



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4204

Objector: Suffolk County Council

Admission authority: The Active Learning Trust for Pakefield Primary School, Lowestoft

Date of decision: 18 October 2023

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2024 determined by the Active Learning Trust for Pakefield Primary School in the local authority area of Suffolk County Council.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the 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. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by Suffolk County Council about the admission arrangements for September 2024 (the arrangements) for Pakefield Primary School (the school). The school is an academy and provides for children between the ages of three and eleven. The objection is that the consultation on changes to the admission arrangements did not meet the requirements of the School Admissions Code (the Code) and to the reduction in the published admission number (PAN) from 45 in 2023 to 30.

2. Suffolk County Council (the local authority) is the objector, the local authority for the area in which the school is located and a party to this objection. The Active Learning Trust (the trust) is the admission authority for the school and a party to this objection.

Jurisdiction

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust on that basis. The local authority submitted its objection to these determined arrangements on 12 May 2023. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the Code.
5. The documents I have considered in reaching my decision include:
 - a. a copy of the minutes of the meeting of the trust at which the arrangements were determined and a copy of the determined arrangements;
 - b. the local authority's form of objection and further information provided by the local authority in response to my enquiries;
 - c. the trust's response to the objection and further information provided in response to my enquiries;
 - d. maps of the area identifying relevant schools and the home locations of children attending reception year (YR) and year 1 (Y1) at the school;
 - e. information on the most recent consultation on the arrangements; and
 - f. information available on the websites of the trust, the school and the Department for Education (the DfE).

The Objection

6. The local authority said it was not consulted on a reduction in the PAN for the school from 45 to 30 for 2024 and so the consultation did not meet the requirements of paragraph 1.47 of the Code. In addition, the local authority said that the reduction in the PAN would mean that parental preference is likely to be frustrated and that children living closest to the school could be refused admission, due to the lower PAN, as those living further away but with a sibling at the school would have the higher priority if the school were to be oversubscribed.

Background

7. The school is in the southern part of the town of Lowestoft. According to the DfE website, 'Find and compare schools', there are 16 state funded schools that admit children to reception year (YR) within three miles of the school and two within one mile. The DfE

website measures distance in straight lines, not walking routes. The school is one of ten primary schools in the south Lowestoft planning area (the planning area) used by the local authority in forecasting the school places it needs in order to meet its duty to secure the sufficient provision of school places. All of these ten schools admit children to YR. Eight of the ten schools are in the southern part of Lowestoft and the remaining two are located outside of Lowestoft with one less than two miles from the school and the other slightly over two miles from the school.

8. Ofsted judged the school to be good in 2021. The trust told me that this judgement followed four years of the school holding a judgement by Ofsted of requiring improvement. I note that there was a previous primary school on the same site which Ofsted judged to require improvement in 2014. This school converted to become the current school in 2015 and which was judged by Ofsted to require improvement in 2017. The school on this site was therefore judged to require improvement for seven years from 2014 to 2021.

9. The oversubscription criteria of the school are, in summary:

- 1) Looked after and previously looked after children
- 2) The sibling of an existing pupil expected to be attending the school at the point of admission of the younger child
- 3) Distance of the home from the school with priority given to those living nearest to the school.

10. I note in relation to the oversubscription criteria that the local authority refers to the catchment area for the school in some of its correspondence. As the summary of the arrangements show, this school does not have a catchment area.

11. The PAN for the school had been 60 until 2022. The trust reduced the PAN to 45 for 2023 and then again to 30 for 2024. My jurisdiction is for the 2024 arrangements. I can and have considered the consultation that preceded the determination of the 2024 arrangements. I can and have also considered whether the PAN set for 2024 conforms with requirements. I cannot and have not considered the consultation that preceded the determination of the 2023 arrangements and nor have I considered the PAN set for 2023.

Consideration of Case

Consultation

12. I will first consider whether the consultation to change the admission arrangements for 2024 met the requirements of the Code. Paragraphs 1.45 to 1.48 of the Code set out what an admission authority must do with regards to consulting on changes to admission arrangements. When any change is planned, the admission authority **must** consult on the change for at least six weeks between 1 October and 31 January in the determination year.

