



Determination

Case reference:	ADA4295 Patcham Infant School, Brighton
Objector:	The Governing Body of the School
Admission authority:	Brighton and Hove City Council
Date of decision:	5 September 2024

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Brighton and Hove City Council for Patcham Infant School for 2025.

I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does 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 the Governing Body of Patcham Infant School (the objector), about the admission arrangements (the arrangements) for Patcham Infant School (the school), a community school for children aged 3 to 7 years of age, for September 2025.
2. The objection is to:
 - (i) the consultation carried out by Brighton and Hove City Council (the admission authority, the LA) prior to its decision to determine a Published Admission Number (a PAN) of 60 for admissions to Year R for 2025. The objector says that

this consultation was flawed, for a number of reasons which mean that “those impacted by the decision” were not consulted with effectively, and

- (ii) the PAN of 60, which the objector says will frustrate parental preference and threaten the school’s financial stability.

3. The local authority is a party to this objection, together with the school’s Governing Body.

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the local authority on 22 January 2024. The objector submitted their objection to these determined arrangements on 6 April 2024. 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

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

6. The documents I have considered in reaching my decision include:

- a. a copy of the minutes of the meeting of the Children, Families and Schools Committee of the LA (which is the relevant Committee of the Council) on 22 January 2024 at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector’s form of objection dated 6 April 2024 and supporting documents;
- d. the LA’s response to the objection and supporting documents;
- e. documents relating to the previous OSA determination in STP656 St Bartholomew’s Church of England Primary School, Brighton (June 2024) which included pupil forecast data provided by the LA and maps of the area identifying relevant schools, and
- f. the LA’s response to the aspect of the arrangements which I had raised as a matter of concern.

The Objection

7. Paragraph 1.45 of the Code says that:

“When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangementsthat will apply for admission applications in the following year.”

Paragraph 1.46 specifies the minimum period of consultation (six weeks) and that this must be between 1 October and 31 January in the determination year (the school year immediately before the school year to which the arrangements are to apply). Paragraph 1.47 lists those who must be consulted, and paragraph 1.48 imposes duties concerning the publication of proposals and the supplying of information to those being consulted.

8. The LA, as the admission authority for the school, therefore needed to observe these requirements when proposing to change the school’s admission arrangements for 2025 by reducing its PAN from 90 for the 2024/25 school year to 60 for admissions in 2025/26. It carried out a consultation between 7 November 2023 and 22 December 2023. This is in line with the duration and time frame for such consultations specified in the Code.

9. When it explained the reasons it had for complaining that the LA’s consultation was flawed in nature, the objector laid out a number of grievances, which covered variously:

- a. the fact that although the school had responded with its objections to the proposed reduction of its PAN immediately following the meetings with it held on 12 December, the proposal was nevertheless taken forward for consideration at the meeting on 24 January;
- b. its view that its inability to submit questions to the meeting of the LA’s committee in November 2023 where the proposed admission arrangements were approved for consultation (as a result of the late publication of the officers’ report) contravened provisions contained in the Local Government Act 1972;
- c. its view that a local councillor who is the Chair of Governors at the school which the LA’s decision to reduce the PAN of Patcham Infant School would, it says, be a direct beneficiary of that decision did not “recuse himself from discussions” during relevant Council debates, and that this constituted a conflict of interests;
- d. the alleged complexity of the means for accessing the online questionnaire used to gather consultation feedback meant that many potential respondents “did not complete the process” and that this, coupled with the questionnaire design which it said allowed unscrupulous respondents “to unfairly influence outcomes” rendered “any purely quantitative data unreliable at best”;
- e. that, in spite of the “vociferous” objections raised by “our families” and the fact that during the consultation the number of respondents voicing opposition to the proposal was “more than twice the school’s population”, this number “was not considered sufficient opposition”.

10. The objector summarised these discontents by saying that the proposals have been taken forward “with little regard for a genuine, meaningful consultation process promoting proper consideration of stakeholders’ views” and that “we feel that the consultation process has not consulted effectively with those impacted by the decision”.

11. The objection is also to the PAN of 60 which has been set for the school. The objector set out the context of the LA’s need to deal with the consequences of a sharp decline in birthrate across the city, and quoted from a presentation made by LA officers to “our school community” during the consultation discussed above which explicitly stated that the LA strategy was “to reduce the PAN of large forms of entry schools and seek to support the viability of smaller schools, with fewer preferences”.

