



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: VAR 659

Admission Authority: The Metropolitan Borough of Kirklees, West Yorkshire for Reinwood Infant and Nursery School

Date of decision: 10 March 2015

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the variation to the admission arrangements determined by the Metropolitan Borough of Kirklees, West Yorkshire for Reinwood Infant and Nursery School. I determine that for admissions in September 2015 the published admission number shall remain as 120.

The referral

1. The Metropolitan Borough of Kirklees, the local authority, has referred a variation to the Adjudicator about the admission arrangements for Reinwood Infant and Nursery School (the school), a maintained community school for children aged 3 to 7 years for September 2015. The school admits 120 children to Reception and the variation requested is to vary the published admission number (PAN) such that it should be reduced from 120 to 90.

Jurisdiction

2. The referral was made in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.

3. I am satisfied that the proposed variation is within my jurisdiction.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a) the local authority's form of referral of 20 January 2015, supporting documents and subsequent correspondence;
 - b) the determined arrangements for 2015/2016 and the proposed variation to those arrangements;
 - c) a copy of the local authority's composite prospectus for parents seeking admission to schools in the area in September 2015;
 - d) minutes of the school's governing body meeting where the proposal to reduce the PAN was discussed; and
 - e) maps of the area.

Background

6. The school is in the town of Huddersfield in Kirklees, West Yorkshire. In 2013, the local authority identified the need for additional school places in a number of areas across Kirklees, but in particular a significant need for additional primary school places in Huddersfield North, North West, West and South West. The school is in Huddersfield North West. A need for an additional 10 forms of entry was identified over the academic years 2014/15 to 2016/17.
7. On 22 October 2013 Kirklees Council's Cabinet (the cabinet) approved a programme of works to provide an additional 210 places by increasing the PAN at the school and the linked Reinwood Junior School, increasing the PAN from 90 to 120 pupils. The two schools share the same building and site. In 2013 and 2014 the school admitted an additional reception class of 30 places, that is 120 pupils into Reception.
8. The local authority also approved a statutory proposal by the governing body of the then Royds Hall High School to make a prescribed alteration to change the lower age limit from age 11 (year 7) to age 4 (Reception) becoming Royds Hall Community School, a foundation school with a trust. At the same time the cabinet approved a linked report requesting capital to build a new one form of entry (FE) primary school building on the Royds Hall site.

9. Royds Hall Community School is based on a site on Luck Lane and it is here that the new building is proposed. However, another primary school some 1.7 miles away from Royds Hall, Beech Early Years, Infant and Junior School was found when inspected by Ofsted in December 2013 to have serious weaknesses. The structural solution that was proposed by the local authority was to close Beech School but to keep the site and buildings as part of Royds Hall Community School. The proposals were approved by the cabinet on 23 September 2013 and the implementation date is 1 March 2015. This, at the time, resulted in Royds Hall School having two FE of primary provision, one FE (with all year groups from Reception to Y6) located on the Beech Avenue site, and the newly established places, currently only Reception, at the Luck Lane site. It is the Luck Lane site that is now proposed to admit two, rather than one FE in September 2015. It is planned that this provision will grow year on year until a full complement of year groups are in the school in 2020. The local authority has approached the governing body of Royds Hall School to request that the school admits 60 pupils rather than 30 for September 2015 at the Luck Lane site
10. The local authority now reports that, having done detailed work, it is no longer possible to afford to construct new school buildings at Royds Hall and develop and invest in the existing school buildings of Reinwood Infant and Junior Schools. It therefore intends to develop a two form of entry new school at the Royds Hall Luck Lane site and not continue with the expansion of the Reinwood Infant and Junior Schools.
11. As the school is not to be expanded the local authority has requested that its PAN is reduced from 120 to 90 for September 2015. The local authority is consulting on a reduction of the PAN from 2016 as part of its consultation of admission arrangements for 2016.
12. In addition to this reduction in PAN, the local authority also reports that there will be only 90 places available in the junior school for 2016 and 2017 when the two years with 120 pupils in each year will reach the age to transfer to year 3.

Consideration

13. Once determined, admission arrangements may only be changed as set out in the Act and Code if there is a major change of circumstance or certain other specified circumstances. My consideration then includes: what is the major change in circumstance; why is the variation needed; is the variation essential; does the requested variation deal with the circumstances; does it create other problems; when was the variation requested; and were all the relevant parties notified as required by the Code.
14. The local authority reports the major change in circumstances is that it can no longer afford to undertake the work required to change the capacity of the two Reinwood schools to admit 120 pupils per annum. This proposal was estimated to cost £4.5m. Its officers reported this matter to its cabinet

in a paper dated 16 December 2014. This report was called in to be scrutinized further and was released for implementation on Friday 16 January 2015.

