



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3813, ADA3838 and ADA3879**

**Objectors: the governing board for Stanford Infant School and two parents**

**Admission authority: Brighton and Hove City Council for Stanford Infant School in Brighton**

**Date of decision: 19 July 2021**

### Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for September 2022 determined by Brighton and Hove City Council for Stanford Infant School in Brighton. The published admission number is not to be reduced from 90 to 60 for admissions in September 2022.**

**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.**

### The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), three objections have been referred to the adjudicator about the admission arrangements for September 2022 (the arrangements) for Stanford Infant School (the school), a community school for children aged between four and seven. One objection was made by the governing board for the school and two objections were made by parents. As all three objections concerned principally the same matter, namely the reduction in the published admission number (PAN) for the school from 90 in previous years to 60 for admissions in 2022, I have considered the three objections together. The objectors also expressed concerns about some other aspects of the arrangements (with different objectors concerned about different matters) and I set these out in more detail later in this determination.

2. The parties to this case are:
  - a. 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);
  - b. the governing board for the school which is a party in its own right and also by virtue of being one of the objectors (the governing board); and
  - c. two parents who made objections (the parent objectors). I differentiate between the parent objectors by naming one parent objector A and the other parent objector B.
3. I will refer to the governing board and the parent objectors as the objectors when referring to them jointly.

## Jurisdiction

4. These arrangements were determined under section 88C of the Act by the local authority. The objectors submitted their objections to these determined arrangements on 10 May 2021 (the governing board), 13 May 2021 (parent objector A) and 14 May 2021 (parent objector B). The parent objectors asked to have their identity kept from the other parties and have met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and addresses to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are 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. a copy of the minutes of the meeting on 11 January 2021 of the Children, Young People's and Skills Committee, which is 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:
    - i. a report on the background to the proposed reductions in PANs across eight primary schools and the consultation held (the committee report); and
    - ii. the equality impact assessment made by the local authority to inform its decision regarding the arrangements (the EIA);

- b. a copy of the determined arrangements;
- c. the objectors' forms of objection, supporting documents and further information provided in response to my enquiries;
- d. maps of the area identifying relevant schools and the home locations of the children admitted to reception year (YR) at the school in 2020;
- e. other determinations made regarding objections to reductions in PANs for community schools in the local authority area (case references ADA3758 and ADA3765);
- f. the composite prospectus provided by the local authority for admissions to primary schools in 2021; and
- g. information available on the websites for the local authority and the Department for Education (DfE).

## The objections

7. The objectors' primary objection is that the PAN for the school has been reduced from 90 to 60 for admissions in 2022 when it is a popular and successful school. The objectors also argued that some parents who would prefer their child to be in a school without a religious character will have the chances of that reduced and that children will have to travel further to a school without a religious character which will increase car journeys. The governing board said in addition that the consultation was flawed; the catchment area for the school is unreasonable and poorly defined; that the distances that children have to travel to school may increase as a result; the reduction in pupil numbers will negatively affect the school's finances and the education it can offer; and that the reduction breaches the Equality Act 2010.

8. Parent objector A also said that there is no provision made for summer born children whose parents had decided, on the basis of the information available at the time, to delay the admission of their child until of compulsory school age. The term 'summer born children' relates to all children born from 1 April to 31 August. These children reach compulsory school age on 31 August following their fifth birthday (or on their fifth birthday if it falls on 31 August).

9. The governing board's objection included reference to the use of a catchment area. I explained to the parties that the Code uses the term 'catchment area', in a specific way. Paragraph 1.14 of the Code says, "Catchment areas must be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."

10. In this sense a catchment area is a defined area, it might be shown on a map and have boundaries which are the centres of roads or rivers. It could be defined as living within

specific post codes. Normally a child who lives in a catchment area has a higher priority in admission arrangements than a child who lives outside a catchment area.

11. In this case, there is no use of a catchment area in the admission arrangements; rather priority is based (after some other categories) on distance from the school. The term catchment area is used in general parlance as well as in admission arrangements. Traditionally it was used as the area of land which drains into a river and has expanded to include an area from which children might go to a particular school. I will, however, be considering the objection against the requirements of the Code. As the school has no catchment area in the sense employed in the Code, there can be no question that a catchment area can be unreasonable in this case.

