



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2396

Admission authority: Warwickshire County Council for Newburgh Primary School

Date of decision: 11 April 2024

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 Warwickshire County Council for Newburgh Primary School for September 2024.

I determine that the published admission number for 2024 will be 30.

The referral

1. Warwickshire County Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2024 (the arrangements) for Newburgh Primary School (the school) to the adjudicator. The school is a community primary school for children aged four to eleven.
2. The proposed variation is that the published admission number (PAN) be reduced from 60 to 30.

Jurisdiction and procedure

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act), which deals with variations to determined arrangements. Paragraphs 3.6 and 3.7 of the School Admissions Code (the Code) say (in so far as relevant here):

“3.6 Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such

changes to be necessary in view of a major change in circumstances. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified. Where the local authority is the admission authority for a community or voluntary controlled school, it **must** consult the governing body of the school before making any reference.

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

4. The local authority has provided evidence that the arrangements, which are those for all community and voluntary controlled schools in its area, were determined on 16 February 2023. The local authority has provided me with confirmation that the appropriate bodies have been notified. I find that the appropriate procedures were followed, and I am 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. The parties to this case are the local authority and the school’s governing board.

6. In considering these matters I have had regard to all relevant legislation, and the Code.

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

- a. the referral from the local authority dated 11 March 2024, supporting documents and further information provided at my request;
- b. the determined arrangements for 2024;
- c. comments on the proposed variation from the school; and
- d. information available on the websites of the local authority, the school and the Department for Education (DfE).

The proposed variation

8. The local authority set the PAN at 60 for admission under the 2024 arrangements but now believes that this should be reduced.

9. The local authority proposes that the PAN for 2024 is reduced to 30 and its reasons for seeking the variation are, in summary, that:

- a. There are expected to be no more than 30 children requiring a place at the school in 2024.

- b. The school is experiencing financial pressures which would be exacerbated if the PAN were not reduced.

10. The local authority explained that when the PAN was set at 60 it was not certain when the construction of two new schools in the area would be completed. The local authority stated, “the capital projects planned to provide additional places in the adjacent planning area for 2024 were not progressed to a point that allowed certainty of their delivery. The school's PAN was maintained at 60 to allow admissions to that capacity should the planned additional capacity elsewhere not be available. The significant change is that the LA is now confident that [the two new schools] will both be opening with a PAN of 30 in September 2024.”

11. The school has expressed its support for the proposed variation; the chair of the governing board stated:

“The governing board has regularly discussed reducing the PAN over the last four years. Over those years we have seen a steady decrease in the number of applications to our school. We have done what we can to try and manage this reduction. Increased marketing to attract more pupils, reduced our staff numbers and costs, adapted our classes; we have split year groups and ensure we take on any additional pupils the LA has needed to place. However, the governing body of the school has come to the conclusion that the only way to ensure we can continue to provide high quality provision for the pupils in the long term is to have the stability of a reduced PAN. We have come to that conclusion because of:

- the long-term financial projections of the school and the impact smaller classes cause.
- the reduced birth rate in the area...showing us there will not be any significant increase in pupils in the short term.
- the very close proximity of two primary school in the area.

[Whilst] we would prefer to be able to keep the PAN at 60, as governors, we feel the best way to provide the best provision of our local community is to reduce the PAN to 30. If this was not agreed it would have a significant financial impact to the school.”

12. 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

13. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. Clearly it is desirable that PAN reductions are made via the process of determination following consultation, as the consultation

process allows those with an interest to express their views. It also allows for objections to the adjudicator. None of this is afforded by the variation process.

14. The arrangements for 2025 have been determined and the PAN for that year has been set at 30. As stated in paragraph 3.6 of the Code, set out above, once admission arrangements have been determined they cannot be revised except in certain specific circumstances. The PAN for 2025 has already been set and this means that whether the PAN for 2024 is reduced or not, there will be no effect on future PANs. That is, the PAN for 2025 will remain at 30 unless, at some point in the future, the adjudicator agrees a variation to the contrary.

15. I have 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 PAN to be reduced from 60 to 30 for 2024. I have also considered the demand for places at the school, the potential effect on parental preference and whether the proposed PAN reduction is justified in the prevailing circumstances.

