



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: REF3728**

**Referrer: Devon County Council**

**Admission authority: The First Federation Trust for Sidmouth Church of England Primary School**

**Date of decision: 5 August 2020**

## Determination

**I have considered the admission arrangements for September 2021 for Sidmouth Church of England Primary School, Devon in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number, the arrangements do not conform with the requirements.**

**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 this determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of 31 October 2020.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of Schools Adjudicator (OSA) by Devon County Council, (the local authority), about the admission arrangements (the arrangements) for Sidmouth Church of England Primary School (the school) for September 2021; the date of the objection was 15 May 2020.
2. The referral relates to the published admission number (PAN) for Reception (Year R) which had been determined by The First Federation Trust (the trust), which is the admission authority for the school, as 60 when it had previously been 75.

3. The parties to the case are the local authority, the trust, the governing board of the school and the Diocese of Exeter (the diocese) which is the religious authority for the school.

## Jurisdiction

4. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined under section 88C of the Act by the trust on 13 February 2020 on that basis.

5. The local authority submitted an objection to the PAN found in these determined arrangements on 15 May 2020. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) says that no objection may be referred to the adjudicator for consideration under section 88H of the Act raising the same, or substantially the same, issue about the admission arrangements for a school where an adjudicator has determined an objection to those arrangements within two years. On 11 October 2019 the adjudicator determined an objection to the PAN at the school in determination reference ADA3571. Consequently, I am unable to consider this matter as an objection under section 88H of the Act. However, I have the power under section 88I of the act to consider arrangements which are brought to my attention if it appears to me that they do not, or may not, conform with requirements.

6. In her determination ADA3571, the adjudicator upheld the objection made by the local authority to the PAN for 2020 being set as 60. It, therefore, appeared to me that a PAN of 60 for 2021 may also not conform with requirements and I am considering the matter under section 88I of the Act.

## Procedure

7. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

8. The documents I have considered in reaching my decision include:

- a) the local authority's form of objection dated 15 May 2020 and its responses to my subsequent enquiries;
- b) copies of the minutes of the meeting of the trust at which the arrangements were determined;
- c) a copy of the determined arrangements;
- d) comments from the trust on the matters raised and its responses to my enquiries;

- e) comments from the diocese on the matters raised;
- f) maps of the area identifying relevant schools; and
- g) determination ADA3751 made on 11 October 2019.

## The Referral

9. Paragraph 1.2 of the Code requires that all admission authorities must, when determining their arrangements, set an admission number for the relevant age group, that is the age group at which children are normally admitted to the school. The relevant age group is Year R and the trust set a PAN of 60 for September 2021.

10. The local authority said that it had supported a previous reduction in the PAN at the school from 90 to 75, but it could not support a further reduction to 60 because it considered this would *“leave the local authority at serious risk of not being able to fulfil its statutory duty to ensure that there are sufficient and reasonable places for local children, both at the normal round of admissions into Reception and for in-year admissions into this cohort throughout its career in primary education”*.

11. The local authority was satisfied with the consultation undertaken by the trust prior to the decision to reduce the PAN to 60.

## Background

12. The school is an academy primary school and is a member of the First Federation Multi-Academy Trust. There are 16 primary schools in the trust, all in Devon. The school for boys and girls aged 2 to 11 incorporates early years and nursery provision. The school is situated across three sites in the seaside town of Sidmouth. The sites were originally a junior school and two infant schools. The combined PAN of the infant schools was 90 and the PAN of the junior school was also 90. The school’s PAN was reduced to 75 for admission in September 2019. For September 2020 a PAN of 60 was set. The local authority supported the PAN reduction from 90 to 75 but objected to the further reduction to 60 for 2020. This objection was upheld by the adjudicator in determination ADA3751 and the PAN for 2020 remained at 75.

13. The Department for Education’s (DfE) database shows that there are two other primary schools within three miles of Sidmouth and there is a secondary school in the town. The school is named as a feeder school in the admission arrangements of the secondary school.

## Consideration of Case

14. On the form of objection the local authority said: *“A reduction in primary school places would leave the local authority at serious risk of not being able to fulfil its statutory duty to ensure that there are sufficient and reasonable places for local children, both at the*

*normal round of admissions into Reception and for in-year admissions into this cohort throughout its career in primary education.*” It said that it was satisfied with the consultation process undertaken by the trust before deciding to reduce the PAN to 60 for 2021 and that it considered communication with the trust and school to be good.