15. The original proposal for new primary provision at Royds Hall was for 1FE to give 210 places and a building at an estimated cost of £5.5m. In the cabinet report seeking capital approval of 8 April 2014 that was approved alongside the final decision for the associated statutory proposal for establishing primary places at Royds Hall, officers were given a mandate to explore the costs of building a two FE building. This was in order to 'future proof' the new building given the future trajectory of additional places that are anticipated to be required over the next five years; to look at whether it would be value for money to build facilities such as the hall and kitchen so that at a future point they could accommodate further building to add on enough class bases to expand to a two FE, should this be required. The local authority reports that it became apparent that it would in fact be most cost effective from a capital delivery point of view to build a two FE building as a single capital project, because to build one phase and then return later to build further would nearly double the costs. To achieve value for money therefore officers were asked to explore the cost of building a two FE school but only admitting one FE as was originally proposed.
16. The work that the local authority has undertaken regarding the cost of expanding Reinwood schools compared with the additional cost estimates of delivering a two FE rather than a one FE building at Royds Hall show that the same number of places (that is the additional 420 places) can be delivered for £1.5m less than the works planned for one FE at Reinwood and one FE at Royds. It is not clear when this became apparent.
17. The local authority reports that revised proposals were discussed between the Children's Services department and officers from the Physical Resources and Procurement (PRP) department during the autumn term and there were subsequent discussions with head teachers in October and November 2014.
18. My consideration has to be whether the PAN determined for admissions to the school in September 2015 and published in the local authority's composite prospectus and against which parents applied for places by the closing date of 15 January 2015 should be reduced from 120 to 90.
19. I note that some additional works have already taken place to facilitate the entry of four reception classes to the school in each of the last two years. The head teacher reports that there would be pressure on classrooms and dining facilities if 120 pupils were admitted in September 2015. I further note that the governors report that staff have already been employed in preparation for the expansion that was agreed in 2013.
20. The local authority suggests that 30 additional places will be made available for reception pupils at Royds Hall. The local authority is presently consulting on the proposal to build a new primary school on the Luck Lane site; it suggests this new building may be available for occupation at

Easter 2016 to open for pupils in September 2016. Temporary accommodation was made available at Royds Hall to enable 30 reception pupils to be admitted there in September 2014. The accommodation, in the Old Mansion House, is described as *“three existing rooms are temporarily converted to two classrooms and a cloaks/wet area with age appropriate toilets”*.

21. Clearly two rooms will be insufficient for two reception classes in September 2015 and the current year R which will be year 1, making three classes in total. The local authority reports *“planning is underway to remodel a space that the school has identified with age appropriate toilet facilities and external access...Royds Hall have been able to temporarily use space flexibly and accommodate the rooms needed to house the primary youngsters via timetabling”*.
22. I note that concerns about traffic and congestion issues have been raised in relation to the Royds Hall proposal. The cabinet paper of 8 April 2014 says *“During the statutory consultation process, there was general consensus across a large number of respondents that traffic and congestion issues arising from the proposed new primary provision would be an issue”*. The report to the scrutiny panel of 16 January 2015 comments on inadequate reference to a number of important issues which include *“a detailed analysis of the impact of traffic flows across North West Huddersfield with particular attention to the safety of children and other pedestrians using Luck Lane*. It adds a foot note which says *“It is, in my view, a miracle that there have been no deaths close to Royd’s Hall Luck Lane entry; the risk of this happening is significantly increased with the single form entry proposal, never mind a two form entry”*.
23. I consider the following issues in relation to the alternative places. The additional school places proposed by the local authority are not directly within its gift, Royds Hall is a foundation school and the governing body is the admission authority, the council report of 16 December asks members *“to work collaboratively with RHCS to request the school admits 30 pupils above PAN”*; the local authority is currently consulting on a proposal to build a primary school within the Royds Hall site and does not yet have planning permission; the accommodation is temporary and further temporary work will be required to admit a further class of 30 pupils; there are concerns raised about traffic and road safety. I am not convinced that parents will view this as a desirable alternative to a place at Reinwood in September 2015.
24. The local authority undertook some consultation about its proposal not to implement the increase in capacity of the Reinwood schools that it had previously agreed. If an admission authority wishes to vary its determined admission arrangements it is required by the Admissions Code at paragraph 3.6 of the Code to notify the appropriate bodies with an additional reference to paragraph 1.44 requiring notification of *“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 who are not the admission authority;”* and footnote 61 *“In addition to the bodies listed at paragraph 1.44 (c), (d) and (f) and so*

far as not covered by them, all governing bodies for community and voluntary controlled schools in the relevant area.” Some of the relevant parties were notified, within the consultation about withdrawing the proposal to permanently increase the size of the school of the proposed reduction in the PAN, but not all those required by the Code.

