



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3842

**Objector:** Hertfordshire County Council

**Admission authority:** The Governing Board of St John's VA Primary School, Digswell, Welwyn Garden City, Hertfordshire

**Date of decision:** 3 September 2021

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by the Governing Board of St John's VA Primary School, Digswell, Welwyn Garden City, Hertfordshire.

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 unless an alternative timescale is specified. In this case I determine that the arrangements must be revised by 31 November 2021.

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Hertfordshire County Council (the objector), about the admission arrangements (the arrangements) for St John's VA Primary School, Digswell (the school), a primary and nursery school for children aged 3 - 11 for September 2022. The objection concerns the school governing board's decision to introduce an oversubscription criterion into its arrangements that gives priority to children who have attended the school's nursery.
2. The local authority (LA) for the area in which the school is located is Hertfordshire County Council. The LA is the objector. Other parties to the objection are the Diocese of St Alban's (the diocese) and the governing board of the school.

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 13 May 2021. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

## Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). When the arrangements were determined, and when the objections to them were made, the Code in force was the School Admissions Code (December 2014). A revised Code came into effect on 1 September 2021. Since the objections and the responses to them were framed in terms of the earlier version, I shall use the references to it which have been made by the parties to the case, but will indicate if the new Code differs in any respect. It is, of course, the revised version of the Code which is now in force. That being the case, the extension of the priority given to looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside England and who have ceased to be in state care because of being adopted, is now a requirement. All admission authorities should have varied their arrangements, both those for September 2021 and those for September 2022, accordingly by 1 September 2021. There was no reason for the school to send me these varied arrangements and I have made my determination on the basis that the governing board, as admission authority, will have varied its arrangements in order to comply with the new requirements.

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

- a) the objector's form of objection dated 13 May 2021 and additional information submitted in response to my enquiries;
- b) the school's response to the objection and supporting documents;
- c) the Diocese of St Alban's response to the objection and supporting documents;
- d) the LA's composite prospectus for parents seeking admission to schools in the area in September 2022;
- e) maps of the area identifying relevant schools and maps showing the spread of addresses of children attending the school and the nursery;
- f) information available on the websites of the local authority, the school and the Department for Education (DfE);
- g) confirmation of when consultation on the arrangements last took place;

- h) a copy of the minutes of the meeting of the governing board at which the arrangements were determined; and
- i) a copy of the determined arrangements.

## The Objection

6. The school has in its admission arrangements for 2022 an oversubscription criterion that gives priority to children in the school's nursery. The oversubscription criteria are set out below (in summary):

- 1) Children looked after and previously looked after
- 2) Medical or social, including children previously looked after from abroad
- 3) Siblings
- 4) Children who have attended our nursery**
- 5) Children of staff
- 6) Children of whom a parent is a practising Christian in the ecclesiastical parish of Digswell by taking "an active part in the life and worship" in one of the three churches listed (which means being on the parish electoral roll and attending church twice a month for the 12 months before applying for a place)
- 7) Any other children by distance.

7. It is the objector's view that the inclusion of "children who have attended our nursery" under criterion four, is in breach of Section 1.8 of the School Admissions Code which states that "oversubscription criteria must be reasonable, clear, objective, procedurally fair and comply with relevant legislation...". The objector thinks that "it is neither reasonable nor procedurally fair for a village school to potentially exclude local children from its Reception year group on the basis that they have not attended the school's nursery." The objector argues that "families may choose not to take up a school nursery place for a variety of reasons, for example they may prefer to keep their child at home or use another nursery provider that is more convenient for their work place or provides more flexible pre-school provision such as wrap-around care and placements for younger children. Attendance at nursery is not a statutory requirement and children and their families should not be disadvantaged in their application for a Reception place because they have chosen not to, or have not been able to, attend a school's nursery."

8. The objector observes that "in the Code which was published in 2014, section 1.39B allows priority to be given to children eligible for the early years' pupil premium, the pupil premium or the service premium who: a) are in the nursery class which is part of the school; or b) attend a nursery that is established and run by the school." The objector's view is that the Code only allows priority for children attending a nursery who meet these criteria, not any child that attends a school's nursery.

