic in the roads surrounding the school if the number of pupils were to increase. Concerns were also expressed about the demands on parking space. The school has a small site in an urban area. Access is currently only possible from one point, on the northern side of the site. The local authority intends to address these concerns, as follows,

*“as part of the design process we will look at how on-site parking can be increased, as well as the possibility of creating a drop off zone. Officers are also working with the school to explore how best to encourage parents to walk/cycle their children to school and also to look at the possibility of opening a pedestrian access from the area of the school that fronts London Road.”* [London Road runs along the southern edge of the school site].

34. I consider these to be appropriate responses. I note, too, that the provision of additional school places in the Strood area, where new housing developments are planned, is preferable to requiring children to make longer journeys to schools further afield by car.

## *Funding*

35. As the decision-maker, I must be satisfied that the funding necessary to implement the proposal will be available. The local authority informed me that it has allocated £870,000 from its capital programme for the enlargement of the school's premises. The sources of these funds are principally government grants and contributions from housing developers. The Programme Lead described the funding position to be “*very tight*.” He explained that the school site is a difficult one to develop. In particular, the provision of a playing field, for which space is available but is currently used in a different way, would be challenging. The Programme Lead confirmed that, “*as things stand*”, the enlargement could be delivered but there is little flexibility in the budget. He expected further contributions from housing developers to become available in due course.

36. I am concerned that the funds available appear to be barely sufficient for the proposed enlargement of the school. The statutory guidance makes clear that I cannot approve the proposal conditionally upon funding being made available. Nonetheless, the local authority has stated that the current position is that just enough funding is guaranteed and, on that basis, I accept that it will be able to implement the proposal.

37. I have also considered the impact of the change on age range on the school's revenue budget. As Table One shows, the number of pupils on roll will progressively decrease from 2020 to 2022, before increasing as the additional year groups are

established from September 2023. The decrease in roll will result in a reduction in the funding provided for the school during this period. I asked the school to confirm to me that it had taken this into account.

38. The school supplied me with its three-year budget plan, which reflects the reduced income whilst its roll decreases, as well as an expected increase in the amount it will receive per pupil. The plan indicates that, based on current spending patterns, there will be a small deficit in the budget of around £10,000 by April 2023. This could increase to about £56,000 the following year. The governing board has considered the possibility of addressing the shortfall by reducing the number of teachers for the academic year 2022-2023 when, as Table One shows, only three classes would be needed to cater for 90 pupils. The headteacher has expressed confidence that the school will be able to manage satisfactorily the reduction in income over the transitional period:

*“We have cost savings in place and we intend to apply to the LA for growth funding which will be in the region of £55000 so we do believe that the deficit will be manageable and most likely to be eradicated.”*

I am satisfied that the school has addressed the revenue implications of the proposals in an appropriate way.

#### *Planning permission*

39. Planning permission has not yet been obtained for the enlargement of the school's premises. The Regulations allow me to make the grant of planning permission by a specified date a condition of approving the proposals. The local authority has suggested that 1 September 2022 would be an appropriate date by which planning permission should be obtained, as it would allow one year for building to be completed before the first extension of the school's age range. I agree.

40. As site trustees, the Rochester Diocesan Board of Education has indicated approval of the proposals. The governing board of the school is satisfied that the local authority will implement the enlargement proposal.

#### *Admission arrangements*

41. The arrangements for admission to the school in September 2020 were determined by the local authority, the admission authority for the school, in December 2018. The school's PAN appeared in a table alongside the PANs of the other community and voluntary controlled primary schools in the local authority area and was listed as 30, with the following caveat:

*“reduction of the PAN to 30 is subject to approval of the expansion of age range, to become a primary school. If such approval is not granted, the PAN will remain at 40 (as it is currently).”*

Notwithstanding this statement, I must emphasise that the reduction of the PAN would not occur automatically, if the proposals were to be approved. It would be necessary for the local authority to seek a variation to its admission arrangements, to alter the current PAN of 40.

42. In order for the implementation of the proposals to take place in the manner described in Table One, a variation must be sought as a matter of urgency. I am empowered by the Regulations to make this a condition of approval of the proposals.

## Summary of decision

43. I consider that the proposals meet the requirements set out in the statutory guidance relating to education standards and diversity of provision, equal opportunities, community cohesion, travel and accessibility. I am satisfied that capital funding is in place and that changes in revenue over the transitional period can be managed. The proposals have broad support and meet a longer-term need for additional school places in the area. I therefore approve the proposals subject to the modifications and conditions that follow.

44. The proposals must be modified to state that they will take effect from 1 September 2023. The information in Table One must be inserted into the proposals in order that the plan for their implementation is made clear.

45. The approval is also subject to two conditions:

- (a) that the local authority obtains planning permission for the enlargement of the premises of the school by 1 September 2022; and
- (b) that a variation to the admission arrangements of the school, reducing the PAN for admission in September 2020 to 30, is approved.

## Determination

46. Under the powers conferred on me in section 21 of the Education and Inspections Act 2006 and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, I hereby approve conditionally and with modifications the proposals to change the age range and to enlarge the premises of St Nicholas Church of England Infant School, Rochester, with effect from 1 September 2023.

Dated: 30 March 2020

Signed:

Schools Adjudicator: Peter Goringe