



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4193

Objector: Worcestershire Children First (the Local Authority)

Admission authority: Bordesley Multi Academy Trust, for Holyoakes Field First School, Worcestershire

Date of decision: 3 August 2023

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 2024 determined by Bordesley Multi Academy Trust for Holyoakes Field First School, Worcestershire.

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

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

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Worcestershire Children First, (the objector), about the admission arrangements (the arrangements) for Holyoakes Field First School, a co-educational academy primary school for children aged 2 – 9 years for September 2024. The objection is to the fact that the arrangements give priority for places in Reception to applicants attending Holyoakes Field Nursery (the nursery) at the time of application.

2. The local authority (LA) for the area in which the school is located is Worcestershire County Council. The LA is the objector and is also a party to this objection. The other parties to the objection are the school and Bordesley Multi Academy Trust (the trust).

Jurisdiction

3. The terms of the academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted their objection to these determined arrangements on 12 May 2023. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). I have also read some of the information displayed on the school's website, the LA's website and the Department for Education's GIAS website to provide context.

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

- a. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 12 May 2023, additional documents, comments and further information provided at my request;
- d. the school's response to the objection, supporting documents and responses to my questions;
- e. confirmation of when consultation on the arrangements last took place, details of the nature of the consultation and the LA's response to the consultation; and
- f. previous determinations ADA2560 Somers Park (paragraphs 23 – 34); ADA2662 Chaddesley Corbett Endowed Primary School (paragraphs 19 – 25); ADA2611 Great Malvern Primary School (paragraphs 13 – 21).

The Objection

6. The objector considers that prioritising children in the nursery for places in Reception is unlawful and unfair contrary to paragraph 14 of the Code unless such priority is limited to children in the nursery who are eligible for the pupil premium.

7. Paragraph 14 of the Code says: "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated".

Paragraph 1.41 of the Code says:” Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium and also children eligible for the service premium. Admission authorities should clearly define in their arrangements the categories of eligible premium recipients to be prioritised”. Paragraph 1.42 says: “Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium, or the service premium who:

- a) are in a nursery class which is part of the school; or
- b) attend a nursery that is established and run by the school. The nursery **must** be named in the admission arrangements and its selection **must** be transparent and made on reasonable grounds”.

8. Another paragraph which I considered may be relevant is paragraph 1.9e which says that admission authorities may not give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority. The exception to this is where parents pay optional nursery fees to the school or school-run nursery for additional hours on top of their 15-hour funded early education, where children from the school nursery class or school-run nursery are given priority for admission to Reception. Finally I considered paragraph 1.9a, which provides that admission authorities must not place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements. This would be relevant if it could be argued that a place at the nursery is a pre-condition to getting a place in Reception.

Other Matters

9. Having considered the arrangements as a whole it appeared there was one other matter which did not conform with the requirements of the Code, namely that I was unable to find the information relating to the admission of children below compulsory school age being permitted to attend part-time and to defer entry. Neither could I find the information referred to in paragraphs 2.18 and 2.20 of the Code about children who are summer born starting school in Reception after their fifth birthday (although there was some information about admissions outside the normal year group). There is a specific process in paragraph 2.20 of the Code which parents need to be made aware of, and it needs to be explained clearly in the admission arrangements.

Background

10. The school is a coeducational academy primary school for children aged two – nine years in Redditch, Worcestershire. The school converted to become an academy in 2019 and, as such, does not have an Ofsted Grade. Its predecessor school was rated as a Good school at its last inspection. The published admission number (PAN) is 60.

11. The oversubscription criteria for 2023 admissions are as follows:

- i. Looked after children and children who were previously looked after but immediately after being looked after became subject to adoption, a child arrangements order, or special guardianship order.
- ii. Children who appear (to the admission authority of the school) to have been in state care outside of England and ceased to be in state care as a result of being adopted.
- iii. Young people who have a sibling currently attending Holyoakes Field First School. In order to qualify for a place on the grounds of a sibling attending the school, the sibling must be attending the school at the time of application and admission.
- iv. Children of staff employed for at least two years or recruited to meet a skills shortage.
- v. Children who are eligible for the early years pupil premium and attend Holyoakes Field Nursery.
- vi. Other young people who live in the Holyoakes Field First School Catchment Area. A copy of the Catchment map is available from the LA or can be seen in school.
- vii. Other young people.

