



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3765

Objector: the governing board for Goldstone Primary School in Hove

Admission authority: Brighton and Hove City Council

Date of decision: 12 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 Goldstone Primary School in Hove. The published admission number is not to be reduced from 90 for admissions in September 2022.

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 Goldstone Primary School (the governing board) about the admission arrangements for September 2022 (the arrangements) for Goldstone Primary School (the school), a primary school for children aged between four and eleven. The objection is to the consultation held on the proposed reduction in the published admission number (PAN) for the school from 90 in previous years to 60 for 2022; and to the reduction in the PAN to 60.
2. The parties to the objection are:
 - 2.1. The governing board for the school which made the objection (the governing board); and
 - 2.2. Brighton and Hove City Council which is the admission authority for the school and the local authority for the area in which the school is located (the local authority).

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority. The governing board submitted its objection to these determined arrangements on 23 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.

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 governing board's form of objection, its supporting letter and further information provided in response to my enquiries;
- d. maps of the area identifying relevant schools and the home locations of those admitted to reception year (YR) in 2020; and
- e. the local authority's comments on the objection and further information provided in response to my enquiries.

The Objection

6. The objection includes two related matters. One is that the consultation held by the local authority on the proposed reduction on the PAN did not include consulting with the governing board as a body and that therefore the consultation was flawed. The governing board cited paragraph 1.3 of the Code. I note that paragraphs 1.42 to 1.45 are also relevant.

7. Secondly the governing board objects to the reduction in the PAN from 90 in previous years to 60 for admissions in 2022. In support of its objection the governing board provided a letter which brought my attention to the high demand for places at the school and at its nursery; the negative effects on the finances of the school and its nursery if the PAN were to be reduced which would include redundant posts; the potential effect on the standards at the nursery and the school; and the potential negative effect on other provision at the school such as childcare.

Other Matters

8. When considering this objection, I noted that there was a way in which the arrangements did not conform with the Code. However, I have considered this matter in another determination regarding the admission arrangements for another school for which the local authority is the admission authority. Therefore, I have decided not to duplicate consideration of this matter here.

Background

9. The governing board explained in its supporting letter that the school had been created “by the combination of two historically undersubscribed schools” in 2001. The governing board said that from an unpromising start the school was now popular. The most recent Ofsted inspection for the school in 2018 judged the school to be good.

10. The local authority consulted to reduce the PAN for nine schools, including the school, for 2022. Following the consultation, the committee report was provided to the local authority’s Children, Young People & Skills Committee. The committee report recommended that the PANs for the nine schools, which included eight primary schools and one secondary school, should be reduced as proposed in the consultation. The local authority determined the arrangements as recommended which meant that there would be 240 fewer YR places and 120 fewer Year 7 places available for admissions in 2022.

11. The committee report said, “Pupil numbers overall across the city have been falling and are forecast to continue to fall over the next few years. Schools are mostly funded on pupil numbers, if schools don’t have enough pupils attending they may not be able to operate in a financially efficient way and risk entering a budget deficit. The council holds the financial risk if community schools move into a deficit budget position. If the number of surplus places in the city is not addressed some schools could face significant financial issues that will impact on their ability to sustain their school improvement journey and this could ultimately mean that schools are forced to close.”

Consideration of Case

12. 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

13. Paragraphs 1.42 to 1.45 of the Code provide the requirements of the Code for consultation by an admission authority. The paragraphs state when a consultation is necessary, the timing of a consultation; what bodies must be consulted; and what must be published and where.

14. The committee paper provided detail of the consultation undertaken and the responses to the consultation. It explained that the consultation commenced on 5 October 2020 and closed on 27 November 2020. Paragraph 1.43 of the Code requires that a consultation must last for at least six weeks and be between 1 October and 31 January in the determination year. The consultation met the requirements of the Code in this respect.

15. I turn now to the question of who was 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 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 in the email to headteachers, 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.

16. 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.

17. 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 committee report said that of those who expressed a view regarding the proposal for the school 359 disagreed and 97 agreed with the proposal.

18. In its objection the governing board said, “The Local Authority did not consult with the Governing Board of our school. There was a public meeting (virtually during the Covid restrictions) but no consultation with the governors as a group. This meant that there was a

significant reduction in the quality of opportunity the Governors had to ask questions and discuss their overall opinions.” I asked for further information and the governing board clarified that it had been informed of the consultation and did respond but remained of the view that there should have been direct discussion with the governing board as a body such as a meeting held solely with the governing board.

19. Neither the governing board nor the local authority have provided any more detail on how the governing board were consulted. While the governing board might have preferred a meeting with the local authority to discuss the proposed reduction and found this more constructive, it appears the governing board was informed of the consultation and did respond. Therefore, the consultation that was held did meet the requirements of the Code except that not all admission authorities were informed of the consultation. I therefore partially uphold this aspect of the objection.

The reduction in PAN

20. 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.

21. 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. The committee report said, “There is recognition of the view that reducing the published admission number for popular schools can have the implication of reducing the availability of places at these schools for parents in certain areas of the city. However, the aim of the council with these proposals is to maintain a constant percentage of surplus places in a range of schools across the city so as pupil numbers further decline children in all communities can continue to access a local school.”

22. Table 1 provides the previous numbers of children admitted in previous years and the forecasts of future demand 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	2023¹	2024¹
Sum of PANs	2940	2910	2820	2820	2820	2820
The number of children allocated a place	2547	2517	2430			
The number of children forecast to require a place				2313	2194	2076
The number of vacant places	393	393	390			
The number of vacant places forecast				507	626	744
The number of vacant places actual and forecast as a percentage	13%	14%	14%	18%	22%	26%

23. 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 reduced by 120 in that period. The forecasts indicate a growing number and proportion of vacant places. The local authority said 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 to reduce the number of places.

