



Office of
the Schools
Adjudicator

Determination

Case references: ADA4349-50

Objectors: The Governing Body for St Luke's Primary School and a parent

Admission authority: Brighton & Hove City Council

Date of decision: 05 September 2024

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements for September 2025 determined by Brighton & Hove City Council for St Luke's Primary School, Brighton.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), two objections have been referred to the adjudicator, one by the governing body for St Luke's Primary School (the governing body, objector 1) and a second by a parent (objector 2), about the admission arrangements (the arrangements) for St Luke's Primary School (St Luke's, the school), a community primary school for children aged 4-11 years for September 2025.

2. The objections are to the consultation held on the proposed reduction in the published admission number (PAN) for the school from 90 in previous years to 60 for 2025; and to the reduction in the PAN to 60. This is for admission to the reception year (YR).

3. The parties to the objections are the governing body for the school, a parent and Brighton and Hove City Council, which is the admission authority for the school and the local authority (the LA) for the area in which the school is located.

Jurisdiction

4. The arrangements were determined under section 88C of the Act by Brighton & Hove City Council, the admission authority for the school, on 22 January 2024. Both objectors submitted their objections to these determined arrangements on 14 May 2024. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

5. Objector 2 has asked to have their identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their name and address to me.

Procedure

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

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

- a. a copy of the minutes of the meeting on 22 January 2024 of the Children, Families & Schools Committee (the determining body for the LA) at which the arrangements were determined and a copy of the papers to inform this decision. Papers provided to the committee include information on the consultation. I will refer to this document as the committee report;
- b. a copy of the determined arrangements;
- c. a copy of the minutes of the meeting of 6 November 2023 of the Children, Families & Schools Committee at which the proposed school admission arrangements for 2025/26 were discussed and the proposed consultation including plans to reduce the PAN of nine schools was approved. I will refer to this document as the consultation papers;
- d. the governing body's letter of objection dated 14 May 2024, supporting documents and other information submitted in response to my enquiries;
- e. objector 2's letter of objection dated 14 May 2024, supporting documents and other information submitted in response to my enquiries;

- f. the LA's comments on the objection, supporting documents and further information submitted in response to my enquiries.
- g. a map of the area identifying relevant schools; and
- h. previous OSA determinations, specifically:

STP656 St Bartholomew's Church of England Primary School, Brighton (June 2024)

8. Although I may not directly refer to it in my determination, I have read and taken account of all the information provided to me.

The Objection

9. There are two main elements to the objections received – concerns about the reduction in PAN from 90 to 60 for admittance to YR in September 2025 and concerns about the consultation process that led to that decision being made.

10. The governing body summarises its concerns as follows:

- a. "the decision frustrates parental preference in their choice of primary school for their children;
- b. the reduction in the school's PAN will significantly reduce the school's budget and will adversely affect the teaching and learning at the school, thereby causing prejudice to the efficient delivery of education and use of resources in the school;
- c. the decision went counter to the criteria that were cited in the consultation document that was published prior to the meeting of the council, bringing into question the thinking behind including St Luke's as part of the proposals; and
- d. there is evidence to suggest that there were some significant irregularities in the process of consultation and in the final report that was submitted to the Council."

11. Objector 2 raises similar concerns to those of the governing body. Additionally, they also raise concerns relating to flaws in the Equality Impact Assessment (EIA) completed by the council as part of the consultation document, particularly in relation to age, disability and race.

12. The LA, as the admission authority, has determined that the PAN for the school will be 60 for admission to YR in September 2025. This is a reduction of 30 places from a PAN of 90. The PAN is lower than the governing body would wish, and they are exercising their right to object as set out in paragraph 1.3 of the Code which states:

"Own admission authorities are not required to consult on their PAN where they propose either to increase or keep the same PAN. For a community or voluntary controlled school, the local authority (as admission authority) **must** consult at least the governing body of the school where it proposes either to increase or keep the

same PAN. All admission authorities **must** consult in accordance with paragraph 1.45 below where they propose a decrease to the PAN. 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.”

Other Matters

13. The admission arrangements do not appear to provide details of how the random allocation process used to separate children living at the same distance from the school is supervised, as required by paragraph 1.35 of the Code.

Background

14. St Luke’s Primary School is a community primary school with approximately 630 children. The school was judged by Ofsted to be ‘outstanding’ when it was last inspected in October 2013.

15. Brighton & Hove City Council is a unitary authority that has responsibility for a total of 61 maintained schools, 48 of which are primary schools. Based on 2023/24 final budget plans submitted by schools, the LA identifies that 33 of the 61 schools have licensed deficit budget arrangements, 29 of which are primary schools.

16. The LA explained in their consultation papers and committee report that pupil numbers across the city have fallen in recent years, resulting in large numbers of surplus places. Pupil numbers are forecast to continue to fall until at least September 2027. The latest data estimates that the number of children needing a place in YR will fall from 1,970 in September 2025 to 1,787 in September 2027. The total YR PAN for the LA in 2024 was 2,610.

17. The local authority consulted to reduce the PAN for nine schools, including St Luke’s Primary School, for 2025-26. Of the nine schools, two were infant schools and seven were primary schools. Following the consultation, a summary of the information collected, the committee report, was provided to the LA’s Children, Families & Schools Committee. The committee report recommended that the PANs for six of the nine schools, including St Luke’s Primary School, should be reduced in line with the proposals set out in the consultation. The local authority determined the arrangements as recommended. This means that, across the LA, there will be 180 fewer YR places available for admissions in September 2025 compared to September 2024. In a separate consultation, the LA also consulted on closing two primary schools. The closure of these two schools will result in a further reduction of 60 YR places.

