



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** VAR2432

**Admission authority:** The governing body of Mersham Primary School,  
Mersham, Ashford in Kent

**Date of decision:** 19 July 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 the governing body of Mersham Primary School for Mersham Primary School for September 2025.

I determine that the published admission number for September 2025 shall be 20.

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 body of Mersham Primary School (the school) has referred a proposal for a variation to the admission arrangements for September 2025 (the arrangements) for the school to the adjudicator. The school is a foundation school for children aged four to eleven in the village of Mersham, near Ashford in Kent. Kent County Council is the local authority (LA).
2. The proposed variation is that the published admission number (PAN) for the school be reduced from 30 to 20 for September 2025.

## 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 governing body 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. In considering these matters 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 governing body dated 10 June 2024, supporting documents and further information provided at my request;
- b. the determined arrangements for 2025 and the proposed variation to those arrangements;
- c. comments on the proposed variation from the school and LA;
- d. a map showing the location of the school and other relevant schools;
- e. the ‘Commissioning Plan for Education Provision in Kent 2024-28’;
- f. [Guidance on handling admission requests for summer born children - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/handling-admission-requests-for-summer-born-children); and

- g. information available on the websites of the LA, the school and the Department for Education (DfE).

## **The proposed variation**

7. The governing body are requesting a reduction in the PAN from 30 to 20 for September 2025.
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.
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.

## **Consideration of proposed variation**

10. Mersham Primary School is a foundation school for children aged four to eleven near Ashford in Kent and is part of the CARE Foundation Trust, along with five other primary schools. As a foundation school, the governing body is the admission authority for the school. The school has a net capacity (the number of children that the school can accommodate based on a national DfE formula calculation) of 210. According to the government website, 'Get Information About Schools' (GIAS), the school currently has 181 children on roll. The school is structured at present with one class per year group, so has seven classes.

11. The variation request states that:

"Mersham School, has a determined PAN of 30. The current Year R cohort has 14 surplus places (12 were forecast). For the 2024-25 Year R cohort, the school has 20 pupils allocated a place in Year R. Our forecast would suggest that there will be 12 places surplus in the 2025-26 cohort.

Retaining a determined PAN of 30 and a 7 class structure is not sustainable.

Retaining a 7 class structure is not feasible with 20 or less in Year R in the last two years. This is not a blip as numbers are expected to be around the same level moving forward.

The budget will not sustain this. A reduction to a 6 class structure for the 2025-26 academic year will be required and eventually a 5 class structure.

Budget forecasts suggest that, with the current and forecast pupil numbers, continuing with a PAN of 30 and a 7 class structure will lead to a deficit of £56,930 by March 2025.

Reducing to a PAN of 20 from September 2025 onwards will bring the budget back into a positive position with a roll over of £113,955 by March 2026.”

12. Table 1 below shows the anticipated numbers in each year group at the school for September 2024.

<b>Year Group</b>	<b>PAN</b>	<b>Number on Roll</b>	<b>Surplus/Deficit</b>	<b>Surplus/Deficit as a percentage</b>
<b>YR</b>	30	14	+16	+53.3
<b>Y1</b>		20	+10	+33.3
<b>Y2</b>		28	+2	+6.6
<b>Y3</b>		25	+5	+16.6
<b>Y4</b>		31	-1	-3.3
<b>Y5</b>		29	+1	+3.3
<b>Y6</b>		31	-1	-3.3
<b>Total</b>		178	+32	+15.2

13. The table illustrates that the school will have a total of 32 surplus places across the school for September 2024, the equivalent of one whole class of children. The size of classes where a majority of children are aged four, five, six or seven (reception year to year 2-inclusive, (Key Stage 1) are governed by The School Admissions (Infant Class Sizes) (England) Regulations 2012 (the infant class size regulations), whereby no more than 30 children should be taught in a class where there is a single qualified teacher. These regulations will apply to the school. In Key Stage 2 (KS2), classes may exceed 30 up to the point where the admission authority considers that the admission of any additional child would cause prejudice to the provision of efficient education or the efficient use of resources.