## Other matters

12. The admission arrangements for this school are, with the exception of the PAN, which is specific to each school, the same as those for those other primary schools in Brighton and Hove for which the local authority is the admission authority. I have considered those arrangements previously in determination ADA3758 and determined that there was a way in which the arrangements did not conform with the Code. I will not duplicate that matter here.

## Background

13. The local authority consulted to reduce the PAN for nine schools, including the school, for 2022. Following the consultation, the committee report and the EIA were 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 school is an infant school as was one other school included 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.

14. The committee report explained the background to the proposed reductions in the number of places. It 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."

15. Objections were made to the reductions of the PANs of three other primary schools as well as to this one and I was appointed as the adjudicator for those cases in addition to

this case. Each case is determined on its merits and the decision in one case does not set a precedent for another case.

16. There were 2820 places available for YR in 2021. The reductions in PAN agreed by the local authority reduced the overall sum of the PANs for the schools in its area by 240 so that there were 2580 YR places for 2022. If I were to uphold all four objections made the overall PAN would be increased by 120 to 2700 places in YR for 2022.

17. There are no voluntary controlled primary schools in the local authority area so all the schools for which the local authority is the admission authority are community schools. The oversubscription criteria determined by the local authority for the community primary schools relevant to admission to YR are (in summary):

1. Looked after and previously looked after children
2. Medical or other exceptional reasons for attending the school
3. Having a sibling attending the school or linked school
4. Distance of the child's home from the school with those living nearest having highest priority.

18. If there is oversubscription within any criterion then the tie-breaker is random allocation. The number of children admitted to the school in recent years has been either at its PAN or close to its PAN.

## Consideration of case

19. There are two major aspects to the objections with several arguments made regarding the reduction in PAN. I will first consider whether the consultation met the requirements of the Code, and then the matters regarding the reduction in the PAN.

### Consultation

20. 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. 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.

21. I turn now to the question of who was consulted. Paragraph 1.44 says that admission authorities **must** consult with (in as far as relevant to the case):

“a) parents of children between the ages of two and eighteen;...

c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);

d) whichever of the governing body and the local authority who are not the admission authority; [and]

e) any adjoining neighbouring local authorities where the admission authority is the local authority”.

22. In regard to paragraph 1.44a of the Code 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 and asked the headteacher to pass this information on to parents. The local authority said it also 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 governing board provided to me its notes from these two public meetings. The local authority also offered the opportunity for anyone to telephone local authority officers with any comments as there were technical difficulties for some people in using Microsoft Teams, but nobody took this offer up.

23. I asked the governing board to describe its experience of the consultation. The governing board said that those without technical expertise and/or limited access to technology would have struggled to engage with the meetings held via Microsoft Teams. In addition the governing board said that some people were not admitted to the meeting and not all those who wished to comment were given the opportunity to speak due to lack of time. The Code does not define the nature of consultation and sets no requirements for public meetings to be held. In this case the local authority decided to hold public meetings which were, due to the restrictions in response to the Covid 19 pandemic, held online. I am sure that this will have limited engagement with the public meetings but I also recognise that in the prevailing circumstances it was a sensible and appropriate approach. I am also aware that there were other means to respond to the consultation, including telephone calls and through the online consultation. There may have been ways to have improved the consultation and some people may have been left feeling that their views were not heard. Overall, however, the efforts made to consult with parents of children between the ages of two and eighteen were compliant with the Code.

24. Of course, a message to headteachers and principals does not include admission authorities (such as governing boards 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 to headteachers. However, the email did say: “Governing Bodies of all maintained schools and Academies in the City are invited to give their views on the proposals for admission arrangements to Community Schools” so, while

not asking that the email and its contents should be conveyed by the headteacher to the governing bodies or academy trusts, this may have been an implicit expectation. The local authority stated that in future it would communicate directly with admission authorities 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. I emphasise here that there is nothing wrong in my view with using headteachers/principals as a conduit to reach governing boards (after all headteachers and principals are regularly in touch with them) but headteachers and principals do need to know that they are being asked to do this.

