



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2279 and VAR2280

Admission authority: The governing board for St Mary's, Prittlewell, Church of England Primary School, Southend-on-Sea

Date of decision: 20 December 2022

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements for September 2022 and September 2023 determined by the governing board of St Mary's, Prittlewell, Church of England Primary School in Southend-on-Sea.

I determine that the published admission number (PAN) for 2022 and for 2023 be reduced from 120 to 90.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

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 must be revised by 28 February 2023.

The referral

1. The governing board of St Mary's, Prittlewell, Church of England Primary School (the admission authority) has referred a proposal for a variation to the admission arrangements for September 2022 and September 2023 (the arrangements) for St Mary's, Prittlewell, Church of England Primary School (the school) to the adjudicator. The school is a co-educational voluntary aided school for children aged four to eleven. The school has a Church of England religious character, and the relevant faith body is the Church of England

Diocese of Chelmsford (the faith body). The school is situated in the local authority area of Southend-on-Sea (the local authority).

2. The proposed variation is to reduce the published admission number from 120 to 90 for admissions in the years beginning September 2022 and September 2023.

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) provide (in so far as is 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 admission authority has provided me with confirmation that the appropriate bodies have been notified. I find that the appropriate procedures were followed, and I am also satisfied that the proposed variation is 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 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 referral ('Request for a variation [...]') from the admission authority dated 5 October 2022, supporting documents and further information provided at my request;
- b. the determined arrangements for September 2022 and September 2023, and the proposed variation to those arrangements;

- c. comments on the proposed variation from the admission authority and the local authority;
- d. a map showing the location of the school and other relevant schools; and
- e. information available on the websites of the local authority, the school, the faith body and the Department for Education.

7. I contacted the faith body, requesting information and inviting their comments. However, they declined to provide either.

The proposed variation

8. The proposed variation is to reduce the PAN for the school from 120 to 90 for the years beginning September 2022 and September 2023. That is, for the current and next school years.

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 major change in circumstances relied upon by the admission authority is a change in the expected net capacity of the school for the years in question. The admission authority has explained that, whilst there had previously been plans to physically expand the school premises in order to accommodate the admission of 120 reception year pupils in 2022 and 120 reception year pupils in 2023, these plans had not gone ahead and the current headteacher had indicated that it was therefore not possible for the school to accommodate the admission of any more than 90 reception year pupils per year in 2022 and 2023. The governing board asserted that the admission of more than 90 pupils in either of the years in question would prejudice the provision of education at the school, by which I understand them to mean prejudice to the provision of *efficient* education, which is the terminology used in the relevant legislation and the Code.

11. I note that the Get Information About Schools (GIAS) part of the DfE website indicates that the school has a net capacity of 714 – that is, its current premises can accommodate 714 pupils. However, I have been provided with a separate calculation, dated 2 March 2020, indicating that the school's net capacity is a slightly lower figure, at 695 pupils. The school has also provided me with some contextual information, explaining that the school is split across two sites and is full to capacity. They have further stated that they are having to displace their library so that the space can be used as a classroom and further space is needed as 'nurture spaces' for certain vulnerable children who find larger

classroom spaces overwhelming. As such, the school states that admitting above 90 pupils in 2022 or 2023 would not be feasible given their current space constraints.

12. The school has provided a breakdown of its current pupil numbers:

Year group	Number of pupils	Number of classes
Reception	84	4
1	102	4
2	95	4
3	81	3
4	101	4
5	76	3
6	96	3
Total	635	25

13. The admission numbers for the reception year intake for the school in the last three years was as follows:

Year	Published admission number	Number of pupils offered a place in reception year on national offer day	Number of pupils admitted in reception year
2020	120	100	90
2021	120	70	90
2022	120	90	90

14. The local authority forecast of demand for reception year places at the school in the next three years is as follows:

Year	Expected published admission number	Forecast demand for reception year places
2023	90 (if variation approved)	80
2024	90	80
2025	90	90

15. The local authority has provided the following data on first, second and third preferences expressed for the school in the past three years:

Preference	2020	2021	2022
First	76	70	48
Second	49	46	35
Third	46	34	32
Total	171	150	115

16. The local authority has indicated its support for the application for a variation. As well as confirming that the school “cannot accommodate 120 throughout the school”, the local authority has also confirmed that “there is no demand for an extra cohort in this planning area”. The local authority has explained that there is a “City wide depreciation in reception demand between 2023 and 2025 and we have sufficient surplus across the central area of Southend”.