14. The school is situated in the Ashford East planning area. Planning areas are geographical constructs used by local authorities to facilitate school place planning. Local

authorities have a statutory duty to ensure that there are sufficient school places for all children within their area.

15. Table 2 sets out the PANs for the six schools in the Ashford East planning area for the last three years and forecast for the next two years.

School	PAN 2022-23	PAN 2023-24	PAN 2024-25	PAN 2025-26	PAN 2026-27 (Anticipated for 2026)
East Stour Primary School	60	60	60	60	60
Finberry Primary School	60	60	60	60	60
Furley Park Primary Academy	90	90	90	90	90
Kingsnorth CE Primary School	60	60	60	60	60
Mersham Primary School	30	30	30	30	30
Willesborough Infant School	30	30	30	30	30
<b>Total PAN</b>	420	420	420	420	420

16. Table 3 shows the total number of children admitted to each of the schools in the Ashford East planning area for the last three years and forecast for 2025, with the percentage of surplus places.

School	PAN	2021-22	2022-23	2023-24	2024-25	2025-26
East Stour Primary School	60	55	48	35	52	46
Finberry Park Primary School	60	60	59	60	60	53

<b>Furley Park Primary School</b>	90	55	65	38	63	57
<b>Kingsnorth Church of England Primary School</b>	60	60	60	56	62	54
<b>Mersham Primary School</b>	30	23	18	11	20	18
<b>Willesborough Infant School</b>	120	115	104	110	117	102
<b>Total for Ashford East</b>	420	368	354	310	374	330
<b>Total surplus places</b>	N/A	52	66	120	46	90
<b>Total surplus places as a percentage</b>	N/A	12.3	15.7	26.2	10.9	21.4

17. In their variation request, the governing body stated that:

“Pupil numbers in Ashford have fallen significantly due to lower birth rates and lower house building rates than had been expected. This has led to significant surplus Year R places in the last 2-3 years.”

18. In its ‘Commissioning Plan for Education Provision in Kent 2024-28’, the local authority writes:

“We forecast that between the 2022-23 and 2027-28 academic years, total primary school rolls will reduce by 1,971 pupils and secondary rolls will increase by 5,167 pupils. The profile of change in school rolls will vary across the County with some local areas requiring additional places to meet demand.”

It goes on to say:

“Ashford East Planning Group

Although forecasts suggest a significant level of surplus places across the Plan period (11% surplus capacity across Year R 2032-33). The level of surplus places may well reduce as existing, permitted and allocated sites come forward. This included: Finberry, Waterbrook, New Town Works, Park Farm, Court Lodge and

Willesborough Lees. The Local Plan makes provision for a new 2FE primary school to be incorporated into the 'Court Lodge' development area, to meet the longer-term primary education needs driven by that development. The masterplan for the development is still in progress, so we would not expect the new primary school to be available until the latter part of this decade."

19. In its response to my letter to them regarding this variation request, the LA confirm their support for the proposed reduction in PAN for 2025 and go on to say:

"In Kent we are seeing a reduction in the demand for primary school places in many locations. Our Commissioning Plan for Education Provision – Kent County Council provides more detail. Annually we discuss the latest version of the plan with our school community. This year, in light of the challenges falling roles have been having on schools, I have met groups of headteachers in planning areas to look at strategic solutions to manage the Year R surplus places. Without action, it will become increasingly difficult for schools in some locations to continue to deliver high quality education as pupil numbers become volatile, budget pressures increase, and unplanned mitigations are implemented.

The proposed variation of Mersham's published admissions number will enable the governing body to set a sustainable class structure and budget moving forward. It will allow them to strategically plan the reduction in the size of the school, ensuring it is sustainable and can continue to contribute to the high-quality education in the planning group.

In addition, it will assist in the sustainability of other schools by reducing the surplus capacity in the planning area, The reduction will not impact on families' ability to secure a school place within the planning group at a school rated good or better."

20. It is clear from the data supplied by the governing body and the local authority that there is a current drop in the number of primary aged pupils in the planning area, leading to a high level of surplus places. While I was unable to find a figure within the document (above) that stated the local authority's target percentage for surplus places across a planning area, the figure widely used by local authorities nationally is five percent and 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 provided by the local authority and the statement in their document above clearly indicate that the current and forecast surplus within the planning area is significantly above either figure.