## Background

9. The school is a voluntary aided primary school with a nursery. The published admission number (PAN) for the school is 30 and the nursery provides 30 part time places, each for 15 hours a week, 15 places are in the morning and 15 places are in the afternoon. The school's oversubscription criteria were changed for admissions in September 2021 in order to introduce the new criterion giving priority for admission to children who have attended the school's nursery. The council raised its concern about the new criterion with the school in 2020 but it decided not to object at that time because both it and the school were dealing with Covid 19. The school has retained the criterion in its 2022 arrangements and the council has lodged its objection to the criterion for September 2022. The criteria are listed above within the description of the objection.

10. The school itself is located on the south eastern corner of the village of Digswell about half a mile from Digswell railway station which is near the central point of the village and on the northern edge of Welwyn Garden City (Welwyn), approximately two miles from the centre of town. There are seven other primary schools listed on the DfE website as being within one mile of the school, all of which are in the northern part of Welwyn. The local authority includes the school in a planning area with other schools that are in towns or villages in and to the immediate north of Welwyn. The school provided a map showing where pupils from the school live. It shows that some of the children come from the areas outside Welwyn including the village of Digswell but also shows that many of the children are living within Welwyn itself and where there are other schools that they could equally easily travel to. The local authority said that the school's nursery competes with 18 private, voluntary or independent nurseries and 11 primary schools with nurseries within a distance of two miles.

11. The headteacher has explained that he and the governing board have concerns about "the viability of our school nursery which had consistently low numbers previous to 2020/21 resulting in a lack of funding to cover basic staffing costs....."

12. The objection makes reference to previous determinations that were made in 2012 and 2013 concerning a similar matter but about other schools. Each determination is made on the basis of the facts pertinent to that case at that time and previous determinations should not be seen to set precedents. I am approaching this case with reference to the information currently available and by taking consideration of the arguments made by the school, the diocese and the objector in the context of the Code and any other relevant legislation.

## Consideration of Case

13. The school maintains a nursery that is not running at capacity and as a result, the headteacher explains that it is struggling financially. In order to tackle this problem the school has added what it considers to be an incentive to encourage parents to choose for their children to attend the nursery. That incentive is priority for admission to the school's Reception class. The headteacher also argues that there is evidence to suggest that

children who have attended the nursery settle better into school and make quicker progress.

14. The objector thinks that the Code at paragraph 1.39B quoted above only permits a school to give priority to children eligible for the early years' pupil premium, the pupil premium or the service premium and that it does not permit priority to be given to any other child who attends the nursery.

15. The objector also thinks that the criterion giving priority to children who have attended the nursery does not comply with paragraph 1.8 of the Code requiring arrangements to be "reasonable, clear, objective and procedurally fair."

16. I consider first whether the arrangements comply with the Code in respect of paragraph 1.39B. The Code is quite explicit that priority may be given to some children who are eligible for the various premiums listed and who attend a nursery that is connected with the school. However, this is not the issue in this case. The school wishes to give a relatively high level of priority to all the children who attend the school's nursery. The Code is silent on this matter. The fact that the Code specifically mentions giving priority to children who are eligible for the various premiums does not mean that by doing this it prohibits priority being given to other groups of children who have attended a nursery, it simply permits priority to be given as described. If a school wishes to give such a priority in its arrangements then this paragraph of the Code does not prevent it. I do not therefore uphold the aspect of the objection that argues that paragraph 1.39B of the Code in effect prohibits the use of a criterion that gives priority to any child that attends the school's nursery. However, there are other aspects of the Code that are relevant and I shall next consider the relevance of paragraph 1.8.

17. Paragraph 1.8 of the Code requires arrangements to be "reasonable, clear, objective and procedurally fair." I shall first consider whether the criterion that is the subject of this objection is "reasonable". The objector considers that it is not "reasonable... for a village school to potentially exclude local children from its Reception year group on the basis that they have not attended the school's nursery."

18. The headteacher on behalf of the school's governing board has explained that the reason the criterion has been introduced is to support the school's nursery which has not been full and as a result is not financially sustainable. Giving priority for admission to Reception to children who attend the nursery provides some additional incentive for families to consider sending their child to the nursery and in doing so they help to secure the nursery's viability. Consultation has taken place and the headteacher reports that apart from the comments by the county council there were no comments made about the proposal at the time of the consultation. The headteacher reports that at present the school has vacancies within the school year groups as follows:

In July 2021	Nursery	Year R	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
St John's Digswell vacancies in year group	9	3	3	1	3	2	1	2

He argues that with vacancies in every year group there is no evidence to suggest that the new criterion is going to prevent children attending the school if that is what their parents want. I observe that the new criterion was introduced for 2021 admissions and so its effect is not yet seen within this table. The allocations for 2021 are set out in a table later in this determination.