17. The local authority has explained that the demand for reception year places in the relevant planning area, ‘Central West’, has “reduced significantly since 2018, from 446 places required to 425 in 2021, 415 in 2022 and is forecast to reduce further”.

18. The local authority provided data in relation to the demand for reception year places in the relevant planning area, ‘Central West’, over the past three years and in relation to forecast demand for the next three years:

School	PAN	Number of pupils admitted in 2020	Number of pupils admitted in 2021	Number of pupils admitted in 2022	Forecast demand for places in 2023	Forecast demand for places in 2024	Forecast demand for places in 2025
Barons Court	35	35	35	35	35	35	35
Earls Hall	90	90	90	90	90	90	90
Milton Hall	90	90	90	90	90	90	85
St Helen's	60	60	60	50	50	50	50
The school	120	90	90	90	80	80	90
Westborough	60	60	60	60	60	60	60
Total	455	425	425	415	405	405	410

19. In relation to the City-wide depreciation in demand, the local authority provided the following figures:

Academic Year beginning in September	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Reception year pupils (actual / *forecast)	2,118	2,105	2,115	2,085	2,114	2,097	1,963	1,866 *	1,906 *	1,763 *

20. The school's current reception year intake was 90 pupils. Therefore, if the PAN for 2022 were to be reduced, it is anticipated that no further pupils would be admitted in-year to reception.

21. The faith body has offered no comment on the request to vary the school's PAN for September 2022 and September 2023.

22. No comments were received by the admission authority when it notified the appropriate bodies of its intention to seek a variation to the school's PAN for September 2022 and September 2023.

23. In relation to capacity issues, I note that the number of pupils currently on roll at the school (635) is significantly lower than the net capacity shown on GIAS (714) and the assessment of net capacity undertaken in early 2020 (695). However, if the current reception year were to increase its number of pupils to 120 and then next year's reception year were also to admit 120 pupils, the number of pupils on roll at the school next year would be 695. On that basis, I can understand the admission authority's concern that being so close to the capacity of the premises could have a negative impact on the use of space other than as classrooms – for example, for vulnerable children with additional needs.

24. Having considered the data provided on demand and admission numbers, I note that there has been a fluctuating demand for reception year places across the city of Southend-on-Sea since at least 2016, overall, on a gradual downward trajectory. I also note that the local authority predicts that trend to continue in the next three years. That pattern appears to be replicated at the relevant Planning Area level, in that the 'Central West' Planning Area has seen the admission of 425 reception year pupils in each of 2020 and 2021, but only 415 reception year pupils in 2022 – with a further forecasted reduction of between 5 and 10 places over the coming three years. Of particular relevance to the request for a variation, I note that demand for reception year places at the school has not exceeded 90 in the last two years and is predicted to reduce to 80 in the coming two years before rising to 90 in 2025. Therefore, demand is not expected to exceed the PAN that is being proposed.

25. I observe that, given the pattern of demand indicated by the local authority data, a PAN reduction at the school would not be expected to have an impact on neighbouring schools, nor would it be expected to frustrate a significant number (if any) applicants expressing a first preference for the school.

26. Having taken into account the declining demand for reception year places at the school, the Planning Area and across the city, alongside the evidence provided as to the capacity of the school to appropriately accommodate pupils at its current premises, I approve the request for a reduction in the PAN from 120 to 90 pupils for September 2022 and September 2023. This is a reasonable response to the major change of circumstances highlighted by the admission authority.

