



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2236

Admission authority: Hertfordshire County Council for Icknield Infant and Nursery School, Letchworth Garden City

Date of decision: 1 August 2022

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Hertfordshire County Council for Icknield Infant and Nursery School for September 2023.

The referral

1. Hertfordshire County Council (the local authority, the LA) has referred a proposal for a variation to the admission arrangements for September 2023 for Icknield Infant and Nursery School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 3 to 11 in Letchworth Garden City, Hertfordshire, for which the LA is the admission authority.
2. The proposed variation is that the PAN of 90 be reduced to 60.

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 Schools 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, 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 and I have seen confirmation that the school’s governing board have also been notified. I find that the appropriate procedures were followed, and I am 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 include:
 - a. the referral from the local authority dated 11 March 2022 and supporting documents, together with the contents of subsequent correspondence;
 - b. the determined arrangements for 2023 and the proposed variation to those arrangements;
 - c. evidence that the governing board for the school has been consulted;
 - d. a map showing the location of the school and other relevant schools;
 - e. a copy of the letter notifying the appropriate bodies about the proposed variation; and
 - f. confirmation that no comments were received on the proposed variation from the appropriate bodies.

The proposed variation

7. Icknield Infant and Nursery School is located in central Letchworth. The Letchworth Central planning area which the local authority operates contains two other schools which offer places in Year R, providing a total of 180 Reception places based on the PANs which have been determined for admissions to the three schools in 2023. The local authority has told me that “...when planning for school places the three primary planning areas; Letchworth North, Letchworth South and Letchworth Central are usually considered together to plan for school places across the town of Letchworth Garden City, with all schools offering a total of 390 reception places.”

8. When it set out its reasons for wishing to vary the arrangements, the LA had requested that the arrangements for 2022 also be varied, by reducing the determined PAN

from 90 to 60. This request was subsequently withdrawn, as I shall explain below, but the LA has continued to seek a variation to the 2023 arrangements.

9. The broad background to the request for this variation is the recent undersubscription of Year R at the school, which the LA has described in terms of there currently being a total of 75 surplus places at the school across Reception, Year 1 and Year 2. It is of course not the case that the Year R PAN can be applied to a consideration of how many children might be admitted to Year 1 or Year 2 in this way, since it is not the Year R PAN but rather the issue of whether admissions would prejudice the provision of efficient education or the efficient use of resources, that would regulate them. Nevertheless, the LA has stated its view that the existence of these “surplus places” presents the school with management problems, both because of the need to cope with a significant number of in-year admissions, and because infant class size regulations mean that it must employ three teachers for each year group, the funding for which is not generated by the number of pupils on roll.

10. The LA has told me that there is a history of the other schools in Letchworth also not being filled to capacity and that the change in circumstances which has taken place since the arrangements were determined is that proposed housing developments in the centre of Letchworth Garden City and on the northern edge of the town have been delayed, meaning that projected falling rolls in the town will not be reversed as had been anticipated. In addition, it says data gathered in October 2021 from GPs on the number of children in forthcoming age groups shows a significant decline in future years. Its view is therefore that it is now appropriate to reduce the number of forms of entry which are available in Letchworth and that doing so at the school will have the benefit of helping it “in managing numbers and class organisation over the coming years as well as ensuring more financial security”. Again, I shall consider this in more detail below.

11. Paragraph 3.6 of the Code requires that admission arrangements, once determined, may only be changed, that is 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 the proposed variation

12. I set out below my views concerning what I believe are the four key factors that have a bearing on my decision as to whether the requested variation should be approved. These factors are related, and I must come to a view as to whether the change in circumstances justifies the particular variation which the local authority is requesting – that is to say, the removal of one of the three forms of entry at Icknield Nursery and Infant School from September 2023.

(i) The need for places

13. The local authority's request relies heavily on the forecast of the demand for places in reception classes in Letchworth made in the summer of 2021, which it said is now lower than the forecast made the previous year, because of the factors referred to above. The figures given to me in the table below show the 2021 forecast of the number of Year R places needed against the existing total PAN, for Letchworth as a whole and for each of the three planning areas which make up the total.

