



Office of
the Schools
Adjudicator

Determination

Case reference: REF3889

Referrer: the governing board for Brunswick Primary School in Hove

Admission authority: Brighton and Hove City Council for Brunswick Primary School

Date of decision: 15 December 2021

Determination

I have considered the admission arrangements for September 2022 for Brunswick Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number, the arrangements do not conform with the requirements relating to admissions. I determine that the published admission number for 2022 will be 120.

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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements be revised by 15 January 2022.

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 Brunswick Primary School about the admission arrangements for September 2022 (the arrangements) for Brunswick Primary School (the school).
2. The referral relates to the published admission number (PAN) for the school's being set at 90 as opposed to 120 in previous years. The parties to the case are:
 - 2.1. The governing board for the school (the governing board); and

2.2. 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).

3. The governing board said in its referral that the reduction in PAN will have an adverse effect on parental preference which was not justified by the circumstances.

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the local authority, which is the admission authority for the school, on 11 January 2021. The governing board submitted an objection to these determined arrangements on 3 November 2021. The School Admissions Code (the Code) requires objections to admission arrangements for 2022 to be made to the adjudicator by 15 May 2021. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the Code.

6. The documents I have considered in reaching my decision include:

- a) the governing board's form of objection;
- b) 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) at which the arrangements were determined and the papers to inform this decision. Papers provided to the committee included a report on the background to the proposed reductions in PANs across eight primary schools. I will refer to this document as the January 2021 committee report;
- c) a report provided to the Children, Young People's and Skills Committee for its meeting on 23 November 2021. I will refer to this document as the November 2021 committee report;
- d) a copy of the determined arrangements; and
- e) comments from the local authority on the matters raised and further information provided at my request including data on admissions and forecasts of admissions; and
- f) a map showing the school and the schools in its vicinity.

Background

7. The local authority consulted to reduce the PAN for eight primary schools, including the school, for 2022. Following the consultation, the January 2021 committee report was provided to the local authority's Children, Young People & Skills Committee. That report recommended that the PANs for the eight primary schools should be reduced as proposed in the consultation and 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."

8. The local authority determined the arrangements as recommended which meant that there would be 240 fewer places in reception year (YR) available for admissions in 2022. Objections were made to the arrangements for four primary schools which included objections to the PAN set for each school and I considered the objections. The schools were (with the case references in brackets) Downs Infant School (ADA3758), Goldstone Primary School (ADA3765), Stanford Infant School (ADA3813, ADA3838 and ADA3879) and West Blatchington Primary School (ADA3814). The objections were made by the governing board concerned in each case with two parents also objecting to the PAN set for Stanford Infant School. Each case is considered on its merits and no case sets a precedent for another. I upheld the objections to the reductions in the PANs of three schools and did uphold the objection to the reduction in the PAN of West Blatchington Primary School. My decisions in these determinations meant the sum of the PANs for 2022 in the local authority area was reduced by 150 places rather than 240.

9. The governing board for the school also objected to the consultation held prior to the setting of the PAN. I will not be considering this matter because an adjudicator's jurisdiction under section 88I relates purely to the content of the arrangements and does not extend to the process which preceded the arrangements' being determined.

10. The governing board explained that there had been some changes in the leadership of the school and I understand that this is why the governing board had not made an objection by the 15 May 2021 deadline. The governing board suggested that if the adjudicator could not consider the objection to the arrangements for 2022, because the deadline had been missed, then the referral could be considered as an objection to the arrangements for 2023. It was not possible to consider this as an objection to the arrangements for 2023 as they have not yet been determined. Parents are making their applications for primary schools for September 2022 and the deadline is 15 January 2022. In these circumstances I decided to consider this matter as a referral of the admission arrangements for 2022 using my powers under section 88I(5) of the Act.

