



Office of
the Schools
Adjudicator

Determination

Case reference: VAR932

Admission authority: The London Borough of Waltham Forest for Thorpe Hall Primary School

Date of decision: 1 June 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 Thorpe Hall Primary School for September 2021.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

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. The London Borough of Waltham Forest (the local authority) has referred a proposal for a variation to the admission arrangements for September 2021 for Thorpe Hall Primary School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 3 to 11 in Walthamstow.
2. The proposed variation is to reduce the published admission number (PAN) for September 2021 from 90 to 60.

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 2021 and the proposed variation to those arrangements;
- c. the composite prospectus for 2020;
- d. evidence that the governing board for the school has been consulted;
- e. a map showing the location of the school and other relevant schools;
- f. a copy of the notification to the appropriate bodies about the proposed variation; and
- g. the Waltham Forest Pupil Place Plan 2018-2022.

The proposed variation

8. The arrangements for 2021 were determined by the local authority on 25 February 2020 and included a PAN of 90 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 primary schools not of a religious character:

- i) all other admission authorities for primary schools 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 primary 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 who 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, this would be a multi-academy trust, would not necessarily receive an email addressed to “*Dear Heads / Chairs*”.

13. Before I could approve this variation, I would require further evidence from the local authority that the notification requirements of paragraph 3.6 were met. If they were not, then I would be unable to approve the variation as 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 large decline in demand for reception places in this area of the Borough. Several schools have surplus places.*”

15. The local authority also said on the application form that as a result of this change in circumstances “*The school would be in a position of being overstaffed and by reducing staff there will be cost savings for the school.*” 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 therefore the school would be staffed sufficiently for 3FE and not 2FE, hence the overstaffing concern. There may be the possibility if natural wastage where staff retire*”.

16. The application form also said that reducing the PAN “*will reduce the surplus in the local area to a reasonable level (around 5%) whilst retaining a level of parental preference and enable cost savings for the schools by not being over-staffed.*”

17. I have noted that this is the fifth successive year when the local authority has asked the adjudicator to approve a reduction in PAN from 90 to 60 for this particular school. I asked the local authority why it had not consulted on and determined a lower PAN for 2021 given the pattern of previous years. I was told that “*This is because most schools fill up in this planning area and we were aware that an academy had expressed interest in reducing their PAN in the same planning area and therefore we didn’t want to create an area where there was no ability to allow for parental preference.*”

18. In the document ‘*Waltham Forest Pupil Place Plan 2018-2022*’ (the place plan) there are references to “*temporary reductions in PAN*”. There is no such thing as a temporary reduction in PAN. Admission authorities set their admission arrangements, including PAN, every year and these apply for one year only. A variation may be requested if there is a major change in circumstances. I asked the local authority what major change in circumstances occurred between 25 February 2020, when the PAN of 90 was determined and 30 April 2020, when the application for a variation was made. I was told “*It wasn’t known until primary offer day (16th April) which planning areas would have surplus places.*”

19. First, the places allocated on 16 April 2020 were for September 2020 whereas the application is to vary the PAN for September 2021. Secondly, it is never known until places are allocated how many places will not be taken up or in which schools. That is not a change in circumstances, let alone one which justifies a variation to the PAN. I have looked at the historical data included in the place plan and provided by the local authority in the application and in response to my enquiries.

Year	2017	2018	2019	2020
Year R places available in planning area	420	420	420	390
Year R places offered in planning area	324	316	332	352
Unfilled places	96	104	88	38
Forecast number of unfilled places in the place plan	-	13	14	11
Year R places offered at the school	58	57	56	56

20. I have quoted above the local authority saying that “*most schools fill up in this planning area*”. Given the number of empty places shown in the above table, this has clearly not been the case for several years. It is also clear that the forecasts in the place planning document are wide of the mark (for example for 2019 the difference was 74, that is 88 actual spare places against a prediction of 14). The need for places in the area has, however, been consistent for some time and the level of parental preference for the school has also been steady. I find it difficult to see the major change of circumstances since February 2020 described by the local authority when looking at the data in the table above. I consider the need for fewer places was foreseeable and the local authority would have been able to consult the public and subsequently determine an appropriate PAN for the school. The variation process is not subject to the same level of public scrutiny as it was intended to address situations arising at short notice, such as loss of a classroom through fire, where there would not be time to consult widely and any more than the required notification would introduce unnecessary delay.

21. The repeated use of the variation process in these circumstances is of concern. However, my role is to determine whether reducing the PAN addresses the problems identified by the local authority and is this justified by the change in circumstances?