25. The school’s governing body was informed at a meeting on 2 December 2014 *“the meeting was to inform Governors of the recommendation that the LA will be putting forward a Capital Paper to the cabinet on the withdrawal of expanding the Reinwood site any further”* and an explanation about how information will be provided was given by officers and was shown in the minutes as follows; *“Q: Why weren’t we told sooner? A: There is the duty to publish information, which will go on the web 7 days prior to the 16 December 2014. Governors are now aware and we have informed the staff prior to the meeting. The Head Teachers were informed also. There is a ward briefing tomorrow and a press release will be out shortly from the LA.”* Also shown in the minutes is a query about the September reception pupils; *“Q: Where are the 30 pupils supposed to go next year then? A: No decision has been made yet. We can look at Royds Hall and request they admit over PAN. If they are asked to vary the PAN it will go to the school adjudicators.”* The minutes show the final comment of the governors as *“Governors responded they are not happy with this and parents are going to be furious.”*
26. The head teacher of a nearby high school responded having seen a copy of a parents’ letter raising concerns about timescale *“There have been concerns expressed by parents about the timescale for response to this proposal. Equally Governors...are concerned that there has not been sufficient time for consultation”*. A local elected member response included the view that there had been *“Insufficient opportunities for parents to be informed of and respond to the proposals; insufficient opportunity for the Schools and Governing Bodies....to be informed of and respond to the proposals.”* My view is that the appropriate parties were not notified of this request as required by the Code.
27. The local authority sent a letter to parents of children at both Reinwood schools in early December, the letter is undated but it is suggested it was sent on 8 December 2014. The letter explains there is a new proposal to create 420 places at Royds Hall and that creating 210 places at Reinwood *“is no longer part of the most effective solution”* It explains further that *“no decision has been made about this proposal. It will be discussed by members of the Cabinet on December 16 and, if approved by Cabinet, will also need approval at national level from the Schools Adjudicator.”* It offered two “drop in” sessions on Tuesday 9 December 8.30-10.00 am and Thursday 11 December 2.45-4.00pm.
28. For the purpose of informing applicants for a place at the school in September about the possible change in circumstance, I consider this letter insufficient. It is only to parents of pupils already at the schools, not to all parents who may have applied for a place or might be doing so before the closing date of 15 January 2015. The letter does not mention the PAN for September 2015 specifically nor the application for a variation

which is the only reason for reference to the Schools Adjudicator. In my view it is misleading to suggest the 'proposal' needs approval from the Schools Adjudicator. The meetings offered, at short notice, at a busy time of year and during the school day would not be convenient for many working parents.

29. A second letter, dated 16 December 2014, again sent only to parents of pupils already at the school, said that the expansion of Reinwood schools would not now go ahead, that "*Cabinet members agreed that the new proposal, to create 420 primary places at Royds Hall, would be far more cost-effective and would still provide the right number of good-quality places.....We are now applying to the national Schools Adjudicator to have this decision confirmed... Everyone who has applied for a reception place at Reinwood I&N, starting in September 2015, will be contacted separately with an outline of their options.*" I note that this letter does not tell parents the decision had been called in for scrutiny nor make plain what might be referred to the Schools Adjudicator.
30. Again, I am not satisfied that there is sufficient information or clarity in this communication. Advice was apparently given to those who attended the drop in sessions that if they were applying for September they could reconsider their preferences. There were three sessions in total, a third being organised for 8 January; attendees recorded as follows;
- a. 1st session 6 attendees
 - b. 2nd session 32 attendees
 - c. 3rd session 19 attendees.
31. It is not known how many of these attendees were applying for September places; there are now 255 families who have expressed a preference for the school. I do not think it safe to assume that all the applicants who had applied by that point had received the information about the possible change in PAN and the option to change their preferences. Once again it is not clear that a variation is being requested and that is the decision being referred to the Schools Adjudicator.
32. This application for variation was made on 20 January 2015 after the deadline of 15 January for parents to make applications for reception places for September 2015. I have asked the local authority if they had notified all the applicants who had named this school as a preference about the proposed change. The local authority's letter was sent, including the invitation to a meeting for further information, only to parents of current pupils of Reinwood infant and Junior Schools. The local authority has indicated it will write to all parents who have applied following my decision. I have asked the local authority, if they have not already written what the letter will contain. It has responded that it has taken legal advice and "*There are plans to communicate the outcome of the adjudicator's decision as soon as that is known and provide an opportunity for any applicants to meet with officers from the Pupil Admissions Team. The team will make provision to answer questions and queries over the telephone or via email.*"

We are very conscious that writing to parents at this stage of the admission application process when the outcome of the LA's request is not yet known may be a cause for unnecessary anxiety for those concerned. We were very keen to be able to provide parents with advice about their applications when drop in sessions were carried out in the time leading up to the closing date of 15th January."

