



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2183

Admission authority: London Borough of Wandsworth for Ernest Bevin College in Tooting

Date of decision: 12 October 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed reduction in the published admission number for 2022 determined by the London Borough of Wandsworth for Ernest Bevin College. By virtue of the same provision I do not approve the proposed removal of the selective stream for 60 places from the arrangements for 2022 determined by the London Borough of Wandsworth for Ernest Bevin College.

I determine that the published admission number for 2022 will be 120.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Wandsworth Borough Council (the local authority) for Ernest Bevin College (the school) has referred a proposal for a variation to the admission arrangements for September 2022 (the arrangements) for the school to the adjudicator. The school is a community school for boys aged 11 to 18 in Tooting.
2. The proposed variation is that the published admission number (PAN) for the school is reduced from 180 to 120 and the provision for 60 places to be allocated on the basis of a selection test is removed.

Jurisdiction and procedure

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which deals with variations to determined arrangements. Paragraphs 3.6 and 3.7 of the Code provide as follows (in so far as relevant here):

“3.6 Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified. Where the local authority is the admission authority for a community or voluntary controlled school, it must consult the governing body of the school before making any reference.

3.7 Admission authorities **must** notify the appropriate bodies of all variations”.

4. The local authority has provided me with confirmation that the appropriate bodies have been notified. I have seen confirmation that the school’s governing board has been consulted on the proposed variation. I find that the appropriate procedures were followed, and I am also satisfied that the proposed variation is within my jurisdiction.

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

6. The information I have considered in reaching my decision includes:

- a. the referral from the local authority dated 18 August 2021, supporting documents and further information provided at my request;
- b. information and comments provided by the school;
- c. the determined arrangements for 2022 and the proposed variation to those arrangements;
- d. a map showing the location of the school and other relevant schools in the local authority’s area; and
- e. information available on the websites of the local authority, Ofsted and the Department for Education (the DfE).

7. I have also taken into account a meeting that I convened with representatives of the local authority and the school on 4 October 2021 via the medium of Microsoft Teams (the meeting).

8. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

The proposed variation

9. The arrangements for the school were determined by the local authority on 25 February 2021. The arrangements included that the PAN be 180 and, if there were more applications than places, the oversubscription criteria, after boys with education, health and care plans which name the school have been allocated places, are (in summary):

Category 1: "Up to 60 places will be allocated by reference to general ability to those applicants with the highest scores in the Wandsworth Year 6 test." I will refer to this as the selective stream.

Category 2:

- 1) Looked after and previously looked after boys
- 2) Boys with exceptional medical or social needs
- 3) Brothers of boys already attending the school
- 4) Sons of staff
- 5) Distance from the school with those whose home is closest to the school having the highest priority.

10. The proposed variation is to reduce the PAN from 180 to 120 and to remove category 1 for the 60 selective places. The local authority said that the school was judged by Ofsted in 2018 to require improvement and that demand for the school has reduced. A new headteacher took up post in January 2021 and following this the local authority agreed with the governing board that, as the school was significantly undersubscribed, it would be advantageous to make the changes proposed which would allow the school to plan its finances efficiently and address the public perception created by the school being undersubscribed. The local authority said that the changes would assist the school in addressing those matters of concern raised by Ofsted by facilitating a major reorganisation. As the decision was made after the opportunity to consult on the changes for 2022 had passed, the local authority requested this variation.

11. Paragraph 3.6 of the Code (as above) requires that admission arrangements, once determined, may only be revised, that is changed or varied, if there is a major change of circumstance or certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

Consideration of proposed variation

12. The variation process as set out in paragraph 3.6 of the Code is designed for use when there is a “major change in circumstances” occurring since the arrangements were determined. Normally where an admission authority decides that change is needed it **must** undertake the consultation process described in paragraphs 1.42 to 1.45 of the Code. Paragraph 1.44 of the Code requires parents and others listed to be consulted for at least six weeks. This allows public scrutiny of the proposed new arrangements.

13. Once the PAN has been set for a particular year then no body, except the governing board of a community or voluntary controlled school, can object if that PAN remains the same in subsequent years. Clearly it is desirable that wherever possible PAN reductions are made via the process of determination following consultation as above.

