



Determination

Case reference: VAR2104

Admission authority: London Borough of Lambeth for Sudbourne Primary School

Date of decision: 11 March 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 Lambeth for Sudbourne Primary School for September 2021.

I determine that the published admission number for admissions in September 2021 shall be 45.

The referral

1. The London Borough of Lambeth (the local authority) has referred a proposal for a variation to the admission arrangements for September 2021 for Sudbourne Primary School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 3 to 11 in Brixton.
2. The proposed variation is that the published admission number (PAN) be reduced from 90 to 45.

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 15 January 2021 (received 27 January 2021), supporting documents and further information provided 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. information provided by the headteacher of the school;
- e. the local authority’s booklet for parents seeking admission to schools in the area in September 2021;
- f. maps showing the location of the school and other relevant schools, and the home locations of children admitted to the school in September 2020;
- g. details of the numbers on roll at the school and other local schools and the forecast demand for places; and
- h. details of the notification of the appropriate bodies about the proposed variation.

The proposed variation

7. In the determined arrangements for admission to the school in September 2021, the PAN was set at 90. This was an increase from the previous PAN of 45 as the school was expected to expand, utilising a second site. However, the local authority has requested that the PAN be reduced back to 45 for admission in September 2021 for the following reasons:

“The process of expansion has taken longer than anticipated and meanwhile the population of the area has decreased. The school have agreed to postpone the increase of places and the building will be put to another use in the meantime.”

It has been confirmed to me that “the building” here means the proposed second site.

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 relevant parties be notified of a proposed variation and that the local authority as admission authority consult the governing board. The local authority has provided me with a copy of its notification of the proposed variation and the list of schools and other bodies to which it was sent. I refer to this notification below. The headteacher has confirmed that the school's governing board has been consulted about the request for the variation. I am satisfied that all relevant bodies have been notified or consulted as the case may be and that the appropriate procedures were followed.

Consideration of proposed variation

10. Information provided by the local authority shows that in 2012 it consulted with the local community about a proposal to provide an additional 315 places at the school on a second site. This would double the capacity of the school to 630, that is, 90 in each of the seven primary year groups. Due to complications with land acquisition, it was not until November 2017 that the Cabinet Member for Children and Schools made a decision to go ahead with the expansion, with the extra places to be provided at a site in Mandrell Road (the Mandrell Road site). The local authority's report, dated 22 November 2017, correctly explains that,

“Under section 19 of the Education and Inspections Act 2006, a local authority is required to publish a proposal to make a prescribed alteration to a maintained school. The proposed expansion is a prescribed alteration within the meaning of the Act pursuant to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.”

11. The date given in the report for the completion of the building work at the new site is August 2019. In fact, the local authority did not determine an increased PAN of 90 until March 2020, for admissions to the school in September 2021. The local authority informed me that, “The works are currently in process and are expected to be finished by April 2021.”

12. The Regulations cited above make clear that when a proposed enlargement would increase the capacity of the school by more than 30 pupils **and** 25 per cent or 200 pupils (whichever is the lesser), the proposers, in this case the local authority, must follow a statutory process. This process requires the publication of a notice in a local newspaper giving details of how the full proposal can be obtained and representations made. The proposal must be sent directly to certain parties, including parents of children at the school. The representation period must last for four weeks, following which the decision-maker, in this case the local authority, should decide the proposal within two months. The decision of the Cabinet Member in November 2017 would be an authorisation for the statutory process

I have outlined above to be undertaken. It could not amount to a final approval of the expansion of the school.

13. Despite the fact that it was aware that the Regulations required the publication of a proposal, the local authority has not been able to provide me with compelling evidence that the statutory process was followed. I have not been furnished with a copy of the statutory notice, the full proposal, responses made during the representation period or a record of the local authority's subsequent determination of the proposal. The proposal was not referred to the Office of the Schools Adjudicator for determination (as it would have been, had the local authority not made a decision within two months). The Department for Education has no record of a statutory proposal being made, although, as the local authority says, it would have been aware of plans for expansion of the school through School Capacity (SCAP) surveys.

14. I am bound to conclude that the necessary statutory process was not followed in respect of the enlargement of the school. Put simply, this means that the expansion has not been approved and that the council would be acting outside its powers to go ahead with it. The determination of a PAN of 90 for admission in September 2021 was clearly made on the basis that the school would begin the process of expansion from that date. This appears to have been a mistake as, based on the evidence I have received, the expansion proposal had not secured the required approval. As it happens, the local authority no longer wishes to expand the school, at least for the time being, and, in effect, although it is not the reason given for the variation request, the reduction of the PAN back to 45 would rectify that mistake.

15. The local authority's reason for seeking the variation is actually "Continuing falling numbers of applications and reception rolls at the school (and boroughwide)." It says that in the past five years the number of births in Lambeth has not followed the expected pattern. Births in the Brixton Hill ward, where the school is located, were 19 per cent lower between 2016 and 2020 than the average of the previous five years, a larger fall than in other areas of the borough. Schools in Lambeth were presented with the outcome of a review into primary school place planning in the borough, which the local authority says, "gave evidence of the need for a reduction of places." In response, "Sudbourne School volunteered to keep their PAN at the same level." The local authority comments,

"This supports the need to ensure all children have access to a local school, by allowing a redistribution of places across the borough. By reducing the number of places in more "popular" schools, schools with previously lower intakes are more likely to see growth."

16. Before proceeding further, I should comment that I consider a request for a variation to be an inappropriate way of achieving a "redistribution of places across the borough." The local authority appears to envisage a strategic re-organisation of the provision of primary school places in its area. Variations, however, are intended to allow admission authorities to respond to a "major change in circumstances" at an individual school.