11. The arrangements for 2023 are not yet determined and are not within my jurisdiction and my only concern is for the arrangements for 2022. However, as part of the context the local authority brought to my attention its decision to consult on reducing the PANs of seven other primary schools for 2023, by a mix of reductions of 15 places at some schools and 30 at others. If the determined arrangements reflect those set out in the consultation this will lead to the removal of another 150 places (subject of course to any successful objections to the adjudicator). The Children and Young People's and Skills Committee of the local authority agreed to the consultation at its meeting on 8 November 2021 and had before it the November 2021 committee report. That report referred in turn to the Chief Adjudicator's report to the Secretary of State for Education for 2019/20 which, amongst other matters, had discussed PAN reductions being made by variations to determined admission arrangements rather than by consultation followed by determination of a reduced PAN. The November 2021 committee report said, "it is the clear expectation of the Schools Adjudicator that local authorities should instead be seeking to effect any proposed changes via the annual consultation route as where changes are made to arrangements by variation there is no requirement for consultation and no scope to object to the adjudicator. Moreover, while some bodies are required to be notified of variations, this does not include local parents." This is indeed the case.

12. The November 2021 report also said, "Last year, following the Children and Young People's committee's determination of admission arrangements, objections to the reduced PAN of three schools were successfully brought to the attention of the Schools Adjudicator. The decisions provided clarity that it is highly unlikely that the Adjudicator would uphold any arrangements determined by the Council which would result in the frustration of parental preference at schools which are currently oversubscribed. It is therefore not a realistic strategy for the council to look to the larger popular schools, which are oversubscribed or admit enough pupils to be close to their PAN as a way of reducing the number of surplus primary school places."

Consideration of Case

13. The governing board said that setting the PAN at 90, a reduction of 30 places from previous years, would have an adverse effect on parental preference. While the governing board agreed with the local authority's forecast that there would be a substantial reduction in the number of children across the city requiring a place in YR, it also argued that demand for places at the school has been sustained at a level consistent with a PAN of 120. The governing board therefore believed that if the PAN were to be 90 then around "15 to 30 families a year would not receive their first choice of school." I will consider the case made by the governing board in more detail below. First of all I will consider the background to the setting of the PAN taking into account of the information provided by the local authority.

14. The local authority said that "as a result of previous [adjudicator] decisions about our September 2022 admission arrangements and the declining number of pupils requiring school places we have put forward to public consultation proposals that reduce the PAN at schools that serve some of our more disadvantaged communities." Furthermore, the local

authority said that its analysis showed that “a number of schools will be left with low admission numbers which could lead to unsustainable futures for a number of schools.” I recognise that the local authority wishes to ensure that there are sufficient school places close to children’s homes and that it seeks to avoid the closure of any school in order to achieve this. The local authority area is a relatively small and densely populated predominantly urban area with 47 schools which admit children YR. Table 1 below shows the overall number of children in YR in previous years and future forecasts.

Table 1: the number of children in YR in the local authority area in previous years and forecasts of future need based on information provided December 2021

	2019	2020	2021	2022	2023	2024	2025
Sum of PANs	2940	2910	2820	2670	2670 ¹	2670 ¹	2670 ¹
Number of children allocated a place	2560	2538	2429				
Forecast demand for places				2237	2132	2080	1930
Number of vacant places	380	372	391				
Forecast number of vacant places				433	538	590	740
The number of vacant places as a percentage of the total number of places	13%	13%	14%	16%	20%	22%	28%

15. Table 1 shows a reduction in the number of children admitted between 2019 and 2021 of 131 but that the proportion of vacant places remained relatively stable at 13 or 14 per cent as the local authority has reduced the PANs of eight community schools since 2019. A further five primary schools, including the school, have had their PANs reduced for 2022. Both local authority reports describe the local authority’s efforts to persuade schools to agree to reduce their PANs so that all schools could thrive but that no more schools were willing to agree to do so. The sum of the PANs for the local authority area would remain at 2670 if no PAN were to be reduced. Table 1 shows that, given the continuing reduction in the need for places, the number and proportion of surplus places is forecast to increase, year on year.

