



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3758

Objector: The governing board for Downs Infant School in Brighton in the local authority area of Brighton and Hove City Council

Admission authority: Brighton and Hove City Council

Date of decision: 10 May 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Brighton and Hove City Council for Downs Infant School in Brighton. The published admission number is not to be reduced from 120 for admissions in September 2022.

I have also considered the arrangements in accordance with section 88I(5) and find one other matter which does not conform with the 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised within two months except that the revision to the first priority regarding previously looked after children must be revised by 1 October 2021 to meet the requirements of the School Admissions Code in force at that date.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the governing board for Downs Infant School (the objector) about the admission arrangements for September 2022 (the arrangements) for Downs Infant School (the school), a community school for children aged five to seven. The objection is to:

- 1.1. the consultation that was held on reducing the published admission number (PAN) for the school; and
- 1.2. the reduction in the PAN from 120 in previous years to 90 for 2022 including that the reduction will frustrate parental preference and does not meet equalities legislation.

2. Brighton and Hove City Council is the local authority for the area in which the school is located and the admission authority for the school and I shall refer to it as the local authority. The objector and the local authority are the parties to this objection.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority on 11 January 2021. The objector submitted its objection to these determined arrangements on 6 March 2021. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. a copy of the minutes of the meeting on 11 January 2021 of the Children, Young People's and Skills Committee (the determining body for the local authority) at which the arrangements were determined and the papers to inform this decision. Papers provided to the committee included a report on the background to the proposed reductions in PANs across eight primary schools and the consultation held. I will refer to this document as the committee report;
- b. a copy of the determined arrangements;
- c. the objector's form of objection and responses provided to my enquiries;
- d. maps of the area identifying relevant schools and the home location of the children who were admitted to reception year (YR) at the school in 2020;
- e. information provided by the local authority in response to my enquiries; and
- f. information available on the websites of the local authority, the school and the Department for Education.

The Objection

6. The objection is in two parts with both relating to the local authority's setting the PAN for the school at 90 for admissions in 2022 which is a reduction from 120 in previous years.

The first part of the objection is that the consultation prior to the decision to reduce the PAN was flawed. The second part is to the reduction in the PAN. The objector argues that the school is outstanding, popular and oversubscribed and that such a reduction will mean that a significant number of parents who would like to send their children there will not be able to and that the reduction in numbers of pupils will have a significant effect on the financial situation of the school and therefore the education it is able to offer. The objector also suggests that the reduction in the PAN may cause a breach of the requirements of equalities legislation as it will reduce the number of places available to children from minority ethnic backgrounds and those in receipt of free school meals. In addition, the objector says that those children with special educational needs will not get such a good education because of the reduction in income to the school. The objector further argues that some parents who would prefer their child to be in a school without a religious character will have the chances of that reduced.

Background

7. The local authority consulted on reducing the PANs of eight primary schools and one secondary school for admissions in 2022. Following the consultation the local authority determined lower PANs than the corresponding PANs for 2021 for all the schools included in the consultation for admissions in 2022. The governing board of another school in the local authority area, has also made an objection to the reduction in its PAN. That school is over three miles away from this one and I am considering that objection as a separate case.

8. The school is an infant school linked to Downs Junior School (the junior school) so that the majority of its children join the junior school when they leave the school at the end of Year 2. The PAN at the junior school remains at 120 and the local authority has indicated that it anticipates consulting on reducing the PAN for the junior school to 90 in due course.

9. The oversubscription criteria for the primary schools for which the local authority is the admission authority are (in summary):

- 9.1. Looked after children and previously looked after children including those previously looked after other than in England
- 9.2. Social or medical reasons for attending the school
- 9.3. A child with a sibling at the school or linked school
- 9.4. Any other child.

10. Where there is oversubscription within a criterion then the priority is given to those children living closest to the school. If two or more children were to live exactly the same distance from the school then random allocation would be used as a final tie-breaker.

Consideration of Case

11. There are two main aspects to the objection. One is that the consultation on reducing the PAN was flawed and the second to the reduction in the PAN itself. I will consider these two aspects in turn.

Consultation

12. The relevant paragraphs of the Code regarding consultation are paragraphs 1.42 to 1.45 and they set out a number of requirements including when consultation must take place and who must be consulted. I note that the restrictions created by the Covid 19 pandemic limited some potential methods of consultation, such as in person meetings. The local authority said that the consultation commenced on 5 October 2020 and closed on 27 November 2020. This is more than the minimum of six weeks required by the Code and therefore complies with the Code in this regard.