25. Paragraph 1.44d) requires that the local authority **must** consult with the governing board of the school concerned when a change is proposed. I asked the governing board to clarify why it felt that it had not been consulted as the governing board did respond to the consultation and members of the governing board attended the online consultation meeting. The governing board told me that it received no direct communication from the local authority saying that it was being consulted. I gave the local authority the opportunity to comment on this but I received no direct information relating to this. From the information that I have seen it appears that all communications from the local authority were to the head teacher. There was no direct contact with the governing board. There was, therefore, no direct consultation by the local authority with the governing board in writing or other means. On such a matter I would expect the local authority to consult directly with the governing board and not rely on using the headteacher as a conduit for information (especially if this expectation were not made clear) given the particular and direct interest of the governing board. The consultation did not meet the requirement of paragraph 1.44d) of the Code.

26. I have seen the letter sent by the governing board to the local authority dated 26 November 2020 which expresses the objections and concerns of the governing board to the proposed reduction in PAN. There is no reference in the committee report to the view of the governing board and that it objected to the proposed reduction in PAN. The reasons the governing board gave for objecting are reflected in the committee report within the summary of the concerns raised during the consultation. There is no indication in the committee report that the clearly expressed view of the governing board, a body which **must** be consulted on such a proposal, was that it opposed the reduction. This suggests to me that the views of the governing board were not brought to the attention of the decision maker or taken into account.

27. The committee report on the consultation 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 a summary of the responses received through the online consultation portal to the proposals. The committee report said that of the 476 who expressed a view regarding the proposal for the school 390 disagreed and 86 agreed with the proposal.

28. The report also said, “A representation was provided by the headteacher on behalf of the staff at the school highlighting what they feel would be far reaching consequences of reducing the PAN such as the financial impact on the school and existing pupils, the impact of reorganisation on staff and that the school has not been significantly undersubscribed in previous years.” The committee paper provided some responses to the points raised in the consultation. I summarise the concerns and the way they were addressed in the committee paper below.

- a. Concerns that the forecasts were inaccurate as one effect of the Covid 19 pandemic could be more people with children might move to the area from London:
  - i. “If any subsequent increase to the PAN of a particular school is required, should the number of applications mean an additional class is required to ensure children have a place at a local school, the Council will be able to determine the increase without reference to the Schools Adjudicator and in dialogue with the governing body of the school.”
- b. Concerns over reducing the PAN of popular schools and depriving 30 children of “education at the school which has been judged outstanding by Ofsted”:
  - i. “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.”
  - ii. “On many occasions the council has made it clear that these proposals are in no way a reflection of the quality of education or leadership at the schools recommended to have their PAN reduced.”
- c. Concerns regarding admissions to schools without a religious character and potentially having to travel further to such schools:
  - i. “add weight to the general aim of the proposals to keep schools open so that families living in all communities will have access to a local school.”
- d. Concerns over the possible high proportion of siblings and thus reducing availability for other children:
  - i. this would be addressed “as a reduced PAN works its way through the school, the number of pupils with a sibling link applying will naturally reduce.”



- e. the school, as an infant school, is smaller than other schools and so the effect will be the greater on its budget;
- f. Concerns over the costs of maintaining classrooms without children to sustain the costs:
  - i. unused classrooms could be used in different ways, staffing is around 80 per cent of a school budget and governing boards “would be expected to set budgets accordingly.”

29. I have read the notes provided by the governing board of the matters raised at the consultation meetings and believe that the committee report, in total, provided a fair summary although not all points raised regarding the school were addressed. I will be considering the decision made by the local authority regarding the reduction in PAN below and so will revisit these matters. However, the local authority did record the concerns expressed and gave responses to most of them. With regard to the consultation, in summary, the local authority did meet the requirements of the Code in several respects but did not consult the governing board or inform all admission authorities of the consultation. The consultation was therefore not fully compliant with the Code. In addition, the governing board did engage with the consultation but it was not directly consulted by the local authority and the objection of the governing board to the proposed reduction in PAN was not considered when the decision was made to reduce the PAN. I therefore partially uphold this aspect of the objection.

### The reduction in PAN

30. 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. The parent objectors have also objected to the reduction in PAN. There are several facets and various points have been made and so I provide sub-headings below.

