



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: VAR933**

**Admission authority: The London Borough of Waltham Forest for The Winns 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 variations to the admission arrangements determined by the London Borough of Waltham Forest for The Winns Primary School for September 2020 and 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 both September 2020 and September 2021 for The Winns 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 in each case is to reduce the published admission number (PAN) for September 2020 and September 2021 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 variations are 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 2021 and the proposed variation to each set of 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;  
and
- f. the Waltham Forest Pupil Place Plan 2018-2022.

## The proposed variations

8. The arrangements for 2020 were determined by the local authority on 26 February 2019 and those for 2021 were determined on 25 February 2020. Both sets of arrangements included a PAN of 120 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 variations requested are 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 and that email did not refer to this school. 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 to nearby local authorities which did refer to this school.

12. In the absence of a list of who the first email was sent to, or confirmation of what the relevant area is and the omission of the school from one of the emails I have been sent, 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, that is a multi-academy trust, would not necessarily receive an email addressed to “*Dear Heads / Chairs*”. The omission of this school from the first email in particular leads me to think that notification was deficient.

13. If I were to decide to approve these variations, then I would require further evidence from the local authority that the notification requirements of paragraph 3.6 were met.

## Consideration of the proposed variations

14. The local authority said on the application form that the major change in circumstances which required these variations 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 4FE and not 3FE, 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 the local authority has asked the adjudicator to approve a reduction in PAN from 120 to 90 for 2018 and 2019 for this particular school. I asked the local authority why it had not consulted on and determined a lower PAN for 2020 and 2021 given the pattern of previous years. I was told that “This is because 3 of the 6 schools are academies with one of them being very undersubscribed. Of the 3 maintained schools 2 are usually full and The Winns is sometimes over 90 on offer day and sometimes under and we didn’t want to create the issue with there being little parental preference. Additionally we were expecting higher child yield from developments which has not been as fast as expected due to changes in the density of the developments and also families leaving the Borough due to Brexit for example.”

The request to reduce the PAN for 2020

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 the date on which the PAN of 120 was determined for 2020 and 30 April 2020, when the application for a variation was made. I was told that “It wasn’t known until primary offer day (16th April) which planning areas would have surplus places. Usually we get a significant number of late applications in the first weeks after offer day however late applications this year have been very few therefore we are expecting a surplus of places higher than we would like.”

19. 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	480	480	450	450
Year R places offered in planning area	392	362	365	359
Unfilled places	88	118	85	91

Forecast number of unfilled places in the place plan	-	-5	24	22
Year R places offered at the school	110	80	89	84

20. It is clear that the forecasts in the place planning document are wide of the mark, for example in 2019 there were forecast to be 24 unfilled places, in the event there were 85, a difference of 61. The need for places in the area has been consistently below the number offered for several years and the level of parental preference for the school has been steady in the last three years. I find it difficult to see the major change of circumstances since February 2019 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 whether this is 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 was: *"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 4FE and not 3FE, hence the overstaffing concern. There may be the possibility if natural wastage where staff retire."*

24. It is difficult for me to see why the school could not reduce its staff without first reducing the PAN for 2020. In the middle of April 2020, if not shortly before, the school would have known how many places had been offered for September 2020. Based on trends in previous years, the governing board would have been able to assess how this number might change between then and September 2020 and set an appropriate staffing level. Normally, there would be adequate time for any necessary redundancy or recruitment processes to be completed before the deadline of 31 May. The processes to dismiss or recruit staff may be more difficult during COVID-19, but, as the local authority has said, it is

now too late to complete them 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.

25. The local authority would be required to offer any applicant for the school who came forward between now and the end of the 2020/21 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 suggested that this is the case here. I do not think that a reduction in PAN for 2020 is required for the school to set an appropriate staffing level.

26. I am not satisfied that all appropriate bodies within the relevant area have been notified about this proposed variation. I have concluded that the proposed reduction in the PAN for 2020 from 120 to 90 will not reduce the number of surplus places in the area and nor is it necessary to enable the school to adjust its staffing to reflect the actual number of children who will join it in September 2020. Therefore, I do not approve the proposed variation.