14. In this case, the proposed variation includes the removal of the partial selection process for admission to the school which has been in place since at least the 1997/98 school year. Once removed this partial selection cannot be re-introduced. It is therefore a significant matter to decide without a formal consultation which allows those with an interest to express their views. The formal consultation process, as required in circumstances where there has not been a major change of circumstances which justifies a variation, also allows for objections to the adjudicator. None of this is afforded by the variation process.

15. The school approached the local authority to ask that the variation should be proposed and the local authority undertook a form of consultation on the proposed changes which included information being sent out to parents of boys at the school and parents of those children attending local primary schools. This was sent out on 14 June 2021 and comments requested by 19 July 2021 (a period of five weeks). No comments were received. This would not meet the requirements of the Code with regard to consultation. At the meeting I convened the local authority explained that the consultation held met all the requirements of the Code with regard to consultation except in terms of timing. The local authority further explained that it undertook the consultation to show that the variation request was an informed one and it wished to demonstrate that people had had an opportunity to consider it. The local authority expressed the belief that the lack of response to the consultation showed that the proposals were uncontroversial.

16. The local authority’s reasons for its proposed variation are, in summary, as below.

16.1. The school has been significantly undersubscribed in recent years and reducing the PAN would allow the governing board to plan more efficiently because there would be more certainty around the number of boys to be admitted. This would assist the school in implementing a major reorganisation which would assist it in meeting the concerns raised by Ofsted.

16.2. There are sufficient places in the area to meet demand. Demand is anticipated to increase in the near future but other schools have been

expanded in preparation for this and so no problems in meeting need are foreseen if the PAN is reduced. In addition, the PAN for the school could be increased in the future if there was a need to do so and/or the school could admit over its PAN.

- 16.3. The selective stream is currently redundant as all those who apply for a place are admitted. There are costs to providing the test which could be better used by the school in addressing the matters raised by Ofsted.
- 16.4. Removing the selective stream could mean a higher priority for those who live nearest to the school. I note that this would only apply if the school were to be oversubscribed.

17. I will first consider the proposed reduction in the PAN from 180 to 120 as it appears to me that my decision on this is relevant to the proposal to remove the selective stream. I will begin with reviewing demand for places in the area. The local authority has a duty to make sure that there are sufficient places for the children in its area. To fulfil this duty the local authority assesses the likely future number of places needed and plans to meet that need. There are 11 state funded secondary schools in the local authority area which admit children to Year 7 (Y7) and the local authority provided me with information on previous admissions and forecast admissions to these schools. This information is provided in table 1. I have shown the sum of the PANs as determined for 2022, that is 180 for the school and as if it were to continue for 2023. Obviously if I were not to support the variation that the PAN is reduced to 120 then the local authority would have the opportunity to consult on this matter for admissions for 2023.

18. When parents are making their preferences, their decisions are affected by many factors including convenience, family links, faith characteristics, school standards and the reputations of schools. The school is located in an urban area with, according the DfE website 'Find and compare schools in England', over 30 state-funded secondary schools admitting children to Y7 within three miles of its site. Two other schools are within one mile of the school. Some of these schools will be in the areas of other local authorities; the local authority has boundaries with several other local authorities. These factors will affect the accuracy of forecasts of demand as schools vary in popularity for a variety of reasons. It would appear, for example, that demand for the school reduced following the judgement by Ofsted in 2018 that it required improvement. If another school or schools became more popular or less popular for whatever reasons, then that would also affect demand.

Table 1: number of places available and number of children admitted or allocated a place in secondary schools in the local authority's area and forecasts of demand for future years

	2018	2019	2020	2021	2022	2023

Sum of the PANs	2222	2252	2342	2342	2342	2342 ¹
Number of children admitted or allocated a place	2115	2107	2030	2093		
Number of children forecast to require a place					2125	2130
Number of vacant places	107	145	312	249	217	212
Number of vacant places as a percentage	5%	6%	13%	11%	9%	9%

19. Table 1 shows that there have been sufficient places to meet demand and that demand had reduced slightly but the number of vacant places increased more significantly, particularly in 2020. The increase in the number of vacant places will be at least partly related to the fact that between 2018 and admissions in 2021, admission authorities for four schools increased the PANs for those schools; one admission authority for another school reduced the PAN. The overall effect on the sum of the PANs in the local authority area between 2019 and 2021 was an increase of 90 places. The number and proportion of vacant places is forecast to be higher partly because of these increases in PANs and this will have affected the number of boys potentially available to be admitted to the school. I also note that as a boys' school, there are fewer children for whom the school is suitable.