21. While the longer term forecast for the planning area is for numbers to rise, this is not likely to be within the next ten years and will depend on numerous factors including the location of new housing and the speed at which houses are built. The pattern over recent years has been for the school to be undersubscribed to such an extent that it has now

made the maintenance of a seven class structure financially unsustainable. The school is looking to restructure, initially reducing to six classes, with a further reduction to five classes going forward. This will require mixed classes, subject to the requirements in relation to maximum infant class sizes set out above.

22. The reduction in applications for reception year (YR) varies across the planning area, with the school being the most adversely affected, while other schools are maintaining their pupil numbers more consistently. The school is the smallest and most rural of the schools within the planning area. No school within the planning area is more than 4.1 miles from the school.

23. I note that all of the other schools within the planning area (there is no data available on GIAS for East Stour Primary School) are also rated as 'Good' by Ofsted, with the exception of Furley Park Primary Academy, which is rated as 'Requires Improvement' (RI). Even without the surplus places available at Furley Park, there are sufficient 'good' places across the planning area for local parents wishing to send their child to a 'good' school should the PAN at the school be reduced by ten places from 30 to 20.

24. A reduction of the PAN to 20 will enable the school to plan confidently for its class and staffing structure and secure its financial sustainability as required by the DfE. Schools are not permitted to set deficit budgets except in specific circumstances and, if the school is in a deficit position, must work with their local authority on a recovery plan. The local authority has stated above that it fully supports the variation request.

25. The school has been undersubscribed for the last four years and is forecast to remain so. At no point within that time have there been more than 20 children allocated a place at the school. It is therefore reasonable to conclude that the proposed reduction is unlikely to frustrate any parental preference. The data demonstrates that there is sufficient capacity across the planning area for all parents seeking a place for their child at a local school and probably at a school rated 'good' by Ofsted.

26. Should pupil numbers rise across the area in the longer term, the governing body will be able to raise the PAN to accommodate demand as the net capacity of the school allows for a PAN of 30.

27. The school has admitted no more than 20 pupils for the last four years and is not forecast to exceed that number in the foreseeable future, leaving it with 32 surplus places across the year groups for September 2024. If the PAN is reduced by ten places, there are sufficient surplus places across the planning area for all children seeking a place to be allocated a place at a local school, with a high chance of that place being at a 'good' school. The reduction in excess surplus places across the planning area is supported by the local authority. The reduction in PAN would enable the school to plan confidently for the future structure and staffing at the school and bring its budget back to a positive position. I therefore consider that the proposed reduction of PAN is reasonable and will not frustrate parental preference.



28. I find that the variation is justified by the circumstances and approve the proposed variation.

## Consideration of the arrangements

29. Having considered the arrangements as a whole it appeared to me that the following matters may not conform with the requirements of the Code and so I brought them to the attention of the governing body and LA. I have listed these matters below setting out the relevant paragraphs of the Code and where the arrangements do not conform to requirements.

30. The cover page of the admissions arrangements states that the next date for review is February 2026 instead of 2025. The Code requires (at paragraphs 15.a) and 1.49) that “admission authorities **must** determine their admission arrangements, including their PAN, every year, even if they have not changed from previous years and a consultation has not been required, by **28 February** in the determination year.” Setting a review date of February 2026 is therefore in contravention of the Code as set out above.

31. In paragraph three of the introduction, the arrangements state that admissions have to be submitted to the local authority in ‘mid-January’. The deadline for applications for admission to primary schools is 15 January (paragraph 15.d) note 8 of the Code). 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.”

The phrase “Mid-January” does not provide sufficient clarity for parents in terms of advising them of the latest date for submission of applications. It is therefore in contravention with the requirement of clarity prescribed by the Code and this paragraph will need to be amended.