18. In priority order, the oversubscription criteria for community primary schools within the LA can be summarised as:

1. Looked after children and all previously looked after children;
2. Compelling medical or other exceptional reasons for attending the school;
3. Sibling link;
4. For junior schools only: children attending a linked infant school;
5. Other Children.

Consideration of Case

19. I will consider each of the main aspects of the objections in turn starting with the consultation process.

Consultation

20. Paragraphs 1.45 to 1.48 of the Code set out the requirements for a consultation by an admission authority. The paragraphs state when a consultation is necessary, the timing of a consultation; who must be consulted; and what must be published and where.

21. The committee report provided detail of the consultation carried out and the responses to it. The consultation ran between 7 November 2023 and 22 December 2023. Paragraph 1.46 of the Code requires that a consultation must last for at least six weeks and be between 1 October and 31 January in the determination year. The consultation met the requirements of the Code in this respect.

22. The local authority sent information about the consultation, as part of their weekly Schools' Bulletin for week commencing 13 November 2023, to the headteachers and chairs of governors of all maintained schools within the LA. This information outlined the proposed changes to the admission arrangements for community schools for 2025 and links to where further information was available. There was also reference to the second consultation running concurrently on the closure of two primary schools. Separate emails containing similar information were sent to academy trusts with schools in the LA, relevant dioceses and neighbouring LAs.

23. As required by paragraph 1.47a of the Code, the information provided noted that:

“The consultation will also invite comment from parents in the City who have a child or children between the ages of 2 and 18 years of age and from other people in the geographical area of Brighton & Hove who have an interest in these arrangements.”

Headteachers were asked to promote the consultations to their school communities, governors, staff and families. Additionally, the committee report refers to the Council encouraging responses from groups who “might not usually participate in consultations” for example through the Parent and Carer Council, the Ethnic Minority Achievement Service and Home:School liaison workers.

24. However, following a freedom of information request from objector 2, the LA has confirmed that nurseries in the city were not informed of the proposals until after the consultation had closed. Thereby potentially restricting feedback on the proposals from the

parents of pre-school children, the very people most likely to be impacted by a reduction in PAN for children entering YR. The committee report states that “nurseries were notified of the consultation”. This presents a false picture in that while nurseries were informed it was not until after the consultation had closed.

25. In its response to my enquiries about this point, the LA said:

“It was the council’s intention to share consultation information with nursery schools for this consultation as it has in the past however, due to human oversight the initial information about the consultation running between 7 November 2023 and 22 December 2023 was not shared directly with nurseries in the city. Despite the absence of a specific communication, there was widespread publicity of the proposals. They were published on our website and were widely reported on within the media and on social media channels, as well as through community groups and residents’ associations. The number of responses to the consultation in general compared to previous years and particularly in respect of the proposal for St Luke’s indicates that families in local nurseries were well aware of the consultation proposals and this did not have an impact on the consultation results.”

26. The Code specifically requires parents between the ages of two and eighteen to be consulted, therefore, the consultation did not meet the requirements of the Code in this respect. However, as the LA took other steps to consult widely, I do not believe that the oversight of not informing nurseries and pre-schools in a timely way resulted in any material difference to the outcome of the consultation.

27. As set out in the committee report, during the public consultation the LA held 22 public meetings, two for each school featured in the proposals. One meeting took place during the daytime and one in the early evening.

28. In relation to these public consultation events, objector 2 raised concerns about the timing of the meetings. They point out that:

“In the Age section of the EIA, actions identified by the Council to advance equality of opportunity, eliminate discrimination and foster good relations also include ‘Consideration of timing of any public consultation events so parents with young families can attend’.”

They go on to say:

“Neither of the public consultation events for St Lukes Primary School were held at a time to help parents with young families attend. The online consultation relating to St Lukes was held at 10am on a Monday morning, when working parents would be working rather than at lunchtime when more people would be able to attend. The in-person meeting at St Lukes Primary School was held at 5pm. As a parent of a child aged 2.5 years old I can tell you that that is when my child needs to be eating their dinner.

The Council therefore failed to carry out actions which it had identified in the EIA as being necessary to advance equality of opportunity, eliminate discrimination and foster good relations for those with the protected characteristic of Age.”

29. The committee report states:

“Approximately 385 people attended meetings held during the consultation period, many people attended more than one meeting. The Council also publicised the consultation by issuing press releases and advertising on social media. An offer was made for parents to contact the Council to discuss the proposals and provide a verbal response to the consultation... this offer was not taken up by any respondents.

1,511 responses to the online consultation were received... In addition, there were 76 direct responses to the council’s school organisation and school admissions email accounts about the admissions arrangements proposals.”

30. While I empathise with objector 2 about the potential difficulty with the timings of the meetings, the LA did provide other opportunities for parents to share their views throughout the consultation period.

31. Objector 2 raised other concerns regarding the EIA contained within the consultation paper. They note that the EIA stated:

“As a public sector organisation, we [the Council] have a legal duty (under the Equality Act 2010) to show that we have identified and considered the impact and potential impact of our activities on all people in relation to their ‘protected characteristics’ (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership).”

However, in addition to concerns about age, as set out above, objector 2 also raises concerns about “the impact or potential impact of targeting St Lukes for a PAN reduction” on those with protected characteristics, in particular disability and race. I will look at each of these in turn.