#### The request to reduce the PAN for 2021

27. When I asked the local authority what major change in circumstances had occurred between the PAN for 2021 being determined as 120 on 25 February 2020 and the 30 April 2020 when the application for a variation was made, I was told "*The school has requested the variation to last for 2 years since it is going to apply for a permanent reduction as from 2022 after the next admissions arrangement consultation. It would then be a 3FE school in each year group due to historic in-year variations.*"

28. As I have set out above, it has been clear for many years that the 120 places at the school were not needed to provide for local children or meet parental preference at the school. This is not something which has only become apparent in the last three months. 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 whether this is justified by the change in circumstances.

29. My comments regarding any effect the reduction in PAN would have on the level of surplus places in 2021 are the same as those for 2020. Surplus places are reduced by the removal of accommodation, not by reducing the PAN, although a PAN reduction may be necessary if accommodation at a school is removed.

30. The local authority's explanation of why it is necessary to reduce the PAN in order to set staff levels quoted above can only apply to September 2020. No explanation was provided for 2021 and I would expect a school to set its staffing for September 2021 to reflect the number of children on roll it expects to have on roll then, not to reflect the PAN set eighteen months earlier.

31. In its responses to my enquiries, the local authority has told me that it expects to require 402 places in the North West Walthamstow planning area for September 2021. In the place plan six primary schools admitting children to Year R are listed in the Walthamstow North West planning area.

School	PAN for 2021 as published in the 2021 arrangements
Greenleaf Primary	60
Hillyfield Primary Academy	210
Roger Ascham Primary	60
The Winns Primary	120
Walthamstow Primary	60
Whittingham Primary Academy	60

This table suggests there are 570 Year R places available for September 2021 in the planning area. However, this figure is significantly more than the 450 which the local authority told me were available for September 2020. I have therefore looked at the information in the place plan in detail.

32. The apparent discrepancy appears to arise from Hillyfield Primary Academy. This school is based on two sites, one, called Hillyfield on the Hill, in this planning area of Walthamstow North West and the other, called Hillyfield at the Park, is in the Walthamstow North East planning area. The 210 Year R places at Hillyfield are split between the two planning areas. As I have pointed out in my determination VAR732 concerning Thorpe Hall School, there are unfortunate inconsistencies in what is said on the academy's website and the local authority's website about the number of children the academy will place at Hillyfield at the Park. The documents that I have seen are, however, consistent in saying that 90 places are provided at Hillyfield on the Hill. This leads to the conclusion that there will be 450 places available in the Walthamstow North West planning area in September 2021 as there were in 2020.

33. The proposed reduction in PAN for 2021 would reduce the number of places available in the Walthamstow North West planning area to 420. This is sufficient for the forecast demand of 402 places, however with over 95 per cent of places expected to be required, there could be constraints on meeting parental preferences in the area.

34. I have concluded that the proposed reduction in the PAN from 120 to 90 will reduce the number of places offered, but 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 constrain the level of parental preferences that will be met in the area. Therefore, I do not approve the proposed variation.

## Consideration of the arrangements as a whole

### The 2020 arrangements

35. The application form for this variation included a hyperlink to the local authority's admission arrangements for 2020. These are the same for the 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. 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.

36. 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.

37. 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 Primary 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.

38. 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 arrangements which had been revised.

### The 2021 arrangements

39. The application form for this variation included a hyperlink to the local authority's admission arrangements for 2021. These are also 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.



40. 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.

41. 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.

42. 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.

43. 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.

44. 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, it 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.

45. 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.

46. 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

47. From the information provided I have formed the view that the notification requirements of paragraph 3.6 in the Code have not been met. The proposed reductions in PAN at the school do not reduce the number of surplus places in the area and nor are they prerequisites for the school to reduce staffing. It also appears to me that if the 2021 PAN is reduced as requested, there will not be sufficient Year R places available in the area in September 2021. I therefore do not approve the proposed reductions in PAN at the school.

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

## Determination

49. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variations to the admission arrangements determined by the London Borough of Waltham Forest for The Winns Primary School for September 2020 or for September 2021.

50. 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.

51. 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