### The strategic context

31. 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 number 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**

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023<sup>1</sup></b>	<b>2024<sup>1</sup></b>
<b>Sum of PANs</b>	2940	2910	2820	2820	2820	2820
<b>The number of children allocated a place</b>	2547	2517	2430			
<b>The number of children forecast to require a place</b>				2313	2194	2076
<b>The number of vacant places</b>	393	393	390	-	-	-
<b>The number of vacant places forecast</b>				507	626	744
<b>The number of vacant places actual and forecast as a percentage</b>	13%	14%	14%	18%	22%	26%

32. 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. Similarly between 2019 and 2021 the number of children allocated a place reduced by 117.

33. The forecasts indicate a growing number and proportion of vacant places so that between 2021 and 2022 there would again be 117 fewer children. The local authority said that it aims to secure a proportion of vacant places of between five and ten per cent to “take account of parental preference, new arrivals in the city and small fluctuations in pupil numbers.” 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. It appears that during the consultation several people queried the accuracy of the local authority’s forecasts. The local authority therefore provided information which stated that in previous years forecasts had been over 97 per cent accurate for three years ahead and more accurate for shorter timescales.

34. 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:

- a. 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.

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<sup>1</sup> Assumes no change to any PAN from 2021

- b. The local authority is only the admission authority for community schools and so it is only these schools for which it can propose reductions in PANs.
- c. 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.
- d. If some schools had inefficiently sized intakes this could create financial pressures on those schools which could lead to negative effects on standards.
- e. 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.
- f. 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.
- g. 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.

35. 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. The School Admissions (Infant Class Size (England) Regulations 2012 (the 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 refers to when it raises 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.

36. The local authority noted in its EIA 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 have not seen evidence that such scrutiny of individual schools.

37. 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. In addition, an intake of less than 30 children will not inevitably lead to the school affected closing.

38. The forecasts of the local authority establish that it anticipates a significant increase in the proportion of vacant places. The local authority’s 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 may 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 planning area**

39. 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.

40. Table 2 provides information on the Central City planning area in which the school is located (the planning area). The school is one of eleven schools in the planning area which admit children to YR. The governing board for Downs Infant School, another school in the planning area, made an objection to the PAN set for it for 2022 and I upheld that objection (case reference ADA3758). The revised PAN for Downs Infant School has been reflected in the data provided to me by the local authority below. The sum of the PANs for 2022 include that the PAN for the school has been reduced by 30 and similarly for another school. This means that there are 60 places fewer in 2022 than in 2021.

**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 <sup>2</sup>
<b>Sum of PANs</b>	660	660	630	630	570	570
<b>Number of children allocated a place</b>	575	600	576	539		
<b>Number of children forecast to be seeking a place</b>	-	-	-	-	480	438
<b>Number of vacant places actual or forecast</b>	85	60	54	91	90	132
<b>Number of vacant places actual or forecast shown as a percentage</b>	13%	9%	9%	14%	16%	23%

41. Table 2 shows a significant reduction in the demand for places in the planning area for 2022 and a further reduction for 2023. The number of vacant places forecast for 2022 is around 16 per cent of the number of places available. If the PAN for the school were to be 90 then the number of vacant places would increase by 30 to 120 which would be 20 per cent. This is considerably more than between five to ten per cent as aimed for by the local authority.

42. Planning areas are useful tools but many parents prefer their children to attend schools outside of the planning area in which they live. 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. The governing board raised the nature of the planning area in its objection. It said that the planning area was based on post codes and that “Brighton and Hove’s postcode geography is unusual; instead of postcodes being clustered around key points, they move up in vertical lines from the sea.” A map showing the planning area shows a shape like a crude ‘Y’. However, it is the local authority that has chosen to base its planning areas on postcodes (there is no requirement to do so although it is a common approach) and it does mean that the school is nearer to some schools in other planning areas than to some of the schools in its own planning area.

