



Office of
the Schools
Adjudicator

Determination

Case reference: VAR929

Admission authority: The London Borough of Waltham Forest for Downsell 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 Downsell Primary School for September 2020.

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 2020 for Downsell 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 2020 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 6 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 produced 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 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; and
- f. the Waltham Forest Pupil Place Plan 2018-2022.

The proposed variation

8. The arrangements for 2020 were determined by the local authority on 26 February 2019 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 12 May 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 overstaffing 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.*”

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 90 was determined for 2020 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.”

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	480	480
Year R places offered in planning area	428	397	397	371
Unfilled places	72	83	83	109
Forecast surplus of places in the place plan	-	25	54	50
Year R intake (for 2020 places offered) at the school	82	73	70	47

20. The forecasts in the place planning document are wide of the mark. The need for primary school places in the area has been consistently below capacity for several years. The level of parental preference for the school has been steady in the last three years at 55 or 56 first preferences. I find it difficult to see the major change of circumstances since February 2019 in light of 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 in time and subsequently determine an appropriate PAN for the school. 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.

21. The repeated use of the variation process by the local authority in these circumstances is of concern. However, my role is to determine whether the proposed reduction in PAN addresses the issues described by the local authority.

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. 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.

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 3FE*

and not 2FE, hence the overstaffing concern. There may be the possibility of 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. By middle of April 2020, if not shortly before, the school knew how many places have 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 notice period 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 was not 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. The number of offers made for September 2020 (as at 15 May 2020) is 47. 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 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 2020. Therefore, I do not approve the proposed variation.

Consideration of the arrangements as a whole

The 2020 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. That determination deals with the issues relating to the admission arrangements for 2020 in paragraphs 35 to 38. 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. 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 Downsell 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