



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** VAR1936

**Admission authority:** Warwickshire County Council for Tysoe Church of England Primary School in Tysoe, Warwick

**Date of decision:** 17 November 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 Warwickshire County Council for Tysoe Church of England 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. Warwickshire County Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2021 for Tysoe Church of England Primary School (the school), to the adjudicator. The school is a voluntary controlled school for children aged four to eleven in Tysoe and the local authority area of Warwickshire County Council. The local authority is the admission authority for the school.

2. The proposed variation is that the published admission number (PAN) should be reduced from 30 to 20 for September 2021.

## 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.

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 12 October 2020, supporting documents and further information in response 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; and
- e. a copy of the letter notifying the appropriate bodies about the proposed variation with information on the comments received on the proposed variation from the appropriate bodies.

8. I have also taken account of the information I received during telephone conversations I have held with a representative of the local authority.

## Consideration of the arrangements

9. Admission authorities are asked to provide a copy of the admission arrangements which they wish to vary when they make a request for a variation to the arrangements. In this case the local authority provided a web link. This link did not work. Various efforts were made to address this matter but waiting for the admission arrangements caused delay to the consideration of this proposed variation. The link was labelled as the admission arrangements for the community and voluntary controlled primary schools for which the local authority is the admission authority. However, the link was to the co-ordinated admissions scheme for all schools in the local authority area and the agreed PANs for the community and voluntary controlled schools. The PANs are part of the determined arrangements for each of these schools. The co-ordinated admissions scheme is something else: it is the scheme drawn up by the local authority which deals with how applications to all state funded schools in the local authority's area are to be handled, including such matters as the number of preferences a parent can express and the common application form to be used by residents of Warwickshire. It is not the determined admission arrangements of particular schools. On another part of the local authority's website there is information on the oversubscription criteria for the community and voluntary controlled schools. These items again are part of the admission arrangements for these schools but are not the totality of the arrangements. Admission arrangements are also required to cover a number of other matters as required by the Code.

10. Paragraph 1.47 of the Code requires that admission authorities **must** publish their arrangements once determined. Paragraph 14 of the Code says that "admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

11. The co-ordinated admissions scheme is a complex document covering a variety of matters over 40 pages. The co-ordinated admissions scheme does not meet the requirements of paragraph 14 of the Code. It is not intended to do so as it serves a different purpose. Parents will not find this a document that meets their need to understand easily how places for the community and voluntary controlled schools in the area will be allocated. The local authority does not meet the requirements of the Code in the way that it determines and publishes the admission arrangements for community and voluntary controlled schools.

## The proposed variation

12. The school is located in a largely rural area with the nearest state funded primary school admitting children to reception year (YR) over two miles distance. The oversubscription criteria for the school include the use of a catchment area. The local authority has said in its request for the proposed variation that the "*Governing body is having difficulty maintaining a viable financial position and staff structure with continuing*

*inconsistent cohort numbers that do not align with the current PAN of 30.” The request continued, “This change seeks to assist the school governing body to plan for long-term stability, a consistent structure and a sustainable financial position, providing a secure foundation for high quality educational outcomes for all pupils.”*

13. 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 certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

14. Paragraph 3.6 of the Code also requires that relevant parties be notified of a proposed variation. The local authority has confirmed that the notification has taken place as required by the Code. I have seen confirmation from the school’s governing board that it supports the request for the variation. I am satisfied that all relevant bodies have been notified and that views expressed have been taken into consideration. I find that the appropriate procedures were followed.

## **Consideration of proposed variation**

15. There is no formal consultation required for a variation because it is designed to meet a major change in circumstances, and so parents and others do not have the opportunity to express their views or to object to the adjudicator if they wish to do so. As it happens, this is particularly important in the case of reductions to PAN. This is because once the PAN has been set then no body except the governing board of a community or voluntary controlled school can object to the PAN’s remaining the same. The school is expected to become an academy school from April 2021. This timing means that it will be for the local authority to determine the PAN for 2022 as that must be done by 28 February 2021. The local authority has expressed no intention of consulting on the PAN for 2022 and has said that it expects the academy trust, which will assume responsibility for the admission arrangements of the school, to continue to set the PAN at 20 if I agree to the variation.

16. I have therefore scrutinised the data to try to ascertain if there will be sufficient school places in the local area if the PAN is reduced from 30 to 20 for September 2021; considered the demand for places at the school; the reasons given for the change; the potential effect on parental preference; and whether the change is justified in these circumstances.

17. The local authority has a duty to make sure that there are sufficient places for the children in its area. To fulfil this duty the local authority assesses the likely future number of places to be needed and plans to meet that need. The local authority has told me that there are no other schools in the planning area used by the local authority for this school. Table 1 below summarises the number of children admitted to the school in recent years and the forecast of future demand.