15. The local authority said that there was “*a high level of inward migration*” which increased the size of each year group over time and new housing development was planned for the town. It said that there was no other primary school within a two-mile walking distance of Sidmouth and referred to the limited public transport in this area. If children living in Sidmouth could not attend a school in the town, taxis would be the means of transporting them to other schools and the local authority considered this would be an inefficient use of public funds. The local authority also said that if children from Sidmouth attended other primary schools which were not named feeder schools for the local secondary school, they could lose priority for a place there.

16. The trust said the reason it had decided to reduce the PAN was because “*operating across three separate sites means that the Trust is incurring significant additional costs.*” The trust listed these additional costs as arising from separate utilities, Wi-Fi systems, alarms and the need to have a senior member of staff at each site. It said operating across three sites limited how classes can be organised. The trust did not dispute that there was sufficient accommodation at the school to admit 75 children.

17. The trust said that it had sought additional funding from both the local authority and Education Skills and Funding Agency (ESFA) to support its exceptional circumstances of operating across three sites, but without success. It has reviewed staffing levels, and said: “*Over the past few years, reception numbers have been just above 60. Because the PAN is set higher than 60, this means having to run three classes with a low number of children in each class. This is not viable over the long term, as the funding generated by this number of children is not sufficient to pay for three class teachers. (Current numbers are 51 pupils in reception, 66 pupils in Year 1, 64 pupils in Year 2 and 60 pupils in Year 3).*” The Trust has bid to the DfE for capital funding to bring the school onto just two sites which would reduce costs, but the outcome of this bid is not yet known.

18. I am concerned that the local authority said that the reduced PAN would affect admissions “*both at the normal round of admissions into Reception and for in-year admissions into this cohort throughout its career in primary education*”. This may show a misunderstanding of what a PAN is. As set out in paragraph 1.2 of the Code, the PAN applies to the “*relevant age group*” which for this school is Year R, the age group to which children are normally admitted. Admission authorities may only refuse places at the school if admitting a child would prejudice the efficient provision of education or the efficient use of resources. Section 86(5) of the School Standards and Framework Act 1998 (the Act) says that prejudice cannot be said to arise if the number of pupils in the relevant year group is below the PAN during that school year. Therefore, the PAN for Year R starting in September 2021 only limits admission to that cohort of children until the end of that school year in August 2022. From September 2022, the cohort becomes Year 1 and from that

point, children must be admitted unless prejudice arises whether the number in the year group is above or below what the PAN was in the previous academic year. Any decision to refuse a place on the grounds of prejudice could be challenged through an appeal to an independent appeal panel by a parent.

19. The PAN set for September 2021 will therefore not have any bearing on decisions made about admission of children to the year group who might move into the area in later years. Consequently, my consideration will be focused on the circumstances surrounding admission to Year R. I have also noted that as set out in paragraph 3.3b of the Code objections may not be brought to the adjudicator if an admission authority decides to determine the same PAN as in the previous year. This means that there would be long-term implications of not upholding this objection.

20. On the objection form the local authority said that the number of children living in Sidmouth due to start school from 2017 to 2020 had been 84, 95, 63 and 80 respectively. I asked the local authority for further information about the pattern of admissions to schools in the area. Table 1 shows the number of children from the Sidmouth catchment area who were admitted to the school in each of those years and how many were admitted to other schools. I note there is a discrepancy (65 as opposed to 63) in the total number for 2019 with the original information; however, this does not change the conclusions I reach.

Table 1: School places offered to children from the Sidmouth catchment area

	2017	2018	2019	2020
Resident in Sidmouth	84	95	65	80
Admitted to Sidmouth	49	55	48	45
Admitted elsewhere (or no application made)	35	40	17	35
Proportion of local population admitted to Sidmouth	58%	58%	74%	56%

21. While some parents in Sidmouth would prefer their children join other schools, some parents from elsewhere would prefer places at the school. This data is shown in Table 2.

