



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** VAR2298

**Admission authority:** Birmingham City Council for Ladypool Primary School

**Date of decision:** 6 February 2023

## 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 Birmingham City Council for Ladypool Primary School for September 2023.

I determine that the published admission number will be 30.

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.

## The referral

1. Birmingham City Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2023 (the arrangements) for Ladypool Primary School (the school) to the adjudicator. The school is a community school for children aged three to eleven in Birmingham.
2. The proposed variation is that the published admission number (PAN) be 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 and are supportive of it. I find that the appropriate procedures were followed and I am 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 from the local authority dated 13 December 2022, supporting documents and further information provided at my request received on 30 January 2023;
- b. the determined arrangements for 2023 and the proposed variation to those arrangements;
- c. information from the governing board for the school regarding the proposed variation;
- d. a map showing the location of the school and other relevant schools; and

- e. information available on the websites of the local authority and the Department for Education (DfE).

## **The proposed variation and background**

7. The local authority determined the arrangements for the school on 8 February 2022 and set the PAN for the school at 60 as in previous years. The local authority has said that there are now fewer children requiring a place in reception year (YR) than forecast due to a falling birth rate and a lower proportion than previously of those born in the city requiring a school place.

8. The local authority explained, “we look at the relationship between the number of children born and the number of children who arrive in Reception classes 4 to 5 years later. Traditionally, the city average has been around 89% and has been relatively consistent; however, in 21/22 it was 86.5% - a difference equating to over 700 Reception children. Our analysis indicates this is due to reduced migration into the city with Birmingham’s population continuing to decline.” The local authority has made requests for variations to four community primary schools for the arrangements for 2023 (including this one) and in each case the request is for a reduction to the PAN for the above reasons. I am the adjudicator for all four cases. Each case is determined on its own merits and no case sets a precedent for another.

9. The school was judged by Ofsted to be good in 2017. It is situated in an urban area and, according to the DfE website ‘Find and compare schools’, there are around 17 other schools which admit children to YR within one mile. The school had a PAN of 60 when all the current year groups were admitted and teaches all pupils in single year group classes. In September 2022 the school made an application to the local authority that its PAN for 2022 and 2023 should be reduced to 30 and that there should be a consultation on reducing the PAN for 2024 to 30. In September 2022, 30 children were admitted to YR. The local authority has requested that the PAN for 2023 is reduced from 60 to 30 and has consulted on reducing the PAN to 30 for 2024. No comments were received in response to reducing the PAN for 2024. The arrangements for 2024 have not been determined at the time of writing.

10. 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**

11. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. Clearly it is desirable that PAN reductions are made via the process of determination following consultation as the consultation 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 and so I have considered the information provided to me in some detail before coming to my decision.

12. The local authority has a duty to make sure that there are sufficient places for the children in its area. To fulfil this duty the local authority assesses the likely future number of places to be needed and plans to meet that need. The local authority uses planning areas, which are geographical groups of schools, for this purpose. There are six state funded schools which admit children to YR in the planning area for the school. Table 1 below summarises the number of children admitted to the schools in the planning area in recent years. I note that the admission authority for another school in the planning area reduced its PAN by 30 for admissions in 2022 therefore reducing the number of available places.

Table 1: numbers of school places and numbers of children in YR at the time of the October census in schools in the planning area

|   | <b>2020</b> | <b>2021</b> | <b>2022</b> |
|---|-------------|-------------|-------------|
| <b>Sum of PANs of schools in the planning area for YR</b>             | 420         | 420         | 390         |
| <b>Number of children on roll in YR at time of October census</b>     | 336         | 360         | 294         |
| <b>Vacant places</b>  | 84          | 60          | 96          |
| <b>Number of vacant places as a percentage of the sum of the PANs</b> | 20%         | 14%         | 25%         |

13. Table 1 shows a significant proportion of vacant places in 2020, 2021 and 2022. From September 2022, a quarter of all places were vacant even though the sum of the PANs for the schools in the planning area had been reduced by 30 compared to 2021.

14. The local authority provided me with the number of preferences (first, second and third) made for YR for 2022 and 2023. For admissions in 2022 there were 284 first preferences for schools in the planning area (a first preference is the school the parent most wants their child to attend). There were 294 children on the rolls of the schools in the planning area in October 2022 and so little difference (ten children) between the number of first preferences and the number of children admitted.

15. For 2023 there have been 220 first preferences for the schools in the planning area. This is a significant reduction from the 284 in 2022 and is evidence of significantly lower demand for places in 2023. If there were to be a similar pattern to 2022 then around 230 children will be admitted to a school in the planning area in YR in 2023. There are 390 places available so there is a potential for 160 vacant places (over 40 per cent of the places in the planning area). I am therefore assured that if the PAN for the school were to be reduced by 30 then there would be sufficient places to meet demand in the planning area.