	Sum of school YR PANs	2022/3	2023/4	2024/5	2025/6
Letchworth North	90	77	85	78	81
Letchworth Central	180	140	157	129	142
Letchworth South	120	105	93	96	97
Letchworth total	390	322	335	303	320

14. Translated into a predicted shortfall in demand compared to the total PANs which have currently been determined by the different admission authorities, and expressing this as a percentage, these figures are:

	2022/3	2023/4	2024/5	2025/6
Letchworth North	13 (14.4%)	5 (5.5%)	12 (13.3%)	9 (10.0%)
Letchworth Central	40 (22.2%)	23 (12.7%)	51 (28.3%)	38 (21.1%)
Letchworth South	15 (12.5%)	27 (22.5%)	24 (20.0%)	23 (19.1%)
Letchworth total	68 (17.4%)	55 (14.1%)	87 (22.3%)	70 (17.9%)

15. It can be seen that the local authority's projections show a greater need for Reception places in 2023 than in 2022, with a decline in demand thereafter. It can also be seen that the projected pattern of vacant Year R places is spread across Letchworth as a whole and not confined to the Letchworth Central planning area. Broadly speaking, there are projected to be proportionately fewer vacancies in Letchworth North, with the majority of vacancies (as a proportion of available places) roughly equally spread between the other two planning areas.

16. At the time that the request for the variation was made in March 2022, allocations of places in Year R for September 2022 were not known. However, more information is now available, including the figures on national allocation day, 19 April 2022, which were:

	Allocations	PANs	Vacancies on National offer day (2021 forecast of vacancies)
Icknield Infant and Nursery School	75	90	15
Other schools in Letchworth Central	90	90	Nil (40 forecast for Letchworth Central)
Schools in Letchworth North	70	90	20 (13 forecast)
Schools in Letchworth South	106	120	14 (15 forecast)
Letchworth total	341		49 (68 forecast)

17. The two other schools in the Letchworth Central planning area which have Year R intakes have been effectively fully subscribed in recent years, which means that variations in the projected need for such places in that locality are particularly relevant to Icknield Infant and Nursery School, since it is there that the effect of changes to these figures will be felt. The figures given to me by the local authority did not include a projected Year R intake for the school – only for the three schools combined. But the figures for the 2022 intake mean that as many as 25 more children (the number by which the expected total unused places in Letchworth North is lower than in the 2021 forecast) have been allocated a place there than had been expected. As a result, the local authority has withdrawn its request that

the PAN for September 2022 be varied from 90 to 60, but has continued with this request that the same variation be made for admissions in September 2023. On seeing the September 2022 allocations and the changed view of the local authority with respect to the PAN for September 2022, I sought its reaction to the apparent increase in demand for Reception places in Letchworth Central as this might affect its requested variation for September 2023.

18. It can be seen from the last table above that there were 49 Year R vacant places in the town as a whole in September 2022 compared with the number of 68 which had been forecast. The local authority did not have a specific explanation for the increase in the number of parents seeking Year R places in Letchworth this summer, and did not address the fact that this figure is made up of an increase of 25 children in Letchworth Central and a decrease for the rest of Letchworth of 6 children compared with the forecasts. It simply said that “Fluctuations in demand happen for a variety of reasons including changes in the underlying population and parental preference” and went on to say that in view of the fact that “the data of actual 0-4 year olds in the Letchworth Central PPA registered with GPs indicates a declining population and therefore the County Council is keen to reduce the PAN at Icknield in order to protect its ability to operate and organise to ensure continued effective teaching and learning for its pupils.”

19. The data which the local authority has shared with me shows GP registrations of children for Letchworth as a whole, which when translated into the year of entry in Year R for these children, is as follows:

Year of entry into Reception	2021/22	2022/23	2023/24	2024/25	2025/26
Total Year R places = 390	430	381	381	364	340

These figures do show a decline, but not between those underpinning Year R admissions in 2022 and those in 2023, as can be seen. This is in line with the forecasts which I have referred to above which show an increase in the demand for Year R places between 2022 and 2023 (that is to say, not a decline at this point), both in Letchworth Central and in Letchworth as a whole.

20. I shall consider what the local authority has said to me about the organisation and management of Icknield Infant and Nursery School below, but considering the information which I have about the projected need for Year R places on its own, I am not convinced that these support the removal of 30 Reception places from Letchworth Central in 2023, and of course the question of whether there is a justification for removing them all from one school, Icknield Infant and Nursery School, remains an associated issue.

