



Office of
the Schools
Adjudicator

Determination

Case references: VAR2231 and VAR2232

Admission authority: Essex County Council for St Michael's Primary School, Colchester

Date of decision: 29 March 2022

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variations to the admission arrangements determined by Essex County Council for St Michael's Primary School for September 2021 and September 2022.

I determine that the published admission number for 2021 and for 2022 will be 30.

The referral

1. Essex County Council, the local authority (the LA) for St Michael's Primary School (the school) has referred a proposal for a variation (VAR2231) to the admission arrangements for September 2021 (the 2021 arrangements) and a variation (VAR2232) to the admission arrangements for September 2022 (the 2022 arrangements) for the school to the adjudicator. The school is a community school for children aged 3 to 11 (the school has a nursery) in Colchester.
2. The proposed variation for 2021 is a reduction in the determined and published pupil admission number (PAN) for 2021 (and so for the remainder of this academic year) from 60 to 30. The proposed variation for 2022 is a reduction in the determined and published pupil admission number (PAN) for 2022 from 60 to 30.

Jurisdiction and procedure

3. The referrals were 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 LA has provided me with confirmation that the appropriate bodies have been notified. I have seen confirmation that the school’s governing board have been consulted on the proposed variation. I find that the appropriate procedures were followed, and I am satisfied that the proposed variations are 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 to 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 Code.
6. The information I have considered in reaching my decision includes:
 - a. the referrals from the local authority, received on 23 February 2022, supporting documents and further information provided at my request;
 - b. the determined arrangements for 2021 and 2022 and the proposed variations to those arrangements;
 - c. comments on the proposed variations from the school.

The proposed 2021 variation

7. The proposed variation is a reduction in the determined and published pupil admission number (PAN) from 60 to 30.
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. The PAN for September 2021 was determined by the LA on 24 February 2020. The LA have explained the major change of circumstances as follows (the paragraph numbers are mine):
 - 9.1. “The major change of circumstance is the decline in the need for school places in this part of Colchester.
 - 9.2. The school was enlarged from 1FE to 2FE capacity in 2018 as part of an LA strategy to cater for projected increases in pupil numbers across the planning group.
 - 9.3. Since then it has become clear that forecasts had over-estimated the number of places required. Cohort sizes peaked in 2018 and have since been reducing, which had not been expected when it was agreed to expand schools in the area.
 - 9.4. This created a much higher number of surplus places in the area than was expected. To help rebalance supply and demand of places the LA has determined a reduced PAN of 30 at St Michael’s for 2023 and is requesting simultaneously with this application an in-year variation to reduce the PAN to 30 for 2022.
 - 9.5. Alongside the reduction in the size of Reception intakes there has been a decline in cohort sizes as they move through the primary age range. This is a trend that had not been anticipated when school expansion plans were agreed.”
10. I accept that there has been a major change of circumstances as set out by the LA.
11. 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 that 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. Consequently, I need to be satisfied that a variation is justified and will not have a disproportionate adverse impact on the availability of places in the local area nor on parental preference.
12. The LA sets out the problems it foresees as follows (again the paragraph numbers are mine):
 - 12.1 “St Michael’s Primary School operates with a PAN of 60 and organises its reception intake and higher year groups in two classes. The school’s staffing policy is predicted on year groups being close to capacity.
 - 12.2 The school has requested an in-year variation because the senior leadership team does not think it will be financially sustainable for the school to continue

with a PAN of 60 while there are not the pupil numbers to fill classes, in the light of an excess of places in the area. The local authority agrees that for the 2021 reception intake, given the number of children in the cohort, this is a very strong possibility.

- 12.3 39 places were allocated at St Michael's for entry in September 2021. The school therefore organised staffing for two classes in the year group to cater for this level of need. However, by the time of the October 2021 census this number had reduced to 30.
- 12.4 This reduction mirrors the situation in the planning group as a whole. 572 places were offered for September 2021. By the time of the October 2021 census this had reduced to 549.
- 12.5 There is a high level of pupil turbulence across the planning group. For example, there were 224 leavers as against 209 joiners between October 2020 and May 2021 across all primary age groups. The total number of children in the schools at this time was just under 4,000 so this equates to around a 5% change in the pupil population over a seven-month period.
- 12.6 If these trends continue it seems unlikely that the level of need across the group will increase substantially. However, the turbulence in the area means that pupil numbers at schools can change over time. St Michael's presently has 32 pupils on roll in reception with some applications pending.
- 12.7 Because of the changes in circumstance since the reception year PAN was set it is extremely difficult for the school to plan its staffing structure for 2022/23. If the PAN for the year group were to be reduced to 30 the school would plan to operate with one class for future years, given that the turbulence in the area is likely to reduce the number of pupils in the year group down to 30 over time.
- 12.8 There are significant numbers of spare places available at schools within walking distance of St Michael's so there would be alternatives if parents could not be offered a place at St Michel's due to the proposed reduction in PAN."