12. The oversubscription criteria for 2024 admissions are set out below. Children attending the nursery (including those not eligible for the pupil premium) will be given higher priority than children living in the catchment area.

- i. Children Looked after and previously Children Looked after, including those who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted.
- ii. Children who have a sibling currently attending Holyoakes Field First School. In order to qualify for a place on the grounds of a sibling attending the school, the sibling must be attending the school at the time of application.
- iii. Children of any staff employed by the school for at least two years (at the time of application) or recruited to meet a skills shortage.
- iv. Children who are eligible for the early years pupil premium and attend Holyoakes Field Nursery at the time of application.
- v. Other children who attend Holyoakes Field Nursery at the time of application.
- vi. Other children who live in the Holyoakes Field First School Catchment Area. A copy of the Catchment map is available from the LA or can be seen in school.
- vii. Other children.

13. In relation to admissions to the nursery, the school's website says: "Our nursery can accommodate up to 26 pupils per session. The morning sessions run between 8.30 and 11.30, with the afternoon sessions running from 12.15 to 3.15. We offer 15 hour and 30 hour places. Please refer to our nursery admissions policy for further details". The website also says that, although most nursery children transfer to Reception, an application must be made for a place via the Worcestershire County website. Information packs are sent home with nursery children in September with details of how to apply for a place.

14. I was unable to find the nursery admissions policy on the website, however the trust has told me that children who will be three before September are allocated places first. Parents are notified of their place after the Easter holidays. If there are unfilled places available, children who will be three years old by 31st December will then be considered for a Rising Three place. In most circumstances, the school aims to have termly admissions in order to minimise disruption and to support induction arrangements. Children can be admitted to start at the beginning of the term following their third birthday i.e. children born between 1st September and 31st December may start nursery in the January after their third birthday if there are spaces available. Children who are born between 1st January and 31st March may start nursery after Easter (after their third birthday) if there are spaces available. Unsuccessful applicants will be considered with the next group of applications if requested by the parents.

15. There are 52 part-time places in the nursery; it is full and has been full for the last two years; 40 children are attending currently, which is said to be a typical number now (although the number has been lower in previous years). All pupils are offered a minimum of 15 Government funded hours. Those eligible for 30 hours Government funding can access 30 hours of provision. In addition, if parents would like additional hours on top of the Government funding, they can pay for these if the nursery has the capacity to offer them. It is thought (by the trust) that approximately 20 children currently in the nursery will be admitted to Reception this September.

16. The school is oversubscribed in Reception. For the year 2023/24, 60 places have been allocated and there are seven children on the waiting list. The position this time last year is said to have been similar; however, by the penultimate week of school last summer the waiting list had cleared. This year and last year the waiting list comprised pupils who lived outside the catchment area as all pupils in catchment had, or have, secured a place. The school has told me that for entry in September 2023, three children who attended the nursery have not managed to get into Reception and they will be "well behind" the seven children on the current waiting list based upon the 2023 oversubscription criteria. The headteacher and trust "strongly believe" that having to transition to a completely new school and setting, instead of the school they have attended for between three – five terms is unfair and will have a detrimental impact on these children.

Consideration of Case

The Objection

17. I am grateful to the parties for their clear and concise arguments and for the evidence provided in support of those arguments. Both arguments are persuasive. The objection essentially raises four questions.

- Whether the school is lawfully able to introduce priority for applicants in the nursery other than those eligible for the pupil premium.
- Whether priority for admission is being given on the basis of financial support provided to the school by parents.
- Whether conditions are being placed on the consideration of applications other than those in the oversubscription criteria published in their admission arrangements (namely whether attending the nursery is a pre-requisite for admission to Reception).
- Whether giving priority to applicants who attend the nursery is fair.

