



Office of
the Schools
Adjudicator

Determination

Case references: VAR2320 and VAR2321

Admission authority: The governing board for St Nicholas Elstree Church of England Voluntary Aided Primary School in Elstree, Borehamwood, Hertfordshire

Date of decision: 01 June 2023

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variations to the admission arrangements determined by the governing board for St Nicholas Elstree Church of England Voluntary Aided Primary School in Elstree, Borehamwood, Hertfordshire for September 2023 and 2024.

I determine that the published admission number for 2023 will be 15 and the published admission number for 2024 will be 15.

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. The governing board for St Nicholas Elstree Church of England Voluntary Aided Primary School has referred a proposal for a variation to the admission arrangements for September 2023 and September 2024 (the arrangements) for St Nicholas Elstree Church of England Voluntary Aided Primary School (the school) to the adjudicator. The school is a voluntary aided school for children aged three to eleven with a Church of England religious character. The religious authority for the school is the Diocese of St Albans (the faith body). The school is located in the local authority area of Hertfordshire County Council (the local authority).

2. The proposed variations are to reduce the published admission number (PAN) from 24 to 15 for admissions in the admission years starting September 2023 and September 2024.

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...

3.7 Admission authorities **must** notify the appropriate bodies of all variations”.

4. The governing board 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 this matter I have had regard to all relevant legislation, and the Code.

6. The information I considered in reaching my decision included:

- a. the referral from the governing board dated 28 April 2023, supporting documents and further information provided at my request;
- b. the determined arrangements for 2023 and 2024 and the proposed variations to those arrangements;
- c. the admissions guidance provided to Church of England schools in its area by the faith body; and
- d. information available on the website for the Department for Education (DfE).

7. I have also taken into account the views and information shared at a meeting I convened with representatives of the governing board, the local authority and the faith body on 30 May 2023 (the meeting).

The proposed variations

8. The governing board described in its referral how there had been reductions in pupil numbers across the school in recent years and this had led to changes in the organisation of classes including during the current academic year. In September 2022, there were 110 pupils at the school in reception year (YR) to year 6, and by January 2023 there were 79. Schools are largely funded by the number of children so lower pupil numbers leads to lower funding for the school. As the largest recurrent cost in any school is its staff, a school may find that if pupil numbers reduce then financial difficulties can arise if steps are not taken to address the situation. The referral explained that the school had a financial deficit which it was trying to address and that there were increased financial risks if the PANs were not reduced as requested.

9. The school has a nursery and from September 2022, the six children in the nursery joined the 12 pupils in YR to create a class of 18 children for a morning timetable of lessons. This class, together with four classes for the other year groups, meant there were five classes in total. In the afternoons, there was a different class structure but still with five classes.

10. As pupil numbers reduced as described above, a different class structure was put in place in January 2023, so that the 79 pupils at the school, plus the children in the nursery, were taught in four classes. The governing board anticipate that for September 2023 there will no longer be a nursery as it is unviable and that there will be 77 pupils in the school who would be taught across three classes together covering the seven year groups.

11. The governing board is conscious that the school is one affected by the provisions of the School Admissions (Infant Class Size) (England) Regulations 2012 (the infant class size regulations) which 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. The infant class size regulations apply to YR, year 1 (Y1) and year 2 (Y2).

12. As of 11 May 2023, eight children had been offered places in YR for September 2023. The governing board plan to provide one class for YR and Y1 combined, which would be a class of 23 pupils.

13. The PAN applies for the whole of the year of admission. In other words, the PAN for 2023 applies from September 2023 until July 2024. If the PAN were to remain at 24, it is possible throughout that time that up to 24 children could be admitted to YR and the governing board could not refuse admission. If that were to happen, the most likely way to accommodate the children and meet the requirements of the infant class size regulations,

would be to create a fourth class. This would have financial implications, not least in terms of staffing costs, which would create further difficulties for the school. It could also be difficult for children to have their class structures changed during the school year and this could affect their wellbeing and educational progress. In addition, the governing board explained that the school was reorganising its curriculum model to be fit for the planned three class structure and so changes mid-year would be challenging for all concerned.

14. 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

15. Before I consider the proposed variation, I pause to note that if I agree the variation for 2024 then the PAN of 15 set would create a baseline for future years and so no consultation would be required to maintain the PAN at that level in 2025 and beyond. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. Once the PAN has been set for a particular year then no body (except the governing board of a community or voluntary controlled school which is not the case here) can object if that PAN remains the same in subsequent years. 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. I have therefore given very careful consideration to the information relating to the demand for pupil places.

16. 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. The planning area for the school is based around Borehamwood and there are 11 schools admitting children to YR in the planning area. Table 1 below summarises the number of children admitted to the schools in the planning area in recent years or offered a place for 2023.