22. The first issue I will consider is the level of surplus places in the area. 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. The local authority has not told me about any accommodation being removed and so the physical capacity of the school remains the same. Reducing the PAN will not change that.

23. Turning to the issue of staffing at the school, the local authority’s response to my enquiries on this matter is confusing. I quote it again: “*Since the request for a reduction is late in the year there is no possibility to plan for redundancies therefore the school would be staffed sufficiently for 3FE and not 2FE, hence the overstaffing concern. There may be the possibility if natural wastage where staff retire.*” For September 2021, which is the year this variation is requested for, there is until 31 May 2021 (the latest date by which a three month notice can be given before the new school year) for staffing matters at the school to be resolved. Against that background, I find the local authority’s response puzzling and unconvincing.

24. It is difficult for me to see why the school could not reduce its staff without first reducing the PAN for 2021. At the beginning of April 2021, if not shortly before, the school will know how many places have been allocated for September 2021. Based on trends in previous years, the governing board would have been able to assess how this number might change between then and September 2021 and set an appropriate staffing level. There will then be adequate time for any necessary redundancy or recruitment before the deadline of 31 May, which is the date by when notice must be served for August 31 2021. Whatever the PAN is, the school will need the number of staff for the number of pupils it has and is funded for.

25. The local authority would be required to offer any applicant for the school who came forward between April 2021 and the end of the 2021/22 school year a place while the year group remains below PAN. 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 said that this is the case here. I do not think that a reduction in PAN for 2021 is required for the school to set an appropriate staffing level.

26. In its responses to my enquiries, the local authority told me that it expects to require 373 places in the planning area for September 2021. According to the place plan there are four primary schools admitting children to Year R listed in the Walthamstow North East planning area.

School	PAN for 2021 as published in the 2021 arrangements
Chapel End Infants	90
Oakhill Primary	30
Selwyn Primary	90
Thorpe Hill Primary	90

This gives a total of 300 Year R places available for September 2021 in the planning area. The arrangements for 2020 listed the same PANs yet the local authority told me that there were 390 places available for September 2020. I have therefore looked at the information in the place plan in detail.

27. The map of the Walthamstow North East planning area in the place plan shows another school in that planning area, Hillyfield at the Park Academy. This is the source of the discrepancy between 300 and 390 places. Hillyfield is a single academy with two sites, Hillyfield at the Park, in this planning area, and Hillyfield on the Hill, in the planning area of Walthamstow North West. According to the composite prospectus for 2020 found on the local authority's website there were 120 Year R places available at the Hillyfield at the Park site. The academy's website says that there were 90 places available on that site in 2020. Taking this latter figure there is agreement with the 390 places in the Walthamstow North East planning area stated by the local authority in 2020.

28. In passing I note that the Hillyfield Academy website also states that there were 90 places available on the Hill site giving a total of 180 for the academy as a whole. The composite prospectus also stated that there would be 90 places on that site, but gave a combined figure of 210, not 180 for the whole academy. This discrepancy needs to be resolved but is not part of this determination.

29. This application concerns admissions in 2021. I could not find the admission arrangements for Hillyfield for September 2021 on the school's website, although the Code requires that they should be published there. Included with the admission arrangements which I have been sent by the local authority is a list of PANs for all primary schools in the

local authority, this includes a PAN of 210 for Hillyfield. The academy was required by the Code to send its arrangements for 2021 to the local authority by 15 March 2020, so I will take this as the figure determined for Hillyfield by its trust. This is the same figure that the local authority published for Hillyfield in 2020 and 30 more than published by the academy for 2020. There is no need for the admission authority for an academy to consult before raising its PAN, so I have no concerns about the PAN being higher. My concern is how many Year R places will be available in the Walthamstow North East planning area in 2021.

30. Because of the pressures on schools due to the COVID-19 pandemic at the time of writing I have chosen not to ask Hillyfield how it intends to distribute its places in September 2021, but to consider the two possibilities of 120 or 90 places being provided in the Walthamstow North East planning area.

31. If there will be 90 places available at the academy, and the proposed reduction in PAN is approved, there will be a total of 360 places for 373 children in the area. In that situation I could not approve the proposal. If 120 places were available, then there would be 390 places for 373 children. The gap between expected demand and provision would be less than 5 per cent which could lead to constraints on meeting parental preferences.

32. I have concluded that the proposed reduction in the PAN from 90 to 60 will reduce the number of places offered, however, it will not reduce the number of surplus places in the area as no accommodation is being removed. I have also concluded that the proposed reduction in PAN is not necessary to enable the school to reduce its staffing to reflect the actual number of children who will join it in September 2021. It also appears to me that the proposed reduction could result in there being insufficient places in the area. Therefore, I do not approve the proposed variation.