32. Under the heading ‘Admission Numbers & Intake Times’, it states that “Applications for admission must be received in line with deadlines set by the Local Authority and children will be 4 plus years of age on entry’. The deadlines are not stated, nor is there a link to the local authority site where this information could be found. Nor do the arrangements state that parents applying from outside the local authority must apply to their home local authority as set out in paragraph 15.d) of the Code which states that, “In the normal admissions round parents apply to the local authority in which they live for places at their preferred schools.” The same issues arise in the first point under the ‘Application Procedure – for Year R places” section of the arrangements. The process is therefore not clear for parents as required by paragraph 14 of the Code.

33. The arrangements go on to say, “Any remaining children will automatically be entered onto a waiting list.” Paragraph 2.15 of the Code says:

“Each admission authority **must** maintain a clear, fair, and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received, or their name was added to the list. Looked after children or previously looked after children allocated a place at the school in accordance with a Fair Access Protocol **must** take precedence over those on a waiting list.”

The arrangements do not state anywhere that the waiting list will be maintained until at least 31 December, nor do the arrangements explain the other requirements pertaining to the waiting list as set out in paragraph 2.15 of the Code and will need to be revised.

34. In the paragraph titled “Admission for Year Groups Other than Reception”, the arrangements say that “Once the PAN for the year group has been reached no other children can be offered a place. (In 2025 the PAN for Year R to Year 6 will be 30).”

35. Paragraph 1.4 of the Code states that:

“The PAN only applies to the relevant age group. This means that admission authorities may not refuse admission to other age groups on the grounds that they have already reached their PAN. They may, however, refuse admission where the admission of another child would prejudice the provision of efficient education or efficient use of resources.”

This statement implying that there is a PAN for year groups other than YR is not in accordance with paragraph 1.4 of the Code, and will therefore need to be revised.

36. There is no clear reference to the in-year application process within the arrangements. Paragraph 2.26 of the Code states:

“...own admission authorities and governing bodies ...**must** set out by **31 August** at the latest each year, on the school’s website how in-year applications will be dealt with from the **1 September** until the following **31 August**. They **must** set out how parents can apply for a school place, and where they manage their own in-year admissions, provide a suitable application form for parents to complete (and a supplementary information form where necessary), and set out when parents will be notified of the outcome of their application and details about the right to appeal. If the admission authority is to be a part of the local authority’s in-year co-ordination scheme, it **must** provide information on where parents can find details of the relevant scheme. An admission authority, governing body or local authority **must** provide a hard copy of the information about in-year applications on request for those who do not have access to the internet.”

In order to comply with the requirements of paragraph 2.26 of the Code, the arrangements must be amended to set out the in-year applications process and provide the specified information.

37. Oversubscription criterion 2 states that priority will be given under this criterion to, “Children with siblings in school at the time of entry (unless the sibling link is broken by the family moving more than two miles away from the school).” I shall refer to this as “the two mile rule”.

38. In its response to my letter querying this criterion, the LA replied that:

“This criterion is widely used amongst Kent’s admissions authorities. It is reasonable, clear, unambiguous, objective and procedurally fair. The rationale for the 2-mile rule is to maintain the sibling priority for families living within a close proximity to the school. The policy is designed to keep school places available for local children and helps prevent potential abuse of the system where families may temporarily move to gain sibling priority and then move away again.”

I am grateful to the LA for explaining that this criterion is widely used within Kent and the reasons for its use.

39. Paragraph 1.8 of the Code states that:

“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group...”

40. While I understand from the LA that the purpose of the inclusion of the two mile rule is to maintain the sibling priority for families living close to the school, I am concerned that its inclusion will cause an unintended disadvantage to some groups. Specifically, where a family has an older sibling at the school but has had to move beyond the two mile radius currently prescribed through no choice or desire of their own, the younger sibling(s) will only be eligible for consideration under criterion 4 (proximity to the school). This could significantly reduce the sibling’s chance of gaining a place at the school, which in turn could lead to such families being put in the situation of having young children attending different primary schools, with all of the attendant adverse logistical and emotional consequences.

41. A recent determination by the adjudicator (ADA4244 Waltham Forest) concluded that the profile of families most likely to be in private, rented accommodation and therefore most liable to having to move not through choice fell within the ‘white, non-British’ and ‘non-white’ categories. Moreover, families with low income and/or in receipt of benefits may be more likely to have short tenancies as they are more likely to be in a poor bargaining position and shorter tenancies may suit the landlord.