16. I will first consider demand for places in the area, which is defined on the DfE website 'Get Information About Schools' (GIAS) as "urban city and town". GIAS indicates that there are three schools which admit children to Year R within one mile of the school. There are fifteen schools that admit children to Year R within three miles of the school.

17. 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 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 belongs to the Warwick planning area.

18. The local authority stated that pupil numbers in the area in recent years "have been significantly inflated by pupils from the adjacent South of Leamington Planning area, which is undergoing high levels of new housing development and increasing populations. Schools in South of Leamington have been at or close to capacity in recent years. Two new primary schools are opening in South of Leamington in 2024 which is expected to reduce the intakes in Warwick Planning area significantly." The two new schools have a combined PAN of 60 and are, according to Google Maps, both within one and a half miles of the school as the crow flies.

19. Table 1 sets out data provided by the local authority and shows the number of places in the schools in the planning area and the number of children admitted to or expected to require a place at those schools, using a PAN of 60 for the school for 2024 and a PAN of 30 for 2025. The local authority stated that pupil number forecasts for 2024 and 2025 take into account the opening of the two new schools in the South of Leamington area. Although parents may apply for a school wherever they choose, and those in the South of Leamington area may still wish to apply for places in the Warwick area, I find it appropriate

that for planning purposes the local authority has taken this approach, especially given the proximity of the schools concerned.

Table 1: the number of school places and number of children admitted or forecast to require a place in schools in the planning area

	2021	2022	2023	2024	2025
Sum of PANs for the schools in the planning area	380	380	380	380	350
Number of children admitted or forecast to require a place	313	354	329	328	271

20. Table 1 shows that for 2024 the sum of the PANs for the schools in the planning area is 380. If the PAN of the school were to be reduced to 30 then this sum would be 350. As there are 328 children who are forecast to be admitted in 2024, this leaves 22 spare places which equates to six per cent surplus capacity.

21. The DfE document, “Basic need allocations 2025-26: Explanatory note on methodology”, refers to the need for two per cent surplus capacity “to provide an operating margin for local authorities. This helps to support parental choice, pupil population movement, and general manageability of the system”. The data shows that in the event the PAN was reduced the surplus capacity in the area would be well above that recommended by the DfE. I am therefore satisfied that the local authority would be able to fulfil its obligation to provide sufficient places in the planning area.

22. I will now consider the demand for places at the school. It is important to consider this in the context of the timing of this variation request. Parents have already made their applications for 2024 and did so on the understanding that the PAN would be 60; offers of places have not yet been made. If there were more than 30 parents for whom the school was their first preference a reduction in PAN would be likely to lead to significant frustration of parental preference.

23. At this stage in the process the local authority is in possession of applications for most children in the area who require a place in Year R in 2024; that is, all on time applications have been received. The local authority has supplied the data in Table 2 which shows the applications made to the school in recent years and for 2024, alongside the number admitted each year.

Table 2: the number of applications for the school, and the number of children admitted to the school

	Number of first preference applications	Number of second preference applications	Number of third preference applications	Number admitted
2021	33	24	13	36
2022	33	30	21	52
2023	31	29	18	38
2024	25	26	9	Not applicable

24. A first preference is the school that a parent most wants their child to attend and is a good indication of demand. However, applications are made months in advance of admission and people’s lives can change considerably in that time. Families can, for example, decide to move house or their family circumstances change in other ways which affects their choice of schools between the application which has to be made by 15 January and the following September when the child has the right of admission. It is not possible therefore to equate first preference applications with total demand for places.

25. Table 2 shows that in each of the past three years the number of pupils admitted has been higher than the number of first preference applications. Broad comparisons between years may give an indication of data in future years. In 2023, for example, they were seven more children admitted than the number of first preference applications received. This equates to an admission number approximately twenty-two per cent higher than the number of first preferences. If this same percentage were applied to the first preference applications for 2024 then either 30 or 31 children would be admitted.