16. I will now consider the situation for the school including the demand for places and the reasons why the governing board supports the proposed variation that the PAN is reduced from 60 to 30. Table 2 provides information on the admissions to the school in recent years.

Table 2: the number of children on roll at the school in recent years

|  | <b>2020</b> | <b>2021</b> | <b>2022</b> |
|--|-------------|-------------|-------------|
| <b>The PAN for the school</b>              | 60          | 60          | 60          |
| <b>Number of children in YR in October</b> | 34          | 35          | 30          |
| <b>Number of vacant places</b>             | 26          | 25          | 30          |

17. There were 26 first preferences for the school for places in 2022. There were 30 children admitted. Presumably the four children additional to the 26 first preferences would have been children who could not be offered a higher preference at another school. I have been told that there remain 30 children in YR. I am conscious that YR is subject to the provisions of the School Admissions (Infant Class Size) (England) Regulations 2012 (the infant class size regulations). 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.

18. The infant class size regulations apply to YR, year 1 (Y1) and year 2 (Y2) and have implications for class organisation and school finances. This is because schools are largely funded on the number of pupils attending and staffing is normally the greatest expense to a school's budget. Classes are likely to be financially efficient if they contain approaching 30 pupils. If classes are much smaller than 30 pupils then the cost of providing that class may well be more than the income generated by the number of children in that class. I note that many successful schools have more than one year group in a class and operate on the basis of mixed aged classes but many schools organise their classes on the basis of single year groups as they find it easier to manage the learning. The local authority has told me that there is one class for YR with 30 children; this is an financially sound model.

19. Paragraph 1.4 of the Code says, "The PAN...applies to the relevant age group." The current YR, those admitted in September 2022, remains the relevant age group for the whole of the academic year which began in September 2022 and so the PAN applies for the whole of that year, that is until the end of the 2023 summer term in July 2023. I raise this matter as some of the information I received referred to 'capping' the admissions to YR at 30 children and this would not be lawful as the PAN for 2022 is 60. If a parent applied for a place in the current YR then the child would have to be admitted and the school would need to make adjustments accordingly. This could be another class with all the

accompanying costs. It would be possible for the local authority to request a variation to the PAN for 2022 so that it was reduced to 30. At the time of completing this determination, no such request has been made.

20. The current Y1 has 30 pupils as does the current Y2 and both year groups have one class each (these are smaller year groups than at the time of admission, suggesting that more children must have left than have joined since the beginning of the relevant YR). This has two main implications. One is that having one class with 30 children for each year group is an economical model. The second is that due to the infant class size regulations, there is no scope to mix year groups if an additional child were to join YR or create other mixed aged classes. I have considered the situation for 2022 in some detail as it is to avoid a similar situation arising for 2023 that the request for a variation has been made. For example, if 31 children were admitted to YR in September 2023, the school may provide two classes to make sure it met the requirements of the infant class size regulations and would incur the costs of doing so.

21. There is no PAN for Y1 or Y2. For the avoidance of doubt, the financial risks are not so great for the current Y1 and Y2 as paragraph 1.4 of the Code continues, "This [the PAN only applying to the relevant year group] 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." One of the ways in which such prejudice can arise is because of the effect of the infant class size regulations described above. It would therefore be possible for the local authority, as the admission authority, to refuse additional admissions to Y1 and Y2 on this basis because to do so may lead to the provision of another class which may not be efficient use of resources. Parents of course retain the right to appeal.

22. In its application for the variation the local authority said, "The school currently have 261 on roll, compared to 372 at October 2018 census. An increase in numbers is unlikely in the near to medium term. Falling rolls have resulted in the school being in an unsustainable financial position. The Governing Body has been forced to set a deficit budget resulting in a -£102,167 shortfall this year. The deficit is projected to grow to -£274,749 the following year if the PAN variation does not go ahead." I have not asked for further details on these figures but my assumption is that the risk of an increased deficit if the PAN is not reduced is potentially caused by the risk of having just over 30 children in two classes for YR from September 2023 without the income to sustain them.

23. There have been 11 first preferences for the school for 2023 compared to 26 for 2022. This indicates that there is less demand for the school in 2023 than in 2022. I therefore consider that parental preference is unlikely to be unduly frustrated if the PAN for the school were to be 30. If I agree to the variation, then the school would have the opportunity to plan its class organisation and staffing on the basis of only providing one class for YR.

24. As, at the time of writing, the arrangements for 2024 have not been determined, if I agree in this determination a PAN of 30 for 2023, this could set a baseline for 2024. As consultation has already occurred on setting the PAN at 30 with no responses made, this does not overly concern me. If the local authority decided to set the PAN at 60 for 2024, although this seems unlikely, then the Code would permit this (paragraphs 1.3 and 3.6).

