



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2369

Admission authority: Essex County Council for King's Ford Infant School and Nursery, Colchester

Date of decision: 21 September 2023

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Essex County Council for King's Ford Infant School and Nursery for September 2024.

The referral

1. Essex County Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2024 (the arrangements) for King's Ford Infant School and Nursery (the school) to the adjudicator. The school is a community school for children aged three to seven in Shrub End, Colchester.
2. The proposed variation is that the published admission number (PAN) be reduced from 60 to 30 for admissions to reception year (YR) in 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. 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. 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.
6. The information I have considered in reaching my decision includes:
 - a. the referral from the local authority dated 25 July 2023, supporting documents and further information provided at my request;
 - b. the determined arrangements for 2024 and the proposed variation to those arrangements;
 - c. comments on the proposed variation from the school;
 - d. comments on the proposed variation from the Chief Executive Officer (CEO) of Connected Learning. This is the multi-academy trust for Icení Academy, a primary school for children aged seven to eleven, which is situated next to the school and shares an identical address;
 - e. a map showing the location of the school and other relevant schools; and
 - f. information available on the websites of the local authority (including the composite prospectus for admissions in 2024), and the Department for Education (the DfE).

The proposed variation

7. It is proposed to vary the PAN for YR entry in September 2024 from 60 to 30. The referral includes the following statements:

“The major change in circumstance has been the unexpected and extraordinary increase in costs at schools which has caused un-precedented organisational and budgetary problems.”

“Previously it was thought that a reasonable level of spare places at King’s Ford Infant School would be manageable. As a 2FE infant school the maximum

capacity is 180 pupils. It is anticipated that the school will soon be operating at less than 75% capacity and with increased staffing, utility and resource costs etc mentioned above, running year groups with two classes which are not full would hugely inefficient and potentially unsustainable.”

“In January 2023 the school was operating at 81% of its total pupil number capacity as a 2FE school. Given the present level of allocations for the 2023 intake it is likely that this figure will reduce to 76% by January 2024 and potentially to 70% in January 2025. Given the prevailing economic and budgetary situation, the school is forecasting a deficit budget for the next financial year. The school has requested the in-year variation because the senior leadership team does not think it will be financially sustainable for the school to continue with a PAN of 60 while there are not the pupil numbers to fill two classes, in the light of an excess of places in the area. The Local Authority agrees that for admission in 2024, and future years, given the number of children in the pre-school cohort, this is a strong possibility.”

“The reduction in PAN will give the school’s Governing Body the confidence to organise as a one form entry school from September 2024. Governors are concerned that if the PAN is not reduced from this earlier date, an intake of more than 30 pupils would mean that the number of pupils in each class could not be maintained at less than 31. If the PAN is not reduced until September 2025, rather than 2024, the cost to the school would equal the cost of maintaining an additional class for the 2024/25 academic year.”

“The cost of a 1fte class teacher, based on the current teaching staff costs at the school, is around £56,820 per year. Further savings may be identified from the reduction in classroom LSA staff. Lastly, it might be possible to identify some savings to non-staffing expenditure as it will no longer be necessary to equip or maintain all classrooms.”

“The school is currently projecting a deficit budget for next financial year. Whilst the reduction in the number of classes/teaching fte will not resolve this issue entirely, it will help to a huge extent. If the PAN remains at 60 the school will be required to plan for two reception classes.”

“This is a very inefficient and costly use of resources if in the event the school only admits between 40 and 45 pupils, which seems highly likely.”