**Table 1: places allocated in the planning area and forecast demand**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>PAN</b>	30	30	30	30	30
<b>Number of first preferences made for the school</b>	16	20	13	N/A	N/A
<b>Number of children admitted</b>	15	22	16	22 forecast	21 forecast
<b>Number of vacant places</b>	15	8	14	N/A	N/A

18. Table 1 shows that there have been a significant number of vacant places in the planning area but that over 20 children, the proposed PAN, were admitted in 2019. The local authority told me that the school was unusually popular in 2019 but the forecast provided by the local authority also shows that the forecast for 2021 is 22 children. This is also more than the PAN of 20 proposed. I asked for more information on why the PAN of 20 was proposed in this context to justify potentially frustrating parental preference. The local authority has said that it could admit over PAN if needed; this seems to be a strange offer in the circumstances if there is a pressing need to set the PAN at 20.

19. I note that the local authority could admit over the PAN of 20 and, if as the admission authority the local authority chose not to do so, a parent could appeal against such a decision. It is not desirable to create this situation through a variation unless there were very good reasons for doing so. I therefore asked the local authority for more information on the need to reduce the PAN through a variation.

20. In response the local authority said, *“The variation is proposed to allow the school to plan for long-term stability, a consistent structure and a sustainable financial position. A PAN of 20 will allow the school to plan for staffing levels that allow for greater financial stability. It is considered highly unlikely that more than 20 pupils of Reception age will reside in the priority area for the school in the foreseeable future. Other schools in the area have spare capacity and would be able to accommodate pupils if required.”*

21. I asked for evidence that no more than 20 children would be likely to live in the catchment area for the school and the data on places available in other local schools. With regard to spare capacity the data provided by the local authority indicated that the nearest schools with capacity in its area were over seven miles away. I asked what evidence justified expecting five year old children potentially to travel such distances in these circumstances. The local authority told me, that, “In rural areas such as this, it is often necessary for pupils to travel some distance to a school.” I note that if it were necessary for an infant (that is a child aged seven or under) to travel further than two miles to get to school because there is no place for them nearer to home, that the local authority would be responsible for the travel costs.

22. I also noted that the Department for Education website showed that there were schools relatively close to the school but located in other local authority areas and asked if there were likely to be vacant places closer than seven miles from the school. The local authority was able to tell me that there was potentially some surplus capacity in another local authority area in schools between two and three miles from the school.

23. The local authority told me that in 2019, 16 of those admitted lived in the catchment area and they expected a similar pattern in future. I asked for the evidence, beyond previous trends, and the local authority said to me that it had, “demonstrated that the school will be able to accommodate pupils forecast in the priority [that is catchment] area.” I asked again for the evidence that supported this statement. The local authority said that it had no further information to submit. I have been provided with insufficient evidence to support the case that no more than 20 children seeking a place in YR for 2021 live in the catchment area. It is unusual for a local authority to be unable to provide this relatively simple information.

24. I will now consider the case for a reduction in PAN that it will help the school's long term stability. A PAN of 20 would mean up to 20 children admitted to YR and, over time, could lead to there being up to 20 children in year 1 (Y1) and year 2 (Y2) as well. This would total a maximum of 60 across these three year groups in due course and would allow the school to arrange its classes in two groups of 30 if it so wished. This would be an economically sound model as it meets the requirements of the Infant Class Size Regulations that infant classes (those where the majority of children will reach the age of 5, 6 or 7 during the school year) must not contain more than 30 pupils with a single qualified teacher. Such a model could be at risk if more than 20 children were admitted to YR year on year leading to more than 60 children across the three infant year groups which could lead to the school providing more than two classes. If the school felt it needed to create three classes then, if the number of children were only just over 60, this could be challenging financially as schools are funded largely on the number of children admitted.

25. Table 1 shows that 22 children were admitted in 2019, 16 in 2020 and 22 forecast in 2021. This would, assuming no child leaves or joins, total 60 children. I have, as above, requested more evidence to support the case for the PAN reduction but I have not been told how the classes are currently organised. I do not know if these classes are organised as two or three classes each with a single school teacher. If in two classes then the admission of an additional child could lead to the need to create a third class and this could be financially and educationally challenging. I have not been told that this could be the case. I note that the PAN is for the year of entry only and the admission to other year groups is dependent on the provision of efficient education or efficient use of resources; the PAN only applies to the year of entry which is YR in this case.

26. I asked for evidence that the major change in circumstances is such that the variation is justified or evidence that there is no significant disadvantage to those who might seek a place at the school. The local authority told me that it thought there were fewer than 20 children in the catchment area for the school and that there were other schools that they

could attend but has provided no details to support this view. The forecast is that the parents of more than 20 children would want their children to attend the school and I have been provided with scant evidence on the number of children in the catchment area for the school. The need for the school to have a PAN of 20 to be agreed through a variation has not been made to me. In these circumstances I do not think that the variation is justified and I do not agree to it.

27. It remains open to the local authority to request a variation again if there is further evidence it wishes the adjudicator to consider.

## **Determination**

28. 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 Warwickshire County Council for Tysoe Church of England Primary School for September 2021.

29. 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.

30. 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 November 2020

Signed:

Schools Adjudicator: Deborah Pritchard