19. In considering whether the new admission criterion is “reasonable”, an accepted interpretation of reasonable is that a decision is reasonable if it has a reason and is neither illogical nor irrational. I am satisfied that the school is able to articulate the reason why it has introduced the criterion, which is to introduce an incentive for children to attend the school’s nursery. The reason is neither irrational nor illogical and so I consider that the school has reasonable grounds for its decision. However, having reasonable grounds for the inclusion of the nursery criterion does not necessarily make its effect either reasonable or fair. If the effect of the inclusion of the criterion is to create a situation where parents/carers whose child has not attended the nursery are unable to find a place for the child at the school when it is their nearest school and if travelling to an alternative school would take significantly longer or be more difficult then in my view the effect of the decision can easily become unreasonable and potentially unfair. I judge that the school has reasonable grounds for including the criterion, so I do not uphold this aspect of the objection. However, I have commented that the effect of the inclusion of the criterion may not be reasonable or fair and I shall consider this and other aspects of this requirement of the Code below.

20. The next requirement of the Code is that the arrangements are “clear”. It is without doubt that the criterion giving admission priority to children who attend the nursery is clear and there can be no misunderstanding about what is intended. In this respect it complies with the Code.

21. The Code requires the arrangements to be “objective”. The criterion requires no judgement to be made in its operation, children either attended the nursery or they did not. In this respect, the criterion is compliant with the Code.

22. The last aspect of this paragraph of the Code is that arrangements **must** be “procedurally fair”. Paragraph 1.8 requires that they be reasonable and I consider this to encompass both in the grounds of the decision (that is why the school has decided to adopt this approach) which I have dealt with above and in their effects. It is these effects that I need to dwell upon and consider the arguments put by the school, the diocese and the objector. This paragraph of the Code refers to criteria being “procedurally fair”. Paragraph 14 the Code includes a similar but actually broader requirement where it states that “admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective”. The issue here is whether the

introduction of this oversubscription criterion is unreasonable in its effect or leads to unfairness for one or more applicants for places at the school.

23. In order to demonstrate that there is unreasonableness or unfairness it is necessary to identify who might be adversely affected and how and why. In this case the objector argues that the school is a village school and as such parents in the local area have a reasonable expectation that their children should be able to attend their local school. This assertion is not denied by the school; indeed, the headteacher in his comments says: “we are a Church of England Voluntary Aided Primary School that serves our local area and although we reside in a village, we do not serve the village per se, we serve our local children under the school’s admissions criteria. The.... [objector argues].. that local children are from the village; whereas if we only served the village, then we would be excluding our local children.”

24. The school and the objector have provided me with a selection of maps showing where children who attend the school or who have not been successful in gaining a place at the school live. It is very apparent from the map showing where the children who attend the school live that there is a wide travel to school area with children coming from across Welwyn, with one travelling over six miles to school. There are seven primary phase schools listed on the DfE schools website that are within one mile of the school, the majority of which are on the Welwyn side of the school and within the residential areas of Welwyn. The school appears to be on the edge of this residential area. This is significant because it shows that most families living on the north side of Welwyn have several schools within a mile travelling distance of their homes.

25. I am left feeling unclear what is meant by “local” in this case. All the parties refer to “local” children and all wish to ensure that such local children can attend the school. It is less clear that all parties share the same understanding of what they each mean. Where a primary school has a catchment area then it is easy to understand that children who live in catchment might be expected to have a higher priority than those who live outside the catchment. This school, however, does not have a catchment area which could be used to inform an understanding of what was meant by local. I have looked at the school’s admission arrangements carefully in order to understand the headteacher’s assertion that the school serves its local area. The introductory paragraphs refer to the school as a “Voluntary Aided Church of England School within the Diocese of St Albans”. However, there is no other expression of what “local” means except for the oversubscription criteria and it is questionable whether these help to say what the school considers to be local. The oversubscription criteria are quoted above but for convenience I reproduce them again here:

