



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2322 and VAR2323

Admission authority: The governing board for Mill Rythe Infant School,
Hayling Island, Hampshire

Date of decision: 26 June 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 the governing board for Mill Rythe Infant School, Hayling Island, Hampshire for September 2022.

By virtue of the same provision, I approve the proposed variation to the admission arrangements determined by the governing board for Mill Rythe Infant School, Hayling Island, Hampshire for September 2023.

I determine that the published admission number for admissions in 2022/23 shall be 60.

I determine that the published admission number for admissions in 2023/24 shall be 60.

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 Mill Rythe Infant School (the school) has referred two proposals for variations to its admission arrangements for September 2022 (the 2022

arrangements) (VAR2322) (this relates to admissions in the remainder of the current academic year 2022/23) and for September 2023 (the 2023 arrangements) (VAR2323) to the adjudicator.

2. The school is a foundation school for children aged 5 to 7 in Hayling Island, Hampshire. Ofsted rated the school as 'Good' in February 2023.
3. The proposed variations are to reduce the Published Admission Number (PAN) in both 2022/23 and 2023/24 from 90 to 60.
4. Parties to the request are Hampshire County Council (the local authority (LA)) and the school.
5. Throughout this determination, I will refer to YR (Reception) which is the normal year of entry for the school.

Jurisdiction and procedure

6. 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 (insofar 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”.

7. The governing board has provided me with confirmation that:
 - 7.1. the arrangements for 2022/23 were determined (with a PAN of 90). The governing board determined the arrangements on 8 March 2021. This is after the deadline for determining arrangements, which was 28 February 2021. However, this does not affect the standing of the arrangements or my power to consider them or the proposed variation;

7.2. the arrangements for 2023/24 were determined (with a PAN of 90) in accordance with paragraph 1.49 of the Code (the arrangements were determined on 28 February 2022); and

7.3. the appropriate bodies have been notified about the proposed variations.

I find that the appropriate procedures were followed, and I am also satisfied that the proposed variations are within my jurisdiction.

8. 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. I will refer to these as 'other matters' and these are covered in the section entitled 'Consideration of the arrangements', later in this determination. These other matters cover both the 2022 and 2023 arrangements.

9. In considering the proposed variations and the 'other matters' I have had regard to all relevant legislation, and the Code.

10. The information I have considered in reaching my decision includes:

- a. the referral from the governing board dated 2 May 2023, supporting documents and further information provided at my request;
- b. governing board minutes recording the determination of arrangements and the determined arrangements for 2022/23 and 2023/24 and the proposed variations to those arrangements;
- c. comments on the proposed variations from the LA and further information provided at my request;
- d. a copy of emails sent notifying the appropriate bodies about the proposed variation (dated 25 January 2023 to schools and 31 March 2023 to the LA); and
- e. information available on the websites of the LA, the school, the Department for Education (DfE) and Ofsted.

11. I have also taken account of the information I received during a meeting (the parties' meeting) I convened on 15 May 2023 at 9am, attended by the Headteacher and Chair of Governors from the school and the Head of Admissions from the LA.

12. I note here a matter I raised with the governing board in correspondence and at the parties' meeting. Although the 2024/25 arrangements are not part of my jurisdiction, the school has provided information on those arrangements to provide wider context to the requests it has made for the 2022/23 and 2023/24 arrangements. In part 2 (d) of the variation request form, it was stated that: "The Governing Body at Mill Rythe Infant

(Foundation) School are [sic] to consult on reducing the school's PAN to 60 from 90 to take effect from September 2024. If approved this will mean that the school will reduce from 8 classes to 6 classes by September 2024." In line with paragraph 1.49 of the Code, the governing board is to have determined its arrangements for September 2024 before 28 February 2023. In order to have consulted to make this change in those arrangements, the governing board would have needed to have held its consultation between 1 October 2022 and 31 January 2023 (as set out under paragraph 1.46 of the Code). I raised with the governing board that the consultation window has now passed and the arrangements should already have been determined. On the basis that the governing board had complied with its statutory duty to determine its arrangements, a subsequent variation to reduce the PAN for 2024 can only be undertaken through making an application to the adjudicator.

13. Following from the previous paragraph, the school has told me that the arrangements for 2024/25 have been determined by the governing board (with the PAN for that year being 90). This means that any variation to the arrangements for 2023/24 will only apply to that year and will have no effect on the years that follow; I am not therefore required to look at the effects of agreeing to the variation on years beyond 2023/24. Additionally, this variation request has been made after primary National Offer Day (17 April 2023) and can be evaluated in the context of the number of offers made for places in September 2023.

14. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. However, I make the point that it is preferable 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.

Consideration of proposed variations

15. 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 variations requested are justified by the change in circumstances.

16. The LA has a duty to make sure that there are sufficient places for the children in its area. To fulfil this duty the LA assesses the likely future number of places to be needed and plans to meet that need. The LA uses planning areas, which are geographical groups of schools, for this purpose.

17. The school is situated on Hayling Island in the borough of Havant. The island is connected to the mainland by a road bridge. The DfE website 'Get Information About Schools' (GIAS) shows that the school is one of four primary schools on the island and it is those schools that make up the LA's Hayling Island Planning Area (the planning area). Mill Rythe Junior School is on the same site as the school. The other two are (with miles from

the school’s postcode in brackets): Mengham Infant School (0.7); and Mengham Junior School (0.65). I will only concern myself with the schools in the planning area that admit to YR.

18. All of these schools were notified about the proposed variations to the 2022 and 2023 arrangements, along with the two primary schools close to the road bridge onto Hayling Island from the mainland (again with miles from the school’s postcode in brackets): Fairfield Infants School (3.63); and Bosmere Junior School (3.36). The school notified all six schools by email on 25 January 2023 with any comments expected by 6 February 2023. The school confirmed that it received no comments as a result of the notifications. The LA has provided its view on both of the variation requests after it was notified on 31 March 2023, and I have included that information in the relevant sections below.

19. On the variation requests form, the school provided the following information about its context:

“The school is in an unusual position based as it is on an island. There are two infant schools within 0.8 miles of each other. Mill Rythe Infant School has a rural catchment as it covers the farming end of the island whereas Mengham Infant School covers the more densely populated part. Mill Rythe Infant School currently has only 11 children who journey onto Hayling Island to attend school from adjoining areas. These families are those who have moved house off the island once they have started the school and commute [to the school] in order to provide stability.”

20. The school provided data from the LA which included the PANs for the last four years (2019/20 to 2022/23) and for the next two years (2023/24 and 2024/25). The PAN for the school has been consistently 90 for that period and the PAN for Mengham Infant School has been consistently 60 through that same period. This means a total of 150 places has been available and is planned for YR in the planning area from 2019/20 to 2024/25. Data was also provided showing the number of children admitted to YR in the last four years, the pupil number forecasts for the next two years and the offers made for places at the two schools for 2023/24 in the planning area. I have put that data into Tables 1 and 2.

Table 1: Number of children admitted to YR in the last four years in the planning area

Schools admitting to YR in the planning area	2019/20	2020/21	2021/22	2022/23
Mill Rythe Infant School	52	61	68	59
Mengham Infant School	56	58	60	60
Total number of YR admissions	108	119	128	119

Table 2: Forecast data for 2023/24 and 2024/25 and offers made for 2023/24 in the planning area

Schools admitting to YR in the planning area	Forecast 2023/24	Forecast 2024/25	Offers made 2023/24

Mill Rythe Infant School	60	74 *	48
Mengham Infant School	49	51	45
Total number of YR admissions	109	125	93

* In the parties' meeting, the LA told me that this figure includes (what the LA call) 'assumption children' (arising from families that may move onto the island as a result of the Sinah Lane housing development in the area). The LA said that NHS forecast data indicates around 59 children per school, which is less than four forms of entry. The Chair of Governors said that very few families with children move onto the island and suggested that the new housing may be used by existing families moving into bigger properties. This would not, therefore, significantly impact the number of children such that the NHS forecast is likely to be more realistic. The Headteacher confirmed that the school has been aware of the possibility of an increase in numbers from the Sinah Lane housing development for a number of years, but it has not yet materialised. There is a low level of migration on / off the island.

21. The data show that there has been between 22 and 42 surplus places in the planning area for schools admitting to YR between 2019/20 and 2022/23. Although the linear trend of the data over that period shows that numbers increased over time, when the number of offers made for 2023/24 are added, the linear trend shows one of a decline in numbers since 2019/20. The number of offers made for places in the schools admitting to YR in the planning area for 2023/24 means that there would be 57 surplus places. The reduction in numbers overall mirrors the downward trend in the numbers of children of school starting age across the country.

