



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3814**

**Objector: the governing board for West Blatchington Primary School, Hove**

**Admission authority: Brighton and Hove City Council for West Blatchington Primary School**

**Date of decision: 3 August 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 West Blatchington Primary School. The published admission number will be 30 as set by Brighton and Hove City Council.**

### 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 West Blatchington Primary School about the admission arrangements for 2022 (the arrangements) for West Blatchington Primary School (the school), a primary school for children aged three to eleven. The objection is to the consultation held on the arrangements and to the published admission number (PAN) for the school being set at 30.
2. The parties to this objection are:
  - 2.1. 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); and
  - 2.2. the governing board for the school and the objector (the governing board).

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority. The governing board submitted its objection on 10 May 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 which I will call the committee) at which the arrangements were determined and the papers to inform this decision. Papers provided to the committee included:
  - a. a report on the background to the proposed reductions in PANs across eight primary schools in the local authority area and the consultation held (the committee paper); and
  - b. an equality impact assessment on the changes proposed (the EIA);
- b. a copy of the determined arrangements;
- c. information available on the websites for the school, the Department for Education and the local authority;
- d. the governing board's form of objection, supporting documents including a copy of a letter sent to the local authority by the governing board dated 8 January 2021 and further information provided in response to my enquiries;
- e. maps of the area identifying relevant schools and the home locations of those admitted to reception year (YR) at the school in 2020;
- f. the local authority's comments on the objection and further information provided in response to my enquiries;
- g. determinations for three other primary schools in the local authority area (case references: ADA3758; ADA3715; and ADA3813, ADA3838 and ADA3879); and
- h. variations agreed to the arrangements for the school for previous years:
  - a. to reduce the PAN for admissions in 2019 from 60 to 30 (case reference: VAR863); and
  - b. to reduce the PAN for admissions in 2021 from 60 to 30 (case reference: VAR2148).

6. I have also taken account of information received during a meeting I convened on 7 July 2021 with the parties and held through the medium of Microsoft Teams (the meeting).

## The objection

7. The objection concerns two related matters. One is that the consultation held on the arrangements for 2022, which proposed that the PAN for the school be reduced from 60 to 30, was flawed. The reasons given were that it was not properly accessible to those with English as an additional language, was unfair, lacked transparency and decisions were made on the basis of misleading information.

8. The second part of the objection is to the reduction in the PAN from 60 in previous years to 30. The supporting arguments are:

- 8.1. There will be insufficient school places in the area.
- 8.2. Children not able to be admitted to the school will have to travel further to reach an alternative school.
- 8.3. The reduction in PAN will result in indirect discrimination against children with the protected characteristics of disability and race and as such does not meet the requirements of the Equality Act 2010 and the local authority has not met its public sector equality duty.
- 8.4. Social value, which is described as necessary to be considered by local authorities in the Best Value Statutory Guidance 2015 (published by the Department for Communities and Local Government), was not properly considered in making the decision because the benefits of the school provision for children with special educational needs and disabilities (SEND) and other disadvantages were not taken into account.

## Background

9. The school is located on the north west edge of the local authority's area. The school has recently benefited from what the governing board described as a rebuild creating "state of the art" facilities and designed for accommodating 420 primary aged children, alongside a nursery and an 18 place facility for children with autism. A primary school accommodating 420 children might normally be expected to have a PAN of 60, given that there are seven year groups and seven times 60 equals 420. Indeed, 60 was the PAN set for the school in the years 2018 to 2021. In 2019 the local authority proposed a variation to the arrangements for the school so that the PAN was reduced from 60 to 30 for admissions in 2019. A fellow adjudicator agreed the variation (case reference VAR863). I was the adjudicator for a similar proposed variation to the admission arrangements for 2021 and agreed that the PAN should be reduced from 60 to 30 for admissions in 2021 (case reference VAR2148).

10. The school is the only primary school in the local authority area with a specialist facility for children with autism (the facility). There are 18 places provided at the facility. The children attending the facility can be in any year group between year 1 (Y1) and year 6 (Y6). The facility caters for children drawn from the whole local authority area so children often travel some distance to attend and all children in such a facility would be expected to have needs that require specialist provision and to have an education, health and care plan (an EHC plan). The governing board also told me that some parents from beyond the school's immediate area will seek a place at the school (but not in the facility) because of the school's wider expertise in working with children with autism. The information on the local authority's website regarding the specialist provision says, "Our aim is for all children to access a mainstream curriculum through both integrated lessons with the main school and small group sessions." This means that children attending the facility may join some mainstream classes at some points. The facility has two classes. One for children in Y1 to year 3 (Y3) and one for children in year 4 (Y4) to Y6. Clearly, this does not include children in YR, the year to which the admission arrangements for the school apply.

