



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2284

Admission authority: The governing board of Menorah Foundation School, London Borough of Barnet

Date of decision: 28 November 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 the governing board of Menorah Foundation School, London Borough of Barnet for September 2023.

I determine that the Published Admission Number (PAN) will remain at 50.

The referral

1. The governing board of Menorah Foundation School (the school) in the London Borough of Barnet (the local authority) has referred a proposal for a variation to the admission arrangements for September 2023 to the adjudicator. The school is a mixed voluntary aided school for children aged 3 to 11 years and is of a Jewish religious character.
2. The proposed variation is to reduce the PAN from 50 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 school’s governing board determined the arrangements for September 2023 on 12 September 2022. The Code requires this to have been done by 28 February 2021. This does not affect my jurisdiction in this case.

5. The school has provided me with confirmation that the appropriate bodies have been notified and I have seen confirmation that the local authority 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.

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

7. The information I have considered in reaching my decision includes;

- a. the referral from the school dated 28 October 2022, supporting documents and subsequent correspondence;
- b. the determined arrangements for September 2023 and the proposed variation to those arrangements;
- c. comments on the proposal from the London Borough of Barnet; and
- d. information available on the websites of the local authority, the school and the Department for Education.

The proposed variation

8. The school has proposed that the PAN for admission in September 2023 is reduced from 50 to 30.

9. 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

10. The school explains the background to the proposal. It says that a combination of factors is driving down the forecast estimates in terms of numbers to be admitted to the school. It cites a smaller number in the nursery classes. It has carried out a parent survey to ascertain the projected number of siblings in the next few years who may apply for the school, and it suggests that there is evidence of a decline in birth rate in the community. It has been disappointed at the small number of parents who have visited the school during their open day. It goes on to suggest that the impact of Brexit, together with the wider economic uncertainty, have forced families that would otherwise have considered moving to the UK/London area and applying to the school to reconsider. The school sees the consequence of what it considers to be falling rolls is that it places a considerable financial burden on the school and, due to these pressures, the governing board has had to explore staff redundancies. This is said to have impacted on the overall quality of the teaching support provision. The school goes on to explain that the current year one (Y1) has 41 pupils who are taught in two classes, the school is therefore having to provide for the cost of staffing, resources and space for two classes but with an intake and therefore income for only 41 pupils leading to a significant deficit. The school says this situation would be 'rectified' by introducing a PAN of 30 whereby the school would only need to provide staffing, resources and infrastructure for one class.

11. I requested further information from the school, the local authority and The Union of Orthodox Hebrew Congregations, the religious body for the school, although the latter has not provided a response even after a reminder. The local authority says that the forecasts for admission to the school for admission in 2023 and 2024 are 50 in both years. The local authority says that these numbers suggest that the proposed reduction to thirty places is likely to lead to competition for places. It then goes on to explain that there are surplus places in other Jewish faith schools in the area and that, although a reduction in PAN may help to reduce surplus Jewish place capacity in the wider area, families may find it harder to secure a place at a school that teaches their preferred form of Judaism and this may lead to lower parental satisfaction. The local authority then goes on to say that they are mindful of the challenge faced by some primary school as a result of falling rolls and whilst the proposed variation may lead to some localised pressure for the type of Jewish places provided by the school it would support the school's endeavours to make the best use of their resources provided the school provided reassurance that should there be an unexpected rise in demand existing capacity could potentially be reutilised without the need for a formal consultation

12. The school took this response from the local authority to be an endorsement supportive of the proposed PAN reduction. I understand why the school has taken this view, although the local authority's response is ambivalent in its support or not for the proposal.

13. I asked the school for some details of numbers of children in the year groups and the school provided me with the following data;

Year Group	Number on roll
Nursery	27
Reception	50
Year 1	41
Year 2	52
Year 3	51
Year 4	47
Year 5	53
Year 6	50

14. The number on roll in the reception class this year is 50 which is the PAN. In five of the statutory age groups the number on roll is equal to or above the current PAN. From these figures I find it hard to see that there is a pattern of reducing numbers.

15. I asked the school for some information about why the arrangements had not been determined within the timeframe required by the Code. The school informed me that this was because the governing board had decided to determine the arrangements in September 2022 and at the same time arrange for a proposed variation to be sent to the OSA. The school said that ‘the admission committee understood the Code to mean that admission arrangements for September 2023 could only be published this academic year’. The school also suggested in their initial letter that the mechanism by which a PAN is reduced must be through the determination of a schools adjudicator.

16. The school’s governing board does not fully understand the timeframe for the determination of admission arrangements nor how these arrangements, including the PAN, can be legitimately changed by the governing board without recourse to the OSA.