Table 1: numbers of school places and numbers of children admitted to YR or offered a place for 2023 in schools in the planning area

	2020	2021	2022	2023
Sum of PANs of schools in the planning area for YR	444	444	444	444

	2020	2021	2022	2023
Number of children admitted or offered a place	451	411	403	413 offered as at 11 May
Vacant places	Some schools admitted above their PAN	33	41	Potentially 31

17. The information provided shows that there has not been a significant increase in the number of vacant places in the planning area, indeed potentially a slight decrease since 2022 although with a reduction of more than 30 children compared with 2020. However, if the PAN for the school were to reduce to 15, a reduction of nine places, there would still be 22 vacancies in the planning area. This would be around five per cent of the available places which is close to the percentage of vacant places that many local authorities like to achieve so that there are sufficient places for any child requiring a place after offers have been made. The local authority is supportive of the requested variations and at the meeting expressed its confidence that there was sufficient capacity in the area to meet demand if the PAN were to be reduced. I note that, according to the DfE website, 'Find and compare schools in England', that there are 17 schools which admit children to YR within two miles of the school. I am therefore assured that if the PAN for 2023 were to reduce to 15 that there would be sufficient places for the children in the area needing a school place.

18. The local authority forecast for 2024 is that 413 places will be required across the planning area for YR. This is the same number of places as have been offered for 2023 and so again I have some assurance that if the PAN were reduced to 15 for 2024 that there would be sufficient places in the area for the children needing a school place. I will now consider demand for the school as shown in table 2.

Table 2: the number of children admitted to the school in recent years or offered a place for 2023

	2021	2022	2023
The PAN for the school	24	24	24
Number of children admitted to YR or offered a place	20	12	8 offered
Number of vacant places	4	12	16

19. Table 2 shows a sharp decline in the number of children in YR and anticipated to be in YR in 2023. The governing board and the local authority said that this reflected an overall

reduction in demand. I do not see that overall decline in demand for places in the planning area since 2021 although there has been a decline since 2020. That said, I agree that if the PAN were reduced to 15 for 2023 that there is no risk that parental preference will be frustrated. I also understand that if the PAN for 2023 is set at 15, then the governing board can plan accordingly and that this would be in the interests of the children and their education. I therefore find that the variation requested for 2023 is justified by the circumstances.

20. I could choose not to approve the variation proposed for 2024 and could suggest that the governing board request any variation in the PAN when the level of demand is clearer, such as when offers have been made. I am conscious, however, of a variety of factors. Firstly, the evidence of demand for the school in 2022 and 2023, which has been below the proposed PAN. Secondly, it is clear that there would be sufficient places across the area in 2024 if the PAN were to be reduced to 15. Thirdly, the school has had to make several difficult decisions regarding class organisation and setting the PAN at 15 for 2024 would provide some certainty in its planning. Lastly, if the PAN for 2024 were set at 15 now, parents would know that that was the case when making their applications for places from September 2023. I therefore find that the variation requested for 2024 is justified by the circumstances.

Consideration of the arrangements

21. 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 governing board and they were discussed at the meeting I convened.

Definition of looked after and previously looked after children

22. The first priority within the oversubscription criteria is for looked after and previously looked after children. The arrangements included more than one reference to looked after and previously looked after children and these are not entirely consistent. The definition for this criterion is not clear and so the arrangements do not meet the requirement of paragraph 14 of the Code that arrangements **must** be clear and paragraph 1.8 that oversubscription criteria **must** be clear.

Definition of sibling

23. The second criterion is for a child with a sibling at the school who is expected still to be at the school when the child is admitted. As required by the Code, the term 'sibling' is defined. This definition includes that the child must be living "permanently in a placement within the home as part of the family household from Monday to Friday at the time of the application." I was concerned that this could infer that a child who lived with more than one parent and otherwise than in a pattern of Monday to Friday, might appear to be excluded. There was a footnote to the definition which said, "A sibling link will not be recognised for children living temporarily in the same house, for example a child who usually lives with one

parent but has temporarily moved or a looked after child in a respite placement or a very short term or bridging foster placement.”

24. At the meeting it was clarified that the reference to “Monday to Friday” was to address such short term stays as referred to in the footnote. The local authority suggested that it might be helpful to define what was meant by the home address before providing the definition of a sibling as the definition of a sibling refers to the permanent home. As it stands the section is unclear and so could be misunderstood and so does not meet the requirements of the Code to be clear.

The supplementary information form

25. The third priority is for a child “where at least one parent/guardian is a practising Christian and has attended worship at least once every month for at least the last five months prior the application.” Further information is given on what can be counted as a place of worship. A footnote says, “If applying under this category, a Foundation Place Application Form must be completed by your minister of religion to endorse this.” Elsewhere the form is referred to as a supplementary information form and it would be clearer if just one term were to be used. More significantly, the form asks for evidence that the child has attended worship, which is not part of the criterion. This makes the form inconsistent with the criterion. The arrangements are unclear in this regard and so do not meet the requirements of the Code to be clear.

Determination

26. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variations to the admission arrangements determined by the governing board for St Nicholas Elstree Church of England Voluntary Aided Primary School in Elstree, Borehamwood, Hertfordshire for September 2023 and 2024.

27. I determine that the published admission number for 2023 will be 15 and the published admission number for 2024 will be 15.

28. 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.

29. 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: 01 June 2023

Signed:

Schools adjudicator: Deborah Pritchard