22. Turning now to look at the situation for the school, the governing board told me in its application the reason for the variation requests:

"The PAN for September 2022 admissions to the school was 90 however the school currently only have 59 pupils on roll in [YR]. Year 1 and Year 2 have also have substantially less than 90. The low number of pupils in [YR], added to the significantly lower than PAN cohort due in 2023 is currently creating many financial difficulties for the school. [...]"

The [YR] cohort of 2015 is the last cohort that reached capacity. The school has been between 70% and 75% capacity for the last 8 years."

23. The school sent me details of the current class structure at the school and the proposed class structure from 2023/24 should the variations requested be approved, which I have put into Tables 3 and 4 below.

Table 3: Current class structure at the school

Class	YR	Year 1	Year 2
1	29	-	-

2	30	-	-
3	-	23	-
4	-	24	-
5	-	24	-
6	-	-	24
7	-	-	25
8	-	-	26
Totals:	59	71	75

Table 4: Proposed class structure from 2023/24

Class	YR	Year 1	Year 2
1	24	-	-
2	24	-	-
3	-	30	-
4	-	30	-
5	-	-	23
6	-	-	24
7	-	-	24
Totals:	48	60	75

24. The school would reduce the number of classes to seven if I approve the variations requested to the 2023 arrangements. The school told me that they would seek to reduce the number of classes to six over time (originally by planning to consult on a reduction in PAN for 2024/25, though as I pointed out earlier this can only now be done by requesting a variation from the adjudicator). The governing board provided me with financial projections for the five years from 2023/24 to 2027/28. If no change is made to the PAN, the number of classes remains as it is currently and combined with the decline in numbers, the school is projecting a significant increase in its cumulative deficit over that period which would make the position of the school's finances untenable.

25. I will now look at each of the two variations requested in turn.

The proposal in respect of the 2022 arrangements

26. The request made for a variation to the 2022 arrangements can now only relate to any in-year admissions in the remainder of the current academic year 2022/23.

27. I note from Table 3 that the current number of children in YR at the school is 59. Mengham Infant School admitted 60 at the start of the year. Assuming this has not changed, agreeing to reduce the PAN at the school to 60 would leave one place available in the planning area.

28. The LA confirmed its position with respect to this variation request as:

“The LA wishes to support the school with their PAN variation for the current [YR], but recognises that this could impact on the availability of school places for in-year movers into the planning area.”

29. In making my decision, I have taken into account that no party has provided evidence that there appears to be anything other than a low level of pupil mobility in the area or that there has been any additional demand since the variation requests were made. I am of the view that there is unlikely to be such a demand as would realise the LA’s concern about the number of places in-year in YR in the planning area, particularly given that this determination is made so close to the end of the school academic year.

30. For the reasons set out above I have decided to approve the proposed reduction in the PAN from 90 to 60 for 2022/23.

The proposal in respect of the 2023 arrangements

31. This relates to admissions in the academic year 2023/24.

32. The school has provided data which show that the number of offers made for places from September 2023 is the lowest it has been since 2019/20. All parents expressing the school as the first preference have been offered places for their children. Reducing the PAN to 60 will mean there would still be 12 places available in the school should they be required.

33. I asked the school if it had considered the use of mixed-age classes from 2023/24 instead of pursuing the variation it has requested. In response, the school told me:

“The school has decided not to mix the KS1 classes for 2023/24 due to the significant vulnerabilities of the children who will be in Year 2 during that academic year. Within the cohort there are currently five EHCPs with another two pending. There are four children who have required Primary Behaviour Service support. Their needs are so great that a full school referral was submitted to support staff with managing their complex needs. Furthermore we have a child new to residential care who has recently started in the cohort and this has caused greater vulnerability.”

34. The LA confirmed its position with respect to this variation request as:

“The LA is supportive of the application for year R in September 2023 as it would allow the school to plan with certainty for two classes of 30 in year R in September 2023, rather than potentially having to run a third class should children make applications to attend Mill Rythe, and therefore, reduce any financial uncertainty in the school’s planning.”

35. Schools are largely funded by the number of children and one of the highest costs is staffing. If the number of children in YR is over 60, even by one child, then the school may

decide for educational reasons to establish a third class with the costs that this would entail. The drop in the number of children of YR age has meant financial difficulties for the school. The situation with the reducing number of children being admitted to the school will result in a reduction in the school's finances such that the resulting cumulative deficit which become untenable. The governing board has requested a reduction in PAN to address that issue. By the PAN being changed so that it is 60 then the governing board can plan on that basis. The reduction in PAN to 60 will enable the school to plan staffing and budgets with more certainty. I am also assured that there are sufficient vacant places in the planning area if there are further requests for places up to and through 2023/24.