32. With regard to disability, objector 2 states:

“...my understanding is that a primary school with 3-form entry is able to achieve some economies of scale which effectively puts it in a stronger position than many. Furthermore, what is obvious from a parent perspective is that the school are enabled to provide more support to those with protected characteristics such as special educational needs (particularly those without the additional funding which comes with an EHCP...) and disabilities, as well as to care experienced children who the Council has resolved to treat as if they were a protected group under the Equalities Act 2010. This additional support is invaluable for children waiting for NHS diagnoses and support who do not yet have an EHC plan...”

In the Disability section of the EIA, actions identified by the Council... include 'Nurseries will be encouraged to identify families who need additional support to access the information materials'.

... the Council has confirmed that it did not inform nurseries about the Consultation until after the Consultation had closed and the Committee had voted on the proposals. The Council therefore failed to carry out actions which it had identified as being necessary in the EIA to advance equality of opportunity, eliminate discrimination and foster good relations for those with the protected characteristics of Disability.”

33. In response to these concerns, the LA responded:

“The Council produced an EIA when the proposal to launch a consultation on the reduction in PAN’s at a number of primary schools was presented to committee on 6 November 2023. This referred in some detail to the decision to consult on the proposals and included a summary of relevant considerations per the recent Government guidance. It was drafted in the context of the totality of the papers which sought to address issues regarding the availability of school places to meet the needs of pupils and the community schools serve. A further EIA was then prepared to inform and assist councillors in making the decision whether to approve the proposals to reduce PAN’s on 22 January 2024.

It is the council’s view that the equalities impact assessment developed for both the consultation process and when assessing the impact of the proposals being taken forward meets the council’s obligations under The Public Sector Equalities Duty.”

34. On 18 July 2024, the LA also commented:

“In terms of the impact on children and families with protected characteristics the EIA referred to the impact across all the schools facing a reduction in their PAN. The Council did not conduct an individual EIA for St Luke’s because the statistics for St Luke’s indicated that their situation was not exceptional compared with other schools. The EIAs as drafted therefore did, in the Council’s view consider the impact, and how it could be mitigated and were sufficient for members to weigh into the balance of the decision.

The [adjudicator] may find the following statistics of assistance in relation to St Luke’s:

- 11.5% of the school population has identified SEND [Special Educational Needs and/or Disabilities] (with 2.1% having EHCPs) – as a comparison two neighbouring primary schools- Elm Grove has 15.9% all SEND, and Queens Park has 17.3%. All are below the primary city average of 19%.
- 16.9% of the school population is eligible for FSM – in comparison Elm Grove has 17.6%, Queens Park has 45.6, with a primary city average is 24%

- 8.1% of the school population is registered as having English as an Additional Language – in comparison Queens Park has 28.6, and this is below the primary city average is 17%.
- 25.9% of the school population is BAME – in comparison Elm Grove has 22.8%, Queens Park has 45.6, this is below the primary city average of 30.

As indicated above, the number of pupils with SEN is below the average across the city both in relation to those with and without EHC Plans

In addition, the suggestion in the objection that three form entry schools are necessary to meet the needs of pupils with SEND is not an analysis that the Council shares. Schools are expected to meet their duties to pupils with SEN on an individual basis which is not contingent on an ECHP.”

35. The governing body state:

“Additionally, St Luke’s is a school which prides itself on its inclusion of children with additional needs. The support that it provides for children with SEN is highly sought after and valued by families, who choose the school precisely because of what the school offers. A reduction in the school’s PAN, together with the reduction in the school’s funding, will disproportionately affect these children because the school will not be able to continue to provide the levels of support that it is currently able to do because of its economies of scale. (It is worth noting that previous policy decisions at the school about which children to include on the SEN register masked the true number of children who attend the school and who receive support in their learning. The school has recently changed this policy and is working to ensure that its SEN register is a true reflection of the cohort.)”

36. As part of its objection, the governing body submitted a number of statements from parents and carers of children with SEND attesting to the positive impact that the support provided by the school has had on their children.

37. While the school may well provide effective support for the needs of its pupils, I must note that schools of all different sizes can, and do, provide high quality support for pupils’ differing needs. Therefore, maintaining St Luke’s as a three-form entry school is not necessarily a pre-requisite for the provision of high quality services for children with SEND.

38. With regard to Race, objector 2 states:

“In the Race section of the EIA, the Council identifies the following action...‘Highlight that there is a translation function on the Council’s website so that consultation information can be viewed in different languages.’

I am a native English speaker with a degree in interpreting and translating and fluent command of [a modern foreign language (MfL)]¹. After finding the Consultation information on the Council's website in English, I then tried to use the Google Translate function to translate it into [MfL] which I understand is a language used by some families at St Lukes. Each time the response to my request to translate the Consultation page(s) took me to the Council's homepage, which was translated into [MfL]. I could not work out how to get past the homepage in [MfL]. The search function did not work in [MfL] and searching for 'St Lukes' and 'consultation' in English lead to a myriad of results in English. Each time I tried to translate a page into [MfL], the Google Translate function took me back to the homepage, which was translated into [MfL], rather than the page I was trying to translate."

39. In response to objector 2's freedom of information request about access to the consultation for respondents who are not native speakers of English, the Council replied:

"The Google translation function on the Council's website does provide the consultation information translated into all of the languages listed ... by selecting the desired language. Once the website is translated, interested parties do then have to navigate to the page containing the consultation information. Alternatively, the link for the language section on the website ... provides translated text and allows direct links to the admissions consultation page..."

40. From my own review of the LA's website, the translation function worked well for some pages. I found that some pages were initially 'unavailable' but then appeared translated into my selected MfL on a second attempt. However, with regard to the admissions guide, only the 'introduction' page appeared to translate. While I cannot comment on how well the translation function worked in relation to the consultation document as it is no longer available, given my albeit small sample, this may have been an issue for some potential respondents.

