



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2014

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

Date of decision: 19 January 2021

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 London Borough of Waltham Forest for Downsell Primary School for September 2020.

I determine that the published admission number for the school will be 60.

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 2021 for Downsell Primary School (the school), to the adjudicator. The school is a community school for children aged 3 to 11 in Leyton.
2. The proposed variation is to reduce the published admission number (PAN) for September 2021 from 90 to 60.

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 local authority dated 30 April 2020 and received 28 October 2020, supporting documents and further information at my request;
- b. the determined arrangements for 2021 and the proposed variation to those arrangements;
- c. a copy of the local authority’s booklet for parents seeking admission to schools in the area in September 2021;
- d. evidence that the governing board for the school has been consulted and further information provided in response to my enquiries;
- e. a map showing the location of the school and other relevant schools;
- f. confirmation that the appropriate bodies have been notified of the proposed variation;
- g. previous determinations regarding primary schools in the local authority area including one for the school (reference VAR929) and others for Buxton Primary School (VAR787 and VAR874); and
- h. information available on the websites for the local authority and the Department for Education.

The proposed variation

7. The local authority made a previous request for a variation (VAR929) to the PAN for the school for 2021. The determination, written by another adjudicator, published 17 June 2020, did not approve the variation. In recent years the local authority has made 15 requests for variations to reduce the PANs for the primary schools for which it is the admission authority. In addition, the local authority has made a further four requests for variations to admission arrangements for admissions in 2021 and all are to reduce the PAN for particular schools, including this one.

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. It has been made clear in previous determinations that it was a matter of concern that the same major change in circumstances, that there have been reductions in the number of children seeking places at the school for some years, is cited each year. In making this point, I emphasise that adjudicator determinations do not set precedents and each case is considered on its merits. However, I also want to put on record that the local authority has been made aware of adjudicator concerns about its use of variations. I will consider below whether the variation requested is justified by the change in circumstances.

9. 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.

10. Paragraph 3.6 of the Code also requires that relevant parties be notified of a proposed variation. The local authority has provided me with confirmation that it has notified the relevant bodies. When the request was received for the proposed variation, an email was sent on my behalf to the governing board asking for confirmation that it had been consulted. No response was received to this and similar emails were sent as reminders on 23 November and 7 December 2020. A further email was sent on 6 January 2021 saying that if no response were received by 15 January then the case would be closed. Confirmation that the governing board had been consulted on the proposed variation was received on 7 January 2021.

11. Clearly the current circumstances are very challenging for all schools but the time taken in providing confirmation that the governing board has been consulted has delayed consideration of the proposal. No information was provided in the confirmation of consultation from the governing board and so I asked if the governing board would like to provide any information to inform my consideration of whether the variation was justified by the circumstances. The governing board's response was received on 15 January 2021 and is considered with the other evidence provided to me below.

Consideration of proposed variation

12. The local authority said that it requested the variation because: "The school would be in a position of being over-staffed and by reducing staff there will be cost savings for the school." The local authority also said that the outcome of reducing the PAN to 60 "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."

13. A previous determination considering a request for a reduction in the PAN for the school (VAR929) said, "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.” This remains valid.

14. VAR929 also said with regards to staffing that, “Whatever the PAN is, the school will need the number of staff for the number of pupils it has and is funded for.” The local authority provided a comment on this in its application this time saying, “the risk here is that a 3 form school [with a PAN of 90] for example may suddenly attract more than the 60 pupils due to the number of late applications the borough receives. This would result in insufficient staff for the school due to class size limits and temporary staff would be required which is expensive. Schools would prefer not to take this unnecessary risk and ensure they are planning their staff on the maximum pupils they are legally permitted to take.”

15. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. Once the PAN has been set for a particular year then no body, except the governing board of a community or voluntary controlled school, can object if that PAN remains the same (or is increased) in subsequent years. In this instance the local authority has stated that it intends to consult on the PAN for admissions in 2022 and set it at 60. Information on the local authority’s website says that the consultation began on Monday 7 December 2020 and will close on Sunday 24 January 2021. Clearly it is desirable that PAN reductions are made via the process of determination following consultation rather than by variation after determination as the consultation process allows those with an interest to express their views. It also allows for objections to the adjudicator. None of this is afforded by the variation process so the local authority’s decision for 2022 is greatly to be welcomed.

16. I have scrutinised the data to try to ascertain if there will be sufficient school places in the local area if the PAN is reduced from 90 to 60 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 and uses planning areas, which are schools within a geographical area, for this purpose. The planning area for the school is called Leyton South Planning Area (the planning area) and contains six schools, including the school, which admit children to YR. Another school in the planning area, a foundation school called Buxton School, has reduced its PAN by 60 places for 2021. Buxton School has also had variations to reduce its PAN agreed in previous years (VAR787 and VAR874). Table 1 below, is based on figures provided to me by the local authority but the figures have been adjusted to allow for the changes to the PAN of Buxton School.

18. Table 1 summarises the number of school places in the planning area, the number of children admitted to the schools in the planning area in recent years and the forecast of future demand.

Table 1: number of school places in the planning area compared to the number of children admitted and forecast to be admitted

	2018	2019	2020	2021
Total PAN	450	450	480	420
Number of children admitted	394	402	360	372 Forecast
Number of vacant places	56	48	120	48
Proportion of difference	12%	11%	25%	11%

19. Table 1 shows 120 vacant places were available in 2020 or 25 per cent of the whole which is a high proportion. There are 60 fewer places for 2021 because of the reduction made by Buxton School. If I were to agree the request for the reduction of 30 places for 2021 then the forecast is that there would be 18 vacant places. This would be around five per cent which is the proportion that the local authority says is recommended by the Department for Education. I am therefore given some assurance that there would be sufficient places in the planning area if the PAN were reduced to 60. I am also aware that the local authority has described the volatile nature of admissions in the area which means that there can be late increases or reductions. As the local authority is the admission authority for the school and other schools close by then it would be within its power to admit over the PAN if it deemed the demand required it.