8. 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

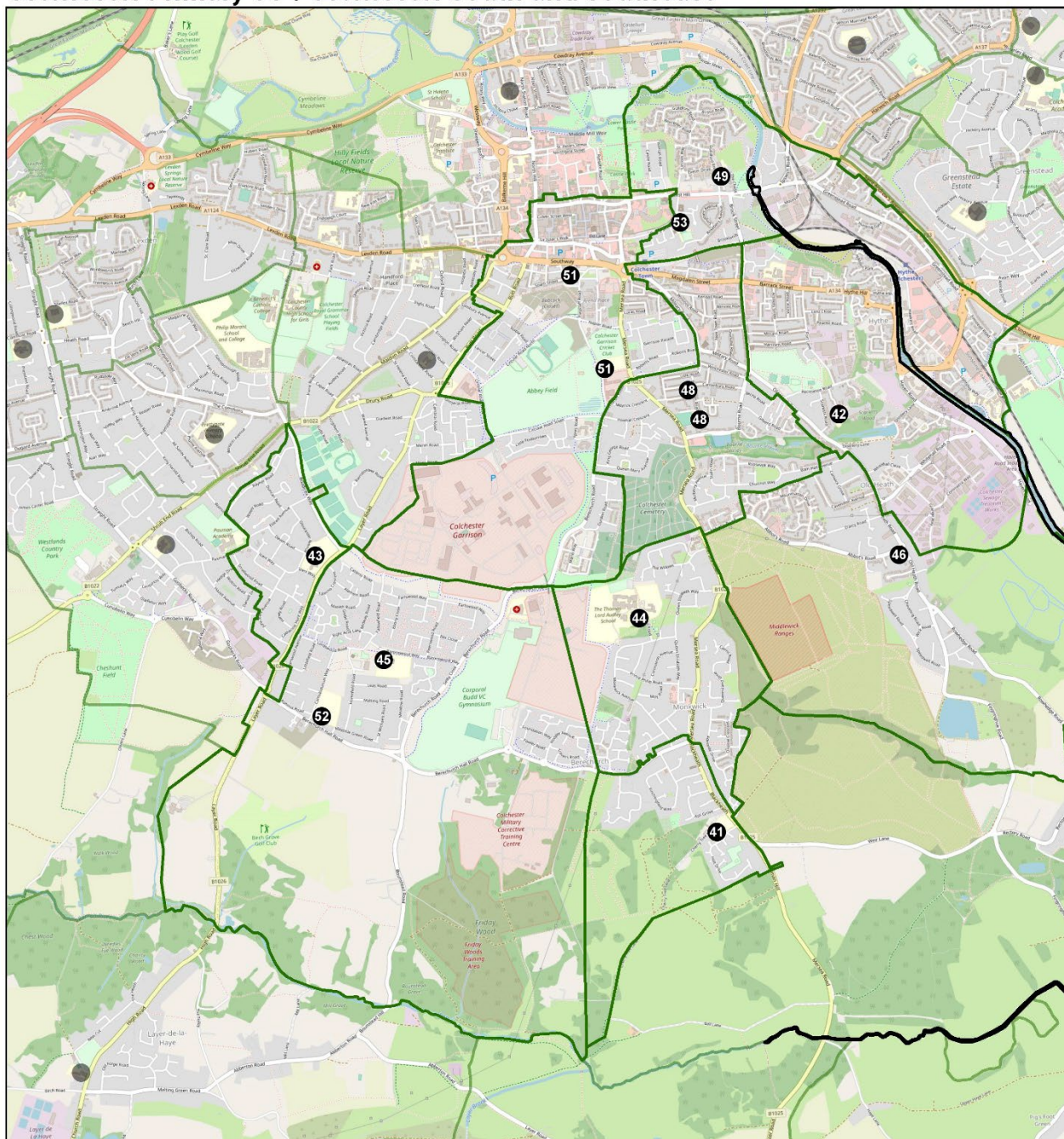
9. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. Once the PAN has been set for a particular year then no body, except the governing board of a community or voluntary controlled school, can object if that PAN remains 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.

10. It is therefore particularly important that the proposed variation is properly scrutinised. I have accordingly given careful consideration to the latest available data in order to form a view about the sufficiency of school places in the local area were the school's PAN to be reduced from 60 to 30 for September 2024. I have also considered the demand for places at the school, the reasons given for the reduction in demand, the potential effect on parental preference of the proposed PAN reduction and whether the proposed reduction is justified in these circumstances. I have also considered carefully any similar information available that relates to September 2025. This is because the arrangements for September 2025 have not yet been determined, and so if the proposed variation were to be approved, the PAN for 2025 could be set at 30 without objection save from the governing body of the school.