16. 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 no further places were removed. The local authority does expect demand to increase. The January 2021 committee paper concluded that this would happen from around 2030. The factors driving the proposals to reduce the

¹ Assumes no change in sum of PANs from 2022

PANs described by the local authority in its January 2021 committee report following its consultation on reducing admission numbers for 2022 included the following:

- 16.1. If no more schools reduce their PANs, then the proportion of vacant places across the local authority area is forecast to increase to around 28 per cent by 2025 and no more schools wish to reduce their PANs.
- 16.2. The local authority is only the admission authority for community and voluntary controlled schools and so it is only these schools for which it can propose reductions in PANs.
- 16.3. If schools had inefficiently sized intakes this could create financial pressures on those schools which could lead to negative effects on standards.
- 16.4. In some cases low admission numbers could mean schools affected 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. Ensuring that there are primary schools within walking distance of most homes would help to meet the local authority's aim of becoming a carbon neutral city by 2030.
- 16.5. 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.
- 16.6. 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.

17. If I decide that the PAN for the school should be 120 as in previous years, then the sum of the PANs for 2022 would increase to 2700 and the number of vacant places forecast for 2022 would increase to 463. Forecasts of the number of children needing a place in YR are based on a number of factors, such as GP registrations, planned house building and previous patterns of demand. Accuracy is not easy and recently there have been other factors that have made it more challenging including the effect of the Covid-19 pandemic; more families may, for example, decide to home educate their children. The governing board, in its referral, cast doubt on the accuracy of the forecasts made by the local authority. The local authority provided previous forecasts and actual data outcomes and these showed that the local authority was very accurate much of the time when considering the numbers for the city as a whole. Of course, the governing board is more interested in the accuracy of forecasts of demand for places at the school rather than across the local authority area.

18. 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 both of the whole local authority area and planning areas which are groups of schools geographically located together. The local authority considers the existing number of places, demand for those places and forecasts future demand based on a range of data. Planning areas, while useful, are in part at least an administrative concept and may not always reflect patterns of demand. There are, for example, eight primary schools admitting children to YR in Central Hove, the planning area which includes the school (the planning area). However, I can see from the map provided to me by the local authority that there are several schools closer to the school than some of the schools in the planning area. I referred to the governing board's concerns about the local authority's forecasts above and I understand that this partly derives from the local authority's use of post code areas to determine planning areas.

19. Generally speaking, planning areas do not mean much to parents; family links, ease of access and their views on the ethos of the school and the quality of education it offers weigh much more heavily. Parents prefer or do not like schools for all sorts of reasons and it is hard to forecast how many may prefer any particular school, although previous trends give some indication. I therefore asked the local authority to provide me with data on admissions to all the schools within two miles of the school. I chose two miles as it seemed the maximum distance that a parent might choose to walk to school with a young child and it is also the maximum distance an infant can be expected to walk before school transport must be provided if no nearer school place is available. There are 19 schools admitting children to YR within two miles of the school of which six are in the planning area with two of the schools in the planning area being more than two miles away. These 19 schools include infant and primary schools. Some have a religious character, and some do not; some are community schools and some are voluntary aided or academy schools. The PANs for 2022 across these 19 schools vary from 30 to 120 and, in 2021, the number of children admitted varied from 19 to 119. Table 2 below summarises the data on these schools as a whole.

Table 2: summary of information on admissions to the schools within two miles of Brunswick Primary School (including the school)

	2019	2020	2021
Sum of PANs	1290	1290	1290
Number of children admitted	1207	1238	1184
Number of vacant places	83	62	106

20. Table 2 shows some fluctuation in the number of vacant places but an increase overall. The proportion of vacant places for these schools in 2021 was eight per cent which is lower than for the local authority area overall (14 per cent) and within the five to ten per cent sought by the local authority. I note that the local authority has agreed to consult on reducing the PAN of another community school within two miles of the school so that there would be, if the reduction were determined, 30 fewer places for 2023 than for 2021

(excluding any change to Brunswick Primary School). Table 3 provides a summary of data on the nine schools in the planning area.