13. I turn now to the question of who was consulted. The local authority sent an email to “Headteachers/Principals” which provided information on the proposed changes for 2022 and links to where further information was available. Of course a message to headteachers and principals does not include admission authorities (such as governing bodies for voluntary aided and foundation schools or trusts for academies) so I asked the local authority to clarify for me how these admission authorities were consulted as required by paragraph 1.44c of the Code. The local authority explained that it had relied on headteachers passing on this information in this case, although this was not stated in the email, and that in future it would communicate directly when undertaking a consultation. As all admission authorities in the relevant area must be consulted, the consultation did not meet the requirements of the Code in this respect.

14. Paragraph 1.44a of the Code says that admission authorities **must** consult “parents of children between the ages of two and eighteen.” The local authority asked headteachers to inform parents of the consultation through the email described above. In addition the local authority said it provided information on the local authority’s website, used social media, contacted groups that worked with parents including early years providers and those who work with minority groups, and held public meetings using the platform Microsoft Teams. Two public meetings using Microsoft Teams were held for each school where changes were proposed with one during the day and one during the evening. The local authority also offered the opportunity for direct contact with officers as there were technical difficulties for some people in using Microsoft Teams but this offer was not taken up. It therefore appears that the local authority made reasonable efforts to consult with parents of children between the ages of two and eighteen. I note that the local authority was at least partly reliant on other bodies passing on information on the consultation to parents.

15. The committee report said, “There were 802 responses to the consultation submitted through the council’s consultation portal. At the time of writing this report there were an additional 42 emails/letters providing comments and a petition against one of the proposals containing 100 signatories.” The committee report provided detailed factual information on

the responses received including by each school on which a PAN reduction was proposed. The section on the responses related to the school recorded that there were 730 responses regarding the school of which 490 expressed an opinion regarding the reduction in the PAN. Of these 388 disagreed with the proposal to reduce the PAN and 102 supported the reduction. The committee report provided views expressed on why the PAN should not be reduced and noted that responses had been received from the school and the junior school.

16. The committee report conclusion regarding the proposal for the school said, “Downs Infant is a popular school that has been oversubscribed in previous years drawing pupils from a large area beyond the planning area. As pupil numbers in the planning area reduce it will be possible for parents to secure a place at this school from further and further afield. It is recognised that reducing the PAN at Downs Infant will potentially deprive some parents living further from the school the opportunity to send their children to this school. This must be balanced against the need to support local schools in other communities from being forced to close due to falling numbers on roll.” The evidence shows that the consultation process included collating and publicly reporting the responses made to the consultation.

17. The objector said “Brighton & Hove City Council have undertaken a wide-ranging but vague and illogical consultation process. The consultation directly involved 16 larger primary and infant schools but not heads and governing bodies of link Junior schools and no faith schools. It is not clear with what breadth parents of children in the local planning areas were consulted or made aware of the consultation.” I have described the steps taken by the local authority with regard to parents above. I asked the objector to explain its concerns further as it appeared, for example, that the junior school had responded to the consultation and I was not sure what was meant by “a wide-ranging but vague and illogical consultation process.”

18. The objector explained that given the implications for the junior school and the direct effect on its future, that it would have expected the junior school to have been consulted more thoroughly, such as holding meetings as for the other schools affected, rather than simply being informed of the consultation. As the majority of the children from the school are then admitted to the junior school then a reduction in the school’s numbers is likely, in due course, to lead to a reduction in the numbers at the junior school. I note this point but also that the junior school was consulted.

19. The objector also said that it felt that the consultation was the minimum required and that some stakeholders, such as large nurseries, were not aware of the consultation. From the information provided to me by the local authority it appears that all early years providers were informed of the consultation. I will not speculate on why some individuals from some nurseries may not have been aware of it.

20. In addition, the objector felt that the local authority had expected the school to arrange the consultation meeting although this was not what occurred. The objector said, “We were also surprised that the Councillor in charge of the Children’s Committee, which ultimately made the decision to reduce the PAN, attended one of the Downs Infant School consultation meetings to defend the decision to reduce the PAN, presenting it to the

audience as a decision which had already been made, rather than a matter they were genuinely seeking input and views to consider before making their final decision.” This appears to have given the impression to the objector at least that the consultation was not genuine but rather that it was a process gone through in order to achieve something that had already been decided.