13. Paragraph 1.47 details who must be consulted and says (in as far as applies in this case),

“Admission authorities **must** consult with:

- a) parents of children between the ages of two and eighteen;
- b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- d) whichever of the governing body and the local authority is not the admission authority; [and]
- e) any adjoining neighbouring local authorities where the admission authority is the local authority”.

14. The relevant area is defined in the Code as “The area for a school (determined by its local authority and then reviewed every two years) within which the admission authority for that school must consult all other prescribed schools on its admission arrangements.” The school’s website included a consultation document which said that it was consulting on the reduction in the PAN from 45 to 30 and that the consultation ran from 21 October until 2 December 2022. This was six weeks, as required by the Code, and the information on the school’s website regarding consultation was sufficient. I asked the trust what bodies and people it had informed of the consultation. The trust told me that.

- a) “School parents were informed by way of school newsletter.
- b) Nursery parents were informed by way of newsletter.
- c) Neighbouring schools were sent a copy of the consultation paper.
- d) The local authority was sent a copy of the consultation paper (although it is acknowledged that they did not receive it).
- e) The consultation paper was published on the school website”.

15. There were no responses to the consultation. The trust believed it had sent the consultation document to the local authority and provided the email address used. An incorrect email address was used which is why the local authority did not receive information on the consultation. This appears to have been an administrative error on the part of the trust. The local authority explained that it would have objected if it had known that such a reduction was planned. The consequence of the error is that the local authority was not consulted as required by the Code.

16. The local authority will have a close interest in a consultation on reducing a PAN because of its statutory duty to make sure that there are sufficient school places for the children in its area.

17. Another group with a clear interest will be parents who may be considering the school for their child. Parents with children already at the school either have no younger siblings or the younger siblings will have a high priority in the oversubscription criteria. It is therefore parents of children who are not yet at school but who may wish to join in future years who have a particular interest in a reduction in the PAN. This will not just be those with a child at the nursery provision at the school. The trust told me:

“We also contacted and held face-to-face discussions with local pre-schools & nurseries. We did not contact playgroups – although notices were placed in the local library. All local groups are linked to Pakefield Primary School’s social media outlets, and the proposed changes (with information on how to object) were posted.”

18. These are good steps although I am assuming that the face to face discussions were with those running the provision rather than with those parents using the pre-schools. Furthermore, I have seen no evidence that the trust asked the other local schools to tell their parents of the consultation. There is no requirement or expectation that an admission authority should directly contact every parent with children over the age of two in the area. However, I consider that the trust could and should have done more. It could have asked schools and other settings to pass information to parents. It did not do so.

19. The trust said that it had consulted with “neighbouring schools”. The requirement of paragraph 1.47c) is to consult “all other admission authorities within the relevant area (except that primary schools need not consult secondary schools)”. I asked the local authority for the relevant area for the school. The local authority document defining the relevant areas provided a list of schools for the relevant area for the school. The trust explained that it had never seen this list and acknowledged that it had not consulted with all the schools named. It had, however, “contact[ed] local schools, including schools within (and over) a 2 mile radius of Pakefield Primary School.” This is not all the schools in the relevant area, as determined by the local authority and required to be consulted by the Code.

20. It therefore appears to me that the trust made genuine efforts to consult. Unfortunately, due to the administrative error in the email address used to consult with the local authority, this did not occur. In addition, the trust was unaware of the determined relevant area and so did not consult with all the schools within it. Finally, the trust did not take adequate steps to consult parents. For these reasons the consultation did not meet the requirements of the Code and I uphold this part of the objection.

Reduction in PAN

21. The local authority has objected to the reduction in the PAN as it is concerned that parental preference may be frustrated if the PAN is 30 and I will explore this possibility and the reasons why the trust set the PAN at 30.

22. First, however, I wish to explain the legal context of the PAN. The PAN is set for the year of entry, YR in this case. It does not apply to other years. The PAN is the minimum number of children who must be admitted if there is sufficient demand; an admission

authority cannot refuse admission until the PAN is reached. The only exception to this requirement relates to grammar schools and so is not relevant here. An admission authority can refuse admission to other year groups, not the year of entry, if admitting another child or more children would prejudice the provision of efficient education or the efficient use of resources. Such prejudice cannot occur in the year of entry unless the PAN has been reached.

