



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2191

Admission authority: The governing board for St. Michael's Easthampstead Church of England Voluntary Aided Primary School, Bracknell Forest

Date of decision: 26 November 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for St. Michael's Easthampstead Church of England Voluntary Aided Primary School, Bracknell Forest, for September 2022.

I determine that the published admission number for admissions in September 2022 shall be 30.

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. The governing board for St. Michael's Easthampstead Church of England Voluntary Aided Primary School (the school) has referred a proposal for a variation to the admission arrangements for September 2022 (the arrangements) to the adjudicator. The school is a voluntary aided school for children aged 4 to 11 in Bracknell, within the Bracknell Forest local authority area, with a Church of England religious character.

2. The proposed variation is that the published admission number (PAN) be reduced from 35 to 30.

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 say (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.

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

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

5. In considering these matters 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 governing board dated 30 September 2021, supporting documents and further information provided at my request;
- b. the determined arrangements for 2022 and the proposed variation to those arrangements;
- c. comments on the proposed variation from the local authority;
- d. a map showing the location of the school and other relevant schools;
- e. a determination of the adjudicator in relation to the school dated 16 November 2020 (case reference VAR1463); and
- f. information available on the websites of the local authority, the school and the Department for Education.

The proposed variation

7. In the determined arrangements for admission to the school in September 2021, the PAN was set at 35, as it has been for several years. The governing board, which describes itself as “entirely new, having been replaced”, has requested that the PAN be reduced to 30 for admission in September 2022 for the following reason:

“the PAN exceeds the permitted infant class size of 30 children necessitating the employment of an additional teacher for key stage one and early years. However, falling applications and preferences mean that this creates an unnecessary financial burden on the school.”

8. 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

9. There are currently eight classes at the school. As shown in Table One below, four of these contain “infants”, that is, children in the reception year (YR), year one (Y1) and year two (Y2). The other four classes are for children in each of the year groups in key stage 2 (KS2), that is years three to six.

Table One: Arrangement of classes at the school

Class	Year R	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
Acorns	29							29
Willows		26						26
Maples		8	10					18
Cedars			25					25
Year 3				35				35
Year 4					35			35
Year 5						36		35
Year 6							35	35
Total	29	34	35	35	35	36	35	239

10. The new governing board says that it has “only just come to understand the issues surrounding a PAN of more than 30 in a primary school.” Some of these issues are apparent from the table. Regulations stipulate that classes containing infants must not exceed 30 pupils. With the current PAN of 35, it is therefore necessary to have four classes containing infants if YR, Y1 and Y2 are fully subscribed. In fact, for admission in September 2021, the school was undersubscribed. The 29 children admitted are all in one class (“Acorns”). There are 34 and 35 children in Y1 and Y2, respectively. These children are

accommodated in three classes, one of which (“Maples”), contains children from both Y1 and Y2. The classes in KS2 are larger than is normal in primary schools.

11. High-quality teaching and learning can, of course, be provided within an arrangement of this sort, but the requirement for one class to contain children from more than one year group and the large class sizes at KS2 may present particular challenges. The governing board aspires to having one class for each year group throughout the school. A PAN of 30 would make it possible, over time, to reduce the number of classes from eight to seven.

12. The governing board also emphasises what it describes as “the financial burden” created by the PAN of 35 that requires the employment of “an additional teacher.” I have been provided with details of the school’s current financial position. It is clear that the governing board faces a difficult challenge if it is to maintain a balanced budget in forthcoming years. Budget projections show that reducing the number of classes from eight to seven will make a significant contribution towards reducing potential deficits.

13. The governing board points out that the establishment of a seven class structure could be delayed by two years if the PAN is not reduced to 30 for admission in September 2022. Tables Two and Three illustrate why this is the case. Table Two shows how the number of infants would reduce if the PAN were reduced to 30 by way of variation for admission in September 2022. Table Three provides the same analysis in the event that the variation request were not approved and the governing board determined a PAN of 30 for admission in September 2023.