41. The governing body set out their concerns about the consultation as follows:

"The original proposals on which the community was consulted included another school in the locality, Queen's Park Primary School, which was not included in the final proposals taken to Council on the 22nd January. The reasons that Queen's Park was not included in the final proposals apply equally to St Luke's, and there is an injustice that the very same reasons for not including one school were not also applied to the other. The reasons given were significant enough for the proposals for Queen's Park to be changed so that the reduction in their PAN was not submitted to the committee, and rightly so. Further, these reasons were written into the document that went to the Committee, specifically about Queen's Park, but they were omitted in

¹ In order to help protect the anonymity of objector 2, I have changed references to the specific language in which they are fluent and instead refer more generally to a modern foreign language (MfL).

the comments about St Luke’s. The way that the two schools have been treated is inequitable.

Paragraph 3.37 of the Children, Families and Schools Committee Agenda Item 48 [the committee report] outlining comments made about Queen’s Park in the consultation, states that “concerns were raised about political representation given recent news about one of the ward councillors.” The two schools are in the same ward and have the same councillors, and this issue was raised by several members of the school community, but inexplicably was not included in paragraph 3.55 which shared the comments made about St Luke’s, so could not be considered by the committee.

Paragraph 3.39 of [the committee report] mentions that Queen’s Park was not in a deficit budget and that this was a consideration in the recommendation not to make a change. The same was true for St Luke’s, but this fact was not expressed in the paper and so could not be considered by the committee.

Paragraph 3.39 of [the committee report] also notes the “concern a change in PAN may impact on the positive trajectory the school is following”, which is true. However, similar responses to the consultation about St Luke’s that highlighted the negative impact that the change in PAN would have on the school’s educational offer were not included in the paper and so could not be considered by the committee.

The inclusion of the comments about one school and not the other is inequitable. Not only that, it has meant that the Children, Families and Schools Committee did not have all of the relevant information at hand in order to make a fully informed decision about St Luke’s specifically. This brings into question the process of consultation and the development of the recommendations that were made to the committee. On that basis, St Luke’s considers the decision to reduce its PAN to be unsound at best.”

42. Objector 2 also raises concerns about the different ways in which the two schools appear to have been treated:

“I wish to draw your attention to the way in which identical points arising from the Consultation were treated differently in [the committee report] depending on whether the report was recommending the PAN reduction proposal be adopted (St Lukes) or not recommending the PAN reduction proposal to the Committee (Queens Park Primary School):

Table 1:		
	Queens Park Primary	St Lukes
Lack of political representation	included in the section on Queens Park Primary when explaining why the Council was not pursuing its proposal to	Included in my response to the Consultation relating to St Lukes but not included in the section on St Lukes in the report to Committee.

Table 1:		
	Queens Park Primary	St Lukes
	reduce the PAN at Queens Park Primary.	
A reduction in PAN would mean the school would not have as diverse an intake	included in the section on Queens Park Primary when explaining why the Council was not pursuing its proposal to reduce the PAN at Queens Park Primary	Included in my response to the Consultation relating to St Lukes but not included in the section on St Lukes in the report to Committee
Absence of clear criteria as to why the school was chosen (note the difference in language used)	<i>‘... Expressed concern in the <u>absence</u> of clear criteria as to why the school was chosen’</i>	<i>‘ a <u>perceived</u> lack of clarity as to why the school met the Council’s criteria for selection for reduction in PAN’</i>

43. In response to my request for an explanation of the rationale for including St Luke’s Primary School but not Queen’s Park Primary School within the final PAN reduction proposals, the LA stated:

“All committee members had full access to all responses to the consultation, those submitted through the online system, sent by email and all letters provided in response to the proposals. The committee report could not contain details of all these responses but highlighted a summary of the main themes for each school.

The proposal for Queen’s Park Primary School was not taken forward in part due to concerns that the reorganisation and changes required to reduce the school’s PAN would jeopardise the school’s improvement journey. Since the school’s [Queen’s Park Primary] “requires improvement” OfSTED rating significant improvements have been put in place and concerns about how these strategies would be affected by the organisational change required to reduce the school’s PAN were recognised as unhelpful at this stage. This does not rule out a PAN reduction in the future at this school when they are further along their improvement journey.”

44. There does appear to have been some differences in the way the same information was treated in respect of each of the schools and the LA’s response does not fully explain the reasons for this, for example in relation to the issues of political representation or the schools’ financial situation. However, the main reason for not taking forward the proposed PAN reduction appears to be due to the potential impact on Queen’s Park Primary School’s educational improvement journey.

45. The committee report did provide a summary of information for each school about which a PAN reduction was proposed. The committee report said that of those who

expressed a view regarding the proposal for St Luke's, 603 disagreed and 184 agreed with the proposal.

46. Overall, I am satisfied that the LA provided several opportunities for interested parties to provide their views on the consultation process. Despite some potential shortcomings in the process, there were a considerable number of responses suggesting that many people were able to access and complete the online consultation successfully. Additionally, other opportunities were provided for people to email or call the council regarding their views.

47. In conclusion, the consultation did meet the requirements of the Code in most aspects, however, a significant group of parents, those of pre-school children, may not have been aware of the consultation. I, therefore, uphold this aspect of the objection. However, I reiterate that I do not believe this error had a material impact on the outcome of the consultation.