11. The local authority consulted to reduce the PAN for eight primary schools, including the school, for 2022. Following the consultation, the committee report was provided to the local authority's committee for decisions on the proposals. The committee report recommended that the PANs 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 available for admissions in 2022.

12. 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."

13. Objections were made to the arrangements of four community primary schools where PANs were reduced, including this one. I am the adjudicator appointed to consider all four cases. Each case is determined upon its own merits and no case sets a precedent for another case. I have made three determinations (ADA3758; ADA3715; and ADA3813, ADA3838 and ADA3879) for the three other community primary schools and these have been published.

## Consideration of Case

14. 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

15. I informed the parties that my powers allowed me to determine if there has been a failure to consult in accordance with the relevant legal requirements, and therefore a failure to comply with both the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements (England) Regulations 2012 and the Code but that an adjudicator cannot impose a requirement upon an admission authority to re-consult after it has determined the arrangements even if the consultation has not been conducted in accordance with the requirements of the Admissions Regulations and the Code. I also explained that it is not possible for me to require an admission authority to re-instate the previous year's arrangements because of a flawed consultation.

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

17. 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”.

18. 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.

19. The governing board said that parents and carers of children with English as an additional language (EAL) “make up a third of our school’s population” and that the “consultation was inaccessible to a large number of our families due to language barriers, cognition barriers, digital literacy barriers and access to technology.”

20. The committee report said, “Endeavours were made to encourage responses to the consultation from groups in the city who might not usually participate with consultations on School admissions. PACC [parent and carer voice] and Amaze [Special Educational Needs Information, Advice and Support Service for Brighton & Hove] issued information to parents in their community about the proposals and consultation, the Trust for Developing Communities [a charity tackling inequality in Brighton and Hove through community-led solutions] was asked to do the same. EMAS (Ethnic Minority Achievement Service) provided information, advice and assistance to complete the consultation to families through their Home, School Liaison workers.”

21. I asked the governing board what additional steps it thought that the local authority could have taken. The governing board said that the local authority could have worked more strategically and:

“Online consultation documents needed to have been translated (or have had this translate facility) in to the most commonly spoken languages, particularly as the documents were very lengthy and laden with legal jargon.

Notice given that interpreters would be available during on line consultations. For our school, Arabic and Bengali interpreters would have been particularly valuable because of the number of families for whom this is a first language.

EMAS to have been given more resources to pro-actively communicate with all EAL families at the school in the local planning area, to explain the consultation process, support them in submitting a response to the consultation process. This pro-activity could also have included direct contact with minority community groups for whom English is an additional language. It was far too unrealistic and laissez-faire to ask EMAS to delegate this important equalities work to a few family liaison workers.”

22. The committee report said,

“Responses from the consultation portal show that only just over a hundred respondents (approx. 13%) completed the equalities monitoring questions from which it is difficult to draw any conclusions. Feedback from the Ethnic Minority Achievement Service (EMAS) indicated that many parents from ethnic minorities or with English as an additional language found the consultation confusing even with assistance. There was a reluctance to participate from some groups as they felt that it didn’t affect them partly due to the uncertainty of the housing situations so children

may have to move schools anyway and a trust that whatever school parents get it will be a good school. The difficulty of not being able to attend a local school was however identified as a potential problem.”

23. The EIA was published with the committee papers on 31 December 2020. It said:

“EIAs enable us to consider all the information about a service, policy or strategy from an equalities perspective and then action plan to get the best outcomes for staff and service-users. They analyse how all our work as a council might impact differently on different groups. They help us make good decisions and evidence how we have reached these decisions.”

24. It was not necessary for the EIA to be published to inform the consultation; its purpose was to inform decision making in the light of the consultation. The EIA records that the planning area (planning areas are groups of schools used by local authorities to plan the number of school places needed) in which the school is situated has the highest proportion of children with minority ethnic backgrounds in the local authority area at 33 per cent. The planning area with the lowest proportion has 21 per cent.

25. Clearly the consultation took place at a very difficult time due to the Covid pandemic and the restrictions it created. The local authority could have done more to engage those families for whom English was an additional language and who thus may have faced additional challenges in engaging in the consultation; the governing board has made some helpful suggestions on this. However, the local authority did take some steps to make sure that such families were aware of the consultation and could respond. On balance, I do consider that the local authority made attempts to consult parents of children between the ages of two and eighteen including those for whom English is an additional language and these were sufficient to meet the requirement of the Code in this respect.

26. The email to headteachers and principals, referred to above, 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 be told explicitly that they are being asked to do this.

27. In addition, I established, through the information provided to me and discussion at the meeting, that at no point did the local authority consult directly with the governing board and nor did it ask that the information that it provided to the headteacher be provided to the governing board. The local authority explained that custom and practice was that such information would be passed onto the governing board by the headteacher and that its governor services arm would normally bring to the attention of governing boards salient information on a range of matters.