12. The objector said that the LA had “paired” it with another school, Carden Primary School, which it said had voluntarily reduced its PAN (to 30) previously but which “is being permitted to restore it to 60 for 2025, seemingly at our expense.” It said that it believed that the school’s current PAN of 90 “is set at an appropriate level for the popularity of our school and the size of the community it serves”, and that a PAN of 60 would mean that “a very significant number of local families will be refused a place at their first choice school”. It quoted paragraph 1.3 of the Code, which says:

“Community and voluntary controlled schools have the right to object to the Schools Adjudicator if the PAN set for them is lower than they would wish. There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering any such objection.”

13. In support of its objection, the Governing Body of the school made the following further points:

- a. that it challenged the relevance of the LA’s “planning area” (which effectively “pairs” the school with Carden Primary School) because it does not reflect “the particular characteristics of our area in terms of regular new family influx from the city centre and from London, nor the custom and practice of local families in selecting school places”. It said that local families would be more likely to choose a place at schools outside the planning area in preference to Carden Primary School because they are closer and more accessible (because of the local topography);
- b. that the LA’s actions “completely overlook” the school’s link with Patcham Junior School, which it says “accepts 97% of its intake from Patcham Infant School”, and which it says would be adversely affected in the future by a reduced intake at the Infant school;
- c. that a PAN of 60 would mean that disadvantaged children living in the Hollingbury area would “effectively have no opportunity to attend Patcham Infants [sic]” and so “establish a concentration of disadvantaged children at a geographically closer school, putting undue and unnecessary strain on that already struggling school’s resources”;

- d. that the LA's projections of the future need for school places in the area show a rising trend in 2026 and 2027 and that it is shortsighted to require the school to have to reduce staffing in 2025 only, potentially, to have to employ more staff again "within a year", and
- e. that by including the school in its strategy of reducing numbers at "larger" schools the LA has ignored the implications of the fact that the school is an Infant school. As result the size distinction with Primary schools (and therefore "the different budget considerations") has also been ignored.

Other Matters

14. Paragraphs 1.34 and 1.35 of the Code say:

"Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after children and previously looked after children are prioritised. The random allocation process **must** be supervised by someone independent of the school...."

The arrangements use random allocation (by computer) where children who are afforded priority on the basis of the distance of their home from the school live equally distant from it. However, the arrangements contain no description which meets the requirements of these two paragraphs in the Code.

Background

15. Brighton and Hove City Council is a unitary authority which has responsibility for a total of 61 maintained schools, 48 of which are primary schools. There has been a significant fall in pupil numbers across the city in recent years, resulting in large numbers of surplus places in these schools. In recent years, the LA has sought to manage these surplus places by reducing the sizes of schools, and two primary schools were discontinued during the school year 2024-25.

16. The council presented forecasts of the future need for Year R places across the city in a separate paper (to the paper concerning the determination of the admission arrangements for the schools for which the LA is the admission authority) at the relevant committee meeting on 22 January 2024 at which it was agreed that notices should be published concerning the proposed closure of one of these schools. These show forecasts for the city as a whole and for each of the eight planning areas which the council defines, based on January 2023 census data. The LA does not forecast the need for places at individual schools, but only for these planning areas as a whole. I shall refer to this information below.

17. The report to the committee on 22 January 2024 which resulted in the determination of the school's admission arrangements also contained proposals to

reduce the PAN at six primary schools across the city, one of which is Patcham Infant School.

18. The school is situated to the north of the centre of Brighton, close to Patcham Junior School. The LA planning area for Patcham which is used for the purpose of pupil place planning contains these two schools and Carden Primary School. Westdean Primary School (which is in a separate planning area, the Central City planning area) is closer to the school than is Carden Primary School.

19. The GOV.UK website “Get Information about Schools” records that when last inspected by Ofsted in 2022 the school was considered “Good”. Its physical capacity is stated there as 320 pupils and that there are 293 on roll.

Consideration of Case

The consultation

20. I asked the LA to provide me with the details of the consultation which it carried out prior to determining the admission arrangements for the school, including its PAN, in January 2024. I also invited the LA to comment on the objection which had been made concerning the consultation, but it has not done so.

21. I have already said that that the consultation took place in accordance with the requirements of the Code concerning its timing and duration. The Code at paragraph 1.47 also provides that the persons to be consulted are:

- 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;
- e) any adjoining neighbouring local authorities where the admission authority is the local authority; and
- f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.