48. As set out in previous correspondence with the parties, specifically the Jurisdiction and Further Information Paper (J&FI Paper) dated 17 June 2024, 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 with both the 2012 School Admissions Regulations and the School Admissions 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 the Regulations and the Code. Nor can the adjudicator require the admission authority to re-instate the previous year's arrangements.

Reduction in PAN

49. I will now consider the objection to the reduction in PAN. As set out earlier, paragraph 1.3 of the Code is particularly pertinent, and the most relevant part states:

“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.”

This objection falls squarely within these parameters. This is a community school for which the PAN has been set lower than the school's governing body would wish and it has exercised its right to object.

50. As set out earlier in the determination, the governing body's main concerns in relation to the reduction in PAN are, in summary:

- a. the potential frustration of parental preference;
- b. the negative impact on the school's budget which may cause prejudice to the efficient delivery of education and use of resources in the school;

- c. the decision does not meet the criteria set out in the LA's consultation and committee reports.

I will look at each of these issues in turn.

51. The LA is clear that pupil numbers in the city have been falling and are forecast to continue to fall over the next few years. The committee report included forecasts of the future need for Year R places. Table 1 shows these forecasts for the city as a whole. The data used the existing PANs in place for all the schools at the time of the consultation. The data did not include the effect of the two proposed school closures or the reductions in PAN at the six schools for September 2025.

Table 1: Surplus places in YR across the local authority area (data taken from committee report appendix 1)

Whole LA	YR PAN (2024) = 2,610	
Year	Projected number of surplus YR places compared to 2024 figure	Surplus YR places as a percentage of the 2024 figure
2024	478	18.3
2025	640	24.5
2026	657	25.2
2027	824	31.5

52. The committee report also included forecasts for each of the eight planning areas which the council defines. St Luke's is in the City East planning area. This area comprises nine schools that admit children to YR. Table 2 shows forecast data for the City East planning area. The data shows that, with the exception of 2024, there is a higher percentage of surplus places than the LA would wish for although the proportion is lower than for the LA as a whole.

Table 2: Surplus places in YR in the City East Planning area (data taken from committee report appendix 1)

City East planning area	YR PAN (2024) = 450	
Year	Projected number of surplus YR places compared to 2024 figure	Surplus YR places as a percentage of the 2024 figure
2024	21	4.7
2025	62	13.8
2026	78	17.3
2027	83	18.4

53. The data used in tables 1 and 2 are taken from appendix 1 of the LA's committee report. However, the data were not presented in this specific format but rather by postcode areas within each designated planning areas. As the LA forecasts pupil numbers at planning area level, I feel that tables 1 and 2 present a clearer picture of the data. The data is the same as that used in the recent OSA determination STP656. The LA does not provide forecasts of pupil numbers at individual school level.

54. It is clear that the LA needs to take action to address the issue of surplus places. Its main strategy seems to be based on reducing the PAN of its larger maintained primary schools. In response to my enquiries, the LA stated:

“... the council is of the view that the justification for this reduction is now powerful due to the overall situation in the city, where a sustained drop in pupil numbers has led to the council determining the closure of 2 one form entry primary schools and where a significant number of primary schools are setting deficit budgets increasing the financial risk to the Council. The council has few options available to remove surplus school places, either reduce the PAN in larger schools or school closures.”

55. The LA's strategy appears to be focused on ensuring most schools have a PAN which is a multiple of 30. The LA does not appear to be considering other possible options of school organisation. For example, in their consultation paper, the LA wrote:

“Too many spare school places in the city will result in some schools not getting enough pupils attending. As schools are mostly funded on pupil numbers, if they do not have enough pupils attending, they may not be able to operate in a financially efficient way. The law prohibits infant school classes larger than 30 pupils. If schools are required to operate small classes, they may not be able to afford to employ the required number of teachers which would impact on their ability to provide an appropriate education.”

56. While the provisions of the School Admissions (Infant Class Size) (England) Regulations 2012 (the infant class size regulations) require that infant classes (those where the majority of children will reach the age of five, six or seven during the school year) must not contain more than 30 pupils with a single qualified schoolteacher, except in specific exceptional circumstances, YR children do not have to be taught in single age classes. Other models of school organisation are possible, and are, indeed, used across the country.

57. It is clear that there are a high number of surplus places both within the LA as a whole and within the relevant planning area for the school. I do not, however, agree that reducing the PAN in larger LA maintained primary schools or closing smaller schools are the only solutions to address the problem. For example, potential approaches could include engaging with academy trusts to consider a reduction in PAN in primary academies or making smaller reductions in PAN in a wider range of schools to provide greater organisational flexibility, such as mixed-age classes.

58. St Luke’s Primary School is a popular, oversubscribed school, as shown in table 3. The school is typically full each year with the majority of places being offered to first preference applications. The number of applications for a place at the school has fluctuated a little over the last four years. However, with the exception of 2023, the school has had more first preferences than its PAN of 90. Objector 2 suggests that the drop in numbers for 2023 may be explained by the appointment of a new senior leadership team in the school around that time. The number of first preferences for a place in 2024 suggests that any uncertainty in the community has been overcome. There is nothing to suggest that this picture will change in 2025 or forthcoming years.

Table 3: St Luke’s Primary School admissions information 2021-2024

	2021	2022	2023	2024
PAN	90	90	90	90
Number of on-time first preferences	131	115	78	135
Total number of preferences (maximum 3)	265	243	221	285
Number of places allocated on national offer day	90	90	88	90
Number of pupils admitted to YR (October census data)	89	88	84	-

59. The issue of parental preference is a key theme of the governing body’s objection to the reduction in PAN. In their objection, they state:

“St Luke’s is a popular, over-subscribed school. At the time of writing, numbers at the school are 627 on roll, and there is a waiting list of children for every year group except for Reception and Year 6. This is representative of the waiting list that always exists for the school...