28. The local authority also said that various briefings for headteachers had taken place over a matter of years raising concerns over the reducing number of children expected to be seeking a school place in the future. However, at no point did the local authority communicate directly with the governing board over its proposed reduction in the PAN. The governing board had the same opportunity as others to respond to the consultation but as a body specified in the Code that **must** be consulted, this is not, in my judgement, sufficient to meet the requirements of the Code.

29. The committee report said, "There were 802 responses to the consultation [covering all the schools for which changes were proposed] 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 factual information on the responses received during the consultation. This included information directly relating to each school on which a PAN reduction was proposed. The committee report said that of those who expressed a view regarding the proposal for this school 301 disagreed and 80 agreed with the proposal. It is therefore clear that many people were aware of the consultation and how to express their views.

30. I turn now to consider the other aspects of the objection to the consultation which are that the consultation was unfair, lacked transparency and that decisions were made on the basis of misleading information. I understand this last point to mean that the objectors consider that misleading information was provided in the committee report which was the basis for the decision to reduce the PAN and so is about the product of the consultation. I have described above the processes used by the local authority to consult. The governing board said that:

- 30.1. forecasting data was confusing and the forecasting data on the area where the school was situated had to be updated and this was after the consultation had commenced;
- 30.2. the minutes of the consultation meetings for the school were not made available to the governing board until after the local authority had determined the PAN so the governing board did not have the opportunity to correct what it saw as errors;
- 30.3. the committee report did not fully reflect the matters raised during the consultation; and



30.4. the governing board were not able to express its views to the committee meeting where the decision was made to reduce the PAN.

31. The consultation meetings for the school were held on 10 November 2020. The governing board said that it was told that the minutes would be made available to it. The governing board asked on 29 January 2021 for the local authority to provide the minutes of the consultation meetings held on 10 November 2020; this was after the decision to reduce the PAN for the school had been made by the committee on 11 January 2021. The minutes, after some confusion, were provided to the governing board on 9 February 2021. The governing board said that the minutes missed some salient points and that the views expressed at the meetings were not fully represented in the committee report. I have considered the points raised and how they were presented below.

32. One point raised in the consultation at various points was the view that housing developments in the area of the school were likely to increase demand for school places. The committee report does give information on housing developments on a city wide basis including an estimate in the increase in the number of children as a result of house building over time. Broadly this was estimated as nine children per year group annually. The governing board did not believe that this took into account local circumstances, such as the availability of cheaper houses in its area and so the increased likelihood of younger families moving to live near to the school and houses being built near to the school. It appears to me, however, that the points made in response to the consultation about house building were taken into account in the forecasts made by the local authority.

33. The governing board said that forecasting data was updated as the original data was flawed. At the meeting I held the local authority explained that it had always been clear that updated data would become available; this was part of the annual pattern following the school census and other information becoming available. Updated data were provided to the headteacher of the school by the local authority by email on 26 November 2020, one day before the consultation ended. The email with the data said, "the consultation closes on 27 November which leaves little time to reflect this information in submissions however you may be aware that there is the option of making representations direct to the committee in January either via a petition or a written question." The email then brought the reader's attention to the forecast for admissions in 2022 for the planning area in which the school is situated. This was shown in the data provided on 26 November 2020 as a surplus of 27 places for 2022. The email said that if the number of places were reduced by 30, as proposed for the school, this would mean that instead of this surplus there would be forecast deficit of three places. The governing board explained to me at the meeting that it had mistakenly believed that this meant that the proposed reduction in the PAN would be retracted and therefore, "dropped its guard" and did not state its objection as a governing board to the proposed reduction during the consultation period.

34. The email sent by the local authority on 26 November 2020 also said that there was an opportunity to make "representations direct to the committee in January either via a petition or a written question." The governing board made great efforts to find ways to

express its views directly to the committee and its meeting on 11 January 2021 and I will describe these efforts as it was clearly a matter of some frustration for the governing board that it did not feel that it actually had the chance to make its views known directly to the committee.

35. The papers for the meeting were published on 31 December 2020. An education officer from the local authority (the education officer) sent the papers provided to the committee to the school on 2 January 2021 and copied in officers from the democracy section of the local authority so the school could find out more about how to engage. On 5 January 2021 the headteacher of the school asked for help in making sure that the governing board could speak at the committee meeting and help was given by the education officer. However, on 6 January the democracy section of the local authority said that it was too late to ask to speak at the committee meeting as the closing date for such applications had been the previous day.

36. The education officer said that the chair of the committee would allow questions. The governing board then provided a statement to the chair of the committee but was subsequently told that this statement did not meet the requirement for questions to be no more than 100 words long and so it would not be used. In addition, the chair of the committee emailed the governing board on 8 January 2021 and said that there had already been an extensive consultation which had covered the points raised so she would not accept a late question. The chair did suggest that the governing board's statement could be circulated to the members of the committee and I understand this occurred.