18. There is guidance published by the Department for Education in 2014 entitled Free Schools: Common Issues which has some relevance here, and I referred this to the parties. The guidance says:

“Prioritising children in a school’s nursery for admission

26. It is possible to give priority in reception to children attending a nursery but you need to be aware that where the nursery and the reception class have the same, or a similar, number of places, and the majority of children tend to transfer from the nursery to the school, this could breach the Admissions Code, as attendance of the nursery would be a pre-condition of admission to the school. This is set out in paragraph 1.9 a) of the Code.

27. You should also ensure that giving such a priority is fair to local parents who choose not to send their children to nursery. As a rule of thumb, such arrangements are likely to be unfair – and be vulnerable to an objection to the Schools Adjudicator - if very few or no places are available to other parents once those attending the nursery have been admitted to reception. If a majority of places are available to parents who have not sent their children to the nursery, the arrangements are likely to be less vulnerable to objection. Anyone can object to a school’s admission arrangements and so it is important that you understand local parents’ views on giving priority to nursery children before adopting it as an oversubscription criterion, and keep the policy under review...

28. Fee-paying nurseries cannot be named as a feeder institution, as this would contravene paragraph 1.9 e) of the Code which prohibits giving priority for admission on the basis of any financial support that parents give the school or an associated organisation. It is possible to give priority to those paying fees for their child’s nursery provision only where any fee is for additional provision above the ‘free’ 15-hour funded early education offer;

29. Within any priority given to nursery children schools may prioritise those children attending the nursery who are eligible for the early years pupil premium, the pupil premium or the service premium above other children attending the nursery (paragraph 1.39B of the Code).”

I note that the Free Schools Admissions Guidance document also published in 2014 says something similar, namely:

“24.4. Children in a nursery which is part of the school or established and run by the school may be given priority for admission to reception. However, this is not without qualification.

24.4.1 Such priority must be fair in the local context. Schools should ensure those choosing not to send their children to the nursery do not find it harder to obtain a reception place than those attending the nursery. In this context, whether nursery priority is fair will depend on the location of the school, the availability of reception places in the area and the number of places offered without any reference to whether the child has attended the nursery (14 and 1.8 of the Code).

24.4.2 Those paying fees for their child’s nursery provision may not be prioritised except where any fee is for additional provision above the ‘free’ 15-hour funded early education offer (1.9(e) of the Code).

24.4.1 When prioritising children in a nursery (in the circumstances set out in 24.4) schools may prioritise those children attending the nursery who are eligible for the early years pupil premium, the pupil premium or the service premium above other children attending the nursery (paragraph 1.39B of the Code)”.

19. I am mindful of the conclusions reached by the Adjudicator in the previous determinations referred to in paragraph 5(f). I have read those determinations and agree their conclusions. The Adjudicator in those cases found that, in the context of the admission arrangements in question, they were clear and that the admission authorities had rational reasons for giving priority to children attending the nursery. However, in each case, she found the arrangements to be unfair. A finding of unfairness in the context of one set of admission arrangements will not bind an adjudicator considering a different set of arrangements to reach an inevitable conclusion that they are unfair because they contain the same provision. The question of fairness is fact specific, and any finding by the Adjudicator will depend upon the context and the effect of an oversubscription criterion upon the group of children to whom it is applied. For example, if in school A the number of children on roll at the nursery exceeds the PAN for entry to Reception, the effect of giving priority to the nursery children will be different to the situation where (for example) school B has 10 children in the nursery and the PAN for Reception is 90. My role is to consider the question of fairness based upon the evidence provided in relation to this particular school and for admissions to Reception in 2024.

The objector’s arguments

20. The oversubscription criterion which gives priority to children attending the nursery has been newly introduced for admissions in September 2024. The objector believes that prioritising children attending the nursery for places in Reception is unlawful and also in breach of paragraph 14 of the Code because it is unfair unless those children are eligible for the pupil premium. The objector states:

“Parents do not have to send their children to nursery. Where they do choose to use nursery provision, they should not feel that they must choose a particular nursery in order to have a reasonable chance of securing a place at a particular primary school, especially if that primary school is their catchment area school and is one that children from their area have traditionally been able to attend. The arrangements for admission to nursery are not bound by admissions legislation or the Code. We have been unable to find on the school website, the admission arrangements for the nursery. Where attendance at a nursery can significantly affect the chance of gaining a place at a particular primary school, consideration ought to be given as to whether the arrangements for admission to the nursery would satisfy the requirements of the law and Code.