43. The governing board said that it was in the same planning area as Westdene Primary School nearly two and a half miles away and that there was a fall in demand for places in that area rather than in the vicinity of the school. I note for sake of accuracy that Westdene Primary School has had more first preferences than places to offer since 2019 and its PAN was reduced from 90 to 60 for admissions in 2020. It would therefore appear that there is a very limited relationship between vacant places in the area close to Westdene Primary School and the situation for the school.

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<sup>2</sup> Assumes no change to any PAN from 2022

44. However, overall, based on the planning area data there will be a decrease in demand for places in the planning area and so an increasingly high proportion of vacant places in 2022 and increasing in 2023 and this supports the case for fewer places being needed.

## Nearest schools

45. The governing board said that forecasts of pupil numbers were unreliable as the GP data used for forecasts of future numbers is based on post codes and that these did not relate well to where children who attended the school lived. I therefore asked the local authority to provide me with information on the five nearest schools to the school which also admitted children to YR. Two of these five nearest schools are outside the planning area and both are full to their PAN for 2021. One of the five schools is a community school and four have religious characters. The community school, Brunswick Primary School, is outside the planning area and has a PAN of 90 for 2022. This is a reduction from 120 for 2021 and 120 children have been allocated places at Brunswick Primary School for 2021. I will consider the implications for parents wishing their child to attend a school without a religious character further below.

46. According to the DfE website, 'Find and compare schools in England' (the DfE website), there are eight schools which admit children to YR within one mile of the school. I note that the information on the DfE website and that provided by the local authority is not consistent with regard to distances and so I assume that different measures are used (straight line rather than walking routes for example). I also note that the DfE website uses miles and the local authority distances provided to me use metric measurements based on routes to schools. Four of the eight schools listed on the DfE website are fully subscribed for 2021 and four have vacant places. As I refer to other schools at various points in this determination, I have provided a summary of the key schools and their distance from the school as provided by the local authority.

**Table 3: the five nearest schools to the school and all schools in the planning area in order of proximity**

<b>Name of primary school</b>	<b>Distance from school (in metres)</b>	<b>In same planning area</b>	<b>Has a religious character</b>	<b>PAN 2021 PAN 2022</b>	<b>Number of children allocated a place in 2021</b>
<b>Cottesmore St Mary's RC<sup>3</sup></b>	916.78	No	Yes	60 60	60
<b>Brunswick</b>	1381.91	No	No	120 90	120

<sup>3</sup> Roman Catholic

Name of primary school	Distance from school (in metres)	In same planning area	Has a religious character	PAN 2021 PAN 2022	Number of children allocated a place in 2021
St Bernadette's RC <sup>3</sup>	1570.49	Yes	Yes	30 30	30
St Paul's CE <sup>4</sup>	1637.95	Yes	Yes	30 30	26
St Mary Magdalen's RC <sup>3</sup>	1708.73	Yes	Yes	30 30	17
St Bartholomew's CE <sup>4</sup>	1810.18	Yes	Yes	30 30	17
Middle Street	2062.99	Yes	No	30 30	30
Downs Infant	2080.81	Yes	No	120 120 <sup>5</sup>	120
Balfour	2220.65	Yes	No	120 90	85
Hertford Infant	2821.12	Yes	No	60 60	39
St Joseph's Catholic	2991.23	Yes	Yes	30 30	28
Westdene	3111.11	Yes	No	60 60	60

## Demand for places at the school

47. I will now consider the demand for places at the school. Table 4 below shows the number of children admitted in recent years and allocated for 2021, including the number of first preferences. Over 80 parents 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 first preference school

<sup>4</sup> Church of England

<sup>5</sup> The PAN for Downs Infant School was set at 90 for 2022. Following an objection it was set at 120.

and 28 children would not have been able to attend the highest preference school for which places were available.

**Table 4: number of children admitted to or allocated a place at the school**

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

48. The committee report 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 but 90 children were admitted as the school was the highest preference that could be satisfied for some parents. For 2021 there were 82 first preferences and 88 children were allocated places as the school was the highest preference that could be satisfied. If there were similar numbers for 2022 then reducing the PAN to 60 makes it more 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 which will be a lower preference or for which they have not expressed a preference. This has been planned in order to increase the numbers of children attending other schools so that the other schools are more financially secure.