37. I can sense how difficult the governing board found these matters, particularly as some of the rules only became clear after the event. However, a formal consultation had taken place and the results of that had been reasonably fairly summarised in the committee report which the committee then duly considered.

38. The committee report did indicate that there was forecast to be an insufficiency of places in the planning area for the school and provided evidence based on the number of children who travelled out of the planning area to attend other schools to explain why the proposal was still being made to reduce the PAN. Not all the detail provided at the consultation meeting regarding the school was in the committee report but there was sufficient for the local authority to make an informed decision. The committee report reflected a strategic approach to reducing the number of school places across the local authority and did not reflect much detail regarding individual schools. The governing board said that the individual circumstances of the school were not taken into account and I will explore this matter further below when considering the objection to the PAN reduction.

39. In summary, with regard to the consultation, 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 compliant with all the requirements of the Code. I therefore partially uphold this aspect of the objection.

## The PAN reduction

40. 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. I have provided sub-headings below to assist in following the arguments presented.

## The strategic overview

41. 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.” 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	2023 <sup>1</sup>	2024 <sup>1</sup>
<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%

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

42. 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.

43. 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:

- 43.1. 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.
- 43.2. The local authority is only the admission authority for community primary schools and so it is only these schools for which it can propose reductions in PANs.
- 43.3. 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 and so anticipates further PAN reductions.
- 43.4. If some schools had inefficiently sized intakes this could create financial pressures on those schools which could lead to negative effects on standards.
- 43.5. 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.
- 43.6. 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.
- 43.7. 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.

44. 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 which is lower than 30 or is not a multiple of 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 means when it refers to the risks of inefficiently sized classes. For example, if a school had a PAN of 60 and 32 children were admitted, 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 unlikely to be financially sustainable in the long term. An infant class with 30 pupils or close to 30 pupils is a financially efficient model.

45. 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 schools to operate in an educationally effective and financially sustainable manner.

### **The planning areas for the school**

46. 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. The local authority considers the existing number of places, demand for those places and forecasts future demand based on a range of data.

47. Table 2 provides information on the planning area in which the school is located (West Blatchington and North Hangleton). It is one of two schools in the planning area which admit children to YR. I have also included the information on a neighbouring planning area (the Central Hove planning area). I have done this as the local authority described in the committee report how children who live in the planning area for the school attend schools in other planning areas and there is particular movement across these two planning areas.

48. The school is one of ten schools across the two planning areas which admit children to YR. As discussed above, the PAN for the school was reduced through a variation for 2019 and so the sum of the PANs for that year in table 2 reflects this. The local authority set the PAN for 2022 for three primary schools (including the school) in the two planning areas at 30 places fewer each than for 2021 which would have meant 90 fewer places in 2022 than in 2021 and this is how matters stood when the objection was made. However, the

variation for the school reduced the sum of the PANs for 2021 by 30 and one other governing board objected to the lower PAN for its school (Goldstone Primary School) and I upheld the objection (case reference ADA3765). Taking this into account, the number of YR places available in the two planning areas combined are now 30 fewer for 2022 than for 2021 and this is how the data is provided in table 2. The sum of the PANs for 2022 includes the PAN for the school at 30.

**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 <sup>2</sup>
<b>Sum of PANs</b>	870	780 <sup>3</sup>	810	780 <sup>4</sup>	750	750
<b>Number of children allocated a place</b>	839	769	782	765		
<b>Number of children forecast to be seeking a place</b>					714	676
<b>Number of vacant places</b>	31	11	28	15	36	74
<b>Number of vacant places as a percentage</b>	4%	1%	3%	2%	5%	10%

49. Table 2 shows that the proportion of surplus places has been below that sought by the local authority (five to ten per cent) but that reducing demand is forecast. Demand is forecast to reduce by 51 places for 2022 compared to 2021 and then a further reduction of 38 children seeking places for 2023. The forecast of 36 vacant places for 2022 is around five per cent which meets the proportion of spare capacity aimed for by the local authority.

### Children admitted to the school

50. 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 type and quality of education it offers weigh much more heavily. In this case, the governing board has said that parents will choose the school because of “its city-wide reputation for high quality inclusive education.” Table 3 below shows the number of children admitted to the school in recent years including the number of first preferences.

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

<sup>3</sup> Includes PAN for the school as 30 following variation agreed 15 July 2019

<sup>4</sup> Includes PAN for school as 30 following variation agreed 9 July 2021

**Table 3: number of children admitted and allocated a place at the school**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>PAN</b>	60	30	60	30
<b>Number of first preferences for the school</b>	25	23	34	24
<b>Number of children admitted or allocated a place</b>	29	25	45	29
<b>Number of surplus places</b>	31	5	15	1

51. Table 3 illustrates that in most years fewer than 30 parents have made the school their first preference for their child. A first preference means that the school named is the one that the parent would most like their child to attend. In 2020, 34 parents made the school their first preference and 45 were admitted which is higher than in any other recent year. I note that in previous years, as shown in table 2 above, there has been a low proportion of surplus places across the planning areas but this does not appear to have increased demand for the school.