25. The local authority has provided evidence to show that there is likely to be a significant number of vacant places in YR in the planning area in September 2023. The evidence also shows that if the PAN were to be reduced to 30 then parental preference is unlikely to be significantly frustrated as there were only 11 first preferences for the school. If the PAN were to remain at 60 then there is a risk to the finances of the school if more than 30 children were admitted to the school and a second class was made necessary for YR. I therefore find that the variation is justified by the circumstances and approve the proposed variation.

## Consideration of the arrangements

26. The local authority has one set of arrangements for all community and voluntary controlled schools for which it is the admission authority. There are differences within the arrangements for different types of schools, such as those with a religious character, but most elements are the same for all schools. The elements discussed below are common to the admission arrangements of all the schools for which the local authority is the admission authority.

27. 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 local authority. I note that paragraph 14 of the Code says, "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." The requirements of clarity and fairness in paragraph 14 are pertinent to the matters I raise below.

### Definitions of looked after and previously looked after children

28. Paragraph 1.7 of the Code requires that looked after and previously looked after children are given first priority if the school is oversubscribed and the arrangements do give first priority to such children. However, the definitions for looked after children and previously looked after children in the arrangements are: "Children who are looked after or immediately after being looked after became subject to an adoption, child arrangement order or special guardianship order. This includes any child / young person who is subject to a Full Care Order, an interim Care Order, accommodated under Section 22(1) of the Children Act 1989, is remanded or detained into Local Authority accommodation under Criminal Law, or who has been placed for adoption."

29. The definitions in the Code are:

29.1. footnote 15 to paragraph 1.7: “A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school.”

29.2. “Previously looked after children are children who were looked after but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order). All references to previously looked after children in this Code mean such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after and those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.”

30. The arrangements therefore have different definitions to those in the Code and the definitions have different meanings. It appears that the local authority wishes to make it explicit that a child “remanded or detained into Local Authority accommodation under Criminal Law” is included within the definition of a looked after child. This is reasonable but the definition used is not accurate. It is my anticipation that the local authority meant something like, “A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school. This would include children accommodated under Section 20 of the Act and those provided with accommodation by virtue of being remanded or detained into local authority accommodation under Section 21 of the Act.” The arrangements currently do not comply with paragraph 14 of the Code in this regard as they are not clear.

### **Definition of home address**

31. In the arrangements the definition of the child’s home address is:

“A pupil’s home address is considered to be a residential property that is the child’s only or main residence and is either;

- Owned by the child’s parent(s), or the person with parental responsibility for the child;
- Leased to or rented by the child’s parent(s), or the person with parental responsibility. Leased to or rented by the child’s parent(s), or the person with parental responsibility under lease or written rental agreement of not less than twelve months duration.”



32. Paragraphs 20 to 25 of the annual report by the Chief Adjudicator to the Secretary of State for Education for 2021 discusses this matter ([OSA annual report 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)). In summary, the Chief Adjudicator reported that many families renting a property do not enjoy leases or rental agreements of at least a year's duration. In fact, many have no choice but to have a six month rental agreement. It would therefore be unfair not to treat the address where the family are living as the child's home address simply because there is a rental agreement of less than 12 months. It is also possible that there are families living in accommodation which they neither own nor have a rental agreement for twelve months (or even six months) and so, under the arrangements as written, would be treated as if they have no home address. This would include families in hostels or refuges – some of the most vulnerable. I therefore find that the effect of this definition is capable of operating unfairly and therefore the arrangements do not meet the fairness requirements in paragraph 14 of the Code in this regard.

### **Home address when parents live apart and share care of the child**

33. Paragraph 1.13 of the Code is concerned with distance and includes, "This [definition of distance] should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent." The arrangements do include some information on this but it does not address a situation where a child lives equally with both parents and so are not clear. Therefore the requirements of paragraphs 14 and 1.13 of the Code are not met.

### **Admission of children outside their normal age group**

34. As noted above, significant elements of the arrangements apply to all community and voluntary controlled schools, including the secondary schools for which the local authority is the admission authority. For all these schools, it may be the case that parents wish their child to be admitted outside their normal age group, including in advance of that age group. It is perhaps more likely that a parent may seek a place in advance of the child's normal age group for secondary schooling. Paragraph 2.18 of the Code concerns the admission of children outside their normal age group and says, "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." There is information in the arrangements on deferring admission but it is not clear that parents can also ask to advance admission, for example, if the child is gifted. The requirements of paragraphs 14 and 2.18 are therefore not met.

35. The local authority has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. As the local authority has accepted that changes are required, I will not discuss them further other than to make clear that the Code requires that the arrangements be amended to address the points set out here.

## Determination

36. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Birmingham City Council for Ladypool Primary School for September 2023.

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

38. 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.

39. 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.

Dated: 6 February 2023

Signed:

Schools adjudicator: Deborah Pritchard