Table 2: School places offered at the school

	2017	2018	2019	2020
Children from Sidmouth	49	55	48	45
Children from elsewhere	10	8	7	11

Total number offered	59	63	55	56
----------------------	----	----	----	----

22. In these four years the number of first preferences for the school has been, 56, 63, 56 and 53. With a PAN of 75 it has been possible to meet all first preferences as well as offer places to children whose parents' higher preferences could not be met. Had the PAN been 60 in the last four years, it would have had an adverse effect on meeting parental preference in just one of those years. The trust reported some slightly different numbers currently in these year groups which would reflect movement of families in and out of the area since the places were offered.

23. The local authority knows of 76 children living in the catchment area due to start school in 2021 and 79 due to start in 2022; data for later years is not yet available from the health service because of delays caused by the Covid-19 pandemic. The greatest proportion of catchment area children admitted in the last four years was 74 per cent. If this proportion wanted places in 2021 and 2022 there would be a need for 57 and 59 places in those two years. More typically, less than 60 per cent of catchment area children want to attend the school. The local authority's own modelling set out in the objection form suggested a need for 56.7 places in 2021. On the face of it a PAN of 60 would meet local demand for admission to Year R in the foreseeable future.

24. The above conclusion is based on the other children living in the catchment area continuing to be able to find places at schools outside of the town. On the objection form the local authority said that the largest proportion of these children went to Sidbury Church of England Primary School (Sidbury) and that this school did not have sufficient accommodation to continue taking 30 children in each year group. However, I note from its website that for 2021, a PAN of 30 has been published for Sidbury, or at least that is the PAN stated in what are still labelled as "*Draft*" arrangements.

25. The local authority also referred to the potential for 300 new homes to be built in Sidmouth but gave no indication of when these homes may be built, or whether they would be family homes which would bring new families to the area, social housing for existing families in the area, or retirement homes each of which would affect the number of school places required differently. I have looked at the East Devon Local Plan, this gives no indication that a quantity of housing which would affect the need for Year R places will be built before September 2021.

26. Another concern raised by the local authority was that reducing the PAN to 60 would "*result in a loss of school capacity requiring future capital investment.*" The capacity of an academy is that set in the funding agreement between the trust and the Secretary of State for Education. The funding agreement dated 19 August 2016 states the capacity of the school to be 664 children. This is the figure which the DfE would normally take into account when calculating the need to fund additional places in the area. If not all of these places are

available for use because of a lower PAN, this could create difficulties in funding additional school places if and when they are needed. However, currently almost all first preferences for school places in the town and the neighbouring area are met. This indicates that there are sufficient places in the area and with no expansion required in the near future.

27. I also asked the trust for more information about the use of its accommodation, the organisation of classes and the financial difficulties it was seeking to address through the reduction in PAN. From the drawings provided to me, the largest site would appear to have 11 classrooms and the other two sites each appear to have four classrooms. Other rooms on the sites which may once have been classrooms are now repurposed for pre-school provision and other uses. Table 3 shows how the school will be using these classrooms in September 2020 for children of statutory school age.

Table 3: Use of classrooms in September 2020 for children of statutory school age.

	Vicarage Road	Manstone Avenue	Woolbrook Road	Total
Classrooms	4	4	11	19
Number used	4	3	9	16

28. The trust told me that in September 2020 the school would be organised as shown in Table 4.

Table 4: Organisation of classes in September 2020

Year Group	Number of children	Classes
R	56	2
1	51	2
2	64	3
$\frac{3}{4}$	130	4
5/6	145	5
Total	446	16

29. The trust also told me that if the PAN in 2021 was 60 it would organise the classes in a similar way to the above. In which case there would still be a need for 16 classrooms which can only be provided by using all three sites. Consequently, there would be no reduction in the duplication of site related costs which was one of the reasons put forward to justify the reduction in PAN. If over time a PAN of 60 led to the school requiring no more than 14 classrooms (two in each of the seven statutory school year groups), then it would be able to consolidate onto the Woolbrook Road and one other site, however, this may only be possible if the pre-school provision was reduced.

30. The other reason for the PAN reduction which the trust gave was that the need to comply with infant class size legislation led to it having to establish three classes if a year group had more than 60 children which could arise if the PAN was 75. As shown above, in September 2020 it will be running three classes for the 64 children in Year 2. The legislation does not require this. It requires that infant classes, which are those where the majority of children reach the age of 5, 6 or 7 during the school year, are limited to 30 pupils with a single teacher. The school currently combines Years 3 and 4 and Years 5 and 6. There is no reason why it could not combine Years 1 and 2 into four classes rather than having five.