52. The financial efficiency of classes of approaching 30 but not being more than 30 underpinned the variations to the PAN requested for the school by the local authority with the support of its governing board for 2019 and 2021. In both cases the local authority had set the PAN at 60 but less than 30 allocations were made on national offer day. The school could have one class of up to 30 children but if more children were allocated places, then it was at risk of needing two classes with just over 15 children which would be expensive. The governing board supported the variations in both years although its view is that the variation was needed in 2019 because of the extensive building work taking place at that time.

53. The information in table 3 gave me food for thought due to the infant class size regulations and some of their implications as described above. Looking at the number of children admitted to the school it seemed to me that it might be advantageous to the school to have a PAN of 30 as it would prevent just over 30 children being admitted and thus, if the school wished to retain children in single year groups, not to have to run two classes for perhaps 32 children with 16 children in each class. Many governing boards have told me that to have such small classes was detrimental to the finances of the school. I therefore asked the governing board to give me a clearer understanding of why it sought a PAN of 60 when often there were fewer than 30 children admitted to YR.

54. The case made by the governing board in its objection included that operating as a one form entry school (as created by a PAN of 30) would constrain the school and limit the benefits offered to disadvantaged children. The objection said, "the breakdown of disadvantage can be summarised as follows: Pupil Premium 47%, Free School Meals 44%, English as an Additional Language 33%, Special Educational Needs & Disability 33%, with 12% of the total pupil population having an Education Health Care Plan (EHCP) and with 4 further EHCPs being processed it will increase the percentage of children in this small school with EHCPs to almost 14% - a figure 4 times the local and national average."

55. The governing board further explained that:

- 55.1. There needed to be capacity in classes so that children attending the facility could join mainstream classes. If every class had 30 children, then it was challenging for children (possibly up to four children) from the facility to join such a class because of space constraints.
- 55.2. Parents wished for their children to be admitted to the school at points other than the year of entry and this would be difficult if every class had 30 children. Some of these children may require an EHC plan and their parents wanted their children at the school because of the expertise offered by the school.

56. It was therefore the view of the governing board that a PAN of 30 would overly constrain the number of children that it was able to admit and support. The particular concern was for those children with additional needs that the school might be unable to properly support if they were admitted after September 2022. I should at this point explain that a PAN only applies to the year of entry, that is YR for this school. In a year of entry a child cannot be refused a place at the school until the PAN is reached. For other year groups, parental preference must be met unless the admission of a child would result in “prejudice [to] the provision of efficient education or the efficient use of resources” (section 86(3)(a) of the Act). In practice, if 30 children are admitted to YR then it is unlikely that children will be admitted above that number in Y1 or Y2 because of the requirements of the infant class size regulations. In other year groups, it is more likely that additional children could be admitted taking a class to over 30 without causing prejudice.

57. With regard to infant class size regulations I note that paragraph 2.15h) of the Code says, “children with special educational needs who are normally taught in a special educational needs unit attached to the school... who attend some infant classes within the mainstream school” are excepted children. This means that if an infant class at the school had 30 children and one or more children from the facility joined the class for some of their lessons then the infant class size regulations would not be breached.

58. As noted above, it would be possible to have over 30 children to a class with a single teacher from Y3 onwards (before any consideration is given to children attending the facility). However, it can be challenging to have over 30 children to a class particularly if there is a high proportion of children needing support from an adult in addition to the class teacher. This is the situation described by the governing board using Y3 as an example. The current Y3 class has 30 children and there are four children in the facility who join Y3 for some lessons. Six of these 34 children have EHC plans which include an additional adult to support their learning. Another Y3 child is in the process of acquiring an EHC plan which would also require an adult to support her or him. With the class teacher this would mean 34 children and eight adults could be in the one class at the same time, making a total of 42 people. This would be physically challenging to achieve in a typically sized primary school classroom. I do note that this will not be the case for the year of entry, YR, and YR is the year group which is the subject of the objection as the facility does not cater for YR children. However, it is my understanding that it is the implications for the older year groups which are the focus of the concerns for the governing board. It does not think it is



right to create a situation where the school cannot admit children throughout the school who would benefit from the expertise the school offers and the governing board believes that this would be the effect if the PAN is set at 30.

59. Discussion at the meeting clarified that ideally the governing board would like the opportunity for smaller classes, perhaps around 25 in each of two classes per year group, so that there was greater flexibility to admit and support children who needed the expertise the school provided. The governing board recognised that finances did not always make such aspirations possible. As the local authority said at the meeting, there is limited flexibility in how a school is funded and a deficit is only licensed by the local authority if there is, as in this case, a plan to address the deficit.