22. The LA has provided me with the following:

- (i) A link to the LA website which contained details of the consultation

- (ii) A consultation document which invited all the above groups to give their view on the proposals and questions to which respondees could reply on an online response form,
- (iii) A consultation bulletin which is stated was sent to “all Headteachers and Chairs of Governors within the relevant area”,
- (iv) A consultation email sent to Academy trusts,
- (v) A consultation email sent to Dioceses and neighbouring LAs,
- (vi) Details of on-line and in person consultation meetings. The latter included public meetings for parents and others at eleven primary schools in the city, with some schools having more than one public meeting, and
- (vii) Reference to the summary of the responses received to the consultation as reported to the meeting on 24 January at which the arrangements were determined.

23. It therefore seems to me that the LA has made comprehensive efforts, through more than one means, to consult widely on the proposed PAN reduction for the school, and so, for example, I can see no grounds for accepting the objector’s assertion that Patcham Junior School “was not notified of the plans nor included in the consultation”. All Headteachers were notified as shown above, and the consultation feedback reported to the Committee on 24 January included comments the junior school had made. That feedback referred to and summarised 1237 responses to the proposal to reduce the school’s PAN. It recorded the strong opposition to the plan, giving the number of respondents who “strongly disagreed or tended to disagree” with it.

24. Although the notification to Headteachers asked them to “promote these consultations to your school communities...” that is not quite the same as making a direct attempt to alert parents of very young children by contacting nurseries and pre-school groups or by placing notices in libraries and GP surgeries and I have been given no evidence that any such notifications were made. I note in passing that although the objector did not raise this point concerning the consultation about the proposed PAN reduction for the school, I am aware that in other cases concerning these same consultations about the PANs of other schools adjudicators have upheld aspects of objections that parents of pre-school children were inadequately consulted. In view the LAs’ acceptance in those cases that it had been an oversight not to directly include nurseries in the city in this same type of consultation, I also find that an important group of parents, those of pre-school children, may not have been aware of the consultation in this case. For this reason, therefore, I find the consultation relating to the proposed PAN reduction for this school also failed to meet the requirements of the Code.

25. As to the matters which were raised by the objector in this case, I must consider whether these are evidence that the consultation was flawed in other ways. That is, my

consideration concerns matters such as whether the consultation took place at an appropriate time (before any decision had been taken), whether consultees were given clear information about the proposal and the reasons behind it, whether there was adequate time to respond, whether those responses were accurately reported to the decision-maker and whether proper account was taken of them before a decision was made.

26. I have already dealt with the timing of the consultation and with those persons who are required to be consulted. The objector complained that a decision was taken to progress the proposal following the meetings held on 12 January, and said that it “took exception” to these being referred to as “consultation” meetings as a result. My view of this is that while these meetings were part of the consultation process, they were in fact information meetings which will have been intended to enable individuals and organisations to make their responses to the proposals - that is to those who would make the decision about those proposals. The objector did this, and those views were reported to the meeting on 24 January.

27. The objector’s complaint referring to the meeting which took place in November at which the committee agreed that the consultation should go ahead may or may not be justified, but this was outside the consultation itself and whatever the facts if this particular matter, they are not material to my consideration of the objection, which relates only to the consultation process itself.

28. The objector also expressed unhappiness about the role of a Member of the Council, as I have described above. It said that this person “was directly involved in Council debates and decision-making on the proposals affecting his school”. I have no jurisdiction concerning the conduct of elected Members of the Council, and it would be a matter for the Council itself to consider whether that conduct may have breached its own rules concerning the declaration of interests. However, I have been presented with no evidence that any of the processes I have outlined above have been impaired in any way, which is what my own jurisdiction concerns.

29. I have not been able to assess the ease with which the online questionnaire could be employed by respondents to the consultation, since the consultation has long since closed. However, I have already stated the large number of responses which were successfully made, and it seems unlikely that there was any significant effect of the sort which the objector complained about, and certainly not enough to invalidate the reporting of the responses that were made. The objector also complained that all respondents were able to express their views on all the proposals which were being consulted on and that this “rendered any purely quantitative data unreliable at best”. That is a view with which I would concur, but it is also the case that consultations of this sort are not held as referenda on proposals as the objection implies. Decision makers will need to be made aware of the opinions which have been expressed and to also be aware of the strength of opinion they represent. But provided a consultation has

enabled them to judge both these matters, then it is my view that they will have been able to take proper account of them before making their decision.

30. However, as a result of the considerations which I have set out above, I uphold the objection that the consultation failed to meet the requirements concerning, not for the reasons given by the objector, but in respect of the lack of consultations with parents of pre-school children affected by the decision.