23. 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. PANs are often set at 30 or multiples of 30 and if 30 or only slightly fewer than 30 or the relevant multiple thereof are admitted, then the school will be able to run single aged classes in a cost effective manner. Other schools have PANs – such as 45 - which are predicated on mixed aged teaching. What most schools will seek to avoid is having to run small classes because school funding is based on pupil numbers and small classes mean that the numbers of pupils in those classes may not cover the teaching and other costs. This school, as I explore below, has a mix of single year group and mixed aged classes.

24. Paragraph 3.3 of the Code sets out what objections cannot be made to an adjudicator. The list includes, “objections about own authority admission’s decision to increase or keep the same PAN”. In other words, if the PAN for the school were set at 30 for 2024 and no objection were made, then no objection could be made in future years, such as 2025, if the PAN were to remain at 30. Local authorities therefore have to consider the implications of a PAN for future years, not just the coming year, when deciding whether or not to object.

25. I now turn to considering this particular case. I asked the trust to explain why it had set the PAN at 30. The trust referred me to the report to trust for its meeting on 8 December 2021 which said,

“There has been a falling roll at Pakefield Primary School for over six years. The demographic of the area is such that young families are not relocating to the area, and so the number of school place applications continues to reduce. This has had a negative impact on the school budget and makes staffing to the current PAN unviable. Pakefield have been operating an Operational PAN for four years so that they can effectively manage class size and budget, and would now like to make this a permanent arrangement to assist budget planning in the future. The Proposal is that Pakefield Primary School reduce their PAN from 60 to 45 in Years 1 to 4. Years 5 and 6 currently will remain at 60 until pupils naturally move through the school. The proposed PAN for the reception intake is 30.”

26. The trust also referred me to the minutes of its meeting where it discussed the PAN on 9 December 2022 following the consultation. The relevant part of the minutes says,

“Pakefield Primary School: a reduction in PAN to 30. In line with falling roll and will ensure staffing stability going forward.”

27. I am not sure what is meant by an operational PAN; the only PAN in law is the PAN for the year for admission, YR in this case. I note that admission authorities can work with numbers for other years which will relate to how many children were originally admitted and what could be justified at appeal if the admission authority believes that further admissions would prejudice the provision of efficient education or the efficient use of resources.

28. The numbers in the year groups planned for September 2023 (as at 8 August 2023) were as provided in table 1. There were also 21 children anticipated to be in the nursery.

Table 1: numbers in year groups anticipated for September 2023

YR	Y1	Year 2 (Y2)	Year 3 (Y3)	Year 4 (Y4)	Year 5 (Y5)	Year 6 (Y6)	total
37	37	38	44	45	58	59	318

29. Table 1 shows the numbers in each year group at the school have reduced since Y6 were admitted. I asked the trust to provide information on the class structure planned (as in August 2023) for September 2023, which is now, I assume, in place. The information provided reflects the decrease in numbers. For example, years 5 and 6 (both year groups approaching 60 pupils) are taught in two classes for each year group with numbers approaching 30 to a class. Years 3 and 4 are taught together with three classes of 30 or nearly 30 each as there are 89 children across the two year groups.

30. YR is part of the foundation stage. Key stage one is Y1 and Y2. Key stage two is years 3,4,5 and 6. The trust told me, that it wishes particularly to avoid mixed key stages classes, that is, classes with key stage 1 and key stage 2 children in them as this made planning and delivering the curriculum more challenging. Y2, with 38 children, is taught in two classes of 19 each. This is an expensive model in terms of staffing, but I assume has been planned to avoid mixing key stages and makes sense given the numbers in key stage 2 (as above).

31. YR and Y1 both have 37 children (74 in total). One class of 37 children would be too many in one class to meet the requirements of infant class size regulations (and would be too many for one class in most circumstances). The school planned three classes. One of 25 which has only YR, one of 25 which only has Y1 and one of 24 with 12 YR and 12 Y1 children. I can see that planning economic and efficiently sized classes is challenging on the current numbers. With a PAN of 30, the school could plan from September 2024 to have one class in YR of up to 30 children.

