



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: VAR2093**

**Admission authority: Warwickshire County Council for Tysoe C of E Primary School**

**Date of decision: 17 December 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 C of E Primary School for September 2021.**

## 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 C of E Primary School (the school), to the Office of the Schools Adjudicator. The school is a voluntary controlled school with a Church of England religious character for children aged 4 to 11 in Tysoe, Warwickshire.
2. The proposed variation is to reduce the published admission number (PAN) from 30 to 20.

## 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 would be 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. However, the arrangements were considered as a whole in a previous determination (reference VAR1936) dated 17 November 2020. That determination required the local authority to revise the arrangements and allowed until 17 January 2021 for it to do so. Because this period has not yet expired, I have not considered the arrangements further under section 88I.

## 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 7 December 2020, supporting documents and its responses to my enquiries;
  - b. the determined arrangements for September 2021 and the proposed variation to those arrangements;
  - c. a determination by the adjudicator VAR1936 dated 17 November 2020;
  - d. evidence that the governing board for the school has been consulted;
  - e. a map showing the location of the school and other relevant schools;
  - f. information available on the Department for Education (DfE) website; and
  - g. a copy of the letter notifying the appropriate bodies about the proposed variation.

## The proposed variation

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 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 the appropriate bodies in the relevant area are notified of a proposed variation. The local authority initially provided me with copies of a notification about the proposed variation dated between 1 and 27 October 2020.

These appeared to me to be the notification required for the previous request for a variation to the admission arrangements for this school made on 12 October 2020 and refused on 17 November 2020 in determination VAR1936. When I questioned the date of this notification the local authority sent me copies of emails dated 9 December 2020 notifying the appropriate bodies of this new application. I note that this notification was dated after the application was made.

10. 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; I find that the appropriate procedures were eventually followed.

## Consideration of proposed variation

11. The school is situated in a rural part of the county of Warwickshire between Banbury and Stratford-upon-Avon, close to the border with Oxfordshire. The DfE website ‘Get Information About Schools’ (GIAS) identifies a single primary school within two miles of the school and that is in Oxfordshire. Altogether, GIAS lists six other primary schools with five miles of the school; four of these are in Oxfordshire. Although the school has a religious character, faith-based oversubscription criteria are not used in the arrangements.

12. The school, together with one other school with which it is currently federated, is in the process of converting to an academy with an expected date of conversion of 1 April 2021. The two schools will form a new multi-academy trust.

13. The arrangements were determined by the local authority on 20 February 2020 and on the application form the major change in circumstances which has occurred since that date is described as: “Continued admittance of pupils significantly below current PAN”.

14. On the application from I was told that the number of places offered at the school in 2018, 2019 and 2020 were 16, 23 and 16 respectively. I was also told in response to my enquiries that the number of children on roll is as shown in the following table.

Year	R	1	2	3	4	5	6
Children	16	19	14	16	23	11	17

The number of children offered places since the arrangements were determined appears to me to be similar to that in the previous six years and therefore difficult to see as a major change in circumstances.

15. I was told that as a result of this perceived change in circumstances “[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.” I have looked at the schools financial benching marking data available through GIAS. These

data do not indicate that the school has a particularly high level of expenditure or low income when compared to similar schools. I offered the local authority the opportunity to comment on these data, but it chose not to do so.

16. The 116 children currently in the school are organised in five classes as shown in this table.

Class	R/1	1/2	3/4	4/5	5/6
Children	24	25	25	22	20
(Year A / Year B)	(16/8)	(11/14)	(16/9)	(14/8)	(3/17)

I have considered what changes to this organisation might be possible if the PAN for 2021 was set at 20 and the school was fully subscribed at this number. The number of children on roll would be 119 distributed as follows:

Year	R	1	2	3	4	5	6
Children	20	16	19	14	16	23	11

It would be possible for the school to reduce to four classes, with two infant classes for the 55 infants, a combined Year 3/4 class of 30 and a large Year 5/6 class of 34. This would lead to a significant saving on staffing costs. Other four class structures are possible with more mixing of age groups.

17. However, the local authority has forecast the need for 22 places at the school in September 2021. This number of Year R children could be accommodated in the same class structure as 20 and would add to the school's income. It would not be until 26 Year R places were required that the number of infants would exceed 60. In that, based on current trends and forecasts, unlikely event there would be two choices available to the school in order to stay within the requirements of infant class size legislation. Either it could "promote" the necessary number of Year 2 children to the Year 3/4 class, or return to the current five class structure in which case the staffing costs remain the same as now, but there would be more children in the school with the associated increased funding to help support an extra class.

18. The local authority has also forecast the need for 21 places at the school in September 2022 with 12 and 18 required in the two following years. If all these children were admitted, the roll would rise to 131 in September 2022 of which 59 would be infants before falling to 120 the following year. If the intake was limited to 20 the roll would rise to 128 before falling to 117. Whether the school had 131 or 128 on roll it seems likely to me that a five-class structure would be necessary.

19. I am not convinced that reducing the PAN to 20 for September 2021 is required to reduce the school's staffing costs and there are implications for two children who would not be admitted which I will consider later. It also appears to me that the school could be oscillating between a four and five class structure whether the PAN is 20 or 30.