31. It is open to an adjudicator to determine that there has been a failure to consult in accordance with the relevant legal requirements, and therefore a failure to comply the relevant provisions in both the School Admissions (Admission Arrangements and Co ordination of Admission Arrangements) (England) Regulations 2012 and the Code. However, an adjudicator cannot impose a requirement upon an admission authority to re-consult after it has determined the arrangements even if the consultation has not been conducted in accordance with the requirements of these Regulations or the Code. Nor can the adjudicator require the admission authority to re-instate the previous year's arrangements.

The school's PAN

32. When I wrote to the parties setting out my jurisdiction concerning this case, I informed the LA that as a result of my consideration earlier this year of the decision which the LA had made to close St Bartholomew's Primary school (in STP656), I already had access to:

- (i) a description of the authority's pupil forecasting methodology, and
- (ii) the results of the use of this methodology to provide forecasts of the need for Year R places in each of the authority's planning areas up to 2027 using January 2023 census data as reported to the council's Children, Families and Schools Committee on 22 January 2024 (appendix 1).

33. I also asked the LA to provide me with the following further information, for both Patcham Infant School and for Carden Primary School:

- (i) the number of first and other preferences (including late preferences) expressed for a Year R place at Patcham Infant School and Carden Primary School for admission in September 2022, 2023 and 2024 (current figures);
- (ii) the number of admissions to Year R in September 2022, 2023 and 2024 at both these schools, and
- (iii) the current number on roll in each year group at Patcham Infant School and Carden Primary School.

34. When the LA provided a description of its pupil number forecasting methodology in connection with the case referred to above, it said that this uses GP registration data "adjusted for trend figures over the last five years". "When converting GP data into

projected pupil numbers we use a conversion factor of 90%...as this seems relatively accurate.” It says that forecasts are checked against actual numbers and that the 90 per cent factor would be amended if necessary but this has not been the case. The council has also provided a copy of its most recent “School Capacity Survey” return to the DfE where it describes the quality assurance checks which it makes on its forecasts, including an independent audit carried out in 2015 which found that “the process was simple but effective”. It also confirmed that, somewhat unusually, it does not attempt to make individual school forecasts “as this is subjective and liable to change, the council uses the 8 determined planning areas. It has not been considered necessary to project to school level given the relatively small geographic area of the city and the number of schools within the city.” In other words, the LA is confident in the accuracy of its forecasting at planning area level. I am aware of what the objector has said about the validity of the LA’s designated planning area, but I must also rely on the figures which I have available to me. These deal only with the designated planning areas, and the LA considers them reliable.

35. As I have said, the objector told me that the LA’s stated purpose in setting a reduced PAN for the school in 2025 is to support schools with small intakes by reducing the number of children admitted to larger schools, particularly those with more than one form of entry. The objector said that a reduced PAN at the school would mean that “...a very significant number of local families will be refused a place at their first choice school”. It cited the current number of children on roll at the school as evidence “that despite falling birth rates, our PAN of 90 is set at an appropriate level for the popularity of our school and the size of the community it serves”. The figures it gave me (in April 2024) were:

Reception: 83 Year 1: 89 Year 2: 89

By June 2024, Year 2 had grown to 90 children, according to the figures provided by the LA in response to my request. The corresponding figures given to me by the LA for Carden Primary School were:

Reception: 30 Year 1: 49 Year 2: 47

36. Carden’s PAN for admissions in September 2023 had been 30, and for the other years, 60. This higher PAN was again set for it for admissions in September 2024, and has been determined again for 2025.

37. The number of first preferences which were expressed for each of the schools (followed by the number of September admissions) in recent years has been:

School	2022	2023	2024
	First preferences (and September admissions)	First preferences (and September admissions)	First preferences (and September admissions, June allocations)
Patcham Infant School	87 (90) (PAN 90)	80 (81) (PAN 90)	70 (80) (PAN 90)
Carden Primary School	45 (48) (PAN 60)	32 (30) (PAN 30)	40 (42) (PAN 60)

38. It is clear from these figures when taken together that the demand for places at Patcham Infant School in recent years has been significantly higher than the PAN of 60 which the LA has determined for admissions in September 2025. Whether this is likely to be the case again in 2025 and subsequent years depends of course on the projected number of parents likely to be seeking places in the area.

39. The figures for the Patcham planning area which were published by the LA in its January 2024 committee report (referred to above) were:

Year	2025	2026	2027
Forecast need for Year R places	105	123	92

These same figures were quoted by the LA in recent correspondence and I therefore understand that they remain the latest forecasts which are available to it.