17. The requirements for determination and publishing a school’s admission arrangements are set out in paragraphs 1.49 and 1.50 of the Code “1.49 All admission authorities must determine their admission arrangements, including their PAN, every year, even if they have not changed from previous years and a consultation has not been required by 28 February in the determination year. 1.50 Once admission authorities have determined their admission arrangements, they must notify the appropriate bodies and must publish a copy of the determined arrangements on the school’s website or their own website (in the case of a local authority) by 15 March in the determination year and continue displaying them for the whole offer year (the school year in which offers for places are made). Admission authorities must also send a copy of their full, determined

arrangements to the local authority as soon as possible before 15 March in the determination year. Admission authorities for schools designated with a religious character must also send a copy of their arrangements to the body or person representing their religion or religious denomination.”

18. The overall process and the requirements for consultation are set out in paragraph 15 of the Code as follows; “15. In summary, the process operates as follows: a) All schools must have admission arrangements that clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school. Admission arrangements are determined by admission authorities. b) Admission authorities must set (‘determine’) admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority must first publicly consult on those arrangements. If no changes are made to admission arrangements, they must be consulted on at least once every 7 years. Consultation must be for a minimum of 6 weeks and must take place between 1 October and 31 January of the school year before those arrangements are to apply (the determination year). This consultation period allows parents, other schools, religious authorities, and the local community to raise any concerns about the proposed admission arrangements.” Further requirements relating to consultation are set out in paragraphs 1.45 to 148 of the Code.

19. Provisions in paragraph 1.3 of the Code mean that if the governing board of a voluntary aided school want to keep their PAN the same, or increase it, they do not need to go through the consultation process. Paragraph 3.3 of the Code prohibits anyone from objecting to the governing board of a voluntary aided school keeping the same PAN or increasing it.

20. The governing board has determined a PAN of 50 for September 2023. This can only be changed through the variation process. If I approve this variation, then the PAN for 2023 would be 30. The governing board has not yet determined the PAN for 2024 and if I were to approve the proposal, the governing board could without consultation determine a PAN of 30 for 2024 effectively reducing the PAN without consultation and without anyone being able to object to this. I regard this as an important consideration. If I do not approve the proposed variation, and the school would like to reduce its PAN for admission in September 2024, then they must undertake a consultation with the parties listed in paragraph 1.47 of the Code which includes parents and community members during the period October 2022 to January 2023. Having considered the response to the consultation, the governing board must then determine the PAN as part of its admission arrangements for 2024 by 28 February 2023. The arrangements then must be published before 15 March 2023.

21. The local authority’s projected admission numbers for the next two years are 50 in each year which is the same as the current PAN. It is of concern that the local authority implies that even though up to 20 families in each of the next two years will be unsuccessful in their application for the school if the PAN was reduced, because it may ‘reduce Jewish capacity in the wider area’ it appears to be supportive of the school’s proposal. It is my view that if the PAN is reduced to 30 then up to 40 families in the next two years may be

prevented from making successful applications to the school. I do not believe that this is fair to those families and it does not support the proposal for a reduction in PAN. The local authority suggests that “displaced children” resulting from this reduced PAN proposal could be accommodated at other local schools, but I would ask the question; why should these families be denied places at a school which is their first preference when there is clearly capacity for their admission? It is certainly a question which I think local parents should be given the opportunity to comment on during a proper consultation. This is one of the reasons I am not approving this variation; if the school wants to reduce its PAN, then the affected families should be provided with an opportunity to comment through the normal consultation process. The earliest opportunity for this to happen would be the consultation arranged by the governing board for the 2024 admission arrangements.

22. In the delegated budget scheme, funds are allocated to the school based on a number of factors. Most important among these factors is the allocation of funds based on actual pupil numbers on roll across the whole school, not within each year group, and I understand that it is easier to plan viable and sustainable budgets if the number of pupils being admitted to the reception year (YR) is divisible by 30. Paragraph 2.16 of the Code states that ‘Infant classes **must not** contain more than 30 pupils with a single schoolteacher.’ Currently the school operates on a two-form intake with a PAN of 50 and maintains two classes in each year group. In years reception, Y1 and Y2 there are currently 143 children taught in six classes, the school could arrange for these children to be taught in five classes of 30 which would reduce the number of staff required and consequently reduce costs; many schools across the country have mixed age classes in their schools and provide very successful education for the children in those classes.

23. I find that the variation is not justified because there is evidence of continuing demand for the places at the school. If the PAN was reduced, it would mean that many parents who place the school as first preference in their application would be unsuccessful and the children would have to go to another school even though the school can accommodate them. To approve a reduction in the PAN for 2023 at this time would allow the governing board to continue to set the PAN at the reduced figure for 2024 without local consultation and without anyone being able to object to there being fewer places available at the school.

24. Whilst I understand the pressure on the school’s finances there are ways in which the school could reduce its expenditure; for example, the school could accommodate Y1 and Y2 in five rather than six classes; I do not therefore accept that the financial circumstances of the school are such that a reduction in PAN is justified for September 2023.

Determination

25. 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 the

governing board of Menorah Foundation School, London Borough of Barnet for September 2023.

26. I determine that the Published Admission Number (PAN) will remain at 50.

Dated: 28 November 2022

Signed:

Schools adjudicator: Ann Talboys