



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2303

Admission authority: Birmingham City Council for George Dixon Primary School

Date of decision: 20 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 George Dixon Primary School for September 2023.

I determine that the published admission number will be 30.

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 George Dixon Primary School (the school) to the adjudicator. The school is a community school for children aged four 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 evidence that the school’s governing board has been consulted and I will consider its views below. I find that the appropriate procedures were followed, and I am also 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. The information I have considered in reaching my decision includes:

- a. the referral from the local authority dated 11 January 2023, supporting documents and further information provided at my request;
- b. the determined arrangements for 2023 and the proposed variation to those arrangements;
- c. minutes from a recent meeting of the governing board for the school and comments on the proposed variation from the governing board;
- 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

6. The local authority determined the arrangements for the school on 8 February 2022 and set the PAN for the school at 60 as it had been in previous years. The local authority made requests for variations to four primary schools for the arrangements for 2023. I am the adjudicator for all four cases. Each case is determined on its own merits and no case sets a precedent for another. The local authority has said in each case that there have been fewer children than forecast requiring a place in reception year (YR) due to a falling birthrate and a lower proportion than previously of those born in the city requiring a school place. 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.”

7. The school was judged by Ofsted to require improvement in 2021. It is situated in an urban area and, according to the DfE website 'Find and compare schools', has 12 other primary schools 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 and provides two classes per year group for years 1 to 6. The current reception year (YR) which was admitted in 2022 is in one year class of 30. I note that the governing board discussed the possibility of mixed aged classes at its meeting but was advised against this by the headteacher.

8. The local authority has not requested a variation to reduce the PAN for 2022. I am concerned that the records provided to me use the term 'capping' YR at 30 pupils for 2022. The PAN is set at 60 for admissions in 2022 and this means that the PAN applies until the end of the academic year in July 2023. It would therefore be unlawful to refuse admission to any parent seeking a place for their child in YR until the number of children reached 60. This is because the PAN applies to the normal year of entry each year which is YR for this school. The PAN represents the minimum number of children who must be admitted if enough seek places and applies throughout the whole of the school year concerned, in this case, YR for the academic year September 2022 to end of the 2023 summer term. .

9. The local authority has consulted on reducing the PAN to 60 for 2024 and received no responses. The arrangements for 2024 were determined on 14 February 2023 and the PAN set at 30. This determination only applies to the PAN for 2023.

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 five 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.

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

	2020	2021	2022
Sum of PANs of schools in the planning area for YR	270	270	270
Number of children on roll in YR at time of October census	228	230	205
Vacant places	42	40	65
Number of vacant places as a percentage of the sum of the PANs	16%	15%	24%

13. Table 1 shows a high proportion of vacant places in 2020 and 2021 which increases to nearly a quarter of all available places in 2022. 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 190 first preferences for schools in the planning area (a first preference is the school the parent most wants their child to attend). There were 205 children on the rolls of the schools in the planning area in October 2022. This is 15 children more than the total number of first preferences, which may indicate that some children who could not be accommodated at a first preference school were offered places at another school in the planning area as a second or lower preference or that more families moved into the area or for some other reason a school place in the planning area was desirable.

14. For 2023 there have been 123 first preferences for the schools in the planning area which is lower than the 190 in 2022. It is 67 fewer children and is evidence of significantly lower demand for places in 2023. If 123 children were admitted there would be 147 vacant places which is over half of the places available. While, as in 2022, there may be a few more children allocated places at schools in the planning area than the number of first preferences for those places, there is evidence of the likelihood of a very high proportion of vacant places. 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.

15. I will now consider the situation for the school including the demand for places and the governing board's views on the proposed variation that the PAN is reduced from 60 to 30. The school has between 45 and 60 children in the year groups year 2 (Y2) to year 6. Table 2 provides information on the admissions to the school in recent years.

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

	2020	2021	2022
The PAN for the school	60	60	60
Number of children in YR in the October of the relevant year	50	50	30
Number of vacant places	10	10	30

16. There were 27 first preferences for the school for places in 2022 and 30 on roll at the time of the October census. 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.

17. The infant class size regulations apply to YR, year 1 (Y1) and 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, for the sake of clarity, that paragraph 1.4 of the Code says (following section 88 of the Act),

“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.”

18. As I explained above, the admission authority is required to admit to its PAN in the year of entry if there is sufficient demand. To put it another way, for admissions to YR for this school, such as in the academic year September 2022 until July 2023, prejudice to the provision of efficient education or efficient use of resources could not apply until the PAN of 60 has been reached. As paragraph 1.4 explains, this does not apply to other years. If, for example, the current YR were to still number 30 children when it moved to become Y1, it would be possible for the admission authority to refuse admission as the admission of another child (a 31st child) could prejudice the provision of efficient education or efficient use of resources. This could occur if it were felt appropriate that the only way to admit another child and meet the infant class size regulations, were to provide another Y1 class

with all the staffing and cost implications. Parents retain the right to appeal in such circumstances.

19. There were 20 first preferences for the school for 2023 compared to 27 in 2022, which is a further reduction. I pause here to note the views of the governing board. The minutes of the meeting of the governing board from December 2022 recorded their decision to request a variation to the PAN for 2023 so that it be reduced to 30. However, when the case manager on my behalf, asked if the governing board had any further comment it wished to make on the proposed variation, the response referred to the high number of first preferences which it stated to be 47 and expressed concern that parental preference would be frustrated if the PAN were reduced to 30.

20. I have explained above that the local authority had told me there were 20 first preferences for places at the school for 2023. The local authority has clarified that this was indeed the case and that the total number of preferences expressed for the school is 47 including second and third preferences and it seems likely that there had been a misunderstanding. This had been discussed with the headteacher for school accordingly by the local authority. A parent can make up to three preferences for their child but only one offer will be made and so the total figure of preferences is not an accurate indication of demand as it is highly likely that many of those for whom the school is a second or third preference will receive an offer for a higher preference school. On this basis I understand that the governing board's support for the proposed variation still stands.

21. 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 there were 20 first preferences for the school and so if the PAN were to be reduced to 30 then parental preference is unlikely to be frustrated. If I agree to the variation, then the school would have the opportunity to plan its class organisation and staffing on the basis of providing one class for YR in September 2023 with up to 30 children. I therefore find that the variation is justified by the circumstances and approve the proposed variation.

Determination

22. 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 George Dixon Primary School for September 2023.

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

Dated: 20 February 2023

Signed:

Schools adjudicator: Deborah Pritchard