40. The PANs for Patcham Infant School and for Carden Primary School for 2025 are both 60, and so 120 Year R places are being made available. That means that the projected surplus places are:

2025: 15 2026: -3 2027: 28

Although there is therefore an obvious deficit of places in 2026 if the PANs at the two schools are 60, the LA has told me that “Pupil forecasts numbers for the Patcham planning area have demonstrated the need to remove 30 school places for 2025, and potentially a further 30 school places in 2027”.

41. It seems to me that it may be possible to remove 30 places for September 2025 as the LA says, but the wisdom of doing so is doubtful given the forecast of the need for more than 120 places in 2026. More importantly, doing so by the means which the LA has adopted pays insufficient regard to the matter of parental preference. It seems to me that the pattern of parental preferences in recent years in the area shows that if there are 105 parents likely to be seeking a place in a school in Year R locally in 2025, then there will with some certainty be somewhat more than 60 parents seeking those places at Patcham Infant School.

42. The LA has told me that it did consult on the possibility of setting a PAN of 30 at Carden Primary School for 2023 (presumably on a permanent basis) but decided against this, for reasons which it set out. However, as I shall explain, that matter is of itself not relevant to my consideration of the objection, which must be viewed itself against what the Code says in relation to Patcham Infant School.

43. The LA has also reminded me of the situation of falling pupil numbers across the city, which I have no doubt is severe. It has also said to me that “While the Council is aware that a reduced PAN at Patcham Infant school could frustrate some parental preferences in 2025 and 2026, the council is of the view that the justification for this reduction is now powerful due to the overall situation in the city. The Council has few options available to remove surplus school places, either reduce the PANs in larger schools or put forward further school closures. We would suggest to the Adjudicator that the potential for a few frustrated preferences is a reasonable trade off against supporting the viability of many other schools in the city.”

44. I am afraid I cannot accept that the LA has “few options” in the situation which it is facing. In particular it seems to me that it has not understood or explored sufficiently the option of setting PANs which are not multiples of 30, and of the possibility of some schools with dwindling numbers to teach in mixed age-groups. This is a perfectly viable approach from an educational point of view and one which is employed widely across large areas of the country. It also seems to me that what the LA has said to me implies that it is appropriate to support some schools in one part of the city by making it necessary for some parents to access places there, inevitably at a further distance from their homes than more local schools where places have been removed by PAN reductions. The negative consequences of such a policy should be evident.

45. The Code was re-issued as recently as 2021, and paragraph 12 says:

“The Code has the force of law, and where the words ‘**must**’ and ‘**must not**’ are used, these represent a mandatory requirement.”

I have earlier quoted paragraph 1.3 of the Code and the requirement which it places on the adjudicator to have regard to the strong presumption to the increase to the PAN when considering an objection by the Governing Body of a community school to a PAN which it considers has been set lower than the school would wish.

46. In view of the evident frustration to parental preference which would result from the school having a PAN of 60, and the mandatory requirement placed on my consideration by the Code, I need not consider in detail the other adverse effects which the objector has described to me, although I believe they support the conclusion I have reached, namely that I uphold this part of the objection.

Other Matters

47. When the LA replied to my concern about the absence from the arrangements of any description of the details of the random allocation process which it employs, it said that it did not consider that there was a breach of paragraph 1.34 or 1.35 of the Code. It said however that “the random allocation process is administered by the Council’s admissions team which is independent from the schools concerned.”

48. My understanding of the purpose of the requirements in the Code is that parents reading the arrangements would be able to have knowledge of, and confidence in, the random allocation process. The LA is the school’s admission authority and the team in the LA which is responsible for the admission process is unlikely to be seen by parents as independent. I therefore take the view that the arrangements do not meet the requirements of the Code and so are in breach of what paragraph 1.35 requires.

Summary of Findings

49. I have explained why I:

- (i) I uphold that part of the objection that the consultation carried out by the LA prior to the determination by it of the school’s PAN failed to comply with the relevant requirements for the reasons I have given, and
- (ii) uphold the objection that the PAN of 60 which the PAN has set for the school for admissions in 2025 is too low.

50. I have also explained why I consider that the arrangements do not comply with what paragraph 1.35 of the Code requires concerning the use of random allocation.

Determination

51. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Brighton and Hove City Council for Patcham Infant School for 2025.

52. I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

53. 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: 05 September 2024

Signed:

Schools Adjudicator: Dr Bryan Slater