20. In its referral the local authority said "Across the borough, the number of pupils transferring from primary schools is forecast to increase over the next three years. However, some other local schools have been expanded to meet this additional need and the Council is satisfied that there are sufficient places in the area." In addition, the local authority has said that it could admit above PAN at the school if there was a need for more places. At the meeting the school described how many of its students came from the neighbouring London Boroughs of Merton and Lambeth and that a new school was opening in Lambeth which would further increase the availability of school places.

21. At the meeting the local authority described how there had been a significant increase in demand for primary places so that there had been an increase of 700 primary places across the borough. It had been anticipated that this increase would lead to a similar demand for secondary school places which was why steps had been taken to increase capacity in secondary schools. However, the local authority described how the situation had changed significantly over the last two years with the United Kingdom's departure from the European Union and the Covid-19 pandemic believed to be significant change factors. As a result the local authority's forecasts of two years ago were now proving less accurate and significant revision had taken place.

¹ Assumes no changes at any school from PANs set for 2022

22. If I were to agree to the PAN being reduced by 60 places then the sum of the PANs for the schools in the area also reduces by 60 places so the total number of places available for 2022 would be 2282. Based on the forecast provided this would reduce the number of vacant places to 157 for 2022; this would be around seven per cent of the number of places available. Many local authorities seek to have capacity of between five and ten per cent to allow for children who may move into an area after allocations have been made. Based on the forecasts provided to me by the local authority it appears that there would be sufficient places to meet demand across the local authority area if the PAN were to be reduced by 60 places.

23. I will now consider demand for places at the school. The number of first preferences, admissions to the school, places allocated and forecast demand for 2022 and 2023 are shown in table 2. A first preference is the school to which a parent would most like their child to be admitted. In the local authority area parents can make up to six preferences. The local authority brought to my attention that the number of first preferences for the school was significantly below its PAN, even in 2018 and 2019 when the school filled to or close to its PAN. For the majority of boys the school was the highest preference to which they could be admitted but for 12 boys admitted in 2019, the parent had not expressed a preference for the school.

Table 2: first preferences, admissions, allocations and forecast admissions to the school

	2018	2019	2020	2021	2022	2023
PAN	180	180	180	180	180	180
Number of first preferences	53	91	45	40	N/A	N/A
Number of boys admitted or allocated a place	172	180	109	103		
Forecasts					115	120
Number of vacant places	8	0	71	77	65	60

24. In 2018 and 2019 the number of boys admitted was either at or close to 180, the PAN for the school. There has been a significant decrease in demand for 2020 and 2021. At the meeting, the school told me that there are 85 boys in the current Y7, the year group admitted in 2021, meaning there are 95 vacant places. This is 18 places lower than the number of boys allocated a place at the school as shown in table 2 and a sign of some volatility in the number of admissions.

25. I note that if the PAN for the school had been 120 in 2020 and 2021, as proposed by the local authority for 2022, then there would have been sufficient places to meet demand in both years. As table 1 shows there is a forecast increase in demand for 2022 and the local authority anticipates a slight increase in demand for the school. The forecast is that demand will still be below the proposed PAN of 120.

26. I wished to understand why it was deemed justified to lower the PAN as it was not clear to me what problems were created by the PAN being 180 and what benefits would be achieved by the PAN being 120. The school said that one advantage of a lower PAN was the removal of the perception of the school being unpopular. The school argued that this was important to the current students, as it affected their sense of self-worth, and to parents considering which school is appropriate for their child. I know from previous experience that some parents will judge the quality of a school by its popularity, with popularity being judged on the basis of how hard it is to get admitted to the school, but I was not convinced that this was a strong justification for reducing the PAN by means of a variation, rather than the full process normally required for a change to admission arrangements.

27. The school provided further arguments to me to justify the variation. These were, in summary, that the school needed to have some certainty in its student numbers to assist it in its improvement journey in terms of teaching and learning; it was in a difficult financial position which would be assisted by greater certainty in terms of student numbers; having some certainty over student numbers would assist in maintaining good quality teaching and learning during a significant building refurbishment programme; and the school buildings are more suited to four forms of entry (as allowed for by a PAN of 120) than six forms of entry (as allowed for by a PAN of 180). Schools and local authorities often refer to multiples of 30 children as forms of entry. I will look at these points made by the school in turn.