Consideration of the arrangements as a whole

33. The application form for this variation included a hyperlink to the local authority's admission arrangements for 2021. These are the same for primary and secondary schools for which the local authority is the admission authority. It appeared to me that these arrangements did not, or may not, conform with requirements.

34. The hyperlink provided took me to the version of the 2021 arrangements put before the local authority's cabinet for approval among the other papers for that meeting. This document had the heading "*Determined School Admission Arrangements 2021/22*", however, throughout the word "*proposed*" is used to describe each section. I could not find a version elsewhere on the local authority's website. Paragraph 1.47 of the Code requires that admission authorities publish their arrangements once determined.

35. When I drew this to the local authority's attention, I was provided with another two hyperlinks. The first took me to a set of arrangements similar to the document presented for approval to the cabinet with the word "*proposed*" removed together with some other changes that I will refer to below. The second took me to the page on the local authority's

website which set out the 2020 arrangements for admission to primary schools. To get to the 2021 arrangements I was instructed in the letter from the local authority to click on a link to “*Related documents*”. I had to scroll some distance down the page to find this link which was at the bottom. I was then able to click on a hotspot which took me to the same document as the other link I had been sent.

36. The Oxford Dictionary defines “publish” as “1. *Make generally known ... 2. Announce formally, promulgate ...*”. Although the 2021 arrangements can be found on the local authority’s website, their location hardly matches the definition of ‘publish’ and they would be difficult for parents or others to find. In my view the requirements of paragraph 1.47 have not been met.

37. Paragraph 14 of the Code requires that admission arrangements are clear while paragraph 1.6 explains that children with an Education, Health and Care Plan (EHCP) which names the school must be admitted before the application of oversubscription criteria to other children. This requirement was not met in the version of the arrangements initially sent to me. When I drew this matter to the attention of the local authority, it referred me to page 34 of the arrangements found on the other hyperlinks sent to me. In this version, a paragraph had been inserted above the oversubscription criteria, in a different font, referring to the admission of children with an EHCP. This said “*Children who have a statement of special educational needs or Education, Health and Care Plan (EHCP) are placed in schools under the terms of the Education Act 1996 and the Children and Families Act 2014. They are not considered under the Admission Criteria referred to below. These children and young people will be allocated a place at the school they must attend which will be named on the Statement or EHCP.*” This is inaccurate because not all children with an EHCP have a school named on it. Some EHCPs may specify non-school provision and it is also possible (for example if no specific school is requested by the parent) for an EHCP to specify only that the child’s needs can be met in a mainstream setting. In such cases, the school’s oversubscription criteria would be applied. I find that this paragraph of the arrangements is unclear and must be revised.

38. Paragraph 1.8 of the Code requires that there is a clear and effective tie-breaker for all oversubscription criteria. The version of the arrangements which I initially sent only had a tie-breaker for the final criterion, of distance from home. When I drew this to the attention of the local authority, they referred me to page 37 of the more recent set of arrangements. Again, some new text has been inserted in a different font under the heading “*Tie-breaker*”. It begins “*The tie-breaker is to decide between two applications that cannot otherwise be separated under the distance priority ...*”. This misses the point. While it may be rare for a tie-breaker to be needed to separate children meeting higher criteria, the Code requires that one is in place and I find that this is not the case.

39. The Code in paragraph 1.39 says “*Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances: a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or b) the member of*

staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.” An admission authority wishing to give priority to children of members of staff may therefore choose whether it requires only (a) to be met, only (b), either of (a) or (b) or both of (a) and (b). I considered that the wording in the version of the arrangements initially sent to me was not clear on which option was chosen. When I drew this to the attention of the local authority it told me that changes had been made on the second version of the arrangements I had been sent. The revised version is clear on this point.

40. Paragraph 2.17 of the Code requires that “*Admission authorities must make clear in their arrangements the process for requesting admission outside of the normal age group.*” In the first version of the arrangements which I was sent, the section on admission outside of the normal age group did not mention the process of requesting such admission. When I raised this matter with the local authority it again referred me to the second version of arrangements in which this section had been altered to say what parents need to do.

Summary

41. 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. It also appears to me that if the PAN is reduced as requested, there may not be sufficient Year R places available in the area in September 2021. I therefore do not approve the proposed reduction in PAN at the school.

42. I find that the arrangements do not conform with the Code in the ways set out above.

Determination

43. 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 Thorpe Hall Primary School for September 2021.

44. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

45. 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: 1 June 2020

Signed:

Schools Adjudicator: Phil Whiffing