20. If the PAN was reduced to 20, then, by the local authority's forecasts there would be a need for two children to go to other schools which would be schools given lower preference by their parents in the application. These may also be schools farther from their homes and require the local authority to provide home to school transport. I asked the local authority for details about the demand for places at the six schools within five miles of Tysoe. From the data provided it would appear that only one of these schools is expected to be oversubscribed in 2021 and it is expected that there will be 24 places available for any child who could be not offered a place at Tysoe.

21. The local authority has said that "It is expected that these children [those over PAN at Tysoe] will be accommodated at the school unless this would frustrate Infant Class Size regulations." However, the local authority will not be the admission authority when the school becomes an academy and I cannot rely on these assurances.

22. I asked the local authority for details of the school's net capacity assessment. I only received a plan of the school, not the associated spreadsheet containing the dimensions and other factors used to calculate the net capacity. The plan shows seven classrooms of which two appear to be in temporary buildings. I noted that one area in which the school's financial benchmarking data showed the school's spending to be above the median was premises costs. It appears to me that an agreed rationalisation of this accommodation might bring savings in its own right and provide a stronger justification for a reduction in PAN than I have yet found in this application.

23. I must also consider what the implications are for future years if I were to approve this proposal. I have taken into account Paragraph 1.3 of the Code which says:

"Own admission authorities are not required to consult on their PAN where they propose either to increase or keep the same PAN. For a community or voluntary controlled school, the local authority (as admission authority) **must** consult at least the governing body of the school where it proposes either to increase or keep the same PAN. All admission authorities **must** consult in accordance with paragraph 1.42 below where they propose a decrease to the PAN. Community and voluntary controlled schools have the right to object to the Schools Adjudicator if the PAN set for them is lower than they would wish. There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering any such objection."

Also of relevance is paragraph 3.3b of the Code which prohibits anyone from making an objection to an "own authority admission's decision to increase or keep the same PAN" and paragraph 3.3c which prohibits "objections about a decision by the admission authority of a

voluntary controlled or community school to increase or keep the same PAN, unless the objection is brought by the governing body of the school.”

24. I must also assume that the school becomes an academy on 1 April 2021. Until then, the local authority is the admission authority for the school and is required to set the PAN for 2022 by 28 February 2021. When a voluntary controlled school becomes an academy, it takes on the admission arrangements determined for it by the local authority. Any changes it wished to make would have to follow the process for consultation set out in the Code, unless there were a major change in circumstances which justified a variation request.

25. The PAN is currently 30 and if the local authority wanted to reduce to 20 it for 2022 it would be required to consult parents and others about such a reduction for six weeks between 1 October 2020 and 31 January 2021 before doing so. Parents or others would be able to object to any reduction in PAN made by the local authority after this process by a referral to the schools adjudicator. I asked the local authority if it had consulted on reducing the PAN for 2022. I was told that it had not and that there was now insufficient time for it to do so before it determines the 2022 arrangements in February 2021. I note that the local authority first applied for a variation reducing the PAN for 2021 on 12 October 2020 when there would have been time to consult properly on a reduction for 2022.

26. If I now approve the proposed reduction in PAN from 30 to 20 for September 2021, then the local authority is still required by paragraph 1.3 of the Code to consult the governing board if it intends to either keep the PAN at 20 or increase it above 20 when it determines the 2022 arrangements. If the local authority decides to keep the PAN at 20 (or any figure under 30 for that matter), paragraph 3.3c would prohibit parents from objecting to it. In effect the PAN could have been reduced permanently without any consultation with the parents in the area whose families might be affected by it. This is my main concern about this proposal. From the data provided by the local authority it would appear that if the PAN was 20, some children could be refused places at the school in 2021 or 2022. These children would then have to attend schools which were not as high in their parents’ preferences, or were farther from their homes or both.

27. The variation process is designed for major changes in circumstances, such as building failure, which would prevent an admission authority from implementing its admission arrangements as published and a speedy remedy is necessary. Consequently, admission authorities are only required to notify the appropriate bodies of proposed variations, parents are not one of the appropriate bodies and so may not be aware of, or able to comment on, changes which could adversely affect their families. The date by when objections to the 2021 arrangements could be made to the adjudicator is now long past and paragraph 3.3b and 3.3c of the Code would prevent any objection to the PAN while it remained at 20 in future years. If I approve this proposal, then a change which could adversely affect children and parents in the area would have been made with no opportunity for full public consultation and scrutiny. I do not consider that to be justified by the circumstances put to me or to be fair.

## Conclusion

28. I am not convinced that there has been a major change in circumstances since the PAN was set in February 2020 which is such that it requires the PAN to be reduced from 30 to 20 for September 2021 so close to the deadline for applications. I am not convinced that reducing the PAN will solve the reported financial and staffing problems at the school. I am concerned that reducing the PAN through the variation process does not allow parents in the area the opportunity to comment on the proposal, or to object to a decision which they did not agree with and which may affect them adversely.

29. When I balance the unconvincing arguments for reducing the PAN with the long-term implications and lack of local scrutiny, I have decided not to approve this proposal.

## 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 Warwickshire County Council for Tysoe C of E Primary School for September 2021.

Dated: 17 December 2020

Signed:

Schools Adjudicator: Phil Whiffing