It is possible that a child could be denied a place at the nursery using arrangements that do not comply with the standards set for Reception intake and because of that, then fail to gain a place in Reception. As the school’s PAN of 60 is not much greater than the number of places available in the nursery each year, a total of 52, it is a real possibility that very few children will be offered places that do not attend the nursery.

This could be impacted where a significant number of out of area applicants begin to attend the nursery and will take precedence over those living in the catchment area that for whatever reason have chosen not to send their child to the school nursery”.

21. The trust consulted upon the change to its arrangements, and the objector sent a response to the consultation which referred to previous determinations by the Schools Adjudicator in 2012, 2013 and 2014¹. The response said that there had been determinations in numerous cases around the country and, in all cases, the Adjudicator had found that giving priority for places in Reception to children attending the nursery was unfair for precisely the reasons which the objector has given for objecting (as set out in the previous paragraph). Additionally, it was said that, in the case of a child being refused a place at a nursery, parents do not have the right of appeal. It is possible, therefore, that a child could be “wrongly denied a place at the nursery” and because of that then fail to gain a place in Reception.

22. The consultation response also said that, following the determinations of the Adjudicator, the LA advised all “Own Admission Authority schools” in Worcestershire which

¹ The LA has confirmed that the determinations referred to are those I have listed in paragraph 5(f) above. I have read these determinations and circulated them to the trust for comment.

had nursery children in their oversubscription criteria that giving priority was deemed to be unlawful and that the criteria should be removed from their policy. The following academic year a number of Worcestershire schools, which had chosen not to remove the nursery priority from their admission arrangements, found themselves subject to objections to the Schools Adjudicator. Again, in all those cases it was ruled unfair and therefore unlawful and the criterion had to be removed. The consultation response said:

“Because this situation was occurring nationally the DfE introduced a new Code on School Admissions in 2015. The then new Code tried to address this issue, by specifically allowing children in receipt of the pupil premiums that were attending a school nursery to be included in over-subscription criteria. The new Code of 2021 also includes allowing priority to school for those children eligible for the premiums if they are in the school nursery. However, both elements continue to have to be met, in order to be lawful.

The Local Authority would therefore advise the Trust to either remove this criterion from Holyoakes Field’s policy for 2024-25 and to only include for nursery children in receipt of the Early Years Premium, the Pupil Premium or the Service Premium”.

23. The minutes of the trust board meeting at which the school’s arrangements were determined acknowledge that the LA was likely to object to the Schools Adjudicator and that the Adjudicator was likely to say that priority for nursery applicants should be removed. The trust decided to go ahead anyway because there were strong views about wanting to offer continuity to children in the nursery.

24. The LA provided additional information at my request. Table 1 shows the number of on time applications for places at the school from catchment area children for the last 3 years:

Table 1

Academic Year	Number of Catchment Applications	Overall Number of on time Applications
2023	69	108
2022	44	98
2021	45	99

I note that in 2023, the number of catchment applications exceeded the PAN for the first time. However, these were not necessarily all first preferences and may well have included applications from those for whom the school was a second or lower preference and for whom a higher preference could be met.

25. Table 2 shows the number of applications for Reception places from parents of children attending the school nursery for the last 3 years.

Table 2

Academic Year	Number of Applications of children attending school Nursery	Number of children attending school Nursery refused a place
2023	27	3
2022	24	4
2021	25	0

26. Table 3 shows the number of children living in the catchment area who were offered a place at the school in the last 3 years, but who would not have obtained a place if priority had been given to children in the nursery:

Table 3

Academic Year	Number of catchment children who would have been disadvantaged if children attending school Nursery had higher priority
2023	3
2022	1
2021	0

27. The LA argues that whilst a low number of children have been adversely impacted in 2023, this will not be the case in future years. There are also other important factors said to concern the LA. The forecast information, including the number of children that are known by the authority to be living in the school's catchment area, continues to rise. The school has been relocated from premises in the centre of a sole catchment area to newly built premises on a different site, and is now within a catchment area shared with Tardebigge CE First School. The LA provided a copy of the catchment area map, which shows the original location of the school and the new site. This is attached as Appendix 1. The authority says that there is a significant amount of housing development that has taken place in the shared catchment area where the school is now located. Table 4 shows the children which the LA is aware of, plus the additional children from the new housing development residing in the catchment area.