21. The objector said that it described the consultation process as “wide-ranging but vague and illogical” because the consultation did not seem to have really considered the implications for the individual schools. Instead, the objector said, the approach appeared to have been, “any school that has a large PAN will have PAN reduced regardless of impact.” Furthermore the objector said, “It was unclear and vague how they had identified each of the schools other than they had large PANs.”

22. On the basis of the information provided to me it appears that the objector found the consultation process unsatisfactory because it felt as if the decision had been made in advance of the consultation and it did not feel that the decision was based on a true consideration of the circumstances of the school. This may be the case but the consultation did meet the requirements of the Code except with regard to consulting with all admission authorities. I therefore partially uphold this part of the objection.

The reduction in PAN

23. I will now consider the objection to the reduction in PAN. Paragraph 1.3 of the Code is particularly pertinent and the most relevant part says, “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.” This objection falls squarely within these parameters. This is a community school for which the PAN has been set lower than the school’s governing board would wish and it has exercised its right to object.

24. As described above the objection includes several aspects. I will first consider the demand for places. The local authority explained in its consultation papers and committee report that there were concerns over the increasing number of vacant places across the city and that it wished to take a strategic approach in order to avoid the closure of schools. Table 1 provides the numbers of children admitted in previous years and illustrates the forecasts across the local authority area prior to the PANs at the eight primary schools being reduced for 2022.

Table 1: number of children admitted to YR and forecasts of the number of children seeking a place in YR across the local authority area

	2019	2020	2021	2022	2023	2024
Sum of PANs	2940	2910	2820	2820	2820	2820
Forecast demand for places	2547	2517	2430	2313	2194	2076
Forecast number of vacant places	393	393	390	507	626	744

The number of vacant places as a percentage	13%	14%	14%	18%	22%	26%
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25. Table 1 shows that the number and proportion of vacant places was similar in the years 2019, 2020 and 2021 while the number of places actually available was reduced by 120. The forecasts are that there will be a growing proportion of vacant places in the coming years. The local authority tells me that it aims to secure a proportion of vacant places of between five and ten per cent. Clearly, the forecasts are that the proportion of vacant places would be much higher than ten per cent if steps were not taken.

26. The local authority does expect demand to increase in the future. The committee paper referred to cycles in the demand for places and therefore, taking previous patterns and house building into account, considers that demand would increase again around 2030. The factors driving the proposals to reduce the PANs described by the local authority include the following:

- 26.1. If no more schools reduce their PANs then the proportion of vacant places across the local authority area is forecast to increase to around 26 per cent by 2024 and no more schools wish to reduce their PANs.
- 26.2. The local authority is only the admission authority for community and voluntary controlled schools and so it is only these schools for which it can propose reductions in PANs.
- 26.3. Even with the reductions in PANs, so that there were 240 fewer places available in 2022, the local authority forecasts that there will be 20 per cent surplus places by 2024 so anticipates further PAN reductions.
- 26.4. If schools had inefficiently sized intakes this could create financial pressures on those schools which could lead to negative effects on standards.
- 26.5. In some cases low numbers could mean some schools becoming unsustainable and therefore closing. The local authority explained that school closure was to be avoided as it would mean that some children might then have to travel some distance to other schools which could increase the overall carbon footprint. Maintaining schools within walking distance for most families helps to meet the local authority's priority of becoming a carbon neutral city by 2030.
- 26.6. If schools closed, then when demand increased as anticipated around 2030 there would not be the flexibility within the school estate to meet that increased demand without capital investment.
- 26.7. There is flexibility to increase a PAN if demand is higher than anticipated. However, it is necessary to request a variation from the adjudicator (or the Education and Skills Funding Agency if a school is an academy) if a reduction

in PAN is needed after being set and this may not be granted. If demand is low some schools may be at risk of inefficiently sized classes and if schools for which the local authority is the admission authority fall into financial deficit, then the local authority is responsible.

