



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2212

Admission authority: Warwickshire County Council for Thorns Community Infant School in Kenilworth

Date of decision: 7 January 2022

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 Warwickshire County Council for Thorns Community Infant School for September 2021.

I determine that the published admission number will be 30.

The referral

1. Warwickshire County Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2021 (the arrangements) for Thorns Community Infant School (the school) to the adjudicator. The school is a community school for children aged four to seven in Kenilworth.
2. The proposed variation is that the published admission number (PAN) is reduced from 60 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 School Admissions Code (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. 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 Code.
6. The information I have considered in reaching my decision includes:
 - a. the referral from the local authority provided 2 December 2021, supporting documents and further information provided at my request;
 - b. the determined arrangements for 2021 and the proposed variation to those arrangements;
 - c. confirmation that the governing board for the school supports the proposed variation; and
 - d. information available on the websites of the local authority and the Department for Education (the DfE).

The proposed variation

7. The school has a PAN of 60. In 2019 and 2020, 60 children were admitted. Only 31 children were admitted in 2021, a reduction of nearly 50 per cent from previous years, which the local authority deems a major change in circumstances and which is the basis for the proposal that the PAN be reduced to 30 for 2021 only.
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 in 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. The PAN for 2022 has been set at 60 and the local authority is not consulting on reducing the PAN for 2023. The normal admission round for 2021 is complete. Because any change to the PAN for 2021 will not affect the already determined arrangements, including the PAN of 60 for 2022, and the local authority has not sought a variation to the 2022 arrangements, any decision I make will only affect the PAN for 2021 and no future years. To put this another way, if I agree the variation, the only effect of that reduction will be on those children who may seek a place in reception year (YR) during the academic year 2021/22, perhaps because they have moved into the area during the year. I will therefore only consider the implications for admissions in 2021/22 and no other year.

10. The local authority has a duty to make sure that there are sufficient school places for the children in its area. In order to carry out this duty the local authority considers the availability of places and the need for places in planning areas, planning areas are geographical groups of schools. The school is in the Kenilworth planning area (the planning area) together with seven other schools which admit children to YR. The school is an infant school and so children leave at the end of year two (Y2). There is an eighth school in the planning area, Park Hill Junior School (the junior school), which is the linked junior school for the school and admits children into year three (Y3) mainly from the school. Admissions to the junior school are not relevant in terms of demand for places in YR but the number of admissions to the school will, in due course, be likely to affect the number joining the junior school.

11. The local authority provided me with the number of admissions across the schools in the planning area in 2021 and this is shown in table 1 below. I note that there were 42 fewer children admitted to schools in the planning area in 2021 than in 2020.

Table 1: number of admissions in the planning area

	2021
Sum of the PANs of schools in the planning area	281
Number of children admitted in 2021	218
Number of vacant places	63

12. The number of vacant places is 63, which is 22 per cent of the total number of places and a very generous proportion. If I were to agree that the PAN for the school could be 30, then there would be over 30 vacant places in the local planning area (allowing that 31 children have been admitted to the school). Given that the sum of the PANs would reduce to 251, this would mean that there would be 13 per cent vacant places which remains a generous proportion.

13. The school is in a relatively urban area. The DfE website, 'Find and compare schools in England' shows that there are three other schools admitting children to YR within one

mile of the school and another three within two miles. The data provided to me by the local authority shows that some of these schools have vacant places in YR. Based on the information provided to me I am assured that, if I agreed to the PAN being 30, there would be sufficient places in the area if a child required a place in YR during 2021/22.

14. The local authority admitted 31 children to the school. 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. In this case there were no such circumstances and the school has established two classes accordingly. The two classes contain 15 and 16 children respectively. Schools are funded on the basis of pupil numbers, and this school will receive funding for 31 YR pupils but need to provide for two classes. This is likely to cost more than the funding it receives for its YR children. The local authority said, "This is financially very detrimental to the school." The governing board said. "If the variation is not agreed and the two separate classes had to continue to operate this would result in teaching assistant hours being reduced and support currently provided to SEND children could not be provided." I note that as an infant school, in which every year group is subject to the infant class size regulations, the school has less flexibility than schools providing for the whole primary age range where there can be more than 30 children with a single qualified teacher in the four older year groups.

15. The local authority said in its referral that if I agreed the variation so that the PAN is 30, "There will be no change unless, as is possible, one or more pupils choose to leave the Reception cohort this year. The proposed variation would allow governors to then reorganise to operate a single class of 30 in Reception with considerable financial benefits." I asked that the governing board provide further information on its class organisation and the implications of the variation being agreed or not. The governing board explained that Y1 and Y2 both contain 60 children and so there are two classes of 30 each. There is therefore no flexibility in terms of mixing year groups to accommodate even one child, given the need to meet the terms of the infant class size regulations.

16. The governing board further explained that "If the variation to the PAN is agreed we would stop admitting children to this cohort and move to a class of 30 children in Years 1 and 2 if/when a child moves school. Staff rationalisation is possible as we have one class teacher on a temporary contract which will not be renewed." This appears to assume that the PAN would in some way continue to apply to the cohort currently in YR as they move through the school into Y1 and then Y2. This is not the case. A PAN only applies to the normal year of entry, YR in this instance. Once the children in this year's YR move into Y1, the PAN will not apply to their class or classes. For all year groups that are not a normal year of entry the question of whether a child who applies is to be offered a place is governed by section 86 of the Act. That provides, so far as is relevant here, that a child need not be admitted where such an admission would cause prejudice to the provision of efficient education or the efficient use of resources. Subsection 4 of section 86 provides that

such prejudice may arise if the school had to take measures in order to comply with the infant class regulations. Clearly that would not be the case where there were two classes for a cohort and only 31 children between them. However, it might be the case if there were only one class and it contained 30 children. In these circumstances, subject to the parental right of appeal to an independent appeal panel, it is possible that the admission authority could refuse admission unless the child seeking admission were an excepted child for the purposes of the regulations.

17. Setting the PAN at 30 may help the governing board manage the school's financial situation better but, as I have noted above, there is no guarantee of this as no child may leave the school and children may join the school while two classes are established and it would be hard to justify refusing admission even if the PAN which had applied for admission in 2021 were to be 30. Therefore, setting the PAN at 30 may only have the hoped for effect on the school's financial health in certain circumstances.

18. The proposed variation is only for 2021 and no future years. If I agree to the variation, as normal admissions for 2021 have already taken place, then there is minimal risk of frustrating parental preference. If any more children require a place in YR for 2021 then there are sufficient vacant places in the vicinity of the school to meet any likely need. I approve the proposed variation as, on balance, it is justified by the change in circumstances.

Determination

19. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Warwickshire County Council for Thorns Community Infant School for September 2021.

20. I determine that the published admission number will be 30.

Dated: 7 January 2022

Signed:

Schools adjudicator: Deborah Pritchard