17. In my view, this request for a variation has not been made at an opportune time; it was submitted at the national closing date for applications for admission in September 2021. This raises two matters of concern. First, when making applications, parents could not be certain what the PAN would be. Second, the demand for places at the school cannot be definitively established until the process of co-ordination of admission applications, including the exchange of information between local authorities, has been completed. I consider these issues in turn.

18. The local authority provided me with a copy of a “notice” that was posted on its website and the school’s website, and was circulated to other appropriate bodies. The notice explained that,

“The Local Authority is proposing to delay the school’s intended increase to 90 as it will have a negative impact on local schools. The published PAN of 90 pupils will instead remain at a PAN of 45 pupils for 2021/22 onwards.”

The views of “everyone who feels they might be affected by this proposed reduction to the Published Admission Number” were sought. I was provided with one response that was received during what was described as the “consultation period” (20 November 2020 to 5 January 2021). The response was from a parent of a child at the school and expressed support for the proposal.

19. It is not, in fact, a requirement for admission authorities to undertake a consultation prior to making a request to vary determined admission arrangements. The Code lists bodies that must be notified of a proposed variation. These do not include parents, so the local authority went further than was required in making known its intention to seek a reduction to the school’s PAN.

20. I also note that the local authority’s admissions booklet for parents, “Starting primary school in Lambeth 2021/22”, states that the PAN of the school is 45. This is an error; the figure determined for admission in September 2021 was 90. I am informed by the local authority that the PAN for admission in September 2022 has been determined as 45. I am not concerned with the arrangements for 2022 in this determination and work on the basis that in setting the PAN at 45 the local authority followed the proper processes.

21. The headteacher of the school has confirmed that at no stage was information provided to parents that would have created a firm expectation that the Mandrell Road site would be in use in September 2021:

“No formal information has been given to parents about the timing of the site 2 use... [and]... No firm arrangements expressed to prospective parents.”

22. I therefore consider it likely that a significant proportion of parents, for whom a knowledge of the school’s PAN was important when deciding on their preferences for admission in September 2021, would either have been aware of the proposed reduction or have assumed, either on the basis of the erroneous statement in the admissions booklet or

in the absence of information about the opening of the Mandrell Road site, that the PAN was 45 and that provision would only be made at the school's existing site.

23. Turning to the anticipated demand for places at the school for admission in September 2021, the local authority received 152 applications from Lambeth residents naming Sudbourne Primary School as a preference, including 42 first preferences. These figures represent a reduction from 2020, when they were 193 and 52, respectively. Due to its location in a central position in the borough, the school receives very few applications from outside Lambeth. Historically, the school has been heavily oversubscribed; there were 69 first preferences expressed for admission in 2018 and 57 for admission in 2019. The reduction in first preferences over time is consistent with the fall in the birth rate locally.

24. Nevertheless, despite the number of first preferences (42) being slightly lower than the proposed PAN, I consider that there is a strong likelihood that a PAN of 45 will not be sufficient to accommodate all applicants with a 'live' preference, that is, including those with a lower preference where the higher preference(s) cannot be met. For admission in September 2020, six applicants with lower preferences were allocated places.

25. I asked the local authority and the school whether it would be able to accommodate more than 45 pupils in the reception year (YR) in its existing site in Hayter Road, which would be necessary if it were to be oversubscribed and its determined PAN were not reduced. It was explained that the school plans each year to operate with two classes in YR, one of 23 and one of 22, in small classrooms. There are three classes of 30 across each of the three pairs of year groups in key stages 1 and 2, that is, years 1 and 2, years 3 and 4 and years 5 and 6. This arrangement enables the school to accommodate the PAN of 45 and, due to the popularity of the school, in most year groups the number on roll matches the PAN. The local authority confirmed that the net capacity assessment for the school site "confirms this stance."

26. It may theoretically be possible for the school to admit more than 45 pupils into YR, but I recognise that this would cause difficulties when those pupils move into key stage 1 as there would be more than 90 pupils in years 1 and 2. This would require the deployment of an additional teacher as pupil numbers in YR and key stage 1 cannot exceed 30 in each class taught by a single qualified teacher, due to the regulations relating to the size of infant classes. Such a requirement could pose a severe financial challenge, in addition to the difficulties in accommodating the children within the capacity of the school.

27. The proposed variation in the school's PAN would, of course, reduce by 45 the places available in the area for admission in September 2021. The local authority does not expect this to cause a problem. It stated in the public notice,

"Given that there are already spare Reception places in the area, there will be no discernible effect on other primary schools within the locality and this change will therefore support school places in the area."

I am satisfied that no child will face an unreasonably long journey to school if the PAN at Sudbourne Primary School were to be reduced to 45.

Conclusion

28. The local authority determined an increased PAN for the school on the basis of an expansion onto a second site, for which it does not appear that approval had been obtained, following the required statutory process. This is a serious shortcoming. It would be a breach of the legislation if the school were to increase its capacity by utilising the enlarged premises.

29. In fact, the local authority no longer wishes the school to expand in September 2021, due to falling demand for places in the borough. Although the request for a variation was made once parents had made admission applications, information about the proposed PAN of 45 was available (erroneously in the case of the information booklet). Demand for places at the school in September 2021 may exceed 45, as it has done for many years, but the school is not able to accommodate more pupils on its existing site.

30. Taking these circumstances into account, I consider it to be appropriate that the PAN for admission in September 2021 is reduced from 90 to the historic figure of 45. I approve the variation request.

Determination

31. 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 Lambeth for Sudbourne Primary School for September 2021.

32. I determine that the published admission number for admissions in September 2021 shall be 45.

Dated: 11 March 2021

Signed:

Schools Adjudicator: Peter Goringe