27. The local authority also referred to the size of schools informing its planning. It appears that it is trying to avoid any school having a PAN lower than 30 and states in its equality impact assessment that, "In drawing up proposals the council considered the inclusion of 3 and 4 form entry schools for a reduction in PAN as larger schools can reduce their published admission number without a significant effect on their budget." I questioned this statement as it is clearly not accurate as schools are largely funded on the basis of the number of children attending so a reduction in pupil numbers will reduce the school's budget, whatever its size. The local authority explained, "This sentence was trying to indicate that the financial implication of reducing the school's intake by a class would be less significant for larger schools. As schools are largely funded on pupil numbers, reducing the PAN of a 2 form entry school by 30 will effectively reduce the school's funding by half whereas reducing a 4 form entry school by 30 pupils would only reduce the funding by a quarter." This clarification is helpful as this is not the same meaning as the statement made.

28. I note that the PANs for all primary schools admitting children to YR in the local authority area are multiples of 30. Infant class size regulations require that infant classes (those where the majority of children will reach the age of five, six or seven during the school year) must not contain more than 30 pupils with a single qualified school teacher (except in specific exceptional circumstances). I understand that this is what the local authority means when it refers to the risks of inefficiently sized classes. If a school had a PAN of 60 and 32 children were admitted, for example, the school could either have two classes of around 16 each or arrange for mixed aged classes, such as mixing YR with Y1. Several classes of low numbers, such as 16, might be very popular with parents but are likely to be financially unsustainable in the long term. For infant classes, a class with 30 pupils or close to 30 pupils is a financially efficient model.

29. The local authority noted in its equality impact assessment (EIA) on the reduced PANs that "through the consultation we have heard of some schools who are able to run their school with unfilled places and are not in financial difficulty. Therefore, careful consideration will need to be made when looking at proposals for individual schools." I did not see evidence that such scrutiny of individual schools occurred.

30. I know that many schools educate children successfully without having groups of approaching 30 children of the same year group; many have classes with more than one year group, often known as mixed age classes. Mixed age classes may be less popular with parents and are more complicated to manage but I do not accept that it is necessary for every school in the local authority area to have a PAN that is a multiple of 30 in order for it to operate in an educationally effective and financially sustainable manner.

31. The forecasts of the local authority establish that it anticipates a significant increase in the proportion of vacant places. Clearly the local authority has concerns about this and its

strategic plan in response is to try to reduce the PANs of eight community primary schools for 2022. This would mean that some of the children who would have attended one of the eight community primary schools will have to attend other schools which will as a result be protected from financial pressures and/or will not have to make internal changes to manage year groups that differ from intakes that are multiples of 30 or close to 30. The committee report also said, “The council has not proposed changes to schools which were oversubscribed with first preferences for September 2020 except where the planning areas would sustain the reduction in places.” The school was oversubscribed with first preferences for September 2020 as illustrated below and it is clear that the local authority considers that the planning area in which it is located would “sustain the reduction in places”.

32. I will now consider demand for places in the planning area. Local authorities have a duty to make sure that there are sufficient school places for the children in its area. The local authority does this on the basis of the whole local authority area and planning areas which are groups of schools geographically located together. The local authority considers the existing number of places, demand for those places and forecasts future demand based on a range of data.

33. Table 2 provides information on the planning area in which the school is located. The school is one of 11 schools in the planning area which admit children to YR. Reductions in the PANs of two other schools in the planning area have also been determined. In each case the reduction was 30 places so a reduction of 90 places overall has been determined for 2022 compared to 2021 across the planning area.

Table 2: the number of YR places in the planning area and the number of children allocated places previously or forecast to require a place in future years

	2018	2019	2020	2021	2022	2023
Sum of PANs	660	660	630	630	540	540 ¹
Number of children allocated a place	575	600	576	571		
Number of children forecast to be seeking a place					480	438
Number of vacant places	85	60	54	59	60 forecast	102 forecast

34. Table 2 shows that the number of children, while higher in 2019, has remained stable for 2018, 2020 and 2021 at between 571 and 576. The overall PAN for the planning area was reduced for 2020 from 2019 (from 660 to 630) by the reduction in PAN at another

¹ Assumes no change made to the PANs of any school from 2022

school. The reduction in the PANs of the three schools in the planning area reduced the overall PAN for 2022 by 90 but the forecast number of vacant places remains around 60 places in 2022, similar to 2019, 2020 and 2021 with a significant increase for 2023 forecast. If the overall PAN had not been reduced for 2022 then the proportion of vacant places, based on the forecast above, would be approaching 24 per cent. This would be a high proportion of vacant places and suggests that there would be sufficient places in the planning area with a PAN of 90 for the school. However, I also note that a sharp reduction of 91 places is forecast from the demand in 2021 (and similar in previous years) for 2022 and a further reduction in 2023. It may be, or course, that the planning area schools are attracting children from other planning areas so that reduction in demand from within the planning area itself is obscured and is to some extent offset.

