



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2131 and VAR2132

Admission authority: The London Borough of Haringey for Devonshire Hill Nursery and Primary School

Date of decision: 25 May 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed reduction in the published admission number for 2021 determined by the London Borough of Haringey for Devonshire Hill Nursery and Primary School. By virtue of the same provision, I do not approve the proposed reduction in the published admission number determined by the London Borough of Haringey for Devonshire Hill Nursery and Primary School for September 2022.

I determine that for September 2021 the published admission number will be reduced from 60 to 30.

I determine that for September 2022 the published admission number will remain at 60.

The referral

1. The London Borough of Haringey (the local authority) has referred a proposal for variations to the admission arrangements for September 2021 and 2022 for Devonshire Hill Nursery and Primary School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 2 to 11.
2. The proposed variations are to reduce the published admission number (PAN) from 60 to 30 for both years.

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 form dated 5 May 2021, supporting documents and responses to my enquiries;
- b. the determined arrangements for 2021 and 2022 and the proposed variations to those arrangements;
- c. evidence that the governing board for the school has been consulted;
- d. a map showing the location of the school and other relevant schools; and
- e. a copy of the notification to the appropriate bodies about the proposed variation.

7. This is the third application made (two by the local authority and one by a governing board) for variations to PANs at schools in this part of the local authority. My decisions on the two previous applications are published as VAR2115 and VAR2116. I asked the local authority whether the contextual information which it provided for those cases was applicable to this application. The local authority confirmed that it was; consequently I have taken relevant information provided for those cases into account again.

Consideration of the arrangements

8. When considering this proposal, I noted that there were ways in which the arrangements did not conform with the Code. However, I am aware that these matters have been considered by another adjudicator in determination VAR2114 dated 4 May 2021. Therefore, I have decided not to duplicate consideration of those matters.

The proposed variation

9. The school is situated in Tottenham; the Department for Education (DfE) database shows 60 other primary schools within two miles of its postcode. The 2021 arrangements were determined by the local authority on 11 February 2020 and the 2022 arrangements were determined by the local authority on 9 February 2021. Both sets of arrangements included a PAN of 60 for the school. The oversubscription criteria can be summarised as follows:

1. Looked after and previously looked after children
2. Children with social or medical needs that require them to attend the school
3. Children with siblings at the school
4. Children of members of staff
5. Children living closest to the school

10. 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 in certain other limited and specified circumstances. I will consider below whether the requested reduction in PAN to 30 is justified by the change in circumstances.

11. Paragraph 3.6 of the Code also requires that the appropriate bodies in the relevant area are notified of a proposed variation. I am satisfied that the required notification was made. I have seen confirmation from the school's governing board that it supports the request for the variation. I find that the appropriate procedures were followed.

Consideration of proposed variation

12. When an admission authority wants to reduce the PAN at a school before it determines its arrangements, it is required to consult parents and others listed in paragraph 1.44 of the Code for at least six weeks. This allows wide public scrutiny of the proposed new PAN. Once arrangements have been determined, they may only be changed, that is varied, in limited circumstances. The variation process is set out in paragraph 3.6 of the Code. That process is designed for use when there is a "major change in circumstances" occurring since the arrangements were determined. This will include emergencies such as building failure which cannot be predicted and could require speedy action to manage the issues that arise leaving no time to consult on any necessary changes to admission arrangements. Hence the lesser requirement to notify appropriate bodies in the relevant area of any proposed changes to admission arrangements as there may not be time to consult more widely. I am concerned that parents and others should be able to have their views fully considered when changes are made to admission arrangements whenever possible and as required by the Code. There are also particular issues in relation to changes to PANs which I will explain below that I have taken into consideration.

13. Paragraph 1.3 of the Code requires a local authority to consult the governing board of a community or voluntary controlled school if it intends keep the same PAN for the next year, but no parents or other bodies need to be consulted. If a local authority decides to keep the PAN of a community or voluntary controlled school the same, only the governing board of that school may make an objection to the adjudicator. Consequently, if I agree the proposed reductions in PAN, then parents in the area will not have had any opportunity to comment on the reduction in PAN in 2021 or 2022, and they would not be able to object if the local authority decided to retain the PAN at the new figure in 2023 and beyond.

14. Local authorities are required to plan the provision of school places and setting a PAN through annual consultation on admission arrangements is one tool they can use. They can also use statutory proposals to open, close or make other changes to schools. All these processes require consultation with parents and others and there are ways in which decisions can be externally scrutinised. I am concerned that, in effect, the variation process is being used to make changes in the pattern of school provision without the same level of consultation with parents and others which is required by the law if the other processes are used.

