



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: VAR931**

**Admission authority: The London Borough of Waltham Forest for Heathcote School and Science College**

**Date of decision: 29 May 2020**

## 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 the London Borough of Waltham Forest for Heathcote School and Science College for September 2020.**

## The referral

1. The London Borough of Waltham Forest (the local authority) has referred a proposal for a variation to the admission arrangements for September 2020 for Heathcote School and Science College (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 11 to 18 in Chingford.
2. The proposed variation is to reduce the published admission number (PAN) for September 2020 from 240 to 210.

## 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.
5. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

## Procedure

6. In considering this matter I have had regard to all relevant legislation, and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
  - a. the referral from the local authority dated 30 April 2020 and supporting documents together with its responses to my enquiries;
  - b. the determined arrangements for 2020 and the proposed variation to those arrangements;
  - c. evidence that the governing board for the school has been consulted;
  - d. a map showing the location of the school and other relevant schools;
  - e. a copy of the notification to the appropriate bodies about the proposed variation;
  - f. the Waltham Forest Pupil Place Plan 2018-2022; and
  - g. a determination by the Schools Adjudicator dated 20 June 2019 reference VAR865.

## The proposed variation

8. The arrangements for 2020 were determined by the local authority on 26 February 2019 and included a PAN of 240 for the school.
9. Paragraph 3.6 of the Code requires that admission arrangements, once determined, may only be changed, that is varied, if there is a major change of circumstance or in certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.
10. Paragraph 3.6 of the Code also requires that the appropriate bodies within the relevant area are notified of a proposed variation. The appropriate bodies are defined in footnote 61 to paragraph 3.6 of the Code. They are for secondary schools, not of a religious character:
  - i) all other admission authorities in the area;

- ii) whichever of the governing board and the local authority who are not the admission authority; and
- iii) all governing boards for community and voluntary controlled schools in the relevant area.

The relevant area is defined in section 88F of the School Standards and Framework Act 1998 (the Act) as the area of the local authority in which the school is situated or another area which the local authority has determined through processes set out in the Education (Relevant Area for Consultation on Admission Arrangements) Regulations 1999.

11. The evidence of notification provided with the application consisted of an email dated 30 April 2020 addressed “*Dear Heads / Chairs*”. There was no indication of which heads and chairs this may have been sent to. When I asked the local authority for further evidence that the requirements of paragraph 3.6 had been met, I received a copy of an email dated 12 May 2020 addressed to nearby local authorities.

12. In the absence of a list of whom the first email was sent to, or confirmation of what the relevant area is, I cannot be certain that all appropriate bodies in the relevant area have been notified of the proposed variation. Indeed, it is possible that an admission authority that was not a governing board but a multi-academy trust, would not necessarily receive an email addressed to “*Dear Heads / Chairs*”.

13. Before deciding to approve this variation, I would require further evidence from the local authority that the notification requirements of paragraph 3.6 were met and if they were not, then I would not be able to approve the variation because the correct process had not been followed.

## Consideration of the proposed variation

14. The local authority said on the application form that the major change in circumstances which required this variation was “*a surplus of Year 7 places in this part of the Borough and nearby academies have expanded.*” According to the ‘*Waltham Forest Pupil Place Plan 2018 -2022*’ there was expected to be a need for 3261 Year 7 places in September 2020 across the local authority and, at the time the plan was written, just 3084 places were available. In response to my enquiries I was told that 90 places had been added to Year 7 for September 2020 which would take the number of places available up to 3174. The local authority also said that just 2950 Year 7 places had been offered for September 2020; with 174 of them at the school. I was told that one nearby academy had offered places to 30 more pupils than its PAN and a number of parents were refusing the offer of a Year 7 place and opting for home education because of COVID-19.

15. The local authority also said on the application form that this change of circumstances would lead to the school being over staffed and that reducing the PAN would “*reduce the surplus in the local area to a reasonable level whilst retaining a level of parental*

*preference and enable cost-savings for the school by not being over staffed.” I asked the local authority for more detail on how reducing the PAN would prevent the school being over staffed. It replied “Since the request for a reduction is late in the year there is no possibility to plan for redundancies however it would allow the school to redirect capacity elsewhere”.*

16. If in 2018 the forecast need for Year 7 places in September 2020 was 3261, then determining a PAN of 240 in February 2019 for the school was a reasonable thing to do. Assuming there were 3261 children needing Year 7 places for September 2020, or even 3174 being the number actually available, then a pandemic resulting in 200 or more parents deciding not to take up places could not have been predicted and is a major change in circumstances. The decision by an admission authority for an academy to offer additional places creates further issues. The questions for me are, does reducing the PAN address the problems identified by the local authority and is this justified by the change in circumstances?