35. Planning areas are useful tools but many parents prefer their children to attend schools outside of the planning area in which they live, as suits their circumstances. The local authority kindly provided a map at my request which illustrates where the children admitted to YR at the school in 2020 lived. Patterns will change over time but this gives me an indication of where the children whose parents wish them to attend the school may live. The school is on the eastern edge of the planning area so it is not surprising that approaching a fifth of the children admitted to YR in 2020 lived outside the planning area. Clearly, when a school is located close to the edge of its planning areas, some homes in the adjacent planning area are likely to be closer to that school than they are to schools in their own planning area. In relation the local authority's aim that children should be educated close to their home, this may in some cases mean travelling across the planning area boundary – which is itself only an administrative construct.

36. Generally speaking, planning areas do not mean much to parents; family links, ease of access and their views on the ethos of the school and the quality of education it offers weigh much more heavily. In this case, the composite prospectus for admissions in 2021 says that 69 children were admitted in 2020 under the distance priority and the furthest distance of such an admission was just under a kilometre (994.88 metres). While there may have been nearer schools for some of these children, this demonstrates that the school is in high demand in its vicinity. I recognise that it is possible, if the PAN were to be 120 and the number of children overall seeking a place reduces, that parents living further afield would prefer their children to attend the school. In these circumstances, the distance travelled to school could increase and some children admitted to the school could have attended a school nearer to their home.

37. I will now consider the demand for places at the school. Table 3 below shows the number of children admitted in recent years including the number of first preferences. Table 3 illustrates that more than 120 parents have made the school their first preference for their child in each year since at least 2018. A first preference means that the school named is the one that the parent would most like their child to attend. In 2021 the school was the first preference for the parents of 134 children so at least 14 parents did not get their first preference school. It is possible that as demand for places has fallen across the city, that the number of preferences expressed for the school may decline. But there is nothing to

suggest that its relative popularity has fallen or will fall, so I would expect it to remain proportionately oversubscribed.

Table 3: number of children admitted to the school in recent years

	2018	2019	2020	2021
PAN	120	120	120	120
Number of first preferences	127	142	132	134
Admitted or allocated	120	120	120	120

38. In effect, the reduced PAN means that it is likely that some parents will not be able to send their child to the school they would most like and that such children will be required to attend another school and that this is planned in order to increase the numbers of children attending other schools. I do not accept, as explained above, that every school must have an intake of multiples of nearly 30 children in order to offer good quality education and to be sustainable. There are multitudes of examples across the country where excellent education is delivered in schools with PANs that are not multiples of 30.

39. I have been provided with no evidence and I have seen none in the committee report provided to me that any school is at risk of closure if the number of vacant places across the local authority is not reduced. Therefore I do not consider the stated potential risk of other schools closing as a justification for reducing the PAN at the school.

40. The local authority has said that the budgets of larger schools are less negatively affected by reductions in pupil numbers. It is not evident that the fact that the school is an infant school so only has three year groups has been considered. A PAN of 120 and three year groups leads to around 360 pupils and 12 classes. I note that, by contrast, a primary school with seven year groups and a PAN of 60 will have 420 children and so more pupils than an infant school with a PAN of 120. If the PAN were to stay at 90 for three years then the school would probably have around 270 pupils and nine classes with all the related staff reductions. There also likely to be 90 children attending other schools whose parents would have preferred them to attend the school.

41. As referred to above, paragraph 1.3 of the Code says that if the PAN is set lower than a community school would wish and the governing board objects, “there is a strong presumption in favour of an increase to the PAN” to which I, as the adjudicator, **must** have regard. The evidence shows that the local authority has reduced the PAN at the school in order to secure an effect that 30 children every year will attend other schools so that the budgets and futures of these other schools are protected. This will clearly significantly frustrate parental preference and so would need powerful justification. I have seen little evidence that would provide such justification. I therefore uphold this part of the objection.