Table 4

Expected Academic Year of Entry	Number of children in catchment that are 3+
2020	87
2021	100
2022	88
2023	124
2024	109
2025	118
2026	109

28. The LA also expects another 975 homes to be built in the area surrounding the new school site. The effect of the new housing is that it is anticipated that by 2036, the catchment area numbers will include an additional 45 children, per year, over and above the forecast numbers shown above. The LA says:

“The new school was built with the potential for 3 Forms of Entry. It opened as a 2 Form Entry school with a PAN of 60, with facilities that could support the increase in size to 3 Forms of Entry. The Hall and other supporting accommodation was built for 3 Forms of Entry, in order to expand in future the school would require additional class bases, but no further infrastructure. We expect the demand from the new housing development to impact the Local Authority sufficiency duty. The Local Authority will need to work closely with the school to adequately plan for future expansion to meet that duty.

Due to the relocation of the school, and the large number of dwellings being built around the new site, this will mean a significant increase in the number of children local to the school that there is every indication, would apply to join Holyoakes Field First School. Even if the school were to increase in size up to a PAN of 90 in future, not all catchment children could be accommodated. If the school nursery were to be prioritised over children in catchment, the potential effect is that a much lower number of catchment area applicants would be successful in obtaining a place. Those residing out of catchment but attending the nursery would have priority over children in catchment.

The traditional housing area the school has served, is located a greater distance from the new school site, and those children are the most likely to be impacted by the introduction of priority for nursery children. If children living outside of the catchment area obtain a place in the nursery setting, the impact would be to disadvantage the children that reside in the catchment but live further away from the

school, those children are more likely to be refused a place. The number to be disadvantaged would depend on the size of the nursery. The area that would be most impacted is an area that has more social deprivation than the new housing development.”

29. The map in Appendix A shows an example address in the centre of the catchment for the purposes of illustrating what the alternative options might be for children living in the catchment area who are not offered a place at the school. The other schools within a two mile walk from the example central address shown on the map are set out in Table 5, and admissions data for those schools for the last three years is set out in Table 6. A map of the locations of the schools attached as Appendix B.

Table 5

School Name	Distance in miles walking
Batchley First School	0.513
St Stephen’s CE First School	1.248
St George’s CE First School	1.424
Our Lady of Mount Carmel Catholic First School*	1.427
St Luke’s CE First School	1.499
Webheath Academy Primary School	1.556
Oak Hill First School	1.942
Tardebigge CE First School*	2.963

*denotes faith school.

Table 6

School Name	PAN	2023 Allocations	2022 Allocations	2021 Allocations
Batchley First School	60	58	47	52
St Stephen’s CE First School	30	30	30	30

St George's CE First School	30	17	28	19
Our Lady of Mount Carmel Catholic First School	60	60	60	60
St Luke's CE First School	30	24	22	22
Webheath Academy Primary School	60	60	60	60
Tardebigge CE First	30	30	30	30

30. The LA says that the forecast information about pupil numbers shows that they also continue to rise in the Batchley First School catchment area. The authority says there is a significant amount of housing development that has taken place in that area, and the development is expected to continue until 2027, at which point there will be insufficient places to meet demand and a new school, which is planned for, will be opened. The pressure on school places due to new housing in both the Holyoakes Field and Batchley catchment areas is said to be significant. The LA stated:

“The overall picture for Redditch and the planning area is that there are only sufficient places going to be available if parental preference is for schools that are beyond two miles walking distance. If parental preference in the area is for schools that they can walk to, they will be less likely to be able to do so, if children in the nursery that may reside further away, are able to obtain places.