Applications received by 16th January 2024, to start school in September 2024, have recently been analysed. St Luke’s received more first preferences and more overall preferences than every other school in the city. The school received 135 first preferences, which means that it could fill one and a half classes over its current PAN, if that were possible, from its first choices alone. Additionally, the school received 97 second choices and 52 third choices, giving a total number of applications at 284.

This demonstrates the school’s popularity with local families and that if St Luke’s PAN was to be reduced, a large number of parents and carers would have their preference frustrated.

Analysis of the applications for September 2024 shows that there are 37 children with a sibling link. Were the school to have a PAN of 60 this year, the intake of new families to the school would be only 23. This would mean that the furthest distance from the school for a child in priority 5 would be under 500 metres, leading to an extremely small catchment area.

St Luke's is a school with a distinctive ethos and culture, including the use of first name terms, no school uniform and a relationships policy which moves beyond a behaviourist approach to supporting children's behaviour. The school attracts families because of the nature of its ethos and culture, and families in the city move to this area in order to maximise the possibility of gaining a school place at St Luke's. Furthermore, families from outside of Brighton & Hove move into Brighton for schools with reputations and distinctive values like St Luke's. Clearly, parents and carers want the opportunity to choose St Luke's for their children."

60. In response to this, the LA states:

"While the council is aware that a reduced PAN at St Luke's Primary School could frustrate some parental preferences in 2025, the council is of the view that the justification for this reduction is now powerful due to the overall situation in the city..."

... Given the recent preference numbers for all of the community schools in this planning area, reducing the PAN at any of these schools is likely to frustrate some parental preferences."

61. For children due to start school in 2025, I asked the LA to model where, with a PAN of 60, children are most likely to live; and at which alternative school children are most likely to be offered a place. In their response, the LA said:

"There is a significant surplus of school places in the planning area so it is likely that all pupils living in the planning area would be able to secure a place at one of the planning area schools in 2025.

The council does not forecast pupil numbers at individual schools as this requires an element of supposition of parental preference which may not be so relevant to estimating the number of children allocated to St Luke's however it would prove more difficult to estimate those going to other schools in the planning area. Due to the city's urban nature it has not been considered a requirement to estimate pupil numbers to this level.

It is not possible to model pupil allocations for September 2025 as we only have data showing the number of children living in a postcode area for this cohort. However, [using 2024 cohort data] 30 pupils would not be offered places had the PAN been reduced to 60 pupils. 4 of these pupils would have been within the cut off distance for priority 5 for Carlton Hill Primary School, 17 would have been within the cut off distance for priority 5 at Elm Grove Primary School, the remaining 9 pupils could have been offered places at Queens Park Primary School or Fairlight Primary School depending upon parental preference or whichever was closest to the home address. It is reasonable to expect a similar situation in September 2025."

62. Parents are, therefore, likely to be able to secure a place for their child at a local school but these schools may not have the ethos and values that the parents would prefer.

63. Objector 2 raises similar concerns about the impact of the reduction in PAN on parental preference:

“At the in-person consultation meeting at St Lukes we were told by a Council officer that rather than reducing PAN at schools which are already greatly under-subscribed, by reducing the PAN at larger primary schools it was hoped to secure an effect that children will be ‘redistributed’ (like parcels) to other schools to protect the budgets and futures of those undersubscribed schools to maintain a school option within their community. This totally ignores parental preference.

The Council’s PAN reduction proposals ... do not seem to have fully considered that for many parents one or more accessible schools might be located outstanding [sic] the relevant planning area and indeed be closer than schools in the planning area.”

64. The size of St Luke’s Primary is currently limited by its net capacity (the number of children that a school can accommodate based on a DfE national formula calculation). The Department for Education’s (DfE) website ‘Get information about schools’ states that the school has capacity for 630 children with 627 currently on roll. Based on these numbers, the school could not reasonably increase its PAN but it can keep its PAN as high as possible to meet as many parental preferences as possible.

65. From the historical data, there are very likely to be close to 30 families who cannot access a place for their child at the school, their preferred school, because of the reduction in PAN. The Code uses the term ‘reasonable’ but does not define it. An everyday definition is of having sound judgement; being sensible and rational. It is the requirement of public bodies, including admission authorities, that they must act reasonably in adopting any policy or making any decision. While there is no definition of how many parents should not be able to secure a place at a school before the level of parental frustration is deemed unreasonable, it seems to me that 30 is a significant number of families to be impacted upon in this way.

66. At the same time as reducing the number of surplus places in the area, the LA is also looking to secure the financial viability of its schools, as set out in the consultation papers:

“The council’s aim with these proposals is to continue reducing the number of surplus places in the city and the associated risk of a school or schools being forced into financial difficulty.”

67. As stated earlier in the determination, 29 of the 48 primary schools maintained by the LA are currently operating deficit budgets. The LA appears to see reducing the PAN at some schools as a way to redistribute part of those schools’ budgets to help support other schools in financial difficulties. In their committee report the LA state:

“School budgets are determined in accordance with criteria set by the government and school funding regulations dictate that the vast majority (over 90% in 2023/24) of the delegated schools block of funding is allocated through pupil-led factors. This

means schools with falling pupil numbers are likely to see reductions in annual budgets. This situation can be particularly challenging where pupil numbers in year groups fall well below the expected number, based on the PAN of a school.