42. The objector also referred to discrimination against “families with protected characteristics.” The objector said, “The Equality Act 2010 provides that admissions authorities must not discriminate on the grounds of race (amongst other protected

characteristics) in the arrangements and decisions it makes as to who is offered admission as a pupil.” The objector argued that reducing the PAN would mean that those who live further away from the school are less likely to be admitted to the school on the distance criteria and that those who live further away from the school are more likely to be from an ethnic minority background.

43. The objector refers to the EIA made by the local authority to inform its decision making in this matter. The EIA says, “The most significant difference would be seen at ... Downs Infant School where an average of 24% of the 90 closest pupils attending the school come from ethnic minority families compared to 35% of the remaining pupils who live further from the school.” My understanding is that this means that the reduction in PAN will reduce the proportion of children from ethnic minority backgrounds able to be admitted.

44. The Equality Act makes provision as to both direct and indirect discrimination. The objector has not said whether it considers the arrangements amount to one or the other or both. It is clear to me that there is no direct discrimination on the grounds of race and, indeed, this would always be unlawful. Rather, as would be expected, the arrangements are entirely silent on the matter of race. Indirect discrimination arises when there is a policy that applies in the same way for everybody but disadvantages a group of people who share a protected characteristic (in this case race). Indirect discrimination is not always unlawful and can be justified on the basis that it is a proportionate means of achieving a legitimate aim.

45. In this case the aim would be reducing the level of surplus places in the area and that is certainly a legitimate aim for a local authority. The response in the EIA is, “All schools are expected to deliver a rich curriculum suitable to all pupils who attend the school. Schools are expected to celebrate the experiences of families in the city and from other areas. Therefore, the experiences of migrant and asylum seekers will be known and understood even if the school’s community is less diverse.” Clearly all schools should be capable of meeting the needs of most children. This response does not address the planned reduction in meeting the parental preferences of families, including those from ethnic minority backgrounds. As I have already decided that reducing the PAN is not justified, I will not make a formal finding on this matter.

46. I note that paragraph 1.8 of the Code says, “Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs”. Reducing the PAN will mean, as shown in the EIA, that fewer children from a minority ethnic background will be admitted to the school and so the arrangements do indirectly disadvantage children from particular racial groups. As above, as I have already decided that reducing the PAN is not justified and so, in this case, this is unfair and so not compliant with paragraph 1.8 of the Code.

47. The objector also raised concerns that the proposed reduction would reduce the proportion of children admitted who were eligible for free school meals. Eligibility for free school meals is not a protected characteristic under the Equality Act but the objector refers to statutory guidance for proposers and decision-makers issued by the Department for

Education in October 2018, 'Making significant changes ('prescribed alterations') to maintained schools'. I note that this is not relevant to my consideration of this case because the reduction in PAN is not covered by this guidance.

48. That said, paragraph 1.8, as referred to above, is relevant as those eligible for free school meals could be deemed a social group. The objector referred to the EIA which said, "Analysis of KS1 pupils from Jan 20 school census shows that the pupils living furthest from Downs, Brunswick and Benfield and attending these schools contain a higher percentage of pupils eligible for free school meals (which is an indication of deprivation) compared to the pupils living closer to the school." The effect of reducing the PAN is therefore likely to decrease the proportion of children eligible for free school meals able to attend the school. The ameliorating actions proposed in the EIA are, "Ensure that there are sufficient school places in all areas of the city so that pupils unable to secure a place at the school of choice have the opportunity to attend a local school." My understanding is that this means that if children eligible for free school meals would not be able to be admitted to the school because of the reduction in PAN then a place should be made available at a local school. This is in line with the overall strategy of the local authority that children attend local schools but not necessarily the school that their parent would prefer their child to attend.

49. The objector's point appears to be that the EIA response is inadequate. In this case reducing the PAN will disadvantage some children eligible for free school meals because they are less likely to be admitted to their preferred school. I have already established above that it is not appropriate in this case to reduce the PAN so that some children must attend another school and on this matter the arrangements also do not comply with paragraph 1.8 as these children are unfairly disadvantaged by the reduction.

50. A further argument made by the objector is that by reducing the number of children attending the school that the provision made for children with special educational needs and disabilities (SEND) would be reduced. The objector argues that the reduction in the PAN would reduce the income to the school and so that it was less able to provide the support it currently gives to such children. The objector said, "The current provision and support provided to children with SEND both with education, health and care plans (EHC plans) and without is exceptional...limiting the resources in school will not only affect those children with disability not able to now gain a place at the school but those already being taught within it."