- 1) Children looked after and previously looked after
- 2) Medical or social, including children previously looked after from abroad
- 3) Siblings
- 4) Children who have attended our nursery
- 5) Children of staff
- 6) Children of whom a parent is a practising Christian in the ecclesiastical parish of

Digswell by taking “ an active part in the life and worship” in one of the three churches listed (which means being on the parish electoral roll and attending church twice a month for the 12 months before applying for a place)

7) Any other children by distance

26. The first five criteria say nothing about locality and it is not until the sixth criterion that the ecclesiastical parish of Digswell is mentioned. The parish is a defined geographical entity that takes in part of North Welwyn and includes three churches, two in the northern part of Welwyn and one in Digswell village, each of the churches is approximately half a mile from the school. The criterion does not give a requirement for residence in the parish since it is possible to be on the electoral roll and attend one of the named churches without living in the parish. In any case, it is relevant only to those who are practising members of the Church of England and so does not apply to others who might live in the village or nearby. The headteacher commented to me about the objection that “a family can be an active member of the parish and does not have to live in either the village or the local area.” The sixth criterion is distance from the school.

26. I looked at the admission criteria for the nursery to see if these helped me to understand this matter. The criteria for the nursery are as follows:

- 1) Children looked after and previously looked after
- 2) Medical or social, including children previously looked after from abroad
- 3) Siblings
- 4) Children of staff
- 5) Children of whom a parent is a practising Christian in the ecclesiastical parish of Digswell by taking “ an active part in the life and worship” in one of the three churches listed (which means being on the parish electoral roll and attending church twice a month for the 12 months before applying for a place)
- 6) Any other children by distance

In other words, the criteria are the same as for admission to school but without the fourth criterion giving priority on the basis of having attended the nursery.

27. The headteacher has provided information about the children in Reception classes in recent years and the local authority has contributed data for September 2021 allocations (which have yet to be confirmed as actual admissions at the beginning of term). Nursery data for September will not be available until the nursery opens and admissions are concluded. It should be noted that the new criterion giving priority to nursery attenders was introduced for 2021 admissions. I have put this together in the following table:



	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22 allocations
Number of children who had attended nursery – for the full 15 hours	9	23	13	12	21	Not yet available
Number of Reception children admitted under siblings criterion	11	6	16	15	9	12
Number of Reception children who attended the nursery and who have no sibling links.	8	5	8	6	9	10
Number of Reception children admitted under the faith criterion	1	5	1	0	0	1
Number of Reception children admitted under distance criterion	10	14	5	9	12	7
Total number of Reception children	30	30	30	30	30	30

28. The nursery has in effect the same admission arrangements as those for the school but importantly the nursery is undersubscribed and so places have been given to all applicants for the nursery in recent years. This is entirely understandable but it offers the opportunity for children from any distance to attend the nursery. It is also understandable that the nursery will accept any applicant if it has space, particularly given the headteacher's expressed concern that the nursery is financially vulnerable if it is not running near capacity and the fact that it is in competition with other local nurseries.

29. While the nursery has been undersubscribed, this is not the case for Reception. The table shows that the school has been fully subscribed for Reception each year. The objector has provided information about the 2021 admission numbers and how many children were admitted against the different criteria as follows. The table shows that for September 2021 admissions a child who did not have a sibling and had not attended the nursery would have to live within just over 700 m of the school to gain a place. Conversely a child with a sibling at the school or who had attended the nursery would secure a place wherever he or she lived. The objector states that analysis of applications for September 2021 suggests that four children who were allocated places under the nursery criterion would not otherwise have been offered a place at the school.

Oversubscription criteria	Allocations for September 2021
Looked after and previously looked after children	0
Medical/social	0
Siblings	12
Nursery attendance	10 distances between 248m and 3066m from school
Children of staff	0
Church	1
Distance	7 distances between 506m and 709m
Applicants not gaining a place on the grounds of distance	17 distances between 719m and 2814m from school

30. The figures show that for September 2021 it was possible to gain a place at the school on the basis of distance provided a child lived no more than just over 700m from the school. Having read the arguments from both the school and the local authority I see that although different words are used to express their views, the overall message from both is very similar and I quote the headteacher's comments by way of demonstrating this. "We agree that admissions authorities should be very clear in their arrangements to protect the interests of local children and to not preclude other children from making an application for admission with a reasonable prospect of success, where they do not attend the Nursery, which is why we have taken time to develop a detailed analysis of our school context." However, because the school gives a relatively high priority to siblings and nursery children wherever they live this does limit the scope for other children to gain a place. Because the nursery is not oversubscribed and so not applying its own distance criterion this effect is heightened.