24. 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:

- 24.1. 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.
- 24.2. 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.
- 24.3. 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 proposing further PAN reductions.
- 24.4. If some schools had inefficiently sized intakes this could create financial pressures on those schools which could lead to negative effects on standards.

¹ Assumes no change to any PAN from 2021

- 24.5. 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.
- 24.6. 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.
- 24.7. 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.

25. 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 as 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. An infant class with 30 pupils or close to 30 pupils is a financially efficient model.

26. 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.

27. 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.

28. The forecasts of the local authority establish that it anticipates a significant increase in the proportion of vacant places. The local authority has concerns about this and its strategic plan in response is 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.

29. 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.

30. Table 2 provides information on the planning area in which the school is located (Central Hove). I have also included the information on the neighbouring planning area (West Blatchington and North Hangleton). I have done this as the school is close to the boundary of its planning area and information provided by the local authority shows that a significant proportion of the children from the school come from the neighbouring planning area. I note in this context that there are only two schools in the neighbouring planning area. One of these two schools is less than a kilometre from the school and closer than any other primary school to the school and both are nearer to the school than are other schools within its own planning area. The school is one of ten schools in the two planning areas which admit children to YR. The local authority has set the PAN for 2022 for two other schools in the two planning areas at 30 places less each than for 2021. The number of YR places available in the two planning areas combined is therefore 90 fewer for 2022 than it was for 2021.

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

	2018	2019	2020	2021	2022	2023 ²
Sum of PANs	900	810	810	810	720	720
Number of children allocated a place	839	769	782	795		
Number of children forecast to be seeking a place					714	676
Number of vacant places	61	41	28	15	6	44

² Assumes no change to any PAN from 2022

31. Table 2 shows that the number of children allocated a place in the planning areas decreased between 2018 and 2019 but has increased each year since, albeit by only 26 overall from 2019 to 2021. A decrease in demand is forecast for 2022 and then a further decrease for 2023. The sum of the PANs across the planning area has been reduced to 720 places for 2022. This reduction, together with a forecast demand for 714 places, leaves a forecast of six vacant places for 2022 which would be less than one per cent. This is significantly less than the five to ten per cent aimed for by the local authority. If the neighbouring planning area is taken by itself there appears to be a deficit of three places for 2022. The local authority had considered how many children who lived in the planning area attended schools outside the planning areas and vice versa. As a result, the local authority said that “all pupils living in this planning area will still be able to secure a place at one of these schools if this is requested.” I therefore note that the PANs set for the planning areas for 2022 are forecast to be just sufficient to meet demand.

32. 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 map illustrates that children attend the school from across the two planning areas with a few living outside the two planning areas. In this case, the composite prospectus for admissions in 2021 says that 44 children were admitted to the school in 2020 under the distance priority and the furthest distance of the home from the school of such an admission was 1888 metres which is a reasonable walking distance. It is considerably below the distance at which free home to school transport would need to be provided if it were a child’s nearest school.

33. 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. I recognise that it is possible, if the PAN were to be 90 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 more children admitted to the school could have attended a school nearer to their home.

34. 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 over 80 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 the local authority area a parent may make up to three preferences with the aim of each child being admitted to the highest preference school for which places are available. If the PAN for 2021 had been set at 60 then at least 22 children would not have been able to attend their highest preference school.

35. 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 not oversubscribed with first preferences in 2020 as there were 84 first preferences for 90 places. In 2021 there were 82 first preferences. However, if there were similar numbers of first preferences for 2022, clearly with the PAN at 60 then the school would be oversubscribed with first preferences. Moreover, the school has admitted up to or very close to 90 in each year since 2018 which – given the way co-ordinated schemes work – means that there were 90 children in 2020 and 88 children in 2021 for whom the school was the highest preference that could be satisfied.

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

	2018	2019	2020	2021
PAN	90	90	90	90
Number of first preferences	98	88	84	82
Admitted or allocated	90	90	90	88

36. 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. The figures provided to me also suggest that there may be other parents for whom this school is the second or third preference but for whom it is also the highest preference that can be met. 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.

37. 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.

38. The governing board expressed its concerns for the effect on its finances and its nursery provision if the PAN were to remain at 60. Clearly if the PAN were to remain at 60 for 2022 and the following years then the size of the school would reduce from around 630 children and 21 classes to around 420 children and 14 classes which is a reduction of one third. The governing board says that this will be hard to manage without affecting standards at the school. There are many successful schools providing good standards of education with a PAN of 60. In addition, if the PAN had remained at 90 and the number of children reduced due to falling demand then the governing board would have to manage a similar situation.

39. The governing board expressed particularly strong concern for the effect on its nursery provision and I asked for further information on this. The governing board said,

“Firstly, that it is extremely highly regarded in the locality and counter to the trend of maintained nurseries it is operating at capacity. Most others in the city are well below capacity, with some recently closing because they were not viable. Secondly, they choose our nursery because they want their children to attend Goldstone when they move into reception and beyond. We strongly feel that if parents felt that there was a reduced chance of their child gaining a place at our school they would be less likely to use our excellent nursery thus depriving them of this fantastic pre-school experience.”

40. The viability of the nursery provision is not a factor that I take into consideration, but I do note that the provision remains full which is potentially an indicator of future parental preference for 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.

Summary of Findings

42. 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.

43. The reduction in the PAN to 60 is designed to divert children from the school to increase the numbers at other schools which are less popular and so likely to significantly frustrate parental preference without sufficient justification. I therefore uphold this aspect of the objection.

Determination

44. 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 Goldstone Primary School in Hove. The published admission number is not to be reduced from 90 for admissions in September 2022.

Dated: 12 May 2021

Signed:

Schools Adjudicator: Deborah Pritchard