51. The objector then provided information on the number of children identified with SEND. I note that the school has about the same proportion of children with EHC plans as is the case across the local authority area. I make no judgement regarding the quality of the provision made but do note that the quality of such provision is not dependent upon the size of the school although I recognise that there may be economies of scale. I note that paragraph 1.8, as referred to above, could also apply here. However, I have not been provided with evidence that children with disabilities or special educational needs are less likely to be admitted due to the change in the arrangements apart from proportionately so. I

will not comment further on this matter as I do not think that it is germane to the decision as to whether it is appropriate or not to reduce the PAN at the school.

52. The objector also drew my attention to the potential effect of reducing the PAN on those seeking education at a school without a religious character and says, “There are 3 Church of England schools on the margin of the Downs Infant catchment area, furthest from the school and this [reduction in PAN] could potentially have a disproportionate impact on pupils not wanting to attend a faith school and parents with a preference for a secular education for their child[ren].” At there is no catchment area defined for the school in its admission arrangements, I asked the objector to clarify this matter. The response explained, “We mean that the faith schools are close enough to Downs Infants to be an equal alternative by distance when considering the "distance to school of the furthest away child" measurement that is published by the local authority in respect of oversubscribed schools.”

53. I repeat the point I made above; it is not appropriate in this case to reduce the PAN in order to bring about a situation in which some children who could have obtained a place at the school are instead required to attend another school and so I will not explore this matter further.

54. I recognise that the local authority is trying to plan strategically to manage a significant reduction which has been forecast in the number of children seeking a place in YR. In this case the evidence shows that reducing the PAN for the school is likely significantly to frustrate parental preference and that this is not justified by the circumstances.

Other Matters

55. Having considered the arrangements as a whole I raised the following matter with the local authority as it appeared that the first priority might not meet the requirements of paragraph 1.7 of the Code that in the oversubscription criteria “the highest priority must be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.”

56. The first priority in the oversubscription criteria in the arrangements is “Children in the care of a local authority (looked after children), and children who were looked after in England or elsewhere but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order).” I explained to the local authority that this appears to include children who have been adopted from outside England which is not permitted by the current Code. In 2018 the Department for Education said in its guidance on this matter, “School admission authorities are currently required to give looked after children and previously looked after children highest priority in their oversubscription criteria. On 4 December 2017, the Minister announced that when the opportunity arises he intends to amend the School Admissions Code (the Code) to ensure that children who were previously in state care outside of England, and have ceased to be in state care as a result

of being adopted, also receive the same highest priority for admission into a school in England. Until such a time, however, the Minister wishes admission authorities to introduce oversubscription criteria to give these children second highest priority for admission into school.” I have underlined as above for emphasis. The local authority acknowledged that it was aware of the request from the Minister but explained that as it had consulted on the matter and no-one had objected, it had determined the arrangements giving such children first priority as described above.

57. A new Code has been consulted on which includes requiring admission authorities to give the first priority to looked after and previously looked after children, including those who have been in state care outside of England and ceased to be in care as a result of being adopted. However, this is not the case now and the wording, which also does not include the definitions of looked after or previously looked after children provided in the Code, is unclear and does not meet the requirements of the Code. I will, in light of the circumstances, determine that this must be addressed by 1 October 2021 as it is possible that a new Code may be in force by that date.

Summary of Findings

58. The evidence shows that the consultation regarding the reduction in the PAN met the requirements of the Code except with regard to consulting all admission authorities. I therefore partially uphold this aspect of the objection.

59. The school is oversubscribed and has had more than 120 first preferences for YR each year for some time. The reduction in the PAN to 90 is designed to increase the numbers at other schools which are less popular and so likely to significantly frustrate parental preference, including disproportionately those with protected characteristics under the Equality Act, without sufficient justification. I therefore uphold this aspect of the objection.

60. I have made a further finding in relation to the priority given to children who were looked after outside England.

Determination

61. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Brighton and Hove City Council for Downs Infant School in Brighton. The published admission number is not to be reduced from 120 for admissions in September 2022.

62. I have also considered the arrangements in accordance with section 88I(5) and find one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

63. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised within two months except that the revision to the first priority regarding previously looked after children must be revised by 1 October 2021 to meet the requirements of the School Admissions Code in force at that date.

Dated: 10 May 2021

Signed:

Schools Adjudicator: Deborah Pritchard