21. The reasons that I have these doubts are the following. First, the figures of projected need above are those which the local authority has told me it now considers relevant. These are lower than previous predictions because of the change in circumstances which it has identified, and prior to this change it had not considered it appropriate to remove Year R places. However, it has told me that the anticipated adoption of the local plan that will result in housing development has been delayed from 2021 “until some time in 2022”, which I take to mean that the resultant effect on the need for pupil places is not likely to be long delayed. Although I have no clear information on this, I can only assume that this may be for no more than a year, given what the LA has said. If so, this would call into question the wisdom of removing places at all at this point, particularly as the recent history (to which I refer below) show a relatively tight fit between supply and demand of Year R places in Letchworth. It is also the case that the GP data does not show a decrease in demand between 2022 and 2023.

22. Second, the present forecast (without the anticipated development) shows that the vacant Year R places are spread across the town and not confined to a specific area or to one school, and third, the most recent information appears to suggest very strongly that the need for places in Letchworth as a whole and Letchworth Central in particular may be higher than these forecasts, and that more than 60 places are likely to be needed at Icknield Infant and Nursery School in September 2023. The LA forecast a need for 140 Year R places in Letchworth Central in 2022, and the number of allocations was 165. The forecast for 2023 is 157, which alone would provide Icknield Infant and Nursery School with 67 admissions (since the two other schools which have a combined PAN of 90 can be assumed to fill these places, as they have done historically), without taking the recent unexpected rise in demand into account.

23. The local authority has in fact never suggested to me that the need for places at the school would be limited to the 60 places it wishes now to provide in 2023, but it couched its request in the following terms, referring to figures which it has given to me of the actual number of Year R admissions in the years 2018/19 to 2021/22:

“Historically, the schools in the town have not been full to PAN and, on analysis of previous pupil numbers at Reception in two out of the last four years, a reduction of the PAN at Icknield Infants to 60 would not have resulted in a deficit of places against actual demand across the town of Letchworth Garden City and HCC would have been able to meet its commitment to allocate a primary school place to all local children. For the remaining two years, in one year there would have been a small deficit of places (around 0.5fe), and in the remaining year there would have been a very close match between demand and places available. Icknield Infant and Nursery School would not have faced the level of financial uncertainty and could have planned more strategically with fewer vacancies.”

24. In other words, it is plain from the LA’s own argument as well as from the figures I have set out above, that both the background of a relatively small level of over-provision and the change in circumstances which the local authority has identified have to do with the town as a whole and not with the school alone. Nevertheless, the LA is seeking to address

these only in terms of a change to the PAN at the school. I have said that I am not convinced that it is appropriate to remove the number of places across the town that the variation would achieve, and I am even less certain that this should be by removing a form of entry at the school. However, assuming it still to be necessary, it is clearly the case that the effect of the identified change in circumstances could have been mitigated in other ways than that proposed by the local authority (which is the admission authority for other schools in the town which admit children to Year R, one of which also has significant Year R vacancies for September 2022). Nevertheless, the local authority has asked to vary the arrangements of the school and for me to take into account its view that the requested variation would be justified because of the beneficial effect which it says this would have for Icknield Infant and Nursery School.

(ii) The management of the school and its financial position

25. The local authority has explained that the school was operating below capacity in all age groups in September 2021, with 75 “unfilled places”, as I referred to above, on the assumption that 90 places are available in each year (based on the Year R PAN). Because of these vacant places, the local authority told me, the school does not have enough pupils to fund the staffing necessary for 3 classes in each year, and is currently running an in-year deficit which is being met from its accumulated historic underspend. It provided me with projected budget summaries for the school showing, first, its “base” financial position with three forms of entry, second its financial position retaining three forms in each year but with recent staffing adjustments factored in, and third its projections based on there being two forms of entry going forward. This last projection, as provided to me, assumed that the change to two forms of entry would have begun in September 2022, in line with the originally requested variation.

26. An assumption made in the final budget projection referred to above was that, on moving to two forms of entry, there would be 60 children taught in two staffed classes in the year groups that then moved through the school. In other words, the LA accepts that the school would probably be oversubscribed with children seeking places in the relevant years (otherwise, not all the places could be guaranteed to be filled), and this has already been proved to be the case for 2022. Even if what was created resulted in what could be seen as an ideal position for the school (although I shall question this assumption below), the same may well not be the case for those affected by the change, particularly for any children who might not be able to access a place at the school. The local authority told me that:

“Reducing the school’s PAN enables the school to manage its staffing and classroom structure and stabilise its finances. It is essential that the school can accurately assess future pupil numbers, and therefore successfully forecast its budget and financial situation, and provide a full and balanced education for all its pupils.”