This issue will be further exacerbated with more catchment children not obtaining a place at Holyoakes Field First School. Whilst sufficiency of places has not been an issue in this area of Redditch historically, the significant housing developments on this side of the town will put more pressure on demand in local schools.

It is difficult to comment on what future demand will look like, parents will decide to send their children to nursery settings for a significant number of different reasons, social, financial, working commitments, family arrangements etc. Given the demand for places from children living in catchment area has increased, forecast information including new housing shows these numbers to be continuing, this is a new build school, with new facilities, as well as the number of children in the area growing, it is expected that demand will continue.

Holyoakes Field First School is also a named feeder school for Birchensale Middle School, which is also a successful oversubscribed school. Birchensale Middle School is also a named feeder school for Trinity High School, which is also a successful and oversubscribed school. All three schools are in the same multi-academy trust. The concern is that if nursery children are prioritised for places in the First School, with those places allocated potentially on the basis of age, those children are securing a pathway on to middle and high school that is unfair and causes disadvantage to parents who, for whatever reason, are not choosing to send their children to Holyoakes Field Nursery. Those parents should not have to feel that they are being forced to make decisions on their children's education at 3 years old to ensure secondary school education is more secure".

The arguments on behalf of the school

31. The trust argues that continuity for young children has always been important, but never more so than since the COVID19 pandemic. The decision to introduce priority for all children in the nursery was based on the need to offer young children and their parents/carers continuity and stability, both in terms of their emotional wellbeing and academically. The trust stated:

"One of the first things parents ask is will my child get a place in Reception class if they attend your nursery? It really does matter to parents; they seek this reassurance and currently we are unable to provide them with it. As a trust we want to be able to offer a 3 -19 flight path for the children and young people that attend our schools. Our families value this.

This year, 3 children who have attended our Nursery have not managed to get into Reception and they would be well behind the 7 children on the current waiting list based on the current criteria. The headteacher and Trust strongly believe that having to transition to a completely new school and setting, instead of the school they have attended for between 3-5 terms will have a detrimental impact on these children.

The school has a strong reputation and has done some excellent work (WELLCOMM, NELI & Voice21 Oracy) to counteract the impact the pandemic had on young children receptive and expressive language skills. We want children who start on these programmes to be able to continue to do so. Starting at an alternative setting will really set back these pupils, academically and emotionally; we believe it to be unfair on these pupils."

32. The trust says that the majority of pupils who would attain priority under oversubscription criterion 5 live in the catchment area. Of the 40 children who were on roll in the nursery when the school sent its response and who could have been applied to be admitted to Reception in September, 36 were living in the catchment area. The school says this is a similar pattern of admissions to that which existed when the school was located on its previous site. Of the 18 pupils due to start nursery in the autumn, 15 live in the catchment area.

33. The trust sent me data about the number of admissions to the school from which I have compiled the table below (Table 7) which shows the pattern of admissions for the last three years.

Table 7

Year	2020/2021	2021/2022	2022/2023
Looked after children	-	-	2*
Siblings	13	11	13
Children of staff	-	-	1*
Children in catchment	44	42	44
Children in the nursery	17	21	22

*The number of looked after children and children of members of staff is the total number over the three year period without reference to specific years of entry. Clearly the data provided each year exceeds a total of 60. This is because some of the pupils fall into more than one category.

34. The trust provided the following data relating to admissions to the school for the last three years.

The number of pupils admitted who were in catchment but not in nursery:

2020/2021 - 34

2021/2022 - 28

2022/2023 - 33

The number of pupils admitted who were in catchment and in nursery:

2020/2021 - 10

2021/2022 - 14

2022/2023 - 11

35. The trust asserts that, from the LA response, it is very easy to assume that the vast majority of pupils attending nursery are from outside catchment and would “prevent” catchment children from being admitted. The trust says: “This is far from the case, the vast majority are from **inside** catchment”. The trust disputes the LA’s statement that the number of children living in the catchment area who will be affected adversely will increase in the future, arguing that the nursery could be full of children from the catchment area or who have siblings in the school.