42. This determination found that the inclusion of a 0.5 mile rule relating specifically to siblings caused an unfair disadvantage to these groups due to the higher probability of their being forced to move beyond the prescribed distance through no fault of their own.

43. Paragraph 14 of the Code requires that the practices and criteria used to decide the allocation of places are fair. Fairness cannot be defined in universal terms as its requirements will depend on the circumstances. Whilst the conclusions of the adjudicator in ADA4244 were based upon the social profile and ethnicity of the population in a different area, his conclusions are also of general application. Fairness is focused on the effect of the arrangements on any relevant group. It is the purpose of oversubscription criteria to create advantage for some applicants and disadvantage to others to enable an admissions authority to allocate places at a school fairly and transparently when the school is oversubscribed. The assessment of the fairness of the effect of admission arrangements requires a balancing judgment, between the benefits resulting to some children from an oversubscription criterion and the disadvantage it may cause to others. Unfairness can be found when the disadvantage is considered to outweigh the advantage.

44. I find that the two mile rule in criterion two does create an unfair disadvantage to those parents who already have a child at the school but are forced to move beyond the stipulated two mile radius through no choice or fault of their own. No provision is made within the arrangements to disapply the two mile rule for families who find themselves in these circumstances. I therefore find that criterion two is unfair contrary to paragraph 14 of the Code and will need to be revised.

45. The section titled “Exceptional Circumstances” lists some, but not all, of the permitted exceptions to the Admissions (Infant Class Sizes) (England) Regulations 2012 (the infant class sizes regulations). These are set out in paragraph 2.16 of the Code. Nor do the arrangements make it clear that these exceptions relate exclusively to those classes to which the infant class size regulations apply. The Code does not require that the exceptional circumstances are included in school admission arrangements but if an admission authority decides to include them, then they should include them all and make it clear to parents to which classes they apply.

46. The section titled “Withdrawal of the offer of a place” says that:

“After a place has been offered the school reserves the right to withdraw the place in the following circumstances:

- when a parent/carer has failed to respond to an offer within a reasonable time”

47. At paragraph 2.13 of the Code, it states that:

“Where the parent has not responded to the offer, the admission authority **must** give the parent a further opportunity to respond and explain that the offer may be withdrawn if they do not.”

The arrangements are therefore not in accordance with paragraph 2.13 of the Code and must be amended.

48. Under the section of the arrangements entitled 'Appeals', the arrangements state that "you can appeal between April and May 2025 (dates to be confirmed) to guarantee that your appeal will be heard by July 2025." This wording does not provide a clear deadline for parents within which to lodge an appeal or a clear timescale within which appeals will be considered. It is therefore not compliant with the requirement of clarity in paragraph 14 of the Code and will need to be amended.

49. The arrangements refer to 'KCC' and should set this out as Kent County Council for cases where this is the home local authority for the parent/carer making the application, and therefore the authority to which they must submit any additional information as required under criterion three of their oversubscription criteria (Health and Special Access Reasons).

50. At paragraph 15.d) the Code states:

"In the normal admissions round parents apply to the local authority in which they live for places at their preferred 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."

The arrangements need to make it clear that any parent/carer applying from a different local authority area must submit their application and any supporting documentation to their home local authority. This lack of clarity is in contravention of paragraphs 14 and 15.d) of the Code and must be addressed.

51. In the second paragraph of the section titled 'Proximity of the child's home address' the arrangements say that "Parents should consult the most recent Admissions guidance, published by KCC, for further information about how home to school distances are measured and defined including details about how blocks of flats will be treated and what constitutes a permanent main residence."

52. Paragraph 1.13 of the Code states:

"Admission authorities **must** clearly set out how distance from home to the school and/or any nodal point used in the arrangements will be measured. This **must** include making clear how the 'home' address will be determined and the point(s) in the school or nodal points from which all distances will be measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent. The selection of a nodal point **must** be clearly explained and made on reasonable grounds."