Table 3: summary of information on admissions to the schools in the planning area

	2019	2020	2021
Sum of PANs	690	690	690
Number of children admitted	667	658	657
Number of vacant places	23	32	33

21. Table 3 shows a fairly steady demand for places in the planning area. I note that the 33 vacant places following admissions in 2021 amounts to less than five per cent of the total number of places and thus falls outside the five to ten per cent flexibility in vacant places that the local authority wishes to achieve. I recognise that the demand may be caused by children travelling to the schools in the planning area from outside of the planning area. However, table 2 and table 3 do not show a significant reducing demand for the schools within two miles of the school or its planning area even if there is reducing demand across the city.

22. I will now return to the governing board's argument for the PAN for the school being 120 rather than the 90 set by the local authority. The governing board acknowledges that the number of children seeking a place across the local authority area is reducing but argues, "the apparent aim of the PAN reduction across the City is to displace children to undersubscribed schools, in order to support their financial sustainability. This is evidenced by a number of currently undersubscribed schools being excluded from the proposal, although some have now had their PAN reduced for 2021 by necessity." The governing board argues that:

- a. The school continues to be popular with the number of first preferences over the PAN of 90 proposed. The governing board said that the reduction in PAN from 120 to 90 would mean that between 15 and 30 children would not be able to be admitted to their parents' first preference.
- b. Those 15 – 30 displaced by the reduction in PAN may gain places at other popular local schools which would have a knock-on effect by displacing other children, potentially out of what they would consider to be their community.
- c. Recent arrivals to the community, such as those who have migrated from other countries, are less likely to gain a place at the school as there are likely to be others with sibling links being given higher priority. The school is concerned by the effect on the diversity of the school if this were to occur, as well as expressing concern for those 'pushed out' because there were fewer places.
- d. The governing board lacks confidence in the forecasts of reducing numbers in its area because:

- i. In previous years the local authority has asked the school to have ‘bulge classes’ on two occasions “at relatively short notice” as there were insufficient places so the forecasts had been inaccurate.
 - ii. The same planning methodology is being used and the planning area is based on post codes and assumptions about where children seeking a place at the school live. Some parents who live locally and wish their child to attend the school live in other post codes. The governing board does not think that sufficient allowance has been made regarding housing developments in the area, particularly where families are living in flats.
- e. The case that schools are at risk if their numbers are less than 30 is flawed as schools are sustainable with intakes of fewer than 30. In addition, the governing board argues that any school that has its numbers reduced, even a large school, will have its economies of scale affected.

23. I will take the last point first. There are many schools across the country that thrive and provide good quality education with PANs that are under 30. I do not accept that every primary school must have a PAN of 30 or more in order to be financially viable. I do note that a school can find itself in financial difficulties if its numbers are very low. I also recognise that with a PAN or numbers of admissions below 30, a school admitting to YR may not be able to meet the requirements of the School Admissions (Infant Class Size) (England) Regulations 2012 (the infant class size regulations) without using mixed age teaching groups. This is because the infant class size regulations require that infant classes must not contain more than 30 pupils with a single qualified school teacher except in specific circumstances and if the number of YR children is low then it may not be possible, as schools are largely funded on the number of children, to have one class of only YR children as it would not be financially viable. It is not, however, necessary to have cohorts of multiples of 30 or nearly 30 to comply with the regulations.

24. I will now consider the matter of parental preference. Parents in the local authority area may state up to three preferences for schools and a first preference is the school that they most want their child to attend. Places will be offered to the highest preference that can be achieved. Table 3 provides information on applications and admissions to the school in recent years. I note that there were some differences in the data between that provided by the governing board and the local authority. I anticipate that the slight differences are based on differences between those admitted in September and the numbers at the school in October; similarly between on-time applications and all applications. The data below is based on that provided by the local authority on on-time applications and the number of children at the school at the time of the October census.