36. In terms of the impact of the planned housing developments, the trust says that, if the school expands, it will have 30 additional places in Reception and stated:

“From the figures provided showing the number of in-catchment pupils who have not managed to gain places, it is apparent that this is in single single digits, whereas the number of additional places available to catchment area applicants would increase by 20 or more. It should also be noted that whilst the school has been designed to accommodate a 3rd form entry expansion that only relates to statutory school age pupils - Reception to Year 4, there is no provision for the nursery to be expanded, in fact the Reception expansion would actually remove the nursery outside area and potentially make it less attractive to some parents”

37. The trust is aware of the plans for a new primary school which have been referred to by the LA, but says that there is no indication of its intended intake, size or the impact it will have on catchment sufficiency. Given the new location of the school, some of the existing catchment is now actually closer to two other first schools. The trust says that it fails to understand the LA’s argument that children living in the catchment area who are not offered places at the school will miss out on places at Birchensale Middle School and the Trinity High School, stating: “It should be noted whilst Birchensale has been oversubscribed 3 out of the last 4 years, no child from any named feeder school has failed to get in so we are not sure what the LAs argument is. In addition the LA and Trust have a signed agreement to expand Birchensale by an additional 1 form entry from September 2024”.

Conclusions

38. I will deal with some of the relevant points shortly. The question of fairness needs a more extensive analysis.

Illegality

39. My conclusions are that, although giving priority to children attending the nursery of a school is not mentioned in the Code as an oversubscription criterion which is expressly permitted (other than in the case of children attending the nursery who are eligible for the pupil premium), the DfE Guidance sends a clear signal that such priority is permissible provided it operates fairly. To put it another way, I do not agree with the interpretation advanced by the LA that only children eligible for the pupil premium may lawfully be given priority for Reception on the basis of having attended a school’s nursery. Therefore, my view is that the introduction of the oversubscription in question was lawful. It is also my view that the trust had rational reasons for introducing such priority, and that oversubscription criterion 5 is written clearly.

Paragraph 1.9e of the Code

40. My conclusion is that there is no breach of paragraph 1.9e. This paragraph prohibits priority for admission being given on the basis of any practical or financial support parents may give to the school. However there is an express exception which provides that this

prohibition does not apply where parents pay optional nursery fees for additional hours on top of their 15-hour funded early education. Since the trust is not charging for places at the nursery other as permitted under paragraph 1.9e, there is no breach.

Paragraph 1.9a of the Code

41. My conclusion is that there is no breach of paragraph 1.9a. This paragraph provides that admission authorities must not place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements. The argument here is that, if it is the case that a parent is required to secure a nursery place for their child in order to be assured of a place in Reception, this is tantamount to making nursery admission a condition of admission to Reception. I do not find this to be the case. I am told that, although there are potentially 52 part-time places available in the nursery, it is currently full with 40 children on roll, which is a typical number. The PAN for Reception is 60. Nursery priority (other than for children eligible for the pupil premium) is oversubscription criterion 5. Looked after children, siblings and children of members of staff all have higher priority. Many of the children attending the nursery have siblings at the school and live in the school's catchment area. It is not a condition of admission to Reception that children attend the nursery. Such children have an ascribed level of priority for admission by virtue of a published oversubscription criterion.

42. Nursery attendance may improve the prospects of a child securing a place at the school, but this is no different to the position of children living in the catchment area under the school's previous arrangements. The school's oversubscription criteria are published, they are clear and parents are able to make choices that may (or may not) improve the prospects of their child being admitted. The implication is that out of catchment children are being allowed to gain priority through a measure which is somewhat underhand. I do not find this to be the case. First, the evidence indicates that the majority of children in the nursery live in the catchment area. Second, the trust has been upfront about its reasons for the introduction of nursery priority and has consulted on the proposal to introduce this in accordance with the requirements of the Code. Whilst the LA has submitted important arguments for why nursery priority should not have been introduced, I have not been provided with any evidence that there is widespread opposition from local parents who may be affected.