53. If the admission authority is not going to include the required information within the arrangements, then a one click link to the local authority website must be included in order

to render the arrangements sufficiently clear and detailed to be compliant with paragraphs 1.13 and 14 of the Code.

54. Under the same heading, the arrangements say that “Where parents live apart but share responsibility for the child, and the child lives at two different addresses during the week, we will regard the home address as the one at which the child sleeps for the majority of week days.”

55. This does not provide for the situation where a child spends an equal amount of time at each parental home.

56. In its response to my letter, the LA said that:

“In the unlikely event that a child spends an equal number of days at both addresses, we recommend admissions authorities use the address that is closest to the school that is named as the child’s first preference.”

There are numerous ways that this point can be decided if the parents are not able to nominate a single address themselves. It is up to the admissions authority to decide how to ascertain the home address for children of separated parents who spend an equal amount of time with each parent, but this must be set out clearly in the arrangements as required by paragraph 1.13 of the Code.

57. Under the heading ‘Admission outside normal age group’, the arrangements say:

“Parents are not expected to provide evidence to support their request, however where provided it must be specific to the child in question and may include medical or Educational Psychologist reports. There is no legal requirement for this medical or educational evidence to be secured from an appropriate professional, however, failure to provide this may impede the school’s ability to agree to a request for admission outside of the normal age group.”

58. Admission out of the normal age group is something which parents can request; the admission authority has discretion to decide whether such a request should be granted. In making such discretionary decisions, the admission authority must take into account the relevant provisions in the Code and any relevant DfE guidance (unless the admission authority has a good reason to depart from the guidance).

59. Paragraphs 2.18 – 2.20 of the Code refer to admissions out of the normal age group. Paragraph 2.18 of the Code says,

“Parents may seek a place for their child outside of their normal age group, for example, if the child is gifted and talented or has experienced problems such as ill health. In addition, the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1.

Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”

60. Paragraph 2.19 says,

“Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned. This will include taking account of the parent’s views; information about the child’s academic, social, and emotional development; where relevant, their medical history and the views of a medical professional; whether they have previously been educated out of their normal age group; and whether they may naturally have fallen into a lower age group if it were not for being born prematurely. They **must** also take into account the views of the head teacher of the school concerned. When informing a parent of their decision on the year group the child should be admitted to, the admission authority must set out clearly the reasons for their decision.”

61. Paragraph 2.20 says,

“Where an admission authority agrees to a parent’s request for their child to be admitted out of their normal age group and, as a consequence of that decision, the child will be admitted to a relevant age group (i.e. the age group to which pupils are normally admitted to the school) the local authority and admission authority **must** process the application as part of the main admissions round, unless the parental request is made too late for this to be possible, and on the basis of their determined admission arrangements only, including the application of oversubscription criteria where applicable. They **must not** give the application lower priority on the basis that the child is being admitted out of their normal age group. Parents have a statutory right to appeal against the refusal of a place at a school for which they have applied. This right does not apply if they are offered a place at the school, but it is not in their preferred age group.”

62. The DfE ‘Guidance on Handling Admission Requests for Summer Born Children’ [Guidance on handling admission requests for summer born children - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/guidance-on-handling-admission-requests-for-summer-born-children) (The DfE guidance) for admission authorities says:

- “The admission authority of each school must make a decision based on the circumstances of the case and in the child’s best interests. It should be rare for an authority to refuse a parent’s request.
- An admission authority may not decide that a child should start school before compulsory school age - that is the parent’s decision.
- The government believes it is rarely in a child’s best interests to miss a year of their education, for example, by beginning primary school in year 1 rather than reception, or secondary school in year 8 rather than year 7.”

63. The substantive obligation upon admission authorities imposed by the Code in terms of the content of their admission arrangements is that they must make clear in their arrangements the process for requesting admission out of the normal age group. The DfE guidance is helpful in the interpretation of what the process must comprise. It says:

“Admission authorities should ensure parents:

- are aware of when and how they can make requests
- know what information they need to provide
- know the outcome of their request in time to make an informed decision about whether their child will start school before compulsory school age”.