60. While I can see that it would benefit the children if the school were able to have two classes of around 25 in each year group, it was not clear to me how a PAN of 60 would help to realise the governing board's aspirations. To put it at its simplest, children had not been joining the school in these numbers even before the forecast reduction in demand. The school organises its classes on the basis of single year groups (that is it does not have mixed aged classes). For the academic year beginning September 2020, every year group except YR and Y6 contained a single class of 30 or fewer than 30. The Y6, which left the school in July 2021, was in two classes of 21 and YR (admitted September 2020) was in two classes, one of 22 and one of 17. As noted above, 45 children were allocated places in YR for 2021 on national offer day in March 2020. By the end of the summer term in 2021 the number of YR children had fallen to 39 children which shows that children leave the school as well as join. There will be 30 or fewer children admitted in September 2021 so the only year group with more than 30 to the year group in September 2021 will be Y1 and to run two classes for around 39 children is not a financially efficient model of operating.

61. The governing board said that it was the heavy financial costs of supporting children with the level of need commonly seen in the school that has led to its financial deficit. It appears to me that there is a tension between the wish of the governing board to provide a suitable learning environment for all children including a higher than usual proportion of children with additional needs who might join the school at any point; and the need to make the school's budget balance. I consider that to set the PAN at 60 there would have to be some tangible evidence that the school will attract substantially more than 30 children in 2022. Otherwise, I would anticipate a request for a variation to reduce the PAN to 30 for 2022 or the school running the risk of increased financial problems because two very small classes are necessary because the school has found itself with just over 30 children in its YR. There could be some capacity to mix year groups because of the two small classes in what will be Y2 in 2022 but the school has not chosen this approach before and in every other year group there will be 30 or close to 30 children based on the number of children currently attending or allocated places for 2021.

## Future demand for places at the school

62. The governing board highlighted the forecast deficit of three places for 2022 in the West Blatchington and North Hangleton planning area if the PAN were to be 30. Forecasts of pupil numbers are only that, using available data and previous trends local authorities estimate the probable numbers but the actual numbers will be affected by a wide variety of matters. Based on the forecast however, if the PAN for the school were 60 then 33 children could be admitted which would be a very expensive model if two classes were provided as per the school's previous practice.

63. Of course, as described above, parents have all sorts of reasons for their choice of schools and I considered the evidence of past patterns of admissions. 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. I also note that 45 children were allocated a place at the school for 2020 which would make it one of its largest year groups for some time. The map illustrates that some children attend the school from across some distances and I will return to this below. No YR children attend the facility so the map only shows children admitted to the mainstream school. The governing board said that some children who live out of the planning area, "have been rehoused in temporary housing since starting at the school or are children in care." This is unlikely to affect the pattern shown on the map provided to me as it was based on the admissions as at September 2020. Approximately one third of the children who joined YR in 2020 live outside the planning area for the school with the majority of these children living in the Central Hove planning area.

64. The committee report said that children who lived in the planning area attended schools outside the planning area and vice versa: "School census data from January 2020 indicates that 23 reception pupils living outside the West Blatchington & North Hangleton planning area attend either West Blatchington Primary or Hangleton Primary school with 45 reception pupils living in this area attend schools elsewhere. This demonstrates a net loss of 22 reception pupils. Similarly, from the October 2020 census 34 reception pupils living outside the West Blatchington & North Hangleton planning area attend the two schools with 60 reception pupils living in this area attend schools elsewhere. This gives a net loss of 26 reception pupils." So for admissions in 2019 and 2020 there were more parents who lived in the planning area for the school preferring a school outside the planning area than parents living outside the planning area preferring a school inside the planning area. If this pattern were to continue then it is likely that the deficit of three places will be addressed by children being admitted to schools in other planning areas. It therefore seems likely that:

64.1. the deficit of three places will be absorbed by children going to schools outside the planning area; and

64.2. if not, and 33 children were admitted to the school then the governing board would find its budget under severe financial strain because of the costs of two small classes.

65. I also note that the PANs set for the two planning areas for 2022 are forecast to be sufficient to meet demand even though it is forecast that in the planning area for the school there will be 11 more children seeking a place in 2022 than in 2021. Of course, if the parents of those 11 children expressed a preference for their children to attend the school, then it is possible, if the PAN were to be 60, that 40 children would be allocated a place at the school in 2022 as a maximum based on the allocations for 2021 (29) plus the additional 11 children. This would be the most optimistic scenario. In the context of all the other options for parents this seems highly unlikely and it is more likely that there would be fewer than 40 children allocated a place. I also note that in terms of first preferences there were 34 first preferences for the school for 2020 and in every other year the number of first preferences has been around 24 (as for 2021). A year group of 40 children would, on the current approach taken by the school, mean two classes of 20 which is again an expensive model and would increase the financial challenges for the school. It therefore appears to me that the most likely situation is that a PAN of 60 will exacerbate the governing board's deficit situation or that fewer than 30 children would be admitted.