The proposal for 2021

15. In the application, the local authority referred to the fall in demand for reception places since 2015. It said: "Since March 2020 Covid-19 has led to a pronounced out-migration from Haringey and lowered demand for Reception places further." The application said that in the planning area (Planning Area 4) which the school is in, the number of first preferences fell from 703 in 2020 to 578 in 2021.

16. It appeared to me the fall in the demand for places since 2015 would have been known to the local authority in February 2020 when it set the PAN for 2021. The major change in circumstances since the arrangements were determined which this variation is intended to address, must be the stated out-migration caused by Covid-19. I asked the local authority for evidence that the quoted fall in local demand since February 2020 was due to Covid-19.

17. The local authority responded to this question by saying "Given the unique situation of the Covid-19 pandemic we are having to work on the best anecdotal and demand led data to ascertain likely shifts in demand for primary school places." It referred me to reports from PWC, the Economic Statistics Centre of Excellence (ESCoE) and other sources as evidence of outward migration from London.

18. I found the ESCoE paper particularly interesting. This pointed out possible flaws in the methodology behind the Labour Force Survey and other published data which have not been adjusted to reflect the pandemic. However, it says its own estimates are "are crude and illustrative, and will certainly not be accurate".

19. The local authority provided data showing the number of on-time applications received for Year R places in recent years within the borough.

Year	2014	2015	2016	2017	2018	2019	2020	2021
On-time applications	3049	2913	2837	2683	2685	2691	2780	2394

At the time it would have been necessary to consult on a lower PAN at the school for 2021 the figures up until 2019 would have been available. From these it may have appeared that the decrease in the number of applications seen since 2015 had stopped and the number of applications may be increasing making a revision of the PAN unnecessary. However, other data provided by the local authority included the Greater London Authority (GLA) forecasts for Planning Area 4.

Year	Births for the school year	Actual Intake	% of Births	Forecast Intake	% of Births
2014/15	1355	843	62%		
2015/16	1404	876	62%		
2016/17	1357	864	64%		
2017/18	1292	807	62%		
2018/19	1359	824	61%		
2019/20	1387	801	58%		
2020/21	1251			852	68%
2021/22	1250			844	68%
2022/23	1180			891	76%
2023/24				931	
2024/25				981	
2025/26				1010	
2026/27				1028	

20. This data shows that the number of children born in the planning area for the relevant year was continuing to fall, and this would have been known in time to instigate consultation on a lower PAN for 2021. I also wonder why the local authority expected between 68 and 76 per cent of the birth figure to require places in future years when in the previous years only once was more than 62 per cent required. The forecast intake beyond 2023 appears to be purely speculative as there is no birth data to base the forecast on.

21. While I may think it would have been possible to identify a continuing decrease in the demand for places in the area from the data available in time to consult on reducing the 2021 PAN, the local authority did not do so. From the ESCoE and other reports it is apparent that since the PAN was determined, the pandemic has led to rapid changes in the population of London which could not be forecast. The local authority is of the view that this is the cause of the marked fall in demand for reception class places for 2021.

22. If families were moving away from the area because of the pandemic, I would have expected there to be evidence that the number of children in other year groups was falling along with demand places in reception classes. The local authority reported an average fall of 3.1 per cent in Years 1 to 6 between January 2020 and January 2021, with the greatest decline being in Year 1 of four per cent. This compares with a 15.7 per cent fall in the demand for places in Year R. While the pandemic may be the cause of some of the fall in demand for Year R places from the anticipated figure, I am not convinced that it accounts for all of it.

23. In the application I was told that "If capacity is not taken out of Planning Area 4 financial pressures on many schools will increase to the extent that they will become unsustainable." The implications of possible school closure were stated as undermining the range of types of school in the area and loss of flexibility to accommodate any future growth in pupil numbers. I asked for details of how the school would be organised in September 2021 if the PAN remained at 60 and how this would be different if the PAN was reduced to 30.

24. I did not receive a complete answer to this question. I was told that 29 children had been offered a place at the school for September 2021 and the school intended to organise as follows:

Year	R	1	2	3	4	5	6
Pupils	29	55	37	50	47	48	50
Classes	1	2	2	2	2	2	2

It was not explained how reducing the PAN would alter the way in which the school organised classes so that it could reduce costs.