17. Reducing the PAN does not reduce the overall capacity in either the school or the local authority unless accommodation is being removed from the school. I have not been told that any accommodation is being removed and so the physical capacity of the school remains the same and will not be affected by a reduction in the PAN.

18. It is difficult for me to see why the school could not reduce its staff without reducing the PAN. At the beginning of March, if not shortly before, the school would have known that it was to expect 174 children to start in September. Based on trends in previous years, the governing board would have been able to assess how this number might change between then and September and set an appropriate staffing level for the curriculum it intends to provide. Normally, there would have been adequate time for any necessary redundancy or recruitment before the deadline of 31 May which is the last date in which the usual three month notice can be given for 31 August. The processes to dismiss or recruit staff will be more difficult during COVID-19 but, as the local authority have said, it is now too late to complete those processes if not already started. Whatever the PAN is, the school will need the number of staff for the number of pupils it has and is funded for.

19. The local authority would be required to offer any applicant for the school who came forward between now and the end of the school year a place while the year group remains below PAN. With 174 places offered this could mean another 66 pupils with a PAN of 240 or 36 with a PAN of 210. There are situations, for example where infant class size legislation applies, where the admission of children beyond a critical number necessitates the appointment of an additional teacher. The local authority has not suggested that 210 is such a point and I think that in a secondary school with over 1000 pupils, over 70 teachers and a pupil teacher ratio of 15.8:1 (Department for Education data for 2018/19) such an argument would be very difficult to make. I think it is very unlikely that as many as 36 additional applicants would come forward during the school year and so setting a PAN of 210 would make no difference to the number of children in Year 7. This would continue the pattern of recent years when in 2017, 2018 and 2019 the number of pupils admitted to the

school was 203, 209 and 200 respectively without requiring a reduction in PAN to set suitable staffing levels.

20. I have concluded that the proposed reduction in the PAN from 240 to 210 will not reduce the number of surplus places in the area and nor is it necessary to enable the school to reduce its staffing to reflect the actual number of children who will join it in September 2020. Therefore, I do not approve the proposed variation.

## Consideration of the arrangements as a whole

21. The application form for this variation included a hyperlink to the local authority's admission arrangements for 2020. These are the same for primary and secondary schools. It appeared to me that these arrangements did not, or may not, conform with the requirements of the Code. I was aware that a determination made by the Schools Adjudicator on 20 June 2019, reference VAR865, found that the arrangements for 2020 did not conform with requirements. That determination required the local authority to amend the 2020 arrangements so that they did conform with the Code. The matters which were of concern to me were the same matters found not to conform in VAR865.

22. When I drew this to the attention of the local authority it replied "*We can confirm changes suggested by VAR865 have been implemented. Below, we have given necessary links*". I need to reiterate that VAR865 did not "suggest" changes, it set out how the arrangements for 2020 did not conform with the requirements of the Code. The admission authority was required by section 88K of the Act to revise the arrangements within two months of the date of determination VAR865 so that the arrangements did conform with the Code.

23. The links which the local authority provided in response to my enquiries on this matter took me to the arrangements for 2021, not those for 2020 to which VAR 865 and this application for a variation apply. I went on to look at the school admissions pages on the local authority's website; here I found a booklet entitled '*Starting Secondary School 2020*'. The arrangements set out in this booklet were different to those originally provided to me and did include changes reflecting the findings of VAR865.

24. Paragraph 14 of the Code requires that admission arrangements are clear. Having different versions of the 2020 arrangements on the local authority's website cannot be considered to be clear. This is well illustrated by the local authority's own officers referring me to a copy of the arrangements which had not been revised.

## Summary

25. I cannot be certain from the information provided that the notification requirements of paragraph 3.6 in the Code have been met. The proposed reduction in PAN at the school does not reduce the number of surplus places in the area and nor is it a prerequisite for the

school to reduce staffing. I therefore do not approve the proposed reduction in PAN at the school.

## **Determination**

26. 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 the London Borough of Waltham Forest for Heathcote School and Science College for September 2020.

Dated: 29 May 2020

Signed:

Schools Adjudicator: Phil Whiffing