



Office of
the Schools
Adjudicator

Determination

Case reference: VAR928

Admission authority: The London Borough of Waltham Forest for George Tomlinson Primary School

Date of decision: 17 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 George Tomlinson 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 George Tomlinson Primary School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 2 to 11 in Walthamstow.
2. The proposed variation is to reduce the published admission number (PAN) for September 2021 from 90 to 60 for Reception (Year R).
3. The local authority has referred some 13 proposed variations to the adjudicator in previous years and a further six this year, of which this is one. These relate to both primary and secondary schools. All these referrals concern the same or substantially the same issues; namely proposed reductions in the PANs for the schools concerned for very similar reasons. I have read the determination in VAR933 (Winns Primary School, published

1 June 2020, available [here](#)) and I agree with the findings and the reasons given for those findings in that determination. I have considered all the relevant facts of this referral, which differ only in detail from those in VAR933 and, where appropriate, I have taken the wording from that determination and reproduced it in this determination.

Jurisdiction

4. 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”*.

5. I am satisfied that the proposed variation is within my jurisdiction. I have also decided to use my power under section 88I of the Act to consider the arrangements as a whole and whether or not they conform with the requirements relating to admissions and, if they do not so conform, 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 1 May 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. 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 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. The process for determining admission arrangements, **including** reductions to PAN, which differ from previous years, which is to take place **before** the new arrangements are determined, is summarised in paragraph 15 b) of the Code, as follows:

“Where changes are proposed to admission arrangements, the admission authority must first publicly consult on those arrangements...consultation must be for a minimum of 6 weeks and must take place between 1 October and 31 January of the school year before those arrangements are to apply. For example: for arrangements which are to apply to applications in 2016 (entry in September 2017), consultation must be completed by 31 January 2016. This consultation period allows parents, other schools, religious authorities and the local community to raise any concerns about proposed admission arrangements.”

10. The Act and the Code make provision for later variations. A variation does not allow for consultation and removes from the local community and the bodies referred to above the opportunity to comment. It also removes from the admission authority’s decision making the benefit of those comments. It is clear that variations are to be the exception, rather than the rule. Paragraph 3.6 of the Code, reflecting the provisions of the Act set out above, requires that admission arrangements, once determined, may only be changed, that is varied, where the admission authority consider such changes to be necessary in view of a major change in circumstances or in certain other limited and specified circumstances.

11. 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 set out 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.

12. 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. That email did refer to this school, amongst others. 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 also referred to this school.

13. 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, that is a multi-academy trust, would not necessarily receive an email addressed to “*Dear Heads / Chairs*”.

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

Consideration of the proposed variation

15. 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.*”

16. 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 over-staffing concern. There may be the possibility of natural wastage where staff retire.*”

17. 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.*”

18. I have noted that the local authority has asked the adjudicator to approve a reduction in PAN from 90 to 60 for 2018 for this particular school. A proposed variation reducing PAN was also referred to the Adjudicator for 2019 which was subsequently withdrawn.

The request to reduce the PAN for 2021

19. 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, the date on which the PAN of 90 was

determined for 2021, and 1 May 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”*. I accept that the local authority, like every admission authority, had on national offer day (if not before) clear information on surplus places and that subsequent late applications may arise. This gives information regarding the position for September 2020. It does not give any specific information about the position for September 2021. I do not accept that any major change of circumstances arose between 25 February 2020 and 1 May 2020 which would lead to a conclusion that the reduction of PAN for 2021 was necessary. The variation process is 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.

20. 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	390	390	390	390
Year R places offered in planning area	352	357	375	384
Unfilled places	38	33	15	6
Forecast surplus of places in the place plan	-	1	0	0
Year R intake (for 2020 places offered) at the school	54	56	81	85

21. The need for primary school places in the area has been below capacity for several years, although the number of unfilled places has been diminishing. There are currently 6 unfilled places for September 2020 out of a total PAN of 390, giving about 1.5 per cent surplus places. It is widely accepted that 5 per cent of surplus places is desirable in order to allow parental preferences to be met to a reasonable degree. The forecast surplus in the planning area for 2021 is significantly below 5 per cent. I note that the local authority has not sought approval for a reduction in PAN for the school for 2020. The local authority has informed me that 85 reception places have been offered at the school for September 2020, giving a surplus of only 5 places. The level of parental preference for the school has been rising in the last three years with 29 first preferences for 2017, 48 for 2018 and 52 for 2019.

22. The reason given by the local authority for the proposed reduction in PAN for 2021 is that *“There has been a large decline in demand for reception places in this area of the Borough. Several schools have surplus places”*. That is not borne out by the figures

considered above, either for the planning area or for the school. The local authority has not provided any information to support a claim that demand for reception places will fall significantly for 2021. In order to approve a reduction of PAN from 90 to 60 I would require a clear explanation of why it is anticipated that 30 fewer places will be required in 2021. This has not been provided.

23. Turning to the issue of staffing at the school, the local authority's response to my enquiries on this matter was: *"If the school timetabled for 3FE and there was only 2FE required then there would be more staff than required"*.

24. The local authority's explanation of why it is necessary to reduce the PAN in order to set staff levels 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.

25. I have considered the question of surplus places in the area. As stated above there does not appear to be a surplus of places either for 2020 or 2021. In any event 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. It is not being suggested that accommodation is being removed and so the physical capacity of the school remains the same. Reducing the PAN will not change that.

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 2021 from 90 to 60 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 2021. I find on the evidence provided by the local authority that a significant level of surplus places in the area is not likely to arise in 2021. The proposed reduction in PAN might lead to a shortfall of places in the area. Therefore, I do not approve the proposed variation.

Consideration of the arrangements as a whole

The 2021 arrangements

27. The admission arrangements for the school are identical to the arrangements for The Winns Primary School. In VAR933, the determination relating to The Winns Primary School, the Adjudicator deals with the issues relating to the admission arrangements for 2020 in paragraphs 39 to 46. The link to VAR933 is provided above. The findings in VAR933 also apply to the admission arrangements for this school and there is no need for me to go over the same ground here, save to state that I agree with the findings in that determination.

Summary

28. 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 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. There is not likely to be a surplus of places in the area for 2021. Consequently I do not approve the proposed reduction in PAN at the school.

29. I find that the arrangements do not conform with the Code in the ways set out in VAR933.

Determination

30. 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 George Tomlinson Primary School for September 2020.

31. 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 VAR933.

32. 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: 17 June 2020

Signed:

Schools Adjudicator: Tom Brooke