27. The local authority and the school will be aware that my decision to approve the PAN reduction does not affect the school's responsibility to comply with the School Admissions (Infant Class Sizes) (England) Regulations 2021 requirement not to have more than 30 children in a class with a single qualified teacher for the relevant year groups.

Consideration of the arrangements

28. The arrangements provide oversubscription criteria as follows (in summary):

- 1) Looked after and previously looked after children.
- 2) Children of parents who worship at St Mary's Church, Prittlewell (Categories A and B).
- 3) Children of parents who worship at other Anglican churches (Categories A and B).
- 4) Siblings.
- 5) Children of parents who worship at St Mary's Church, Prittlewell (Category C).
- 6) Children of parents who worship at other Anglican churches (Category C).
- 7) Children of parents who worship at other Christian churches (Categories A, B or C).
- 8) Children who live in the area of Central Southend "*i.e. – inside the area bounded by and including Chalkwell Avenue, Westbourne Grove, Prince Avenue to Cuckoo Corner, Priory Crescent, Eastern Avenue, Royal Artillery Way, Thorpe Hall Avenue and the seafront between Thorpe Hall Avenue and Chalkwell Avenue*".
- 9) Any other children.

29. The arrangements state that:

"Claims for admission under categories 2, 3, 5, 6 and 7 must be accompanied by a letter from the incumbent or minister, or from the Church that is supporting the application and must be on official church headed paper [...] The evidence must contain details of the length of time that the parent/s have been members of the congregation and the pattern of attendance of the parent/s at the church as in the following defining Groups;

A - At the heart of the church – i.e. attending Sunday services or/involved in weekday worship at least twice a month.

B – Attached to the church – i.e. attending Sunday services/ or involved in weekday worship at least on a monthly basis.

C – Known to the church – i.e. parent/s who are occasional worshippers at the church.

Priority will be given in categories 2, 3, 5, 6 and 7 above, to those children in Group A, then B then C [...] in that order in all categories.

N.B. Attendance by the child alone at Church or Sunday School, is not a sufficient qualification for inclusion under categories 2, 3, 5, 6 or 7.”

30. Having considered the arrangements as a whole it appeared to me that the following matters may not conform with requirements of the Code and so I brought them to the attention of the admission authority.

31. Paragraph 1.14 of the Code requires catchment areas to be clearly defined. I was concerned that the “preferred area” referred to at oversubscription criteria 8 may not comply with this requirement because it was not clear whether a person living on one of the boundary roads fell within or without of the area. The admission authority provided me with an annotated copy of the map showing the “preferred area”. However, that did not address the question about families living on one of the boundary roads. As such, I find that oversubscription criterion 8 does not meet the requirement at paragraph 1.14 of the Code that a catchment area must be clearly defined.

32. Paragraph 14 of the Code requires that practices and criteria used to decide the allocation of school places must be fair. I was concerned that the definition of “parent” in the arrangements may not comply with this requirement because it does not include foster parents. The admission authority responded that they had used the definition of “parent” used by the local authority and, as looked after children are given priority in the admissions, those children are not disadvantaged. I accept the admission authority’s point that a child living with a foster parent will be in the care of the local authority and therefore be eligible for consideration under oversubscription criterion 1, before any of the oversubscription criteria that reference the term “parent”. On that basis, I am satisfied that the omission of foster parents from the definition of “parent” in the arrangements, does not amount to non-compliance with paragraph 14 of the Code.