Table 3: applications and admissions to the school

	2019	2020	2021
School PAN	120	120	120
Number of first preferences	126	117	105

Number attending in October	117	114	111
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25. The number of first preferences for the school has declined slightly in three years but remains above the PAN set of 90. Similarly, the number of children admitted has reduced slightly but the 111 children admitted in 2021 are likely to lead to four classes of around 27 or 28. The PAN of 120 has been, the governing board said, “particularly well matched to the number of first-choice applications received.” I note that if the PAN has been set at 90 for 2021 that 15 parents would not have received their first preference for their child and others may not have received the highest preference that could be achieved.

26. The local authority has provided me with its forecasts for the number of children likely to be seeking a place in the planning area. The forecast is based on post codes and estimates the number of children eligible for a place in YR and then reduces that total by ten per cent, presumably reflecting previous patterns. Table 4 shows the forecasts for the planning area. I have provided two scenarios, one based on the PAN for the school as determined at 90 and one with the PAN at 120 as sought by the governing board.

Table 4: forecasts for demand for YR in the planning area

	2022	2023	2024
Sum of PANs (school PAN at 90)	660	660	660
Number of children forecast	600	572	554
Number of vacant places forecast	60	88	106
Sum of PANs (school PAN at 120)	690	690	690
Number of children forecast	600	572	554
Number of vacant places forecast	90	118	136

27. Table 4 shows a significant increase in the number and proportion of vacant places from 2022 and onwards. For example, if the PAN for the school were to be 120 in 2022 then on the basis of this forecast, then the proportion of vacant places in the planning area would be 13 per cent; this is nearer to the local authority’s average in previous years. However, it does not appear to me that these forecasts have made sufficient allowance for parental preference. It would require a jump from five per cent vacant places in 2021 to 13 per cent vacant places in 2022 for the forecast to be accurate. The data provided to me shows that the school, and other schools in its vicinity, are continuing to attract high numbers of children even as the overall number of children in the city reduces. I recognise that this may well result from attracting children from elsewhere who would otherwise attend other schools if the choice of the school were to be restricted by lowering the PAN.

28. I understand that the local authority’s case is that by reducing the PAN here, that other schools will benefit and that strategically this will assist the local authority in its overall aims. These are noted above and I recognise that the local authority has concerns that it is the disadvantaged communities that may suffer if all schools are not supported through managing the supply of places by reducing the PANs at schools such as this one, which is large and popular. However, the case for this has not been made sufficiently to justify

reducing the PAN for the school when it is likely that parental preference will be significantly frustrated by that action. It is therefore my judgement that the PAN for the school for 2022 should be 120.

29. I have considered what deadline I should give for making this change. The closing date for applications for admissions to primary schools in September 2022 is 15 January 2022 and so, for the avoidance of doubt and confusion, I determine that the arrangements must be revised by that date.

Summary of Findings

30. The local authority has forecast that the number of children requiring a school place in YR is reducing and wishes all schools to remain open. The local authority set the PAN for the school at 90, as opposed to 120 in previous years, so that more children would be admitted instead to other, less popular schools in order to achieve the local authority's strategic aim for all schools in all communities to remain open. This approach appears to be based on the view that every primary school needs year groups of at least 30 children to be viable. The local authority is trying to manage the supply of places so that this is achieved. The local authority has not provided convincing evidence that this is necessary in this case.

31. Reducing the PAN to 90 is likely to frustrate parental preference significantly as over 90 parents have put the school as their first preference in previous years and significantly more than 90 children have been admitted and so the school was the highest preference that could be achieved for them. I therefore determine that the PAN for the school should be 120 for admissions in 2022 and that the arrangements must be varied in order to give effect to this decision by 15 January 2022.

Determination

32. I have considered the admission arrangements for September 2022 for Brunswick Primary School in accordance with section 88(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number, the arrangements do not conform with the requirements relating to admissions. I determine that the published admission number for 2022 will be 120.

33. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements be revised by 15 January 2022.

Dated: 15 December

Signed:

Schools Adjudicator:

Deborah Pritchard