49. As described above, there are multitudes of examples across the country where good quality education is delivered in schools with PANs that are not multiples of 30. I do not accept that every school must have an intake of multiples of nearly 30 children in order to offer good quality education and to be sustainable.

50. 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. I do not consider the stated potential risk of other schools closing as a justification for reducing the PAN at the school.

51. 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 up to 30 children every year will attend other schools so that the budgets and futures of these other schools are protected. This will frustrate parental preference and so would need strong justification. I have seen little evidence that would provide such justification. I therefore uphold the objection to the reduction of the PAN for 2022.

52. There were other supporting arguments provided to the objections to the reduction in the PAN and I consider these below.



## **Financial effect on the school**

53. The governing board expressed its concerns for the effect on the school's 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 two years then the size of the school would reduce from around 270 children and nine classes to around 180 children and six classes which is a reduction of one third. The proportional reduction for this school, an infant school, will be greater than for a primary school admitting the whole primary age group (four to eleven). Such a primary school with a PAN of 60 could have 420 children and 14 classes. A primary school with a PAN of 30 could have 210 children and seven classes and thus bigger than the future size this school is planned to be by the local authority. In fact, based upon the PANs set for 2022 and not taking the actual numbers of admissions into account, the school would become the smallest school in the local authority area if it had a PAN of 60.

54. An infant school also has less flexibility in its class organisation than a primary school as all its classes have to meet the infant class size regulations. This is because a primary school also provides education to children in key stage 2 and could have over 30 children in such classes. The governing board raised concerns on this matter in its objection to the consultation saying, "The impact on the school's budget will directly affect the quality of education we are able to provide. The financial implications of any reduction including cost of redundancies will have a huge impact on the budget and as an Infant school there is less flexibility. The disproportionate financial impact of reducing the PAN in a three-form infant school rather than the large primary schools in the city would have a damaging impact on the quality of education offered at Stanford."

55. The committee report said, "Where it is feasible, proposals include large schools where there are projected to be fewer children in future years (in the council defined planning area for that school), however the council is the admissions authority for community schools only and cannot set the admissions number for other schools."

56. As I have said above, I know schools of many sizes can offer high quality education but in this case it appears that the local authority has identified the school as having a large PAN and does not appear to have fully represented the effect on the school in terms of its proportional contraction. In terms of comparison with other schools in the local authority area it is not a large school and if the PAN of 60 were to continue it would become a comparatively small school with the added constraints of an infant school. There is no evidence that these facts have been considered by the local authority.

## **Travel to school and schools with a religious character**

57. The concern raised by the objectors is that where schools without religious characters are oversubscribed, as may occur with the PAN at 60 and the PAN reductions at other community schools, then the nearest schools with capacity to admit children would be schools with religious characters. As stated above, parents have various reasons for which schools they prefer their children to attend. Some will wish their children to attend schools with religious character and others will not. The objectors say that the lower PAN will mean

some children will have to travel further to school in order to attend a school without a religious character. This would not help to meet one of the professed objectives of the local authority which is “Wherever possible the council aims to reduce the number of journeys to school undertaken by car.”

58. The governing board said that the school makes strenuous efforts to support children to walk to school. I note that children under eight are only eligible for free school transport if they attend their nearest suitable school and that is over two miles away. This implies that two miles is a reasonable walking distance. There are 29 schools within two miles of the school which admit children to YR according to the DfE website and 20 of these do not have a religious character. This would imply that there is no problem caused by reducing the PAN as there are so many other schools.

59. However, this is an urban area with several schools within a short distance of most homes so I can understand that parents might expect to be able to walk a child to school within a mile of their home. Parent objector B said the school is popular and, “By cutting 30 places, our child would not get in and (especially given the other reductions at other schools across Brighton and Hove), it is hard to see where he will get a place that will not involve a very long journey by car / bus each day. There is no other secular state school where we would fall within the catchment area which is not also having cuts. These cuts seem extremely likely to lead to a lot of families travelling across Brighton and Hove every day.” Similar remarks were made by parent objector A. Again I note that the admission arrangements for the community schools do not include catchment areas as defined by the Code.

