



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2454

Admission authority: Brighton & Hove City Council for Rudyard Kipling Primary School and Nursery in Brighton

Date of decision: 02 October 2024

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Brighton & Hove City Council for Rudyard Kipling Primary School and Nursery for September 2025.

I determine that the published admission number for admissions to reception year in 2025/26 shall be 30.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

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

The referral

1. Brighton & Hove City Council (the local authority, the LA) for Rudyard Kipling Primary School and Nursery (the school) has referred a proposal for a variation to the admission arrangements for September 2025 (the arrangements) for the school to the adjudicator. The school is a community school for children aged two to eleven in Brighton.
2. The proposed variation is that the published admission number (PAN) for the school be reduced from 60 to 30 for admissions to reception year (YR) in 2025/26.

Jurisdiction and procedure

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

“3.6 Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified. Where the local authority is the admission authority for a community or voluntary controlled school, it **must** consult the governing body of the school before making any reference.

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

4. The local authority has provided me with confirmation that the appropriate bodies have been notified. I have seen confirmation that the school’s governing body has been consulted on the proposed variation. I find that the appropriate procedures were followed, and I am satisfied that the proposed variation is within my jurisdiction. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

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

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

- a. the referral from the local authority dated 23 July 2024, supporting documents and further information provided at my request;
- b. the determined arrangements for 2025 and the proposed variation to those arrangements;
- c. comments on the proposed variation from the local authority and the governing body of the school;
- d. a map showing the location of the school and other relevant schools; and
- e. information available on the websites of the local authority, the school and the Department for Education (including ‘Get Information About Schools’ (GIAS)).

The proposed variation

7. It is proposed to reduce the PAN from 60 to 30 for entry to YR in 2025/26. This proposed variation has the support of the governing body.

8. Paragraph 3.6 of the Code (as above) requires that admission arrangements, once determined, may only be revised, that is changed or varied, if there is a major change of circumstance or certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

Consideration of proposed variation

9. There is no formal consultation required for a variation and so parents and others do not have the opportunity to express their views. Once the PAN has been set for a particular year then no body, except the governing body of a community or voluntary controlled school, can object if that PAN remains the same in subsequent years. Clearly it is desirable that PAN reductions are made via the process of determination following consultation as the consultation process allows those with an interest to express their views. It also allows for objections to the adjudicator. None of this is afforded by the variation process.

10. The major change in circumstances relied upon by the local authority is set out in the referral, which states:

“The council’s ability to license schools’ deficit budget positions for this financial year has been significantly affected by the number of schools in the city forecasting a deficit and the potential impact on the council’s general fund. This is in part due to sustained falling pupil numbers across the city. The budget plan developed to bring Rudyard Kipling Primary School out of deficit requires the school to reduce from 2fe [form entry] to 1fe. This financial pressure is the major change in circumstances since the admission arrangements were determined in January 2024.”

11. The local authority goes on to give further information in its request:

“The council did propose and consult upon a reduced PAN at both Rudyard Kipling Primary School and Woodingdean Primary School by 15 pupils each for September 2025. However, these proposals were not taken forward due to opposition from both schools relating to the introduction of mixed age teaching groups necessary with a PAN of 45. In not taking forward the proposal to reduce the PAN at both schools the council agreed to continue further discussions with both parties due to preference numbers in recent years fluctuating between the two schools and not showing an outright preferred 2fe school. These discussions have led to the Governing Body at Rudyard Kipling subsequently requesting/agreeing with the request for a variation in PAN due to their new financial position.”

12. I have accordingly given careful consideration to the latest available data in order to form a view about the sufficiency of school places in the local area if the PAN is reduced

from 60 to 30 for 2025/26. I have also considered the demand for places at the school, the reasons given for the change in such demand, the potential effect on parental preference and whether the change is justified taking into account all relevant circumstances.

13. The local authority has a duty to make sure that there are sufficient places for the children in its area. To fulfil this duty the local authority assesses the likely future number of places to be needed and plans to meet that need. The local authority uses planning areas, which are geographical areas each containing a number of schools, for this purpose. I have considered the data that it has provided for the school's planning area, the Deans. There are five schools in the Deans planning area. This data shows the numbers now allocated to the schools following national offer day (16 April 2024) and is set out in table 1 below.