26. It seems likely that if the PAN were reduced to 30 the school may be “full” in that admissions could be made up to PAN. I have considered this position very carefully. It is not the case that, say, admissions are likely to be well below 30 which may have made the requirement for the PAN reduction more evident. It is certainly possible that there may be some frustration of parental preference were the PAN to be reduced. For example, late applicants or parents who named the school as a second or third preference and who were not successful in gaining a place at their preferred school could be denied a place. However, neither does it appear to be the case that the school will be able to admit a number close to its current PAN.

27. I must consider whether the potential frustration of parental preference for what is likely to be a small number of parents is sufficient justification for the current PAN to be

maintained and the variation to be denied. I have therefore considered the effect on the school of keeping the PAN of 60 or reducing this to 30.

28. 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 (paragraph 2.16 of the Code). The infant class size regulations apply to Year R, Year 1 and Year 2.

29. The local authority provided the pupil numbers at the school as shown in table 2, and told me that pupils are currently arranged into 12 classes: two for each of Year R, Year 5 and Year 6; and three mixed-age classes for Years 1 and 2 and Years 3 and 4.

Table 2: pupil numbers at the school, as of March 2024

Year group	Number of pupils
Year R	40
Year 1	52
Year 2	32
Year 3	39
Year 4	60
Year 5	55
Year 6	64

30. As schools are largely funded on a per-pupil basis, classes of around 30 pupils are generally considered to be the most financially efficient. The school has sought to organise its pupils in an efficient way, hence its use of mixed age classes in some year groups. However, the number of pupils in Year R is well below the PAN of 60 and, due to the requirements of the infant class size regulations, the school is obliged to organise these children into two small classes; this is not financially efficient.

31. The school stated, "Having to staff small classes is restricting the provision we can provide our pupils. This year we have had two teachers having to teach two classes of 20 in reception, which would be financially impossible to manage year on year. Also, this unpredictability of pupil numbers makes it almost impossible to plan and budget year to year. This uncertainty is impacting the morale of our staff and is increasing the chances of us going into deficit as a school."

32. Paragraph 2.8 of the Code states: “With the exception of designated grammar schools, all maintained schools, and academies, including schools designated with a religious character, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria.” That is, admissions must be made at least up to PAN or, to put it another way, if the PAN of the school remains at 60 for 2024 then a total of 60 pupils must be admitted to Year R if sufficient applications are received.

33. The local authority told me, “If the PAN is not reduced, there is a risk of the school operating an empty or near-empty class which will have a significant financial impact. The most recent budget forecasts currently available, from June 23, indicated a 2023/24 balance of £78,500 and a deficit of -£45,000 for 2024/25 unless action is taken to reduce costs.”

34. Under the current PAN various scenarios may arise. It could be the case that, say, 29 pupils were admitted to Year R in September 2024. In this event these children could be taught as a single class and it would not be the case, as the local authority has stated, that there would be a requirement to operate an “empty class”. However, at any point during the school year further applications could be received, and once there were 31 Year R children they could no longer be taught as a single class. It would then be likely that an additional class would need to be created and that some classes would be of a size which was not financially efficient.

35. The local authority seeks to avoid, via the proposed variation, both the need to group children in small classes which the school cannot afford and the uncertainty for organisation, staffing and finances that would be caused by a scenario such as that described above. Their wish, and that of the school, is for a PAN of 30 which would enable a single class in Year R in September 2024 and two single-age group classes in all other year groups except Years 4 and 5, who would be accommodated in three mixed-age classes.

36. The PAN for 2025 has already been set at 30 and to reduce the PAN to 30 for 2024 would expedite the school’s longer-term plan, which they expressed as follows: “If we were able to reduce the PAN we could restructure the school gradually over the next few years. This could help us better financially plan for the future, ensuring we can continue to provide high quality support for our pupils. It will also mean we can look at ways to effectively use the space a smaller PAN would give us to best serve the community.”

37. I am satisfied that the local authority would be able to fulfil its duty to provide sufficient places in the area if the PAN was reduced. I am of the view that the proposed reduction of PAN will benefit the school by providing greater certainty regarding staffing and organisation and avoid the requirement for a financially inefficient model of class organisation in 2024. I find that there would be no significant frustration of parental preference and any frustration that may arise would be, on balance, outweighed by the benefits to the school and its pupils.