32. Future demand for places in the area is an important consideration in deciding if the PAN set is fair. The Code requires admission arrangements to be fair and if the PAN set led to undue frustration of parental preference and/or that children had to travel long distances to an alternative school as a consequence, then the PAN set could be deemed to be unfair

and this would not meet the requirement of paragraph 14 of the Code. I will therefore consider the demand for YR in the planning area. Table 1 shows the sum of the PANs for the schools in the planning area and the numbers on roll in recent years and anticipated to be on roll for 2023. The reduction of 15 places for 2023 reflects the previous reduction in PAN for the school from 60 to 45 referred to above.

Table 2: schools in the planning area, the sum of the PANs and number of children

	2021	2022	2023
Sum of the PANs	480	480	465
Number of children on roll or anticipated	373	355	338
Number of vacant places	107	125	127

33. Table 2 illustrates that the demand for school places has reduced in the planning area. Even with the reduction in PAN for the school for 2023, over a quarter of all places are vacant. If the PAN for the school had been 30 for 2023, there would still have been nearly 100 vacant places across the planning area.

34. I turn now to look at forecast admissions in 2024 and beyond. The local authority forecasts that 313 places will be needed in 2024, 290 in 2025 and 313 in 2026. There is, therefore, a reduction in demand from that in 2023 anticipated in the near future. There would be sufficient places to meet demand if the PAN were to be 30 in those years and so no danger to the local authority's duty to make sure that there are sufficient school places. I also note that most of the schools in the planning area are not far from each other and all, bar one, have vacant places. This means that no child, if unable to gain admission to the school, would have to travel far to another school.

35. I will now consider parental preference and demand for the school. This is shown in table 3 and includes forecast demand.

Table 3: admissions to the school and demand forecast by the local authority

	2021	2022	2023	2024	2025	2026
PAN	60	60	45	30	30 (assumed)	30 (assumed)
Number of first preferences	32	32	37	N/A	N/A	N/A
Number of children in YR or anticipated	37	37	39	27	41	37

36. Table 3 shows that the number of children in YR has been stable for 2021, 2022 and 2023, demand for the school reducing for 2024 and then increasing for 2025 and 2026. I am aware that forecasting the number of children seeking a place at a particular school for YR, when they will be four years old, is unlikely to be precise. The figures can only be an indication. I recognise that there are many factors that affect parental preference and that

these factors can change over time. I note, for example, that two of the three nearest schools to the school have been judged to require improvement by Ofsted and this may affect a parent's views of a school and their preferences.

37. The local authority's objection said that it believed that "lowering the PAN from 45 to 30 would potentially limit parental preference in the area." I see this parental preference and the risk of its frustration as the crux of this objection. I will therefore consider whether parental preference is likely to be frustrated and, if so, whether this would make the arrangements unfair.

38. Table 3 shows that just over 30 parents made the school their first preference in 2021 and 2022 and 37 in 2023. More than these numbers were admitted which would mean that the school was the highest preference that could be met for some children for whom the school was not the first preference. It seems unlikely, based on the local authority's figures which are not disputed by the trust, that there will be more than 27 first preferences for 2024 on the figures provided. That evidence also suggests, again not disputed by the trust, that somewhere between 30 and 40 parents are likely to have the school as their first preference in each of 2025 and 2026. If the PAN remains at 30 then some of those parents may not achieve their first preference in 2025 or 2026. In addition, there may be some for whom the school would have been a second or third preference that could, with a higher PAN, have been satisfied but who would instead have to go to a lower or no preference school.

39. I asked the trust to "Provide information on the implications for the school if the PAN were to be 45 as opposed to 30." The trust did not provide any financial data but stated its belief that the numbers for 2024 were likely to be under 30. The trust also said,

"Should Pakefield go over 30 in YR for 2024 (which, given the evidence on predicted numbers, is highly unlikely) an additional class would need to be opened, with an additional teacher and teaching assistant needing to be employed. The school budget, based on the predicted numbers will not support additional staffing. This would be a major financial burden on the school."

40. This does not make entire sense to me as if the numbers were over 30 then there would be more than the predicted number (27) and the additional places would be financed. However, I recognise that if, for example, 37 children were admitted (as in 2022 and 2023) then the funding will be unlikely to cover the costs of two classes. However, the school currently provides mixed aged classes for YR and Y1 (as well as Y3 and Y4) and the trust recognises this as a possibility but remains very concerned about mixing key stages.

