



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: VAR940**

**Admission authority: The governing board for Millbrook Infant School, Northamptonshire**

**Date of decision: 27 August 2020**

## Determination

**In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for Millbrook Infant School for September 2020.**

**I determine that the published admission number for September 2020 will be 90.**

## The referral

1. The board of governors of Millbrook Infant School (the school) has referred a proposal for a variation to the admission arrangements for September 2020 for the school, to the Office of the Schools Adjudicator. The school is a foundation school for children aged 5 to 7 in Kettering, Northamptonshire (the local authority).
2. The proposed variation is to reduce the PAN 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 variation is within my jurisdiction.

## Procedure

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

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

- a. the referral from the board of governors dated 18 June 2020 and supporting documents;
- b. the determined arrangements for 2020 and the proposed variation to those arrangements;
- c. the determined arrangements for 2021;
- d. a map showing the location of the school and other relevant schools;
- e. a copy of the letter notifying the appropriate bodies about the proposed variation;
- f. my previous determination VAR889 dated 4 December 2019 on an earlier request to reduce the PAN for 2020; and
- g. comments received on the proposed variation from the appropriate bodies.

## The proposed variation

7. The school is situated on the eastern side of Kettering adjacent to Millbrook Junior School. The Department for Education (DfE) database shows that there are 15 other state-funded primary schools within two miles of these schools, all but one of which admit children into Year R.

8. 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.

9. Paragraph 3.6 of the Code also requires that all appropriate bodies in the relevant area are notified of a proposed variation. The school has provided me with a copy of its notification of the proposed variation which it asked the local authority to circulate on its behalf. On 26 August 2020 I received confirmation from the local authority that it had sent the notification to all the appropriate bodies.

10. The notification invited the appropriate bodies to send the governing board comments and allowed until 17 July 2020 for them to do so. I was therefore unable to consider this request until after that date and the date on which I received confirmation that

the notification had been made correctly. In the event one comment was received from the neighbouring Millbrook Junior School.

## Consideration of proposed variation

11. I considered a previous request from the governing board to reduce the PAN for 2020 from 120 to 90 in determination VAR889 made on 4 December 2019. In that same determination I approved a request to reduce the PAN for 2019 to 90 but did not approve a reduction for 2020 because at that time there was a possibility that the places at the school that would be removed by the variation could be wanted. I also took into account the fact that the arrangements for 2021 did not need to have been determined until 28 February 2020. Paragraph 3.3b of the Code prohibits objections being brought to admission arrangements of foundation schools concerning a decision to keep the PAN the same. Consequently, if I approved a reduction in the PAN to 90 for 2020 at that time, the governing board would have been able to maintain it at that level in 2021 and subsequent years. Effectively, the PAN would have been permanently reduced without the scrutiny which the process set out in paragraphs 1.42 to 1.45 of the Code requires when changes are made to admission arrangements outside of the variation process. It was only in the course of considering the current variation request that I have become aware that the 2021 arrangements had already been determined when I made my determination VAR889 and that they included a PAN of 120, a matter to which I will return below.

12. In this new application I was told that one of the classrooms used for Year R had been suffering from a leaky roof for some years. Remedial work had been unsuccessful in preventing water damage and “a significant area of the ceiling” had now collapsed. The application said that “there was no indication that this room would be watertight and fit for use by September 2020.”

13. The DfE database says that the capacity of the school is 360 children, this indicates that the school has a total of 12 classrooms to cater for its three year groups. The school told me that it would have 283 children on roll in September 2020. Of these 87 will be in Year R in three classes, 89 in Year 1 in three classes and 107 in Year 2 in four classes. On the face of it, even with one classroom out of commission, there would be sufficient accommodation for the school to admit up to the current PAN of 120 and to have four Year R classes. However, the application explained that the other available classrooms were not suitable for the youngest children in the school and so there would be difficulties if the school had to establish a fourth Year R class which it might need to do because it could not refuse places until the PAN was reached.

14. By mixing year groups, more children could be admitted to Year R in September 2020 and during the following year without the need to establish a fourth Year R class. It would be possible to admit another 17 children before infant class size legislation required an eleventh class to be established. However, putting Year R children in with older children would leave them in a classroom without the smaller facilities required for their age. If there was a need for school places in the area, such a compromise might be necessary.