28. The school provided me with its student numbers for each of its year groups. These were, as provided to me in a letter dated 5 October 2021: Y7: 85, Year 8: 111, Year 9: 174, Year 10: 166 and Year 11: 168. These figures reflect to a certain extent the admissions to the school in the relevant year of entry. The school said that “As a school with a significant number of available spaces it remains open to all in year and casual admissions. There is no filter as to the number and suitability of the student being placed.” The school emphasised that high levels of change in the student body made it more challenging to focus on improving teaching and learning particularly as there were significant numbers of boys joining the school who had no English and/or were in challenging circumstances. My jurisdiction is only for the year of entry (Y7) and note that the PAN only applies to the year of entry. For other years children can only be refused admission to a school on the grounds of prejudice to the provision of efficient education or the efficient use of resources and often the PAN for the relevant year of entry is taken as an indicator of this. For the year of entry, Y7 in this instance, it is not possible for the admission authority to refuse to admit a child (except in very particular circumstances not relevant here) if the number of children is below the PAN.

29. Hypothetically therefore, the school could have established its class structure for Y7 in 2020 on the basis of 120 boys (so four forms of entry), which would have been reasonable with 109 boys allocated places. However, during that year of admission, many more boys could have been admitted up to the PAN of 180 and the school would have had to find ways to manage this. Such increases are likely to be difficult to manage and potentially disruptive to the education provided.

30. Similarly for those admitted in 2021, there are currently 85 on role but this number could increase significantly. Theoretically at least, this could be up to 180. Although such an increase is very unlikely to that level, this potential volatility will make it hard for the school to operate efficiently both in terms of teaching and learning and finances. A secondary school will want to plan its curriculum, and therefore its staffing well in advance in order to have the best chance of providing quality to its students. If the school knew that no more than 120 boys would be admitted to Y7 in 2022, then there would be greater certainty for its planning.

31. The significant drop in student numbers joining the school led to the school having a significant financial deficit. This is because staff were employed on the basis of student numbers that did not materialise. The school has undertaken a major reorganisation, completed in August 2021, which has allowed it to address much of its deficit. This will have been a difficult process for the school and its community as it means staff having a period of uncertainty and some posts becoming redundant. This is difficult for a school community and I recognise that it would assist the school in moving forward if it had more certainty to inform its work and planning. This is particularly important to the school as it wishes to remedy the Ofsted judgment made in 2018 of requiring improvement by being judged good or better.

32. I was told that one benefit seen in the smaller numbers in the school is that a long overdue building improvement programme was now possible. Smaller numbers allowed some areas of the school to be closed off so that building could take place without danger or daily disruption. The school told me that more and even more significant building work was planned for the school year 2022/23, and that having smaller student numbers would be helpful.

33. Another point made by the school is that it believes that the building capacity is more suitable for a four form entry school (a PAN of 120) than a six form entry school (a PAN of 180). I have not asked for further information on this but note the school's view.

34. Fewer than 120 boys were admitted to the school in 2020 and 2021. For those years there were fewer than 50 first preferences for the school. This suggests to me that if the PAN were reduced to 120 for admissions in 2022 then parental preference is unlikely to be frustrated. The local authority undertook an informal consultation on this matter and the lack of responses could suggest that potential parents are not concerned about a reduction to the PAN of this nature. I note again that this consultation did not meet the requirements of the Code as it did not meet the prescribed timescales.

35. The school has argued strongly that there would be considerable advantages to the quality of teaching and learning at the school, and to the efficient use of resources, if the PAN were set at 120. The school has new leadership, the expected demand for places in the area is less than expected. I have considered the arguments made and decided that, on balance, as there is little or no risk to frustrating parental preference and there are strong

indicators in assisting the school on its improvement journey if the PAN were to be set at 120, that I support this part of the proposed variation.

36. I now turn to the proposed removal of the selective stream. This would mean that no child would have to undertake a test to be admitted to the school. The admission arrangements are that the school is partially selective and so there is an upper limit of 60 on how many boys can be admitted based on the score that they have achieved in the test. In the past, boys may have undertaken the test from across a wide area in order to seek admission to the school. The local authority told me that “The school uses the Wandsworth Year 6 Test to prioritise applicants for its selective places, with applicants attaining the highest standardised scores given highest priority.”