Without planned reduction in PANs it will be challenging for primary schools to plan ahead for staff reductions and set balanced budgets. For the schools where reductions in PANs are proposed there will be direct implications and a need to plan future years' budgets to reflect lower pupil numbers in line with reduced PANs and the consequent impact this will have on budget allocations. However, planned reductions in PANs should mean schools are more likely to be able to balance their budgets if operating with full, or close to full, forms of entry.

By reducing the number of surplus places in the city in the longer term there is an expectation that school occupancy rates will increase meaning that school budgets are more sustainable.”

68. St Luke's is already operating with full, or close to full, forms of entry but it is experiencing the same financial constraints as all schools nationally. The governing body provided the following additional information:

“The school has presented a five-year budget plan to the council for the period 2025/26 to 2029/30 which has a carry-forward of over £235,000 at the end of the fifth year. This is, however, not without some real difficulties in years 1 and 2, and the school has plans to undertake a restructure of staffing in order to balance the budget as laid out in the five-year plan. The reduction in PAN would seriously jeopardise this plan moving forward, exposing the school to significant financial risk because of the reduced number of pupils and the corresponding per-pupil funding.”

69. In relation to the proposed PAN reduction at the school, the governing body states:

“Paragraph 3.19 of [the consultation papers] says that “the council must seek to deliver an efficient education system” and that they are reducing numbers so that “schools are operating from a more secure platform”, but this proposal destabilises St Luke's and makes it less secure.

St Luke's will undergo, unnecessarily, seven years of destabilising transition, with year on year reduction in funding which will impact on the school's ability to provide some of the 'added extras' that being a larger school, with a bigger budget, can be offered through streamlining and efficiencies.

St Luke's school building is a large, Victorian school board building, with the large associated costs that come with maintaining a building of this type. The costs of running and maintaining the building will not reduce, but the school's ability to pay for it will because of the linked reduction in funding that comes with reduced numbers of children in attendance. These costs as a proportion of the school's budget will increase, therefore prejudicing the efficient delivery of education and use of

resources at the school... Additionally, the council is currently funding a massive infrastructure project at the school, costing approximately £1.4 million. This project is due to finish just as the PAN reduction is planned. It seems counterproductive to invest so heavily in a building, parts of which will then likely be mothballed.

Paragraph 3.19 of [the consultation papers] says that the Council's plan "outlines a commitment to inclusive education... and to do this in part by delivering specific strategies for children and young people at risk of educational disadvantage." Perversely, the decision to reduce the PAN at St Luke's will have precisely the opposite effect for those children who attend the school and will imperil the school's ability to "provide a full and vibrant curriculum and to be able to provide the right support to be available to pupils and families", which is the Council's intention. All of this will impact negatively on the school's outcomes for children with disadvantaged children and those with SEND. Indeed, this is recognised in Paragraph 6.4 [of the consultation papers] which state that the plan "could challenge some school's abilities to deliver specific strategies for children at risk of educational disadvantage..."

70. If the PAN were to remain at 60 for 2025 and the following years then over time the size of the school would reduce by around one third from 21 classes to 14 classes. The reduction in pupil numbers would see a proportionate reduction in funding. As mentioned by the governing body, there would be a reduction in the number of staff although fixed costs, such as building maintenance, are likely to remain the same. I do not underestimate the challenges, disruption and impact on morale that an extended period of restructuring and potential redundancies can bring but this is not in itself a reason not to reduce the PAN.

71. Schools of all different sizes can, and do, provide high quality support for pupils' differing needs so, again, this is not in itself a reason not to reduce the PAN. However, the specific systems and staffing models that are currently in place at the school may no longer be viable if pupil numbers reduce considerably. This could be disruptive to children and families, at least in the short term.

72. The third area the governing body raises concerns about is the thinking behind including St Luke's as part of the proposals. The governing body wrote:

"Paragraph 3.21 [of the consultation papers] set out the Council's criteria for choosing the schools to be included in the proposals.

The first criterion is the number of school places in the area in which the school is located. St Luke's is in planning area 6 – City East. Taking aside that the planning areas that have been designated by the Council are largely arbitrarily drawn, the forecast number of children in the BN2 9 postcode area does not demonstrate a need to reduce school places in that postcode. There are 120 places in this postcode area, with the numbers of children forecast to be in that locality being 135 in September 2024, 134 in September 2025 and 110 in September 2026. Reducing the school places in this locality is an unnecessary overreaction to these figures.

Furthermore, applications for entry in September 2024 to the two schools in that locality show a total of 177 first choice preferences, calling into question the Council's forecast numbers. Additionally, the proposals do not take into account the more than 50 children in Kemp Town, who have no specific, postcode 'allocated' school, and who often choose St Luke's as their preferred school, increasing the number of children and families affected. St Luke's should not have been included in the proposals according to this criterion.

The second criterion is a consideration of the financial position of the school. However, at the time of the consultation St Luke's was not in deficit, unlike the majority of schools in Brighton and Hove. Paragraph 3.11 (Appendix C) states that "the Council will be seeking to support schools to ensure that they operate in as financially efficient way as possible", but this proposal imperils the school's financial position. It will take a financially healthy school and submit it to a problematic transitional period, with reductions in funding year on year, and expectations to remain within budget throughout – an extremely difficult change to manage. A reduction in St Luke's PAN will add ongoing pressures to the school's budget, which is quite the opposite of the hoped-for impact of the wider proposals. St Luke's should not have been included in the proposals according to this criterion.