13 The PAN and number on roll (NOR) or, for 2021, the allocations, for the schools within the same LA planning area as the school are:

2019 PANs and Admissions

	PAN	NOR Oct-2019
Cherry Tree Academy	30	20
Kendall CE P, Colchester	30	29
King's Ford I & N, Colchester	60	41
Monkwick I & N, Colchester	90	65
Montgomery I & N, Colchester	90	86
Old Heath Cmty P, Colchester	30	30

	PAN	NOR Oct-2019
St George's I & N, Colchester	90	84
St James' CE P, Colchester	60	56
St John's Green P, Colchester	90	90
St Michael's P & N, Colchester	60	45
St Thomas More's Cath P	30	30
	660	576

2020 PANs and Admissions

	PAN	NOR Oct-2020
Cherry Tree Academy	30	23
Kendall CE P, Colchester	30	30
King's Ford I & N, Colchester	60	57
Monkwick I & N, Colchester	90	48
Montgomery I & N, Colchester	90	89
Old Heath Cmty P, Colchester	30	29
St George's I & N, Colchester	90	78
St James' CE P, Colchester	60	58
St John's Green P, Colchester	90	86
St Michael's P & N, Colchester	60	27
St Thomas More's Cath P	30	29
	660	554

2021 PANs and Allocations

	PAN	Allocation Sept 2021
Cherry Tree Academy	30	14
Kendall CE P, Colchester	30	30
King's Ford I & N, Colchester	60	53
Monkwick I & N, Colchester	60	59
Montgomery I & N, Colchester	90	90
Old Heath Cmty P, Colchester	30	30
St George's I & N, Colchester	90	77
St James' CE P, Colchester	60	60
St John's Green P, Colchester	90	90
St Michael's P & N, Colchester	60	39
St Thomas More's Cath P	30	30
	630	572 *

(*Reduced to 549 by October 2021 census)

14 The forecast total admissions to the schools in the planning area are 528 for 2022 and 542 for 2023. I note that if this variation is granted for the school, and the PAN is not increased for 2023 (the LA has determined a PAN of 30 for 2023), then the overall PAN for the group will be 600.

15 I am satisfied that overall demand for places at the school has fallen, although I note an increase for 2021 at the allocations stage across the wider planning area, with six schools admitting up to PAN. However, by the October 2021 census the number of pupils in Reception across the schools had fallen to below the 2020 level. In 2019 the school admitted 45 pupils (15 below PAN), in 2020 it admitted 27 pupils (33 below PAN below PAN), and in 2021 only 39 pupils were allocated places but by the October census the number on roll had fallen to 30. Since then, three more pupils have joined the Reception class.

16 The current number of pupils on roll in Reception is 33, which exceeds the infant class size limit of 30. The school are currently managing the situation by combining the Reception class with the nursery children. There are 20 children in the nursery who attend only in the morning. Consequently, there are two qualified teachers for 53 children in the morning and two qualified teachers for 33 children in the afternoon.

17 It follows that in theory the school could accommodate a further seven children in the combined nursery and Reception classes. However, the PAN for 2023 has been determined as 30 and I have determined that the PAN for 2022 will be 30.

18 The law states that for the whole of the Reception Year prejudice is deemed not to arise if the numbers are below PAN. The effect of this is that if the PAN remains at 60 any in year applications for Reception Year will have to be admitted. Consequently, there is a possibility that further pupils may have to be admitted in year, taking the class size further above the infant class size limit of 30, or maintaining the numbers above 30 even though some children leave before the start of the next academic year. The school has a high turnover of pupils. It is located near to military accommodation and so families are regularly posted in and out of the area. If the PAN is set at 30 my understanding is that is likely that number will reduce to 30 or below by the start of the next academic year. This would make it easier for the school to plan classes and staff for what will then be Year 1. A reduction of PAN for 2021 would be consistent with the PAN for 2022 and for 2023 and I accept that this would help the school to plan and budget appropriately for coming years.

19 I am satisfied that there has been an overall surplus of places in the local planning area and that this is likely to continue to be the case in future years. I am also satisfied that the headteacher and governing board of the school support the application for a variation.

20 Consequently, on balance I agree with the requested variation and determine that the PAN for school for 2021 will be 30.