31. If there is no increase in the number of children in Year R and Year 1 during the 2020/21 school year, there would be 107 infant children at the school before the new Year R joined in September 2021. Based on the recent pattern of parental preference, it is unlikely that more than 60 will be admitted that year and it would be possible to organise with two classes for each year group. However, if just over 60 places were needed, then there is flexibility for up to 13 Year R children to be put in with Year 1 and nine Year 1 children with Year 2 before an additional class is required by legislation.

32. I have noted the view of the diocese which is that the PAN should reflect the needs of the community and its sympathy with the difficulties the school experiences of working across three sites.

33. The local authority raised this objection on the grounds that with a PAN of 60 in 2021, there may be insufficient places for all children in the town resulting in its needing to provide taxis to take children to other schools. Based on the recent pattern of parental preferences I consider it unlikely that more than 60 places will be required for admission in either of 2021 or 2022. The local authority's concern for families moving into the town after the year group is established is not relevant to the consideration of the PAN as that only applies to the relevant year group. I have noted that the reduction in the PAN would be inconsistent with the physical capacity of the school and could affect future funding of additional school places.

34. The trust has said the reason for reducing the PAN was to address financial difficulties caused by operating across three sites and organising classes. Reducing the PAN for 2021 will not allow the school to reduce the number of sites on which it must operate in 2021. Only if the PAN remained at 60 for subsequent years would it become possible to rationalise onto two sites. While a PAN of 60 would mean that the school could



be sure of organising with six infant classes in 2021, taking a few more Year R children would not require it to establish a seventh class.

35. If I find for the local authority, then the PAN remains at 75 and there is a risk that the school may have to admit more than 60 children in September 2021. This would happen if either the local authority has undercounted the number of children in the area or there is a significant change in the pattern of parental preferences. This would require the school either to have more mixed age classes, or to set up another class.

36. If I find for the trust, the school would continue to need to use all three sites, but could be certain that it will only need six infant classes in 2021; this leaves a risk that the local authority would have to transport children from Sidmouth to other schools which as well as being expensive to the tax payer, could lead to their losing priority for admission to the local secondary school. I do not think that this is a high risk in 2021 or 2022. However, it would not be possible for the local authority or anyone else to object if the trust kept the same PAN of 60 in future years. The number of local children is not known beyond 2022 when the number of places at other local schools may be less and the pattern of parental preference could be different. Therefore, the risk could be a greater in the future and school accommodation provided for the residents of Sidmouth would not be available to them.

37. On the balance of these considerations I have decided that reducing the PAN to 60 for 2021 could lead to children from Sidmouth being unable to access places at the local school in future and this would be unfair and so not conform with the requirements of the Code for admission arrangements to be fair.

38. Paragraph 3.1 of the Code says that admission authorities should revise arrangements within two months of a decision by the adjudicator, unless the adjudicator specifies an alternative timescale. Because this determination has been completed during the school summer holiday, I have decided to allow the trust until 31 October 2020 to revise the arrangements.

## Summary of Findings

39. The PAN only applies during the relevant year, the normal year to which children are admitted. For 2021, analysis of recent patterns of parental preference indicates that it is unlikely that there will be more than 60 children wanting places at the school and so it does not matter whether the PAN is 60 or 75. Reducing the PAN will not allow the school to operate on fewer sites for some years and so will not reduce the costs associated with the additional sites. If a few more than 60 children were admitted in 2021, there are other ways that the school could organise classes to meet infant class size legislation without establishing another class.

40. It is not possible for objections to be made to a PAN if the admission authority decides to leave it unchanged. Therefore, if the PAN becomes 60 for 2021, it will remain at that figure until the admission authority decides to change it. This could leave residents of

Sidmouth without access to places at the local primary school in the future when there is physically space for them at the school and that would not be fair.

## Determination

41. I have considered the admission arrangements for September 2021 for Sidmouth Church of England Primary School, Devon in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number, the arrangements do not conform with the requirements.

42. 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 this determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of 31 October 2020.

Dated: 5 August 2020

Signed: Phil Whiffing

Schools Adjudicator