66. The governing board said that reducing the PAN to 30 will create a situation where children will have to travel further to school and provided some walking distances to other schools to evidence the point. Of course, children will only have to walk further if there are insufficient places at the nearest school which their parents prefer them to attend. If the PAN had been 30 for admissions in 2020 then this would have been the case. It was not the case for 2021 or previous years. At the meeting I asked the governing board to explain why it believed that more parents would seek a place at the school for 2022 than for 2021. The response was that 2021 had been an unusual year and so it had not been possible for parents to visit the school and see what it had to offer. Of course this was true for all schools but I can see that for parents seeking a school that might be able to meet their child's special needs then this could have made a difference. Based on the forecasts above, it does not seem likely to me that children would have to travel further to attend an alternative school if the PAN were 30.

67. It is possible for an admission authority to admit over a PAN; this would normally be in consultation with the governing board in the case of a community school. It is not possible for the admission authority to refuse to admit a child if the PAN has not been reached. So, for example, if the PAN were 60 and there were 31 children for whom the school was the highest preference that could be met, then the local authority would have to admit 31 children to the school and the governing board would have to find a way to manage this and meet the requirements of the infant class size regulations. As described above, this is likely to be costly.

68. If the PAN were 30 and in fact 40 parents applied for places for their children and could not have a higher preference met, then the local authority could agree with the governing board to admit over PAN and all these children could be admitted. If this were to occur it would appear likely that the governing board would establish two classes of 20 which would be an expensive model but would create the flexibilities the governing board seeks. For admissions in 2021, the governing board supported the proposed variation to

reduce the PAN to 30 because of the risks of admitting just over 30 children. I have sympathy with the governing board's position in that it wants to make sure that it can accommodate those who most need the expertise that the school has to offer. There is, however, little evidence that the parents of more than 30 children will want to attend the school in 2022 and therefore I see a risk to the school and its financial situation if the PAN were to be set at 60 without creating any particular benefit. That risk is shared with the local authority which is also the admission authority.

69. I do understand that the governing board is very concerned about the effect of having up to 30 in a class when the school works towards children from the facility joining mainstream classes and I have considered this matter above. The governing board also expressed concerns that having just one class per year group would mean a disproportionate number of children with additional needs per class and "jeopardise [its] comprehensive intake in which disadvantaged and vulnerable, as well as learning gifted children, thrive." I must note that the school is already managing this situation across the majority of its year groups.

### **Potential indirect discrimination under the Equality Act 2010**

70. The governing board argued that reducing the PAN amounted to indirect discrimination under the Equality Act 2010 by the local authority. The governing board said that this was partly because the school was treated as if it were the same as every other school and its particular circumstances were not considered. The governing board also said that by reducing the number of places available the local authority "inadvertently discriminates against the disproportionate number of children at [the school] with the protected characteristics of disability and race." Race and disability are protected characteristics in the Equality Act 2010. In the EIA the local authority hypothesised the effect of the PANs reductions by testing them out on a previous year's admissions (2018) and estimated that any effect upon those from a minority ethnic background would be minimal across the local authority area. The analysis highlighted two schools where reducing the PAN might affect access of children from minority ethnic backgrounds because they tended to live further away from the school but the school was not one of them.

71. It is not clear to me how children with these protected characteristics might be unlawfully discriminated against by the reduction in PAN. This is for the simple reason that I have been presented with no evidence that any child will be prevented from attending the school if its PAN is reduced. There could be children for whom places are sought in years other than YR, as described above, who may not be able to gain access but this would not be because of the reduction in PAN. As explained above, a PAN applies only for the year of entry (YR in this case) and does not apply to other years and the consideration for other years is whether the admission of a child would "prejudice the provision of efficient education or the efficient use of resources."

## Public sector equality duty

72. Similarly the governing board said that by reducing the PAN to 30 the local authority was “failing in its public sector equality duty to advance equality of opportunity to the disproportionate number of children with the protected characteristics of disability and race attending” the school. The argument made is that a PAN of 30 would make one class of 30 and it would not be possible for other children with EHC plans to join the school (as opposed to the facility) at a later stage, such as in Y1 or Y3. The governing board wishes to welcome such children. As described above, the PAN only applies to the year of entry so I am not convinced that this is directly relevant. I have not been provided with evidence that there is a failure to advance equality of opportunity by reducing the PAN to 30.

## Best value

73. The governing board further argues that the local authority is failing to meet the requirements of best value (as explained in Best Value Statutory Guidance) because it is giving insufficient weight to the social value provided by the school and social value is one of the matters that needs to be considered when scrutinising what is best value. The objection said that the funding provided for children with a variety of additional needs is insufficient to meet the needs of the children which is why the school is in deficit and the local authority has permitted this. Such considerations are not within my jurisdiction but I note that the ‘Best Value Statutory Guidance’ referred to by the governing board applies to “voluntary and community groups and small businesses” and there is no reference to schools.