36. Taking into account the circumstances and evidence presented to me in relation to this case, I am of the view that the governing board has made a strong case for reducing the PAN at the school to 60 for 2023/24, and I therefore approve the reduction in PAN from 90 to 60.

Consideration of the arrangements

37. Having considered both the 2022 and 2023 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. I have listed these matters below setting out the relevant paragraphs of the Code and where the arrangements did not conform to requirements.

37.1. The arrangements state, in the introduction: "The guiding principles of the school admissions policy are that each Hampshire child should be offered a school place; [...]" . I appreciate that the LA has a statutory duty to secure provision of school places for children who live in its area. However, that is not the end of the matter. As paragraph 2.1 of the Code makes clear, parents are not constrained in where they might seek to have their children educated. As paragraph 2.1 explains: "[...] parents may express a preference for any state funded school – regardless of whether it is in the local authority area in which they live [...]". Paragraph 15d makes the same point when it says that: "Parents are able to express a preference for at least three schools. The application can include schools outside the local authority where the child lives: a parent can apply for a place for their child at any state-funded school in any area. If a school is undersubscribed, any parent that applies **must** be offered a place".

37.2. The school uses in its arrangements the term 'Admission Criteria' rather than the more common term 'Oversubscription criteria'. I consider that this – especially when combined with the references to Hampshire children which I have described above – may make the arrangements misleading to parents by creating (I am sure inadvertently) an impression that only Hampshire children can be admitted. Of course, this is not the case and moreover the application of these criteria is only in situations where there are more

applications than places. They do not apply when the number of applicants is fewer than or equal to the PAN. Parents may believe the criteria are used for any admissions and this is therefore unclear. (Paragraph 14)

- 37.3. In the 'Admission Criteria' section, it is stated: "For the main admission round, all on time preferences will be considered simultaneously and ranked in accordance with the admission criteria. If more than one school can offer a place, the parent's highest stated preference will be allocated." This will be unclear for parents as the arrangements are only for the school. It is not clear why this is referring to 'more than one school'. (Paragraph 14)
- 37.4. Under oversubscription criterion 4, it is not clear for parents what is meant by the term 'preferred school' which is undefined. It is also not made clear why Mill Rythe Junior School is named in this criterion until it is explained under oversubscription criterion 5). This is not clear for parents looking at oversubscription criterion 4. (Paragraph 14)
- 37.5. The need to include the section 'school closures statement' is unclear for parents as it does not apply to the school. (Paragraph 14)
- 37.6. In respect of the tie-break section, it is stated that: "If the school is oversubscribed from within any of the above categories or subcategories [...]" It is not clear for parents to what 'categories' or 'sub-categories' this is referring, and what it means to be 'oversubscribed from within'. (Paragraph 14)
- 37.7. In respect of the section 'Pupils with Statements of Special Educational Needs':
- 37.7.1 This section uses out of date terminology. Statements of special educational need no longer exist, and arrangements should therefore only refer to Education Health and Care Plans (EHCPs).
- 37.7.2 Paragraph 1.6 of the Code states: "All children whose Education, Health and Care Plan names the school **must** be admitted." This section, and the section entitled 'Admission Criteria' do not make clear that children with EHCP are prioritised above all other children when the school is oversubscribed. It is therefore unclear to parents that this is the case and that the number of places available to other children on the oversubscription criteria will be less the number admitted with EHCPs. (Paragraph 14)
- 37.8. Information for parents who may wish to make an in-year admission can only be found on the website. The school says it will provide copies of paper-based forms for making in-year applications but does not say how a parent can request one. (Paragraph 14).

37.9. The arrangements include a section entitled 'In-Year Fair Access placements by the local authority'. The Fair Access Protocol is not part of the normal admission process and so its inclusion in the arrangements is unnecessary and makes the arrangements unclear for parents. (Paragraph 14).

37.10. In respect of the contents of the section entitled 'Waiting List':

37.10.1 It is stated that: "When all available places have been allocated, schools will operate a waiting list". This is generic and not specific to the school's arrangements. It is also inaccurate. Therefore, this is not clear for parents. (Paragraph 14).