27. I have been provided with no explanation as to why this school in particular should be so favoured. It is, in my understanding, never “essential” for a school to be in such a position. Rather, schools must manage the uncertainties that circumstances provide for

them, and still “provide a full and balanced education”, not just for the number of children they would like to have, but for the number of children which the local population needs the school to admit. I shall return to this point, as it applies to Icknield Infant and Nursery School, below.

28. As far as the budget projections which I have been given are concerned, although the third variant clearly results over time in there being a healthy in-year budget surplus, the second also returns the school to a position where its cumulative surplus is growing by 2023/24. The local authority has helpfully provided me with the detailed staffing and budgetary underpinnings of these figures, which as far as I can see do support the summary positions I have just referred to. It therefore seems clear to me that, while the school may prefer the greater security and stability of having two, filled, forms of entry going forward, it is in fact currently in any case not at risk of going into an overall deficit, thanks to the management action which it has already taken.

29. The local authority made a further point in support of its view that the removal of a form of entry at the school would benefit it. It told me that, as a result of currently having unfilled places, the school has had a large number of in-year admissions (14 in each of the last three years) and has been “required to admit pupils under the Fair Access Protocol and children with special needs, some with EHCP’s (sic) and some awaiting EHCP’s (sic), changing school mid-year. This has a direct impact on staffing and one-to-one support required to enable these new pupils to succeed. In the past two years, the school has needed to employ staff on temporary contracts because of uncertainty about pupil numbers and future finances.”

30. I can only take from this statement that the LA regards these as detrimental matters, whereas it seems to me that the school has been able to make provision for a range of children in need of school places and to manage the associated difficulties that come with this part of a school’s role. Further, it would appear that the local authority believes that reducing the PAN so that classes are full would mean that these matters would no longer be relevant. However, that would not necessarily be the case.

31. Paragraph 1.4 of the Code says:

“The PAN only applies to the relevant age group. This means that admission authorities may not refuse admission to other age groups on the grounds that they have already reached their PAN. They may, however, refuse admission where the admission of another child would prejudice the provision of efficient education or efficient use of resources.”

As the local authority itself said to me, “Icknield Infant and Nursery School has the capacity and the resources to accommodate 90 children in every year group”. In-year access to places at the school would therefore in all likelihood not be ended by making it a two-form entry school which fills both in Year R, as the local authority seems to think, or that it would be able to “cap” the year group which entered Year R in September 2021 at its present level of 62 if the variation is approved, as it has told me it would “seek” to do. Many of the

children referred to in the LA's statement would be "excepted pupils" under the School Admissions (Infant Class Sizes) (England) Regulations 2012, and so the school would not be required to form an additional class were they admitted, as they could be.

32. When asked how the proposed variation will address the problems arising from the change of circumstances, the local authority said:

"Reducing the PAN would allow senior leaders and governors to establish a budget which is predicated on a realistic and accurate figure for income/pupil intake, so that funds can be accurately and precisely targeted to maximise the quality of education at the school."

I have noted that the school was judged to be "good" at its last Ofsted inspection (in 2017) and have been given no indication by the local authority that standards there are at risk. So I see no evidence that it is in need of the kind of special protection implied by the local authority's statement.

(iii) The effect on local children

33. I have already referred to the fact that the local authority's own forecast of the need for Year R places for Letchworth as a whole and for Letchworth Central both show an increase demand in 2023 compared to 2022, and that the GP data relied upon by the local authority also shows no decline between these two years. The LA did not provide me with any insight into the increase in demand for places which has taken place at Icknield Infant and Nursery School for September 2022, but recognised that it had happened and that a PAN of 60 for September 2022 could not be supported in the light of the 75 offers of places that had been made. I have referred above to the expectation that if the PAN for 2023 were reduced to 60, that the school would in all probability be oversubscribed, certainly initially.