60. I have tested the argument made by the parent objectors. The DfE website shows seven schools within one mile of the addresses provided to me by the parent objectors. Of these seven schools, four are schools with a religious character. A fifth school uses random allocation as its main criterion and so proximity to the school will not increase the chances of admission. This leaves two schools, including the school, within one mile of the parent objectors’ homes which do not have a religious character. The other school, Brunswick Primary School had a PAN of 120 and 120 children allocated to it on national offer day in 2018, 2019, 2020 and 2021. The PAN for Brunswick Primary School has been reduced to 90 for 2022 and so it is likely that not all parents that put the school as a high preference will be admitted in 2022.

61. The 90th pupil allocated a place at Brunswick Primary School for 2021 lives 1106.77 metres from the school. The parent objectors live further from Brunswick Primary School than this so their child would not have been admitted to Brunswick Primary School if its PAN had been reduced as for 2022 for 2021. The next nearest primary schools without a religious character to Parent A’s home are over a mile away and, of course, places at these schools are largely based on the distance of the home from the school so when allocations were made, those living further away would have a lower priority. There is therefore some validity to the parent objectors’ concerns that the PAN of 60 would mean that some children would not be admitted to a local community school and it may be necessary for some

children to travel longer distances to attend a school without a religious character. Of course, as numbers overall reduce this risk is likely to reduce.

62. The concern regarding reduced choice for schools without a religious character was raised in the consultation as well as in the objections. The committee paper did not comment on this matter beyond saying that it had “remained in dialogue with both the Diocese of Chichester and Diocese of Arundel & Brighton in relation to the projection of surplus places. As the admission authority for 15 primary schools in the city both Dioceses have a role to play but it is recognised that 11 of those schools are already one form entry primary schools.” Setting aside the fact that the PAN for the school makes it smaller than a one form entry primary school, as described above, the local authority cannot make proposals to reduce the PAN of schools for which it is not the admission authority. For the sake of accuracy I note that the dioceses named above are not the admission authorities for the schools with religious character in the local authority area. All 15 schools are voluntary aided so the admission authority for each school is its governing board.

63. The EIA acknowledged the concerns raised in the consultation and said, “24% of first preference applications for September 2020 were for church aided schools and 76% expressed a first preference for secular schools.” In addition the EIA noted that the local authority was not the admission authority for church aided schools and that “All schools identified for a reduction in PAN are community schools and this could potentially have a disproportionate impact on pupils with no faith.” The remedial action was, “The council will need to ensure that where PAN’s are reduced there are sufficient secular school places for the number of pupils in these areas.” It is not clear to me how this was done.

64. I do note, however, that the EIA said that 24 per cent of the first preferences expressed in 2020 were for schools with religious characters; the sum of the PANs for such schools was 600 in 2020 and remains so for 2022. This means that in 2020 around 21 per cent of school places were at schools with a religious character. The reductions made by the local authority for community schools increased that percentage to around 23 per cent. This would indicate that the balance of places at schools with or without a religious character is in line with parental preferences. Of course this might not be the case at a localised level as illustrated above for the parent objectors.

65. I asked the local authority to comment on the availability of places at schools without religious characters and the distances that children may have to travel in order to attend them. The local authority brought my attention to the mixture of schools with and without religious characters in its area and that “For pupils starting in September 2021, 90% of on time applicants received their first preference school and 98.6% received a place at one of their preferences.” Of course if a parent does not wish their child to attend a school with a religious character, then such a school will not be put down as a preference. My questions were about the effect of reducing the PANs of community schools and the local authority said, “With pupil numbers forecast to fall in the coming years at a greater rate than school places have been able to be removed from the city, a greater number of schools are likely to be undersubscribed and more parents likely to secure a places at their preferred school.”

66. Above I noted that there were eight schools which admitted children to YR within one mile of the school. Of these eight schools, three are community schools, two have a Church of England religious character and three have a Roman Catholic religious character. At the time of the objection, the local authority had reduced the PANs for the four community schools (including the school) for 2022 so a reduction of 120 places. Three of these community schools are full to PAN or nearly full to PAN for 2021 before the reduction in PANs for 2022.