37.10.2 It is then stated that: "Parents who wish their child to be included on the waiting list must inform the school in writing." Parents are not expected to request to be placed on a school's waiting list. However, it is permissible for the school to ask parents to confirm if they wish their child(ren) to stay on the waiting list.

37.11. Paragraph 2.18 of the Code states (in part): "[...] Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." The section of the arrangements entitled 'Admission outside normal age group' does not adhere to the requirements of the Code, as it offers no such explanation.

37.12. The section entitled 'Legislation' refers to the 2014 version of the Code. However, that version of the Code was replaced in September 2021.

37.13. Paragraph 1.50 of the Code states: "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 [...]" The school website does not include a copy of the school's arrangements for 2024/25.

38. The governing board has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed.

39. I have, while considering this case, been provided by the school with a copy of proposed revised arrangements for 2024/25 in which the school has told me that it has addressed the matters I raised. I record here that I have not looked at those draft arrangements. I do not have jurisdiction to do so, as the determined arrangements for 2024/25 were not part of the variation requested and because they are not the determined version in any event. The school will need to amend the 2022 and 2023 arrangements to address the matters raised in this section of the determination. I note here the commitment that the school has demonstrated already to addressing the matters I have raised with the governing board.

40. I also note here that the LA had a different view to my own in respect of some of the other matters raised with the governing board. For example, in respect of the way that some matters are worded (for example, the wording of the tie breaker) and with the inclusion of specific information (such as in relation to school closures). The LA's view on these matters was such that it would be important for the school to word matters as the LA does and to include the specific information for parents. In respect of wording, the LA makes the point that:

“It is unclear how the language here could be made clearer in the circumstances, and similar language is used by other Local Authorities in the South-East.”

41. It is not my role to advise admission authorities on how they address any matters raised, but to indicate where arrangements may not or do not adhere to the Code. I will say here that, in my view, the language used in those areas I have highlighted, is not clear for parents and needs to be addressed. It is not sufficient to argue that it should remain on the basis that others use the same language.

42. On the LA's view with respect to the inclusion of specific information for parents, I make the following points. The Code includes mandatory requirements and statutory guidance to admission authorities and this is set out clearly in paragraph 3. That paragraph ends: “These bodies have a statutory duty to act in accordance with the relevant provisions of the Code” (underlining is my emphasis). Paragraph 14 then states: “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated” (again, underlining is my emphasis). The Code does not mandate that everything therein has to be included in / covered by admission arrangements (though it clearly mandates that specific matters are covered / included), but that arrangements must include what is relevant for parents to ensure they are clear and fair in respect of the arrangements for a specific school or, if the LA is the admission authority, for the schools to which those arrangements apply. Clearly, the LA will need to include / cover some provisions of the Code that might be different to those that a school would need to as an admission authority. As a foundation school, the school's arrangements are the responsibility of the governing board and apply only to that school. The governing board should not be expected or advised by the LA to include that which applies outside of its remit and which may render the arrangements unclear for parents or that which can be covered by the LA's own admission information.

43. I include one specific example to illustrate my point in this regard. In respect of the inclusion of wording related to school closures, the LA told me that:

“The inclusion of such wording in the Code [paragraph 2.33] would suggest that inclusion of such wording in an admission policy is appropriate in reflecting that provision of the code, were the school to be affected by school closure, as an aided school in Hampshire were [sic] in August 2022.”

44. The inclusion of such a statement in the LA's own arrangements may well be relevant. However, including such a statement in this school's arrangements is, in my view, neither relevant to the school's own situation (as it is not earmarked for closure) nor does it help parents to understand how places for that school will be allocated. In short, it is simply not relevant to the school's situation, is not clear for parents and, therefore, does not adhere to the Code. I disagree with the LA's view in this regard and where this applies to other matters I have raised with the governing board where the LA has expressed the same opinion.

45. As the governing board 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 within two months of this determination as required by paragraph 3.1 of the Code. This does not, of course, affect the requested variations which come into force immediately.

Determination

46. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for Mill Rythe Infant School, Hayling Island, Hampshire for September 2022.

47. By virtue of the same provision, I approve the proposed variation to the admission arrangements determined by the governing board for Mill Rythe Infant School, Hayling Island, Hampshire for September 2023.

48. I determine that the published admission number for admissions in 2022/23 shall be 60.

49. I determine that the published admission number for admissions in 2023/24 shall be 60.

50. 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.

51. 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: 26 June 2023

Signed:

Schools adjudicator: Dr Robert Cawley