11. 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 school is one of 11 schools admitting children to YR in its planning area ("group 8"). Map 1 below shows the group 8 planning area and the location of the primary schools within it, with school 43 being both King's Ford and Icen Academy.

Map 1: Location of primary schools within planning area 8

Colchester Primary o8 : Colchester south and southeast



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12. The local authority has provided me with a variety of data covering admissions to the planning area and forecasts for future years, which I have summarised in table 1 below:

Table 1: number of places in the group 8 planning area, numbers admitted and forecasts for YR

	2021	2022	2023	2024	2025
Sum of current PANs of schools in the planning area for YR	600	600	600	600	600
Number of children admitted or allocated a place	549	547	521 (allocated as of 16 June 2023)		
Essex 10yr plan forecast: (2023 – 2032)			527	521	534
Vacant places	51	53	79	79 (potentially)	66 (potentially)
Vacant places as a percentage	9%	9%	13%	13%	12%

Other relevant information

	2021	2022	2023	2024	2025
Revised SCAP forecast (July 2022)				527	521
GP registration numbers	637	657	605	612	561

13. If the PAN for the school for 2024 were to be reduced from 60 to 30, the sum of the PANs for the planning area would be reduced to 570. Had this reduction been in place this year, there would have been sufficient capacity to provide places for all of the 521 children allocated for this September. The figures show that there are likely to be similar levels of spare capacity in 2024 and 2025 and I am therefore satisfied that a reduction of 30 in the PAN for the school would not compromise sufficiency for the planning area in 2024 nor in 2025.

14. I now turn to the number of children at the school and the reasons given by the school in support of the variation request. Table 3 summarises the numbers admitted to the school in recent years.

Table 3: numbers of children admitted to YR or predicted to be offered a place in YR at the school

	2021	2022	2023	2024
The PAN for the school	60	60	60	60
Number of children admitted or projected to be offered a place	48	41	42 (allocated as of 16 June 2023)	
Vacant places in YR	12	19	18	

15. The request for a variation refers to the governing board’s wish to align its staffing and budget to a reducing number of children, and in particular the need to reduce the total number of classes for financial reasons. The school is one affected by 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. The infant class size regulations apply to YR as well as Y1 and Y2 and this means that if the number admitted to YR in any given year exceeds 30, and the school wishes to teach only in single year group classes, there will need to be at least two YR classes. From the data supplied, it appears unlikely that the number of admissions in 2024 and 2025 will reach the 60 children required for the most economically advantageous situation. The financial calculations supplied by the school support this analysis.

16. The school tells me that it currently has six classes, two per year group, and that if the variation is approved, it will move to five classes – one in YR and two in each of Y1 and Y2. It also tells me that if the variation is not approved, and there are more than 30 children admitted to YR, it plans to operate with six classes. The school says:

“The school wishes to avoid mixed aged classes due to the impact on the children’s access to an equal entitlement of education. Especially with the view to not wanting to mix Key Stages. This has been discussed at length with the school’s development and improvement partner from the local authority.”

17. However, whilst the school may consider that there are sound reasons for avoiding mixed age classes, it is not required to do so in law, the only requirement being that the infant class size regulations are not breached. It is therefore open to the school to arrange infant classes so that there is more than one year group to a class. Many schools do this successfully, although it may initially be unpopular with parents and teachers if they are not accustomed to it.

18. The school tells me that in September 2024 that there will be 37 children in year 1 and 45 in year 2. The variation request refers to a projected intake into YR in 2024 of between 40 and 45 children. I note that these figures suggest a total of up to 127 children in infant classes, and this number is well below the limit of 150 for organisation into five classes without breaching the infant class size regulations. As an aside, I note that were this to be done, it would avoid the significant loss of revenue funding that would come from admitting 30 rather than between 40 to 45 children. I also note that if the school still wished to maintain two classes in YR, it would be able to organise the remaining 82 Y1 and Y2 children into three classes without breaching the infant class size variations. This would also allow it to avoid mixing across Key Stages in line with its stated wish not to do so.