33. A school with a designated religious character must have regard to any guidance provided by the relevant faith body when constructing faith-based oversubscription criteria. In particular, a school with a designated religious character may take account of religious activities in its oversubscription criteria, but only if it does so in accordance with guidance “laid out” by the relevant faith body (paragraph 1.9i of the Code). As the school does take account of religious activities in its oversubscription criteria – frequency of attendance at Sunday services or weekday worship – I asked the school for a copy of any guidance that had been provided by the faith body or confirmation that none had been provided. I also asked the faith body for a copy of any such guidance provided to the admission authority. The admission authority was silent on this point and the faith body likewise declined to comment or provide any information. On 16 December 2022 I accessed the website of the

faith body – Chelmsford Diocesan Board of Education at www.cdbe.org.uk – in order to see whether I could identify any generic guidance provided to all schools supported by the faith body. I found a page titled ‘School Admissions Diocese of Chelmsford School Admissions guidance for 2021-22’. I could not locate any equivalent page for the school years 2022-23 or 2023-24. The relevant guidance provided in relation to the school year 2021-22 was that schools with a designated religious character could “*use faith-based oversubscription criteria and allocate places by reference to faith when the school is oversubscribed [...] Any Church of England school in the Diocese of Chelmsford that uses faith-based oversubscription criteria must consult with the Diocese of Chelmsford Board of Education about any proposed changes to their faith-based oversubscription criteria, or as part of their seven-year cycle, before any public consultation*”. However, no particular religious activities that could be taken into account in oversubscription criteria were specifically “laid out”. Given the absence of any evidence that the faith body has laid out which religious activities the admission authority may take account of in its faith-based oversubscription criteria, I can come to no other conclusion but that the admission authority is in breach of paragraph 1.9i of the Code by taking account of frequency of attendance at Sunday services and weekday worship in its oversubscription criteria.

34. In light of my finding in the paragraph above, it is not necessary for me to make any findings on other aspects of the faith-based oversubscription criteria, because those criteria take in account religious activities and that is not permitted by the Code unless laid out in guidance provided by the faith body. However, for completeness, I will set out two matters that I raised with the admission authority and upon which they responded. I was concerned that two aspects of the faith-based oversubscription criteria may not comply with paragraph 1.8 of the Code (which requires oversubscription criteria to be clear, objective and procedurally fair) and paragraph 1.37 of the Code (which requires faith-based oversubscription criteria to be easy to understand), namely:

- a. The faith-based oversubscription criteria require parents to provide a letter, alongside the Supplementary Information Form (SIF), from their church minister stating the length of time that the parents have been members of the church’s congregation. However, it is unclear from the faith-based oversubscription criteria how that length of time is factored into the allocation of places; and
- b. Categories A, B and C refer to frequency of attendance at Sunday services or weekday worship but do not say over what period (for example, the previous year, two years, or three years).

35. The admission authority has acknowledged that “there is quite a bit of ambiguity identified in our current SIF when looking against the Code” and has not sought to justify the discrepancies that I have identified. Indeed, the admission authority indicated that it would be “happy to receive any recommendations to ensure that we are doing things correctly”. I am grateful to the admission authority for its indication that it is open to receiving feedback and am confident that these matters will be addressed by the admission authority when it addresses the wider problem with the arrangements, that is, that they take

account of religious activities without there being any relevant guidance having been “laid out” by the faith body to permit such an approach.

36. I recognise that the school will have to take quite significant actions in terms of changes to its arrangements in consequence of my determination. The faith body may also consider whether it wishes to lay out religious activities – although I stress that is not a matter for me; my only concern is whether or not activities have been laid out so that an admission authority might include them in its arrangements. Moreover, parents will now be making their choices as to which schools to apply for for admission in September 2023 and will be doing so on the basis of the arrangements as they now stand. The 2022 arrangements of course have largely now served their purpose. I have therefore set a deadline of 28 February 2023 for the school to make the necessary changes to its arrangements. This is the latest deadline I can specify. It means that applications for places in the main round for admission in September 2023 can be considered against the arrangements as already determined. It is also the deadline for determination of the arrangements for 2024.

Determination

37. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements for September 2022 and September 2023 determined by the governing board of St Mary’s, Prittlewell, Church of England Primary School in Southend-on-Sea.

38. I determine that the published admission number (PAN) for 2022 and for 2023 be reduced from 120 to 90.

39. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

40. 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 must be revised by 28 February 2023.

Dated: 20 December 2022

Signed:

Schools adjudicator: Jane Kilgannon