The third criterion is that the Council seeks to ensure that the city retains a broad range of schools of various sizes and types. However, the final proposals that were submitted to the Council targeted larger schools, all of them had a PAN of 90 and were proposed to reduce to a PAN of 60, thereby reducing the range of schools in the city. St Luke's is the only three-form entry school in its planning area; all of the other schools are one- or two-form entry. This decision not only reduces the variety of schools in the city, it reduces the variety of schools in the school's locality. St Luke's should not have been included in the proposals according to this criterion."

73. In response to this, the LA stated:

"There is an increase from 129 pupils in 2024 to 134 pupils in 2025 living in the BN2 9 postcode which is where the school is situated. This represents 116 pupils requiring a school place living in this postcode area in 2024 and 121 requiring a school place in 2025 as we forecast only 90% of pupils showing in the GP registration data will require a maintained school place. However, the pupil numbers across the whole planning area who will require a school place drop from 429 in September 2024 to 388 in September 2025. The largest surplus of school places in this planning area are in the postcode areas immediately adjacent to the BN2 9 area, BN2 0 and BN2 3. For BN2 0 there are forecast to be 10 more school places than children requiring a school place in this postcode area and for BN2 3 there are forecast to be 65 more school places than children requiring a school place in 2025.

As such the council concluded that it would be possible to reduce the PAN of St Luke's and still ensure there are sufficient places for all children in this area in September 2025.

Pupil number forecasts for the City East planning area indicate that even with a reduced PAN at St Luke's Primary School in 2025, there will still be over 30 surplus places in this planning area. In September 2026, there are forecast to be 48 surplus places and in September 2027 the forecast indicates 53 surplus places in this planning area. Given the recent preference numbers for all of the community schools in this planning area, reducing the PAN at any of these schools is likely to frustrate some parental preferences."

74. I accept that the LA does have an urgent need to address the surplus capacity in the primary schools in the city on financial grounds. While I have sympathy with the LA for the situation in which it finds itself, the Code applies to individual schools and their determined admissions arrangements. I must, therefore, focus on the situation relating to St Luke's Primary School. In this case, the reduction in PAN is highly likely to frustrate not just one or two parents but, in all likelihood, close to 30 families. This is based on historic admission numbers and a history of the school being oversubscribed.

75. As referred to above, paragraph 1.3 of the Code says that if the PAN is set lower than a community school would wish and the governing body objects, "there is a strong presumption in favour of an increase to the PAN" to which I, as the adjudicator, must have regard. The evidence shows that the local authority has reduced the PAN at the school in order to secure an effect that 30 children every year will attend other schools so that the budgets and futures of these other schools are protected.

76. The reduction in PAN will clearly have some adverse effect on the provision at the school and will certainly significantly frustrate parental preference and so would need powerful justification. The justification put forward by the LA is that the reduction in PAN at the school would lead to a significant increase in the number of pupils attending other, undersubscribed, maintained primary schools I have seen little evidence that this objective would be met to an extent that would justify the resulting frustration of parental preference. Consequently, on balance I do not find that the adverse effect on the school and the frustration of parental preference is justified. I therefore uphold this part of the objection.

Other Matters

77. As explained on the LA's website:

"Brighton & Hove City Council uses a catchment area system with random allocation being used as the tiebreaker in each admission priority in the event of oversubscription."

For example,

"Where the home addresses of 2 or more pupils are an equal distance from the school (such as 2 children living in the same block of flats) and only one place remains available at the school in question, the place will be allocated randomly by computer to one of these pupils."

The admissions arrangements do not, however, explain how this process is administered as required by paragraph 1.35 of the Code which states:

“The random allocation process **must** be supervised by someone independent of the school, and a fresh round of random allocation **must** be used each time a child is to be offered a place from a waiting list.”

78. In response to my enquiries about this point, the LA said:

“It is the council’s view that the admission arrangements satisfy the requirements of Section 1.35 of the code as the random allocation process is administered by the council’s admissions team which is independent from all of the schools concerned.”

I do not accept that the LA’s admissions team is independent. The school is maintained by the LA and the LA is the admissions authority for the school. The arrangements do not make it clear that the random allocation is independently overseen or that a fresh round of random allocation is used each time a child is offered a place from a waiting list. These points need to be clarified in the published arrangements.

79. Although I did not specify any further matters in the J&FI Paper, I also notice that the following areas may not meet the requirements of the Code:

- a. Under the section titled ‘Home Address’, the arrangements say, “If it is unclear what is the pupil’s main address this will be taken as the address where the child is registered with a doctor.”

This provision does not allow for circumstances where the address registered with a doctor may not actually be the one where the child spends the majority of their time during term time. It therefore does not provide sufficient clarity for parents as required by the Code (paragraph 14).

- b. Under the section titled ‘Admission outside normal year group’, the arrangements say, “Parents who are applying for their child to have **decelerated** entry to school, i.e. to start later than other children in their chronological age group....

Parents who are applying for their child to have an **accelerated** entry to school, i.e. to start earlier than other children in their chronological age group...

(I have used bold to highlight the phrases to which I am referring).

This is not wording used in the Code and may be in breach of the Code (paragraph 2.18) and not in line with the DfE guidance for admission authorities on the admission of summer born children and the admission of children out of the normal year group. This does not, therefore, provide the necessary clarity for parents as required by the Code (paragraph 14).

- c. Under the section titled 'Notes', there is no mention of looked after children, though there is a full definition for previously looked after children and those who appear to have been in care outside of England.

While this may well simply be an oversight, this is a requirement of the Code (paragraph 1.7 and note 15).

Determination

80. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements for September 2025 determined by Brighton & Hove City Council for St Luke's Primary School, Brighton & Hove.

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

82. 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: Catherine Crooks