19. I now consider the impact of the variation on parental preference. Map 1 shows that the school's priority admission area is on the western periphery of the planning area. In situations like this, it is likely that there is a strong element of "crossover" whereby parents express a preference for a nearby school that is not in the planning area corresponding to their address. The local authority has not provided any analysis of this in their variation request, but in any case, I place a strong weight on their submission that, regardless of where parents live, there is likely to be a significantly higher demand for places at the school in 2024 than would be available if the PAN were 30. As such, there would be a degree of frustration of parental preference if the variation were approved, regardless of the availability of suitable school places in other schools and other planning areas. I take into account also that the composite prospectus for admissions to Essex schools in 2024 has now been published in accordance with the statutory deadline for this. This states that there will be 60 places available at the school and parents may well already have begun to consider their options.

20. I also note that there are strong views opposing the reduction in PAN expressed by the CEO of the multi-academy trust for Iceni Academy, the junior school which is situated next to the school and shares an identical address. The CEO outlined the trust's concerns in an email to the local authority dated 20 July 2023, and I reproduce some extracts below:

"Thank you for sharing the proposal to reduce Kings Ford Infants and Iceni Academy from 2 form entry to one form entry. I understand this is to a reduction in forecasted numbers within the Colchester area. Thank you in particular to [X] for his time this morning to outline the proposal and add clarity."

"I would like to state from the start that this is not a decision I support and do not feel reduction in the numbers of Iceni is an appropriate decision. First and foremost, I was only apprised of this following contact from [X] this week and Iceni only received notification on Tuesday despite ongoing conversations with Kings Ford Infants since January. Not only if [sic] this not an appropriate consultation or notification period but a failure to involve Iceni Academy in any discussion or share the direction of travel is exceptionally disappointing at best. Indeed, sharing proposed changes on the last week of term ... [is] certainly not the way this episode should have been conducted."

“Regarding the proposed changes I query how the selection took place and why local schools whom [sic] had recently been expanded following poor forecasting are not those to be targeted for reduction. A three-form entry school currently displaying 71 on role would be more readily able to absorb cohort reduction without the financial impact of a two-form entry infant or junior reducing to one. I fail to see how it can be economically viable to run two separate infant and junior schools with two heads, two sets of clerical and site staff as well as two large buildings with half capacity. Certainly, in these financially difficult times - sustainability would be exceptionally difficult for either school whereas three form to two-form would not have the relative impact.”

“I have real concern over the rationale for the infants to reduce and the disingenuous way it has been approached - what is the ulterior motive of the leadership? To serve children [or] to make life easier for themselves? Questions which need to be explored. I do not feel the needs of the children or local community are truly being accounted for here.”

“Whilst I understand numbers are falling within the area and your role in addressing this, I do not feel simply accepting the first bid without due diligence is the way to go and as such will be raising my concerns directly with the adjudicator.”

21. I do not intend to comment in detail on the points raised by the CEO, but I include them to show that the proposal to reduce the PAN is clearly of significant interest to a relevant stakeholder. In circumstances such as these, it is undesirable for admission authorities to make long-term change without parents and others who have an interest being given the opportunity to make representations. This is particularly important in this case because the arrangements for September 2025 have not yet been determined, and so if the variation were to be approved, the PAN for 2025 could be set at 30 without there being any scope for objection save from the governing body of the school.

Summary

22. I am satisfied that a reduction in PAN for the school from 60 to 30 would not compromise sufficiency for the planning area in 2024 nor in 2025.

23. However, I also find that such a reduction would lead to frustration of parental preference and is not a necessary condition for the school to be able to reduce the number of teaching classes in 2024/25.

24. A PAN reduction for 2024 would allow the PAN to be set at that level in future years without objection save from the governing body of the school. This would be a change with long-term implications, and it would be undesirable for this to be made without the opportunity for relevant stakeholders to make representations.

25. For these reasons, I do not approve the variation.

Determination

26. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Essex County Council for King's Ford Infant School and Nursery for September 2024.

Dated: 21 September 2023

Signed:

Schools adjudicator: Clive Sentance