Table Two: Projection based on reduction of PAN to 30 for September 2022

	YR	Y1	Y2	Total
September 2022	30	29	34	93
September 2023	30	30	29	89

Table Three: Projection based on reduction of PAN to 30 for September 2023

	YR	Y1	Y2	Total
September 2022	35	29	34	98
September 2023	30	35	29	94
September 2024	30	30	35	95
September 2025	30	30	30	90

14. When completing Tables Two and Three, I made two assumptions, namely:

(a) in September 2022 and succeeding years, the school will admit up to its PAN;
and

(b) that the number of pupils currently in YR and Y1 (Y1 and Y2 in September 2022) will not change as a result of in-year admissions.

It is far from certain that these assumptions will prove to be correct. Nevertheless, I consider that it is not unreasonable for the governing board to be concerned that if the PAN were not reduced to 30 for admission in September 2022, it could be September 2025 before the number of infants at the school reduced to 90 or fewer and therefore could be accommodated in three, rather than four classes.

15. The local authority provided me with information about the availability of places in the planning area in which the school is located. This shows that two neighbouring primary schools (Great Hollands and Wildridings) are undersubscribed, significantly so in the case of Great Hollands. I am satisfied that any parents unable to obtain a place for their child at the school in September 2022, as a result of a reduction in its PAN, would not face an unreasonably long journey to an alternative school. The nearest Church of England school, Jennett's Park, is also projected to be undersubscribed. It is further afield, a little over two miles by road. I note, though, that of the 29 children admitted to St Michael's School in September 2021, only six met the requirements of the criteria relating to attendance at church.

16. The local authority made the following comment on the request for a variation:

“although an overall reduction in the PAN would be beneficial to the LA due to surplus places across the borough, we would have concerns over this being reduced as a variation of the PAN as opposed to a formal consultation. Whilst we understand the urgency for the school to request this for the 22-23 academic year, we would have concerns regarding parents lack of ability to respond to the proposal, which will then automatically follow on for future years without consultation. The Guide to Primary Education 2022 has a statutory date of publication on the LAs website, which was 12 September 2021. This has already been published as required by the School Admissions Code and parents would have started reading it. Should the variation be agreed, and depending on the timings of this, parents may have already started or even finished making their applications.”

17. The local authority makes an important point. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. 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 PAN reductions are made via the process of determination following consultation as the consultation process allows those with an interest to express their views. It also allows for objections to the adjudicator. None of this is afforded by the variation process.

18. However, the school's new governing board has identified the practical and budgetary challenges that result from the PAN of 35 and that the circumstances of the school are such that more significant financial difficulties will be encountered if a reduction does not take place for admission in September 2022. On balance, I consider that these circumstances justify the approval of the variation request and that a decision to reduce the

PAN should not be delayed until the annual process of consultation and determination of arrangements for admission in September 2023 takes place. In coming to this conclusion, I take into account the relative smallness of the requested reduction (five places), the fact that fewer than 30 places were allocated for admission in September 2021 and the availability of alternative places locally. There are still several weeks before the national closing date for primary admissions (15 January 2022), which will allow the variation to the PAN to be publicised by the school and the local authority.

19. I approve the proposed variation. The PAN for admission to the school in September 2022 shall be 30.

Consideration of the arrangements

20. 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 governing board. For the avoidance of doubt, the adjudicator made clear in the previous determination relating to the school (VAR1463) that the single matter of revisions necessary due to the Covid-19 pandemic was considered and that the arrangements as a whole were not scrutinised at that time. The matters I brought to the attention of the governing board were:

- The second oversubscription criterion gives priority to applicants who live within the Bracknell Forest Local Authority area and have attended an Anglican church in the parish of Easthampstead. This criterion appears to be in breach of section 86(2) and (8) of the Act. In this respect, the “Greenwich judgment” (R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469) held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated.
- Some references in the opening paragraphs of the arrangements are misleading or out of date, namely “rising five year old children” and the School Admissions Code 2014 (now replaced by the 2021 version).

21. The governing board has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. As the governing board 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.

Determination

22. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the

governing board for St. Michael's Easthampstead Church of England Voluntary Aided Primary School, Bracknell Forest, for September 2022.

23. I determine that the published admission number for admissions in September 2022 shall be 30.

24. 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.

25. 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: 26 November 2021

Signed:

Schools adjudicator: Peter Goringe