25. Infant class size regulations which require that infant classes, that is those where the majority of children are aged 5, 6 or 7, should not contain more than 30 pupils with one teacher. If the PAN was reduced to 30, then the local authority would be able to refuse any application for a place in Year R above that figure. It would still need to be able to demonstrate to an independent appeal panel that admitting a child above the PAN would prejudice the efficient provision of education or the efficient use of resources.

26. If the PAN remains at 60, then the local authority would not be able to refuse any application for a place in Year R until that figure was reached. In the event there were more than one application, the school would not be required by infant class size legislation to establish another class. There is no prohibition on children from different year groups being in the same class. There will be five infant classes providing 150 places, currently 121 of them are allocated. It seems very unlikely that another 29 will require places during the year when families are said to be moving out of the area. Mixing year groups is necessary in many schools and can be done successfully; however, I do appreciate the difficulty of introducing the practice mid-year when it has not been the usual way of working.

27. While the proposed reduction in PAN would give the school some protection against disruption during the year, that must be balanced against any impact it would have on parents moving to the area requiring a school place in Year R for a child. The local authority's data shows that of the 14 primary schools in Planning Area 4 only one is fully subscribed for September 2021. There are currently 870 places available in Year R for September 2021 and 655 places have been allocated. If I approve the proposed reduction in PAN for 2021, there would still be more than sufficient places in the area for families moving in or for late applications.

28. While I may think that a fall in demand for reception places in the area in 2021 could have been foreseen and a lower PAN consulted on before the arrangements were determined in February 2020, there is anecdotal evidence that the pandemic has introduced an unforeseeable degree of volatility in the population since then. Reducing the PAN from 60 to 30 is not necessary to avoid the school needing to establish another class should there be more than one new application. However, admitting more than one further child to Year R would require some internal reorganisation although not the establishment of a new class. Given that there are many other nearby schools which are undersubscribed, families would not be disadvantaged by the proposed reduction in the PAN. I therefore approve the proposed reduction in PAN for September 2021.

The proposal for 2022

29. I begin by noting that because the PAN for 2022 had already been determined before the application for a variation for 2021 was made, my decision on the 2021 arrangements would not have any effect on the PAN for 2022 or subsequent years.

30. For whatever reason, the local authority did not decide to consult on a lower PAN for 2022 when it could have done so based on the additional information it had about falling demand from the year since the 2021 arrangements were determined. I have explained above that if I approve this reduction, then the local authority would be able to keep the PAN at 30 in 2023 and afterwards without parents being able to comment on the reduction or lodge an objection to it with the adjudicator.

31. Whereas for 2021 the level of demand for places at the school is known, and I am satisfied that reducing the PAN will not adversely affect parental preferences or lead to children not being able to find a local school place, that is not the case for 2022. The local authority itself has said that its school level projections are “not particularly robust” and it is “currently re-visiting school role projections in light of Covid-19”. I am also aware that reductions in PAN have been approved for other schools in this and neighbouring planning areas in the local authority. The effect of these on patterns of parental preference is not yet known and the local authority has referred to reports of how population forecasts in London are not reflecting the impact of the pandemic. While the GLA data shows the number of births in the planning area falling steadily since 2015, the number of children admitted to the school has both fallen and risen out of step with this pattern. Furthermore, for 2021 there were 31 first preferences expressed for the school and it is only after some parents had changed their minds that the expected intake fell below 30.

32. The number of places offered at the school for 2022 will be known in mid-April 2022 (if not shortly before) and the school will have until the end of May 2022 to set its staffing levels based on the number of children that it expects to have on roll. If at that time, there is a need to adjust the PAN then an application could be made, and a decision taken based on the circumstances as they exist at the time. The local authority will also have set the PAN for 2023 by then and if it thinks that a PAN of 30 will be required in future it would have had the opportunity to set it at that figure after full consultation with parents and others.

33. I have reached the decision that it would be premature to reduce the 2022 PAN at the school until the demand for places is clearer. More fundamentally, approving the reduction now would lead to the local authority being able to keep it at the new level in subsequent years without consulting parents and others. Consequently, I do not approve the proposed reduction in PAN for 2022.

Determination

34. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed reduction in the published admission number for 2021 determined by the London Borough of Haringey for Devonshire Hill Nursery and Primary School. By virtue of the same provision, I do not approve the proposed reduction in the published admission

number determined by the London Borough of Haringey for Devonshire Hill Nursery and Primary School for September 2022.

35. I determine that for September 2021 the published admission number will be reduced from 60 to 30.

36. I determine that for September 2022 the published admission number will remain at 60.

Dated: 25 May 2021

Signed: Phil Whiffing

Schools Adjudicator