38. I find that the variation for 2024 is justified by the circumstances and approve the proposed variation.

Consideration of the arrangements

39. Having considered the arrangements as a whole it appeared to me that several matters may not conform with the requirements of the Code. I wrote to the local authority setting out in what ways the arrangements did not, or may not, conform; my letter invited their comments and stated that the local authority was not expected to make any changes to the arrangements until receiving this determination. In response the local authority provided a proposed set of arrangements, which included amendments intended to address the matters I had raised.

40. The Code requires that admission authorities determine, that is formally agree, their arrangements annually; paragraph 3.6 of the Code states that once admission arrangements have been determined for a particular year they cannot be revised except in specific circumstances. Where an admission authority wishes to propose variations other than those provided for by that paragraph these must be referred to the schools adjudicator.

41. My jurisdiction in this case is to consider the determined arrangements, not the amended, proposed arrangements. To be clear, I have discounted the amended arrangements and my consideration below is of the arrangements determined by the local authority on 16 February 2024. The local authority must revise the arrangements to comply with this determination.

42. I have listed below the matters in the arrangements which do not comply with the Code, setting out the relevant paragraphs of the Code and where the arrangements do not conform to requirements. Paragraph 14 of the Code states that: "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." That paragraph of the Code is relevant to the matters set out below unless otherwise specified.

43. I note that the local authority had a different view to my own in respect of one of the matters raised. It is not my role to advise admission authorities on how they address any matters raised; it is my role to indicate where I have concluded admission arrangements do not conform to the Code. In circumstances where the Schools Adjudicator has determined that a set of admission arrangements do not comply with the Code or legislation, the Code requires that the arrangements be revised to render them lawful and Code-compliant. In my consideration of the matters raised below I include the local authority's response and explain why I have reached the view that these matters do not conform to the requirements of the Code. My decision in these matters is binding on the local authority as provided for by section 88K of the Act.

44. The Code extends the right to parents to choose whether their child's admission to Year R should be deferred or whether the child attends school part-time if the circumstances set out in paragraph 2.17 apply. This paragraph does not state that parents are expected to request in the sense of seeking agreement or permission for deferment or part-time attendance. The arrangements state that: "Once a school place is offered parents or carers can request that entry is deferred or for their child to attend part-time." The wording of this implies that the school may have something to decide in this circumstance and to grant if it so chooses and does not clearly state the rights of parents as afforded by paragraph 2.17 of the Code. In this respect therefore, the arrangements do not meet the requirements of the Code, and they will need to be revised. The local authority has told me that it will address this issue, which is welcomed.

45. In places the arrangements use the term "category" to refer to oversubscription criteria. On page six, for example, the arrangements state: "If there are more applicants who comply with either category 2 or 3 than the number of places available under that category, places will be allocated based on the distance between home and school". The term "category" is not defined; its use is likely to be confusing for parents and does not provide the clarity required by paragraph 14 of the Code. Further as the term "comply with" is generally defined as acting in accordance with a wish or command when used in relation to people, its use in this context is also likely to create confusion. The local authority has told me that it will address these issues, which is welcomed.

46. The arrangements state that "Each community and voluntary controlled school have [sic] an area identified as its Priority Area (this is sometimes referred to as a 'catchment area'). Full details of Priority Areas are available on the Warwickshire County Council website and can be viewed using interactive maps."

47. Paragraph 14 of the Code requires that parents should be able to easily understand, from the arrangements, how places for the school will be allocated. Paragraph 1.14 states, as far as is relevant here, "Catchment areas **must** be designed so that they are reasonable and clearly defined". The interactive maps on the local authority website fail to fulfil these requirements.

48. The interactive maps show the entire local authority area, on which all the schools are displayed as mortar board icons, colour coded to denote the different phases of education. To see the priority area of the school one must first identify the correct mortar board icon. I find it highly unlikely that all parents or prospective parents would be able to easily accomplish this; I found it took some time to identify the school and could only do this by first looking up the location of the school on Google Maps and comparing landmarks between the two maps. It should not be necessary for parents to go to these lengths to identify the priority area of the school.