33. The LA reports that prior to submitting the application for the in-year variation to the PAN *"we had given careful consideration as to what we could practically do for parents/carers prior to, and, in the event of the in-year variation be approved. Given where we are in the annual admissions process it would be incredibly challenging to offer an opportunity for parents/carers to change the order of preferences or indeed the schools that they have preferred without this causing significant difficulties in terms of exchanging information with other admission authorities. Because we would want to support parents in this most unusual circumstance we did take legal advice about what would be a reasonable course of action. We have been advised that should (at this stage of the process) we offer an opportunity for parents/carers who have named Reinwood I & N to change anything about their application this may have an impact on other families who have also made applications for Kirklees Schools. This could lead to others being disadvantaged as part of the normal round process administered by the LA. Allowing anyone to change preference order or change preferences or add preferences after the closing date could be challengeable in terms of being unfair, and be difficult for the LA to defend either in an appeal situation or indeed if a parent/carer made a referral to the Local Government Ombudsman. We do feel confident that we were able to advise parents at the drop in sessions (before the closing date) that they could name more than 1 preference on their applications and parents did still have time to change or add preferences at that time. I can confirm that we will support parents individually after offer day should they require support or advice to revise their preferences and consider all their options. Appropriate planning will be put in place should the decision be made."*
34. As part of the evidence provided, the local authority has sent a letter it proposes sending to applicants for a place at the school should the variation be agreed. It explains the situation and offers various forms of contact with the local authority for advice. It says *"It will not be possible at this stage of the application process to change your preferences. This is because of the timetable and strict deadlines that need to be followed in order offers of places for children can be made by 15th April (sic) which is National Offer Day."*
35. I note however, that the local authority's composite prospectus, on which parents should be able to rely gives the information, under the heading *"Can I change my mind after I have completed my application"* the answer *"After the closing date you cannot change your preferences without a genuine reason for doing so, such as a significant change of address. We will require proof of a change of circumstances"*

36. I consider it would be unclear to parents why the local authority would consider there was a major change in circumstance sufficient to request a variation to reduce the PAN but that was not a genuine reason for a parent to change a preference as indicated in the composite prospectus.
37. I do not share the confidence of the local authority that they were able to advise parents appropriately. They advised some applicants, that is those who already had children at the schools and attended the meetings, there has been no contact with other applicants, if this was to avoid causing undue anxiety then this consideration was not applied to those who attended meetings at the school. I consider providing information to some applicants and not others to be unfair.

Conclusion

38. I have thought carefully about this request for a variation. There are considerable demands on the local authority to provide school places and they must consider carefully the value for money of its proposals. I consider, however, that the financial issues of this case, that it was more cost effective to build a two FE school than build a one FE school and remodel two other schools, became apparent at a stage sufficiently early to have been able to have meaningful engagement with stakeholders, particularly parents before applications were made for a reception place for September 2015.
39. I have taken into account the views of the school that to admit a further reception class without further work will put pressure on space at the school. I acknowledge their view that to admit 120 pupils in September when only 90 pupils will be able to transfer to year 3 will cause disappointment for parents. Parents will be also disappointed if the variation were to be agreed and they are not allocated a place at the school having applied expecting 120 places to be available. Considering both circumstances I consider it preferable that parents have time to plan and consider their child's school in the future rather than have so little notice as is the case here, indeed for some parents it may have been no notice at all.
40. Furthermore, I find that the alternative places proposed, temporary classes on a secondary school site as part of a proposal for a new school that is not yet fully agreed, are not comparable with those the local authority is seeking to withdraw from Reinwood Infant School.
41. I find the implications of this request for variation, made after the deadline for making an application for a year R school place, were not properly presented to parents so that they could make informed decisions about their children's education and application for a place in September 2015. For this reason and those above I do not approve the request for a variation.

Determination

42. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the variation to the admission arrangements determined by the Metropolitan Borough of Kirklees, West Yorkshire for Reinwood Infant and Nursery School. I determine that for admissions in September 2015 the published admission number shall remain as 120.

Dated: 10 March 2015

Signed:

Schools Adjudicator: Miss Jill Pullen