20. I will now consider the situation at the school and the potential effect on parental preference if the PAN were reduced. The closing date for applications for 2021 was 15 January 2021 so most parents will have already stated their preferences for admissions in 2021 on the understanding that the PAN for the school is 90.

Table 2: number of children admitted and forecast to be admitted to the school

	2018	2019	2020	2021
PAN	90	90	90	90
Number of first preferences	56	55	41	N/A
Number of children admitted	74	74	46	60 forecast
Number of vacant places	16	16	44	30

21. Table 2 shows that the school admitted more than 60 children in 2018 and 2019 but that there was a sharp reduction for 2020 when 44 children were admitted; this is considerably below the proposed PAN of 60. I note that Ofsted judged the school to require improvement in November 2019 and this may have affected the popularity of the school. I note that the number of first preferences for the school (how parents specify the school they would most like their child to attend) was 46 for 2020, which is a reduction from previous years. The data shows that there was no significant increase in the numbers of children

admitted to other schools in the planning area in 2020 which supports the view that a PAN of 60 would leave sufficient places for the children of the area.

22. The number of first preferences in 2018, 2019 and 2020 were below 60 which is an indication that for any child whose parent stated the school as a first preference is likely to be admitted. Of course, other preferences are also important as parents may state a higher preference for a school where there is a low chance of admission in the expectation that a place would be available at Downsell Primary School if the application for a higher preference were not successful, but the number of first preferences does provide an indication of parental preference.

23. The governing board provided information on the size of the year groups throughout the school. These are shown in table 3 below. My jurisdiction is only for admissions to YR in September 2021 but it is valid for me to consider the proposed variation in the context of the whole situation

Table 3: number of pupils in each year group at the school

	Numbers on roll
YR	47
Year 1	69
Year 2	68
Year 3	61
Year 4	62
Year 5	58
Year 6	72

24. Table 3 shows that the majority of year groups have around 60 pupils. Infant class size regulations require that infant classes (those where the majority of children will reach the age of 5 (YR), 6 (Year 1) or 7 (Year 2) during the school year) must not contain more than 30 pupils with a single qualified teacher. Additional children may be admitted under limited exceptional circumstances. Schools are mainly funded on the basis of the number of pupils attending. Large primary schools such as this one, will seek admission numbers that support 30 or nearly 30 to a class. For example, 60 children would support two classes of 30 and this is very cost efficient. When 46 children were admitted in 2020 (as shown in table 2 as the number admitted compared with table 3 which shows how many on roll as of January 2021), unless the school mixed year groups and many schools prefer not to do this, then two classes of 23 pupils may have been created. This is less cost efficient than 60 children with two classes as the costs are similar but the income (largely based on the number of pupils) is reduced.

25. A year group of 69 pupils, as with the current Year 1, is likely to mean that the school provides three classes of 23 children with a similar impact to that for YR. This is likely to create significant strain on school finances in the long term. Table 3 shows that several year groups are in this position. For year groups from Year 3, the school could have classes of more than 30 children but a year group of 72, as in the current Year 6, could be three

classes of 24 or two classes of 36. It would appear from the information available to me that the school has decided not to run with two classes of 36 children but to adopt a model with three classes in Year 6. Such small class sizes are likely to be too expensive to maintain long term. If the PAN remains at 90 and just over 60 children (say 63) were admitted in 2021, unless the governing board decided to mix age groups, then it may be necessary to provide three classes of about 21 pupils each. This model is unlikely to be affordable in the long term for any school.

26. The governing board also said, "At present the first choice from parents for a Reception placement for September 2021 is significantly lower than in previous years. This may well indicate that the recent population exodus from the south of Waltham Forest in Leyton where Downsell is located is part of an ongoing trend. It has affected other schools in the area and is not confined to Downsell. The pandemic has made many families reappraise their priorities in terms of where they can afford to live, especially with more and more people now working from home."

27. I have considered that:

27.1. most parents have already made their applications for the school on the understanding that the PAN is 90;

27.2. for admissions in 2018, 2019 and 2020 fewer than 60 parents made the school their first preference;

27.3. in 2020 there were 46 children admitted to YR which is likely to mean two classes of 23 children and the total costs of this may not be met by the funding generated by the number of children;

27.4. the year group sizes throughout the school, if the school does not teach in mixed year group classes, are likely to create significant financial pressures on the school's budget;

27.5. if just over 60 children were admitted in 2021 then, unless YR children were mixed with year 1, which is not a popular model, then it would be necessary to have three classes of just over 20 children the costs of which may not, again, be met by the income;

27.6. there are sufficient places in the planning area for all children seeking a school place; and

27.7. the school is in challenging circumstances as it addresses the matters raised in its Ofsted report and deals with the further problems created by the Covid 19 pandemic.

28. Having considered these matters I have decided, on balance, to approve the variation that the PAN be reduced to 60 for 2021.

Determination

29. 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 London Borough of Waltham Forest for Downsell Primary School for September 2020.

30. I determine that the published admission number for the school will be 60.

Dated: 19 January 2021

Signed:

Schools Adjudicator: Deborah Pritchard