67. The five schools with a religious character include three which are full or close to their PAN based on allocations for 2021. The remaining two, one with a Catholic character and one with a Church of England character, have PANs of 30 and 17 places allocated for 2021. It could appear that it is schools like these that the reductions in the PANs of the community schools were designed to protect. Indeed, this is in effect the policy of the local authority as described in its committee paper, "The council is committed to keeping schools open and to try to avoid the risk of an increase in schools experiencing financial pressures. The proposals aim to sustain all schools in the city by identifying a range of schools to play a part in reducing the surplus of school places." Of course this range of schools identified by the local authority can only be community schools.

68. On the basis of the evidence provided to me, it is possible that some children would have to travel further to a school without a religious character if the PAN for the school were 60 and that this is not compatible with the local authority's aim of minimising car journeys to school.

## **Equality Duty**

69. The governing board considered that reducing the PAN could mean that the local authority was at risk of breaching equalities legislation and failing to meet its public sector equality duty. The governing board expressed the view that the implications for the school and those who might be admitted to it raised in the EIA were not reflected in the decisions made. In addition the governing board said that the EIA did not consider the school situation in sufficient detail. The governing board therefore told me that house property prices near to the school tended to be higher and so the reduction in PAN "will negatively impact on those families who are unable to afford to live in close proximity to the school". This was described in the context of the governing board's concerns on the use of post codes to forecast the number of children seeking which I have considered above. I have already decided that the reduction in the PAN is not justified and so I will not consider this point further.

## **Effect on those without siblings at the school or linked junior school**

70. In its objection the governing board said that reducing the PAN will increase the proportion of siblings and thus proportionately reduce those without siblings at the school or its linked junior school. The governing board told me that normally around 30 children are admitted on the basis that they have a sibling at the school or its linked school. In most

years this would mean that 30 out of 90 children are admitted on this basis. A PAN of 60 would mean that 30 out of 60 were admitted on this basis. The local authority noted this as it was a point made in the consultation but said that this would work its way through over several years of the reduced PAN. I note that for 2022 there was likely to be an effect and it would be some years before the effect was reduced. The governing board said that local families without a child or children already at the school or the linked school were concerned that their child would not be able to gain admission to the school. This could have been the effect but as I have already determined that the PAN for 2022 will be 90, I will not consider this point further.

## Summer born children

71. Parent objector A also said that there was no consideration given to the effect on summer born children whose parents had decided to seek admission when their children were of compulsory school age when the decision was made to reduce the PAN. The decision to reduce the PAN for 2022 was made on 11 January 2021 with the deadline for applications for admission in 2021 being 15 January 2021. This parent objector said that this decision was made, “with absolutely no thought or provisions for how this would effect summer born children born in 2017 who are deferring school start until 2022. There should be special interim provisions for children who are deferring as we have been left in a very tricky position of (relative) certainty of school but starting too early on one hand and a deferred start but complete gamble on the school on the other.”

72. Admission authorities are required to determine their arrangements every year. It is therefore within their power, having undertaken the necessary consultation, to change their arrangements. They may or may not put interim arrangements into place to offer protection to those who may be adversely affected. Such protection is at the discretion of the admission authority provided that it acts reasonably and in accordance with the law and Code. I therefore do not uphold this part of the objection. I note, however, that this determination means that the PAN for the school will be 90 in 2022 and so the concern expressed by parent objector A is addressed.

## Summary of findings

73. The consultation met some of the requirements of the Code but the governing board was not consulted and its views not considered. In addition, not all admission authorities were informed of the consultation. The consultation did not meet the requirements of the Code in two key matters and I therefore partially uphold this part of the objection.

74. The school has had more than 60 first preferences for YR each year for some time. The reduction in the PAN to 60 is designed to increase the numbers at other schools which are less popular by diverting children from the school. This is likely to frustrate parental preference. The school would reduce in size by one third if the PAN were to be 60 and become a small school. The governing board has objected to the reduction and when such an objection is made paragraph 1.3 of the Code says, “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.” I have considered all the evidence provided to me and uphold this part of the objection.

## Determination

75. 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 Stanford Infant School in Brighton. The published admission number is not to be reduced from 90 for admissions in September 2022.

76. 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.

Dated: 19 July 2021

Signed:

Schools Adjudicator: Deborah Pritchard