31. Up to this point it seems to me that the parties are in agreement. The headteacher and the school's governing board are seeking ways to increase the number of children in the school's nursery and the strategy is to link attendance at the nursery to the admissions into the school at Year R. The headteacher comments that "The historical analysis over 5 years shows that 47.9% of our Nursery places are taken up by siblings. In addition, with our Nursery Admissions Policy mirroring our Reception Admissions Policy, we would believe that this supports the admission of local children." The diocesan officer provided comments on behalf of the diocese and observes that "In 2019 and 2020 all children attending the nursery whose parents applied for a place were admitted under the existing criteria. .... figures suggest that the introduction of the nursery criteria is unlikely to have a significant impact on the likelihood of local children, not attending the nursery, being offered a place at

the school. Over the past five years on average 33% of applicants offered a place were ranked under distance from the school some of whom would have attended the nursery. On average over the past 5 years 56% of pupils admitted to the Reception class had attended Nursery. Clearly on that basis there is a high likelihood that an applicant who had not attended the nursery, could expect to be offered a place. In terms of the Nursery admissions arrangements the criteria are the same as those for the school (except for the Nursery priority). It could not be argued that it was easier to obtain a place in the Nursery and therefore having done so secure a place at the school. The nursery admissions arrangements do not create any additional unfairness in the school's procedures.”

32. In reviewing these arguments and the evidence presented about numbers admitted under the different criteria I find agreement between the parties about the desirability of enabling local children to attend the school but I have not seen clarity from any of the parties about what they mean by “local”. Moreover, although reference is made to the school being a “village school”, the maps provided show the geographical location of Digswell and the school to be on the outskirts of Welwyn. The maps which have been provided showing where children who attend the school live illustrate that while many of the children live in the area called Digswell, there are also many who live in Welwyn and one from as far as Hatfield which is about six miles away. The link between children who attend and the parish map is not a strong match. In conclusion then, the notion that the school serves the “village” as its local area is not what appears to be happening in practice; children from Digswell are attending the school but so too are children from quite a wide area of north Welwyn together with a small number from other towns and villages. References to “the local area” might, in this case, be defined through straight line distance from the school which is the last oversubscription criterion in the absence of other descriptions. That, however, will simply mean that who is considered local depends in turn on the number of applications for places and the distance between the school and the home of the most distant child who could be admitted.

33. The objector has argued that the priority given to children who attend the nursery amounts to an unfairness for families who choose not to send their child to this nursery for a variety of reasons. The objector provides evidence that in September 2021 there are four children who might have gained a place on distance grounds but who did not gain the place because a child who had attended the nursery was allocated the place despite living further away. There were other children who would not have gained a place regardless of whether priority was given to the nursery because the school was oversubscribed.

34. I have discussed at some length the scope for there to be different understandings of what is meant by local children in the context of these arrangements. Moreover, there is no requirement in the Code that priority must be given to those for whom the school is “their local school” or “the most local school” or “the nearest school”. Indeed, in some cases not all children for whom a school is the nearest to their home can be accommodated at that school. There is, however, a requirement that children must be treated fairly. The test here is whether there are likely to be any children who do not attend the school’s nursery and thus apply for a place at the school on the basis of distance who fail to get a place and who suffer a real disadvantage by having to attend an alternative school. It is already

established that for 2021 admissions there were four children who did not gain a place who would have done if there had been no priority for nursery children. Numbers in the nursery have increased and may increase closer to the maximum of 30. The school's PAN is 30 so it is possible that all the places in the school could be allocated to those who attended the nursery (or satisfied a higher criterion such as having a sibling at the school). That would mean that there would be no scope for children to be admitted on the basis of the distance of their home from the school.