15. I was provided with place planning data for the area which indicated that if the PAN at the school for 2020 was reduced to 90 there would be 818 Year R places available in September 2020 with 787 places required. Therefore, I do not think the compromises arising from putting Year R children in with older groups are necessary. I note that the local authority did not object to the proposed variation so it cannot have any cause for concern about finding school places for children moving into the area if the PAN is reduced.

16. The neighbouring junior school expressed concern about the implications for its future roll and recognised the need for collaboration between both schools and the local authority to plan for the future level of demand in the area.

17. Because of my concern for the implications of paragraph 3.3b of the Code, explained above, I wanted to be certain that a PAN had been determined for 2021 before making a decision on this application. I looked at the school's website and was disappointed to find that the 2021 arrangements were not published on the admissions page of the school's website. Neither were the 2020 arrangements for that matter. I therefore asked the school for a copy of the 2021 arrangements and evidence that they were determined as required by the Code.

18. The school drew my attention to a page on its website headed "Policy Documents" where the arrangements could be found. I do not consider it helpful to parents for such important information which the law requires is published is not to be found on the page of the website headed "Admissions" which is where parents would expect them to be published.

19. The school also provided me with a copy of the 2021 arrangements which include a PAN of 120 and minutes of the governing board dated 24 September 2019 in which it is recorded that "Admissions arrangements 2021/2022 - agreed with a proviso that the policy will be amended if the request for variation to PAN is successful". I find this to be of concern.

20. If the governing board wished to set a PAN for 2021 lower than that set for 2020, which at the time was 120, then the correct process would have been to consult on the proposed new PAN in the manner required by paragraphs 1.42 to 1.45 of the Code between 1 October 2019 and 31 January 2020 and then determine a PAN for 2021 by 28 February 2020. This would have allowed full local scrutiny of the issues arising from reducing the PAN and, if it were decided to set a lower PAN, for any objection to be made to the adjudicator. The process of reducing a PAN through a variation only requires appropriate bodies to be notified, it does not require full consultation with parents and others. At the time of determining the 2021 arrangements there was ample opportunity for the governing board to consult on and determine a different PAN for 2021, but it chose not to do so appearing to rely on the variation process to achieve a lower PAN.

21. The variation process is intended for major changes in circumstances, such as a building failure, which occur after arrangements have been determined when a decision must be made quickly and there is no time for consultation. The variation process is not intended to address changes which can be foreseen well in advance.

22. Because one of the specialist classrooms for Year R is currently unusable due to water damage and because there are less than 90 children joining the school in September 2020 and there are sufficient school places in the area to accommodate the year group I will approve the proposed variation. However, there are some matters which I would like to make clear to the governing board.

23. My approval relates solely to the PAN for 2020. The governing board has determined a PAN of 120 for 2021 and should note that, despite the minute of 24 September 2019 quoted above, my decision does not alter the PAN for 2021. This is because the 2021 PAN has been set before the PAN for 2020 was varied. Had the PAN for 2021 not been already set at 120 I may have formed a different view on the current proposal.

24. The governing board has now achieved a reduction in PAN for 2019 and 2020 through the variation process. The PAN of 120 stands for 2021. There remain 12 months for the damaged Year R classroom to be repaired, or for another classroom to be adapted to be suitable for Year R children, so this would not be an impediment which would justify a request to reduce the PAN for 2021 as a major change in circumstances. Nor in my view would having fewer than 90 children applying for places in 2021 justify a repeat variation request to reduce the PAN to 90 again.

25. I am left with the impression that the governing board is trying to reduce the PAN at the school without full public scrutiny and this impression is not helped by its publishing the admission arrangements somewhere other than on the admissions page of its website. It appears to me that there is a need for full public scrutiny of the PAN for this school which could be achieved through consulting on a new PAN for 2022 during the period, and in the manner, laid out in the Code.

## Summary

26. Because of the lack of accommodation suitable for Year R pupils due to building failure and taking into account the supply of, and demand for, places in the area for September 2020 I approve the reduction in PAN for 2020 from 120 to 90.

27. I am concerned that there have been repeated requests for variations to the PAN of this school which avoid the level of public scrutiny which the consultation process on admission arrangements set out in the Code provides.

## Determination

28. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for Millbrook Infant School for September 2020.

29. I determine that the published admission number for September 2020 will be 90.

Dated: 27 August 2020

Signed:

Schools Adjudicator: Phil Whiffing