37. The local authority explained that five schools in its area use the test in their admission arrangements for a variety of purposes. The local authority arranges the test and each of the five schools contribute to the costs; the contribution made by the school was £25,400 for admissions in 2021. I asked that the local authority explain the justification to remove the selective stream via a variation rather than consulting on arrangements for 2023. The local authority said that the test was redundant as all boys were admitted who wished to attend the school. The test was therefore not only a cost to the school, with no advantage, but also the taking of the test put additional and unnecessary pressure on the boys concerned and on staff in organising and facilitating the process.

38. I note that the tests for admission in 2022 have already taken place and that the local authority has forecast that fewer than 120 children will be admitted in 2022 so the oversubscription criteria, including the selective test, will not apply, even with the reduced PAN. At the meeting the local authority also explained that due to the financial pressure on the school the local authority had met all the costs for the tests for admissions in 2022. These two arguments to remove the selective places for 2022 are therefore redundant. The removal of the selective places is a significant step to take and I see no justification for a hasty decision on this via a variation as the tests have already been taken for admissions in 2022; removing or keeping the selective stream would not affect school, staff or potential students for 2022. The local authority could formally consult on removing the test for admissions in 2023 if it so wishes. I do not support the proposed variation that the selective stream is removed.

Consideration of the arrangements

39. The arrangements for the school as set out in this determination were determined on 25 February 2021. At that date the Code then in force provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). A new Code came into force on 1 September 2021 and that extended the level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in

state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the adjudicator and no reason for the school to send me its varied arrangements. I have made my determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements set out above.

40. Having considered the arrangements as a whole it appeared to me that the following matters may not conform with requirements of the Code and so I brought them to the attention of the local authority. These matters were (with the relevant paragraph of the Code in brackets):

- 40.1. Category 1 says, "Up to 60 places will be allocated by reference to general ability to those applicants with the highest scores in the Wandsworth Year 6 test." No further information was provided regarding the process. Paragraph 1.7 of the Code says, "All selective schools **must** publish the entry requirements for a selective place and the process for such selection." The process is not clear (14 and 1.7).
- 40.2. In the oversubscription criteria category 2, criterion (ii) is "Children with a professionally supported exceptional medical need or exceptional social need for a place at the College, as decided by the Director of Children's Services." This could imply that one person makes the decision to admit on the basis of the criterion or otherwise. This would not be compliant with paragraph 2.7 of the Code which says, "a decision to offer or refuse admission **must not** be made by one individual in an admission authority." The local authority explained that one person does not make the decision but this is not clear and so does not meet the requirements of the Code (14 and 2.7).
- 40.3. Paragraph 2.17 of the Code provides information on admission outside the normal year of entry and says, "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." There is information on admission outside of the normal age group but the process for requesting such an admission is not clear (14 and 2.17).
- 40.4. Paragraph 2.17 of the Code also describes the type of information which may be taken into account when a decision is made regarding the admission of a child out of the normal age group and includes, "where relevant, their medical history and the views of a medical professional." The arrangements repeat this and then say, "Each case should be supported by a letter from a professional (e.g. GP, Hospital Consultant, Social Worker) that provides the reasons for admission outside of the chronological year group." This could imply that this is a requirement for such a request when it may not be

appropriate in all circumstances. This makes the arrangements unclear (14 and 2.17).

41. The local authority has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. As the local authority has accepted that changes are required, I will not discuss them further other than to make clear that the Code requires that the arrangements be amended to address the points set out here.

Summary

42. I approve the part of the proposed variation that the PAN for the school is reduced for 2022 from the determined number of 180 to 120. The evidence leads me to believe that there would be sufficient places to meet demand, parental preference will not be frustrated and there could be benefits to the quality of education that the school is able to offer if it had more certainty over its future student numbers.

43. I do not approve the part of the proposed variation that the selective stream for 60 boys is removed as there is no evidence that this is justified for admissions in 2022.

44. I have made further findings in relation to other matters as described above.

Determination

45. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed reduction in the published admission number for 2022 determined by the London Borough of Wandsworth for Ernest Bevin College. By virtue of the same provision I do not approve the proposed removal of the selective stream of 60 places from the arrangements for 2022 determined by the London Borough of Wandsworth for Ernest Bevin College.

46. I determine that the published admission number for 2022 will be 120.

47. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

48. 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: 12 October 2021

Signed:

Schools adjudicator: Deborah Pritchard