## Financial implications of a PAN of 30

74. At the meeting the local authority explained that there was very little flexibility in funding schools and that the existing deficit was only permitted as the governing board had a plan to address the deficit by an agreed date. In this context the objection said, “Governors argue that there is social value in maintaining two forms of entry [at the school] as well as medium and long-term cost effectiveness in creating the best conditions for disadvantaged children, especially those with protected characteristics and complex learning needs, to remain in a mainstream school.” It is not appropriate or necessary for me to consider the funding of the education of children with or without additional needs. In this case the governing board has supported a variation so that there will be one class for YR in 2021 as this is the financially responsible thing to do. The local authority cannot make parents choose to send their children to this school even if the PAN is set at 60.

75. The governing board brought my attention to a section in the EIA which said, “Anecdotaly one form entry primary schools are at greater risk of having difficulty managing financially.” This would reinforce the governing board’s concerns about the PAN being set so that it had only one form of entry. The extract from the EIA continues, “However, there is a benefit to capping the pupil numbers to have one full class and one teacher in each year group rather than having the potential need to run two small classes if the number of pupils allocated is above 30 and then be required to employ two teachers.” As described above, in

September 2021 every year group except one will have 30 or fewer children so in practice the school is already operating as if it had had a PAN of 30 for six of its seven year groups when the children joined in YR.

76. The objection lists concerns that a reduced budget will have for the school if the PAN were 30. These include reduced time for the special educational needs co-ordinator (who may have to spend more time teaching) and the family liaison worker. However, it appears to me that running as a one form entry school throughout the school would be more financially efficient as having a class of approaching 30 children will give the governing board more certainty in its staffing and financial planning compared to financing the small classes set up for the current YR and Y6.

77. The governing board also expressed concerns for the viability of the nursery if the PAN were reduced as families might be less likely to use it if there was less likelihood of gaining admission to the school. The governing board also described the excellence of its nursery provision for disadvantaged children. From the evidence that I have seen, with less than 30 pupils in most year groups, it appears that the nursery is unlikely to be significantly affected by the PAN being set at 30 because, as said above, a PAN of 30 has largely reflected reality in terms of admissions to YR in previous years.

78. Another matter raised was the waste of the excellent facilities that have been created for the school in its recent major rebuild and the costs of running these, which were designed for a PAN of 60, with only a PAN of 30. Again I must say that the PAN of 30 reflects the reality of demand and previous admissions (except in 2020). The larger part of the school's budget will be spent on staffing although clearly there are maintenance and running costs for the school site and buildings. I can see that it will be frustrating and difficult to have such facilities available but only partly used. In addition there will be costs attached. However, there is scant evidence that setting the PAN at 60 would address this.

### Consideration of paragraph 1.3 of the Code

79. I have taken very seriously the requirement of paragraph 1.3 of the Code that where a PAN has been set that is lower than the governing board 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." However, in this case it appears to me, based on the evidence I have considered, that:

- 79.1. the number of children is falling across the local authority area and the school is unlikely to have more than 30 children allocated to it for admissions in 2022 and parental preference is unlikely to be frustrated if the PAN is set at 30;
- 79.2. if it happened that slightly more than 30 children were admitted to the school in 2022 then this would exacerbate the difficult financial situation the school is already in which could damage the education provided for the children; and

79.3. if significantly more than 30 parents wanted their children to attend the school then the admission authority, the local authority, could admit over the PAN of 30 by agreement with the governing board.

80. I therefore see considerable advantages for the wellbeing of the school and the children it educates of the PAN remaining at 30. If the school was likely to attract approaching 60 children, then it would be in the school's interests to have a PAN of 60 but this is not the case. I see financial risk for the local authority if the PAN were set at 60 as it remains responsible for the school budget. On the basis of the evidence it is therefore not appropriate for me to set aside the local authority's decision to set the PAN at 30. I therefore do not uphold this part of the objection.

## Summary of Findings

81. The consultation did not meet all the requirements of the Code as there was no direct consultation with the governing board and not all admission authorities were informed of the consultation. I therefore partially uphold this part of the objection.

82. The evidence is that at a time of falling demand across the local authority area and planning areas for the school, there are sufficient places for children in the area to meet the need for places at the school with a PAN of 30. A PAN of 60 is unlikely to be required and could lead to increased financial difficulties for the school and the local authority with no clear benefits. The concerns expressed by the governing board relating to the Equality Act 2010, the local authority's public sector duty and indirect discrimination for those with protected characteristics are not supported by the evidence. I do not uphold this part of the objection.

## Determination

83. 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 West Blatchington Primary School. The published admission number will be 30 as set by Brighton and Hove City Council.

Dated: 3 August 2021

Signed:

Schools Adjudicator: Deborah Pritchard