34. When I asked the local authority about the recent increase in need for places at the school, I also asked to be told where the 75 children due to be admitted to Icknield Infant and Nursery School in September 2022 live in relation to the school. This information was helpfully provided to me in terms of a scattergram map of the locations of the 75 homes, and in a list of their distances from the school. While I have not interrogated this data forensically, or looked at other years, it does seem evident that the great majority of the children live very close to the school, certainly within a mile, with perhaps only as many as 10 living closer to another school which has a Year R intake. It is noteworthy that some of these other schools were not fully subscribed according to the list of allocations provided by the local authority, meaning that parents have sought a place at Icknield Infant and Nursery School in 2022 in preference to another school closer to where they live.

35. I have every reason to believe from the information which I have received and concerning which I have set out my views above, that there are likely to be more than 60 Year R children for whom a place at the school will be sought in September 2023. There would seem to be good reason to expect that these children would live close to the school in the way that those allocated places for 2022 can be seen to. If the PAN were reduced to 60 as the local authority has requested, some children would therefore need to access

places further away. The two nearest schools which were not filled at the time of the 2022 allocations are 1.6 and 1.8 miles from Icknield Infant and Nursery School respectively.

(iv) Consultation and timescales

36. In response to my request concerning the basis of the requested variation to the arrangements for 2023, the local authority has explained to me in detail why it was not possible for the new information which was available to it in mid-November 2021 (the change in circumstances) to inform its decision made on 21 February 2022 to determine a PAN of 90 for Icknield Infant and Nursery School for September 2023. I am grateful to it for its patience in doing so.

37. Paragraph 1.45 of the Code requires admission authorities to consult for a minimum of six weeks between 1 October and 31 January in the determination year if any changes to admission arrangements are being proposed. For the local authority, it was necessary to secure the agreement of its Cabinet to proposed changes prior to the consultation period, and because of its internal deadlines and the schedule of meetings, the earliest the change in circumstances identified by officers could have been considered by its Cabinet would have been 17 January 2022, leaving insufficient time for the required consultation on arrangements which proposed a change in PAN at the school. The recourse for the LA was therefore to request that the adjudicator consider a request that the PAN be varied, since it had no choice but to determine an unchanged (or increased) PAN on 21 February 2022.

38. I am mindful that agreeing to a reduction in the PAN of a school as a requested variation to the admission arrangements for a school necessarily bypasses what would otherwise be a formal consultation in which parents would be able to make their views known to the admission authority. Parents are not among those who must be informed of a proposed variation, but are included in the list of consultees concerning revised arrangements. It is precisely because changes to admission arrangements can have a significant impact on parents who might seek a place at a school for their child that consultation involving them about such changes is, in normal circumstances, mandated. Where a change to admission arrangements might reasonably result in parents who otherwise could have expected a place to be available at their local school only to find that that is not, and that their child will therefore have to travel to a more distant school, it is incumbent on the adjudicator to exercise caution on their behalf, in my view. That is the case here.

Summary

39. While it is the case that schools which admit children in Year R in Letchworth are not filling all those places, these vacancies are geographically spread and not confined to the school. The change in circumstances identified by the local authority also affects schools in the town generally, but may not have more than a short-term effect. Forecasts of the need for places and data supplied by GPs do not support the need for fewer Year R places across Letchworth in 2023 compared to 2022. The LA's own forecast shows an increase in

demand in Letchworth Central between 2022 and 2023. Recent allocation data suggest an increase in demand for Year R places in Letchworth Central, and therefore at the school, over and above that forecast.

40. I am not persuaded by the merits of the arguments presented by the local authority of there being a beneficial effect to the school by removing a form of entry there. In all likelihood, if the variation were agreed there would be children living near to the school in September 2023 whose parents would be unable to access a place there, and in my view that fact outweighs any arguments which the LA has put forward.

41. As a result, I am not persuaded that the change in circumstances which has been identified by the local authority justifies the requested variation to the admission arrangements of the school by removing a form of entry there from September 2023.

42. If the local authority still considers, in the light of information available to it in the coming months, that a reduced PAN at the school would be appropriate at the school for admissions in September 2024, then it will be able to propose such a change and consult local parents concerning it in the autumn of 2022, in the way set out in the Code.

Determination

43. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Hertfordshire County Council for Icknield Infant and Nursery School for September 2023.

Dated: 1 August 2022

Signed:

Schools Adjudicator: Bryan Slater