14. Table 1: Number of children admitted to schools in the planning area

	2022/23	2023/24	2024/25 (allocated)	2025/26 (forecast)	2026/27 (forecast)
Our Lady of Lourdes RC Primary School	24	30	31		
Rudyard Kipling Primary School	49	43	40		
Saltdean Primary School	77	74	80		
St Margarets CE Primary School	21	21	19		
Woodingdean Primary School	49	45	51		
TOTAL	220	213	221	140	162
Sum of PANs for YR	270	270	270	270	270
Vacant places	50	57	49	130	108
if proposed variation is approved and PAN is also set at 30 for 2026/27					
Sum of PANs for YR				240	240
Vacant places				100	78
Vacant places as a percentage				41.6	32.5

15. I note that the local authority does not forecast numbers for individual schools and has based its forecasts on a figure of 90% of GP registration data. That notwithstanding, from the above data I am satisfied that a PAN of 30 for 2025/26 will still leave sufficient places in the planning area for those seeking a place in YR. If the proposed variation is agreed, it will be possible for the local authority to determine a PAN of 30 for the following year without consultation. I am also satisfied that a PAN of 30 for 2026 would not lead to a shortage of places in 2026/27.

16. I now turn to the number of children at the school and the reasons given by the local authority in support of the variation request. I note at this point that the allocation numbers for September 2024 (40 allocated places as of 23 July 2024) are such that there has been no frustration of parental preference given the current PAN of 60.

17. In the variation request, the local authority says:

“Rudyard Kipling finished the 2023/24 financial year with an overspend of £115k and has been granted a licensed deficit of £167k in 2024/25. They have provided a budget recovery plan over a multi-year period which is predicated on moving to 1FE from September 2025 ... The council has already had to close two Primary schools this year due to dropping pupil numbers in the city and would like to avoid further school closures wherever possible.”

18. The local authority goes on to say:

“It will allow the school to operate full classes which are more financially viable. This will enable the school to realise their budget recovery plan to move out of its deficit budget position.”

19. The provisions of the School Admissions (Infant Class Size) (England) Regulations 2012 (the infant class size regulations) apply to the school, and they 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.

20. Given the number of children admitted to the school in the last three years (as shown above in Table 1), the infant class size regulations will have required the school to have two classes for each of the foundation and key stage one (KS1) year groups. As the majority of school funding is based on the number of pupils at the school, where there are substantially fewer than 30 pupils in a class, the funding generated by the number of pupils does not meet the cost of the teaching and support staff required. Providing two classes for each year group in the foundation and KS1 year groups without the number of pupils allowed by the PAN of 60 will have significantly contributed to the school’s deficit budget situation.

21. If the PAN for YR in 2025/26 were to be reduced to 30, the school would be able to plan its staffing and organisation on the basis that it will have no more than that number of children in YR. However, if the PAN for 2025 remains at 60, then the school would have to

admit up to that number. The data shows that there is minimal chance of the school receiving sufficient applications to make the continuation of a PAN of 60 financially sustainable. It also shows that there are sufficient places across the planning area such that no child will be without a school place. I therefore consider the request to reduce the PAN from 60 to 30 to be a reasonable one and one that will materially help to address the issue of the school's budget deficit and give it stability moving forward.

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

Consideration of the arrangements

23. Having considered the arrangements as a whole it appeared to me that the following matter does not conform with the requirements of the Code and so I brought it to the attention of the local authority. I have set this out below, showing the relevant paragraph of the Code and where the arrangements do not conform to requirements.

24. 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."

25. 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."

26. 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."

27. Whilst the random allocation process may operate independently in practice, as the arrangements are currently written, they do not make it clear that the allocation is randomly

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.

28. The Code requires that the arrangements are amended within two months of the date of this determination.

Determination

29. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Brighton & Hove City Council for Rudyard Kipling Primary School and Nursery for September 2025.

30. I determine that the published admission number for admissions to reception year in 2025/26 shall be 30.

31. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

32. 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: 02/10/2024

Signed: 

Schools adjudicator: Tess Gale