35. Against that background, I must consider whether that prospect is realistic and whether it would lead to some children suffering unfair disadvantage. Given that there are other schools within a mile of this school, the distance travelled to an alternative school is likely to be a similar distance to St John's school. There is, however, no guarantee that a place in a nearby school will be obtained, this will depend on the overall pressure of places in the schools in 2022. Having looked at the admission arrangements for some of the other schools in the area many of them allocate places on the basis of distance after siblings have been admitted. Overall, I consider that the disadvantage that could be suffered by these children is likely to be limited in scale provided that a place can be obtained in another local school. However, that disadvantage would be most pronounced for those who live very close to the school. On balance, my view is that it is unreasonable that a school that is claiming to serve its local area should, through its admission arrangements, give such limited priority to children who may live very close indeed to the school and thus farther away from other schools. I consider that the arrangements, by giving a higher priority to all children who have attended the nursery than to any other children who have not done so irrespective of where those children live, are unfair.

36. I need to enter an important caveat. My decision should not be understood to mean that the school can give no priority to children who have attended the nursery and who are not entitled to the various premiums ahead of other children on the basis of distance from the school. Rather, my decision simply means that I have determined that the level and extent of such priority in the determined arrangements is unfair. It is not for me to specify how the arrangements must be amended to address my finding but I suggest that the school governing board gives its attention to two issues. First, to clarify what it understands by "local" and second, if the board wishes to give priority to local children, how does it wish to reflect this in the arrangements to avoid a situation where the sibling priority together with the nursery priority combine to prevent a child who does not qualify for either of these priorities to gain a place at the school if they are "local"? One approach could be to cap the number of places in these criteria to ensure that there will always be some places available on the basis of distance alone. In addition, places within the criteria could be ranked on distance if there were more applicants than places available. There are other possible approaches and the governing board must decide how it wishes to amend its arrangements to address this matter.

37. Linked to this, I have considered carefully how much time I should allow for the arrangements to be amended. I am conscious that the governing board will wish to consider its decision and may well wish to discuss this with the local authority and the diocese. I have accordingly decided that the arrangements must be revised by 31 November 2021.

This is longer than the standard two months set as the default position in the Code but will also allow for revised arrangements to be put in place before parents need to apply for places for children for September 2022.

## Summary of Findings

38. I have considered whether the arrangements comply with the Code in respect of paragraph 1.39B. The Code is quite explicit that priority may be given to some children who are eligible for the various premiums listed and who attend a nursery that is connected with the school. However, this is not the issue in this case. The school wishes to give priority to all the children who attend the school's nursery. The fact that the Code specifically mentions giving priority to children who are eligible for the various premiums does not mean that by doing this it prohibits priority being given to other groups of children who have attended a nursery, it simply gives permits priority to be given as described. I do not therefore uphold the aspect of the objection that argues that paragraph 1.39B of the Code in effect prohibits the use of a criterion that gives priority to any child that attends the school's nursery.

39. Paragraph 1.8 of the Code requires arrangements to be "reasonable, clear, objective and procedurally fair." The objector considers that it is not "reasonable... for a village school to potentially exclude local children from its Reception year group on the basis that they have not attended the school's nursery." I have found that the school has a reason for introducing the criterion giving priority to children who attend the nursery and the reason is neither irrational nor illogical and on this basis I do not uphold this aspect of the objection. I do, however, comment that the effect of a decision may be unreasonable and may lead to unfairness even if the decision itself appears reasonable.

40. The objector argues that there are children who may be treated unfairly by the introduction of the priority given to children who attend the nursery. Specifically the unfairness is likely to be to children who live close to the school and who have neither a sibling at the school nor have attended the nursery. I have upheld this aspect of the objection. The Code does not specifically prevent the school from having such an oversubscription criterion but in using it the school must ensure that it does not create unfairness. I have suggested that one way to achieve this would be for the school to come to a view about what it understands by the term "local" and then to cap the number of places available for the nursery criterion in order to ensure that there will be some places available for "local" children applying on the basis of distance alone.

41. Paragraph 3.1 of the Code requires an admissions authority to revise their admission arrangements within two months of the date of a determination unless the adjudicator specifies an alternative timescale. In this case it is clearly important that the arrangements are revised before parents apply for places for their children in January 2022. However the governing board needs time to be able to consider the matters that it must address and to seek advice from the local authority if it so wishes. I therefore set the 31 November 2021 as the date by when these arrangements must be revised.

## Determination

42. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by the Governing Board of St John's VA Primary School, Digswell, Welwyn Garden City, Hertfordshire.

43. 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 unless an alternative timescale is specified. In this case I determine that the arrangements must be revised by 31 November 2021.

Dated: 3 September 2021

Signed:

Schools Adjudicator: David Lennard Jones