The proposed 2022 variation

21 The proposed variation is a reduction in the determined and published pupil admission number (PAN) from 60 to 30.

22 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

23 The PAN for September 2022 was determined by the LA on 5 February 2021. The LA have explained the major change of circumstances as follows (again the paragraph numbers are mine):

- 23.1 “The major change of circumstance was the global pandemic. The process for consulting on and determining admission arrangements for 2022 took place in the autumn and winter of 2020/2021 when it was not clear if or how the pandemic would affect demographic patterns.
- 23.2 Pupil number forecasts from summer 2020 suggested that there would be substantial numbers of spare places in this school place planning group. Under normal circumstances discussions would have taken place with schools about reducing admission numbers to better reflect the predicted demand.
- 23.3 In autumn 2020 there was a strong view was that there could be an “exodus of people from Britain’s cities” and an “escape to the country”, including Essex. This view was supported by research from the Royal Institute of Chartered Surveyors which suggested (September 2020) that there was “a strong upturn in activity across the (housing) market, as indicators on enquiries, agreed sales and new listings all remain strongly positive”. The research also said, “sales continue to rise across all parts of the UK, led by exceptionally strong growth in East Anglia”.
- 23.4 House building continued strongly during this period in Colchester supporting the view that there could be an upswing in families moving into the area and a corresponding increase over previously predicted admissions to schools.
- 23.5 Given these circumstances it seemed unwise to reduce PANs without concrete evidence either of previously un-forecast population changes or a continuation of previous trends.
- 23.6 Since February 2021 we have had updated school census information, updated GP registration data and new forecasts based on these data which suggest that there will still be substantial surpluses in the area. We can now be more confident of these projections than was the case in autumn 2020/2021.”

24 I accept that there has been a major change of circumstances as set out by the LA.

25 The LA sets out the problems it foresees as follows (again the paragraph numbers are mine):

- 25.1 “St Michael’s Primary School operates with a PAN of 60 and organises its reception intake in two classes. The school’s staffing policy is predicted on year groups being close to capacity.

25.2 The school has requested the in-year variation because the senior leadership team does not think it will be financially sustainable for the school to continue with a PAN of 60 while there are not the pupil numbers to fill two classes, in the light of an excess of places in the area. The local authority agrees that in 2022, given the number of children in the admission cohort, this is a very strong possibility.

25.3 Pupil number forecasts for admission in 2022 are at a very similar level to admissions in 2021. The school received 21 first preferences for admission in 2021, 19 first preferences in 2020 and 29 first preferences in 2019. For admission in 2022 the school has received 28 first preferences (at closing date for applications). The local authority therefore considers that if the PAN were to be reduced to 30 it is very unlikely that parents would be denied their school preference, or that children would be denied a place at their local school."

26 The PAN and number on roll (NOR) or, for 2022, the allocations, for the schools within the same LA planning area as the school are set out above. For 2022, as of the closing date for applications, the school had 28 first preferences for admission in September 2022. More pupils may be allocated places if they put the school as a lower preference and their higher preferences could not be met. There also may be in year applications later in the 2022/23 academic year. These factors would potentially take the numbers entering Reception Year in September 2022 above the infant class size limit of 30 children with a single qualified teacher and require it to run two classes.

27 I am satisfied that there are sufficient places available at nearby schools within the planning area to accommodate any pupils displaced as a result of a variation to reduce the school's PAN for 2022.

28 Consequently, on balance I agree with the requested variation and determine that the PAN for school for 2022 will be 30.

Consideration of the arrangements

29 I recently considered a similar application for a variation reducing the PAN of another school maintained by the same LA (VAR2221). In that determination I found that a number of matters within the admission arrangements did not comply with the requirements of the Code. Those aspects of the admission arrangements are generic to all primary schools for which the LA is the admission authority. As a result of those findings the LA has helpfully amended its admission arrangements for September 2022. However, the amended version relating to the provisions for establishing home address by reference to child benefit remain, in my view, unclear. The LA has agreed to reconsider this wording and to further amend it to give sufficient clarity. In the circumstances I need not make any formal finding on that point.

30 The relevant provisions admission arrangements for 2021 are worded in the same way as the original 2022 arrangements with which I found fault. The LA has agreed to ensure that

the 2021 admission arrangements are amended in line with the 2022 arrangements and again I make no formal findings on this point.

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variations to the admission arrangements determined by Essex County Council for St Michael's Primary School for September 2021 and September 2022.

I determine that the PAN for 2021 and for 2022 will be 30.

Dated: 29 March 2022

Signed:

Schools adjudicator: Tom Brooke