49. After I wrote to the local authority setting out the matters within the arrangements which may not comply with the Code they told me, "The Arrangements have been amended to include a link to an online calculator allowing parents to input their postcode to determine

their priority area. The tool also provides a map for the location of the school which can be used in conjunction with the interactive maps to provide the priority area map.”

50. I have examined the online calculator. This is helpful in that parents no longer need to locate their home address on a map; instead they can enter their postcode and select their address from a corresponding list. They are then presented with a list of schools, ordered from nearest to furthest from their home; this shows the schools whose priority area includes their address. I am not sure that I fully understand what the local authority means in stating “The tool also provides a map for the location of the school which can be used in conjunction with the interactive maps to provide the priority area map.” I entered a postcode into the tool and thus selected a school near to that postcode; this resulted in a map showing the walking route but did not show the priority area of the school. It may be that the local authority expects users to compare this map with the one described above in order to locate a specific school but I do not find this to be a clear solution.

51. The local authority has provided tools which make it easy for parents to establish to which schools’ priority area their address belongs; this is no doubt useful but does not fulfil the requirements of the Code. The local authority must ensure that the priority area of the school is clear. Some admission authorities accomplish this by providing a list of postcodes which form the catchment area of a specific school; others use interactive maps with the functionality to easily find a specific school. How the local authority chooses to address this matter is their decision. However, the local authority must ensure that the priority area of the school is clear and that this information can be easily accessed, without the need for any corresponding home address.

52. The second oversubscription criterion for entry to the school prioritises “Children who receive the Early Years Pupil Premium for their early years provider at the time of the making of the application, with no more than 14% of the places available to be allocated under this category.” The following explanatory note is included in the arrangements:

“Where stated, priority is available for children who are in receipt of the Early Years Pupil Premium through their early years’ provider, with no more than 14% of the places available to be allocated under this category. The child must be in receipt of the premium at the time the application is made; Check your eligibility at: www.warwickshire.gov.uk/freeschoolmeals”.

53. Paragraph 1.41 of the Code states: “Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium and also children eligible for the service premium. Admission authorities should clearly define in their arrangements the categories of eligible premium recipients to be prioritised.”

54. Prioritising applicants “in receipt” of the early years premium rather than those eligible for this premium is contrary to paragraphs 14 and 1.41 of the Code. This is for two reasons. Firstly, where a child does attract such funding, it is the school that receives that

funding not the child; the arrangements are therefore unclear. Secondly, there are many possible reasons why a school may not be in receipt of funding for a child, for example due to delays in administrative functions, even though that child's circumstances fulfil the criteria to attract such funding. This renders the arrangements unfair.

55. When I brought this matter to the attention of the local authority they disagreed with my analysis, stating, "While the Code states that priority may be given for eligible pupils, WCC [Warwickshire County Council] is unable to distinguish eligible pupils as part of the admissions process. Priority is given to pupils who are in receipt, as the closest proxy to eligible pupils."

56. The Code is clear that priority may be given to children who are eligible for the early years premium, as indeed it may be given to those eligible for the pupil premium or the service premium. The Code does not provide for prioritisation to be given on the basis of the receipt of those premiums and indeed, paragraph 1.9 prevents such prioritisation stating, as far as is relevant here, "It is for admission authorities to formulate their admission arrangements, but they **must not**: ... give priority to children according to the occupational, marital, financial, or educational status of parents applying. The exceptions to this are children of staff at the school and those eligible for the early years pupil premium, the pupil premium and the service premium who may be prioritised in the arrangements in accordance with paragraphs 1.39 – 1.42."

57. The local authority has cited administrative constraints as the reason for the non-compliance of the arrangements with the Code in respect of the above point. Any such constraints are not a matter for the adjudicator. To prioritise applicants on the basis of receipt of the early years or other premiums, rather than on the basis of eligibility, contravenes the Code and the arrangements must be revised to correct this matter.

Determination

58. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Warwickshire County Council for Newburgh Primary School for September 2024.

59. I determine that the published admission number for 2024 will be 30.

Dated: 11 April 2024

Signed:

Schools adjudicator: Jennifer Gamble