64. The DfE guidance says that it is for local authorities and admission authorities to decide what their process should be. However, for primary schools there is a recommendation that the process being used:

- “expects parents to make an application for a school place in their child’s normal age group at the usual time
- enables parents to submit a request for admission outside the normal age group at the same time
- ensures parents receive the response to their request before primary national offer day.”

65. My view is that, in order to be sufficiently clear, the arrangements must tell parents who they must apply to and when they need to apply. They also need to describe the factors which are taken into account in making a decision so that parents will know what information they need to provide. Both the Code and the DfE guidance make clear that the admission authority of each school must make decisions based on the circumstances of the case and in the child’s best interests.

The DfE guidance states that:

“Admission authorities can reasonably expect parents to provide information about why they think their child should be admitted out of their normal age group, to enable them to make a decision in the child’s best interests.

In some cases, parents may have evidence from professionals involved in their child’s care or treatment that it would be appropriate for them to submit, for example:

- a speech and language therapist
- an occupational therapist
- a social worker
- a paediatrician



- the child's nursery or childminder

Admission authorities should not expect parents to get evidence they do not already have and must still consider requests that are not accompanied by evidence from professionals. Authorities should not refuse a request solely because it is not accompanied by professional evidence."

66. The DfE guidance suggests that it should be rare for an authority to refuse a parent's request for their summer born child to be admitted outside the normal year group; that the parent has discretion in deciding when their child starts school where the child is below compulsory school age; and that it would rarely be in a child's best interests to miss a year of their education, for example, by beginning primary school in Y1 rather than YR. The DfE guidance does not impose mandatory requirements in the same way as the Code or primary or secondary legislation. The purpose of government guidance is to explain how the law should be interpreted, and admission authorities are expected to follow DfE guidance which applies to them unless (as mentioned above) they have a good reason to depart from it.

67. It is important that I explain the role of the Schools Adjudicator and the limitations of that role. My function under the Act is to determine the variation request and whether, under section 88I of the Act, the admission arrangements comply with the Code. I have no role in the enforcement of whether the procedures followed by admission authorities are compliant with the DfE guidance. My role is confined to ensuring that whatever is said in a set of admission arrangements complies with the Code. Having said that, there is a general requirement that admission arrangements must be reasonable and, in my view, arrangements which describe a process for requesting admission out of the normal age group, which is contrary to DfE guidance, are unreasonable.

68. The arrangements are contrary to the DfE guidance insofar as they imply that the onus is on the parent to ascertain what evidence they need in order for their request for their child to be admitted out of the normal age group to be agreed. The arrangements state that the lack of professional evidence will 'impede the school's ability to agree to a request', whereas the DfE guidance makes clear that such decisions should be made based upon the child's best interests and that it would rarely be in the best interests of a summer born child to start school in year 1 (Y1) as opposed to in YR. Accordingly, it could be said that the arrangements under consideration are indicative of a process which is contrary to the DfE guidance (and so arguably not a process which the admission authority should be following). They are therefore unreasonable and misleading to parents.

69. I find that the arrangements for admission out of the normal age group are insufficiently clear to comply with paragraphs 2.18 and 14 of the Code. I also find that the arrangements are unreasonable. This is because they state that failure to provide medical, educational psychologist or other reports from professionals may impede the school's ability to agree to a request for admission outside of the normal age group, whereas the DfE guidance says that admission authorities should not expect parents to get evidence they do

not already have and must still consider requests that are not accompanied by evidence from professionals. It further states that authorities should not refuse a request solely because it is not accompanied by professional evidence.

70. The LA has told me that it will encourage the school to address the matters that I have raised under section 88I relating to the ways in which the arrangements do not comply with the requirements of the Code. Such revision is permitted by paragraph 3.6 of the Code. I am grateful to the LA for their support. The Code requires that the arrangements be amended to address the points set out here, and the admission authority will be required following this determination to make the necessary revisions.

## **Determination**

71. 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 body for Mersham Primary School for September 2025.

72. I determine that the published admission number for September 2025 shall be 20.

73. 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.

74. 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: 19/07/2024

Signed:

Schools adjudicator: Mrs Tess Gale