41. In its objection, the local authority expressed the concern that younger siblings of existing pupils could secure a place at the expense of children who lived nearer. I asked the trust to provide any information it felt valid on this matter. The trust explained that it was rare for children attending other school nurseries to apply for the school. There are 16 children currently at the nursery at the school who will require a school place in 2024. Of these, 11 have siblings at the school and will have a high priority for a place. This leaves 19 places for those without siblings at the school and I note that the local authority has forecast

27 children seeking places at the school for 2024. I am therefore not concerned that the PAN of 30 will lead to local children not gaining a place in 2024. I consider future years below.

42. The local authority has expressed its concern that a high proportion of parents only express one preference. As some parents have already made their applications for 2024, there is a risk, if the PAN remains at 30, that if some parents have already made their application and only put down the school, that a school will be allocated for which the parent have not stated a preference. I would like to be able to say that the admission arrangements for 2024 on the school's website clearly state that the PAN is 30 so parents are able to apply in this knowledge. However, I cannot say this as the trust has not published its admission arrangements for 2024 on its website as I discuss below. However, the local authority has forecast that 27 children will be admitted in 2024 which is lower than the PAN of 30 so the risk described by the local authority should not materialise based on the local authority's own forecast.

43. However, and importantly, the local authority forecasts that the parents of 41 children will prefer their child to attend the school in 2025. Paragraph 3.3 of the Code, as described above, would prohibit the local authority objecting to the PAN being 30 for 2025 if it remained at 30 for 2024. It appears to me that the risk of parental preference being frustrated is in 2025 as opposed to 2024.

44. The local authority provided me with a map showing where the children currently in YR and Y1 lived. The map shows that some of these children live some distance from the school and must pass other schools to get to the school.

45. Against the consideration that parental preference may be frustrated, I have thought about the effect on the school if the PAN were to be 45 and the background that the school was, overall, judged to require improvement for seven years. It seems to me that if the PAN were to be 45 then the school would have to keep revising its class structures, year on year, in order to meet the infant class size regulations and that this would put strain on the delivery of the curriculum as well as potential difficulties with the budget. It could, in other words, make it harder for the school to maintain a good quality of education.

46. There is no shortage of local school places. All but one local school has had vacancies year on year. A PAN of 30 makes sense educationally in this particular context. For these reasons I do not uphold this part of the objection. The PAN for 2024 can remain as determined at 30.

Other Matters

47. Having considered the arrangements as a whole I raised the following matters with the trust.

48. Paragraph 1.50 of the Code says, "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 ... by 15 March in the

determination year and continue displaying them for the whole offer year (the school year in which offers for places are made).” The arrangements were not published on the school’s website by 15 March in the determination year and are still not on the website as I write this determination. The trust said in its response that as the arrangements were available on the local authority’s website that it assumed that it had met its duty. This is not the case. The trust is the admission authority for the school and the arrangements **must** be on the school’s website.

49. The arrangements refer in three places to statements of special educational need. Statements of special educational need have been replaced with education, health and care plans and so the use of out of date terms may make the arrangements unclear. The trust said that “the term ‘statements of education’ is followed by ‘OR Educational Health Care Plan’” and so felt the arrangements were clear. I remain of the view that including reference to documents that do not exist will make the arrangements unclear and not meet the requirements of paragraph 14 of the Code that arrangements must be clear.

50. Paragraph 2.17c) of the Code says, “The authority **must** make it clear in their arrangements that where they have offered a child a place at a school...c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.” The arrangements do not state this right and therefore the arrangements are not clear in this regard.

51. I therefore require the trust to amend its arrangements, as permitted by paragraph 3.6 of the Code, so that they conform to the Code.

Summary of Findings

52. The trust did not meet the requirements of the Code regarding consultation in the ways described above. I uphold this part of the objection. The trust set the PAN at 30 for educational and financial reasons. The local authority forecasts many vacant school places in the area. The risk of parental preference being frustrated is not sufficient in these circumstances for me to uphold the objection.

53. The arrangements do not meet the requirements of the Code in the ways set out above.

Determination

54. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2024 determined by the Active Learning Trust for Pakefield Primary School in the local authority area of Suffolk County Council.

55. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

56. 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: 18 October 2023

Signed:

Schools Adjudicator: Deborah Pritchard