Unfairness

43. The question at the heart of this objection is whether giving higher priority for places in Reception to children attending the nursery than is given to children living in the catchment area operates fairly in the context of admissions to this particular school. This is a difficult question to answer as there is no actual data for 2024 admissions, and I find it impossible to gauge what the pattern of applications will be. The school has relocated, which could alter the pattern of primary school applications as some of the other local primary schools are now closer to the homes of in-catchment applicants than the school (although this appears not to have happened for 2023 admissions); the school is now in a shared catchment area; I cannot predict how many applications there will be from children

falling within oversubscription criteria 1 - 4. The only information I have is that 15 out of the 18 pupils due to start nursery in the next school year live in the catchment area and that there are 109 children aged 3+ in that area who are expected to start Reception in 2024. With a PAN of 60 it is quite certain that they will not all be able to go to Holyoakes whatever its admission arrangements. Given that the school is now in a shared catchment area it is also possible that not all parents will most want their child to attend Holyoakes – for example if they already have an older child at the other school (Tardebigge) or live very close to it.

44. Previously, the school was located in a populated area in the centre of the catchment area. It is now located in a less populated area in the most northern part of the catchment area and this catchment area is shared with Tardebigge. The evidence provided by the parties indicates that:

- the number of applications for children living in the catchment area exceeded the PAN for the first time in 2023 (Table 1);
- the number of applications for children attending the nursery is not equal to the PAN for Reception, but close to half that number (Table 2);
- the number of applications refused for children in the nursery was very small under the previous admission arrangements (only three), and until 2023 all such applicants were offered places (Table 3);
- the number of children aged 3+ in the catchment area is said to be rising, although in 2024 the number of children in the catchment shared with Tardebigge is said to be 109 (Table 4), which is less than the number in the combined catchment area in 2023, which was 124;
- there are seven other primary schools within two miles of the central catchment address (Table 5);
- three of the seven schools have vacant places in Reception (Table 6), although one of them is said to be unlikely to have vacant places for September 2024 admissions;
- two are said to be closer to the central catchment address than Holyoakes; and
- the combined PAN of Tardebigge and Holyoaks for 2024 is 90.

45. All oversubscription criteria will disadvantage applicants who do not meet the requisite criteria, but in order to be in breach of the Code any disadvantage must also be unfair. The unfairness alleged by the objector is a disadvantage to children who live in the catchment area who do not attend the nursery. Displacement of children who live in an established catchment area would generally be deemed unfair unless there were relevant mitigating circumstances. A possible mitigating circumstance is that, since the school has been relocated, the rationale for drawing it as it is may no longer be logical. However, the catchment area for the school is well-established which creates an expectation on the part

of parents and children that they will be offered places. The fact that the school has relocated does not in this case mean that the area it was previously expected to serve has changed. It is inevitable that an expectation of being able to attend a catchment school will not be fulfilled in a situation where the number of children in the catchment increases and no additional places are provided at the school. However, the situation is different where the expectation is not fulfilled because children living further away have priority as a result of being allocated a place at the nursery on the basis of age.

46. That said, children living in the catchment area who do not attend the nursery may not necessarily be 'displaced'. The school's new location is 0.9 miles from the previous location. The LA says that the school's catchment area "extends around the location of the old school with an extension to the south". The new location of the school (at the northern tip of the catchment border) places the populated areas surrounding the school's previous location and to the south of the border further away from the new site of the school; it is possible therefore that this will alter parents' preferences. The authority says that when comparing first preferences and allocations from these areas by postcode it can find no "strong evidence" of a change in preferences away from earlier patterns, but this may change. The LA is said to be most concerned about children living in the south of the catchment area because, if they do not attend the nursery, they are the least likely to secure a place at the school because the school is now some distance away. The authority has provided a map of the locations of other local primary schools (Appendix B). As above, at least five would be closer to home for children living in the southern part of the catchment. Three currently are undersubscribed, although one may not be in 2024.

47. In considering the question of fairness, the starting point is that a child should be able to attend a primary school within a reasonable travelling distance of his or her home. Potential unfairness is created if admission arrangements result in there being no such opportunity for a significant number of children. This is not the case here. It is important to emphasise that my jurisdiction is limited to the 2024 arrangements. The LA itself acknowledges that only a small number of children living in the catchment area may not get places at the school in September 2024. A large part of the LA's argument centres upon the post 2024 effects of building developments, which cannot be relevant to this determination. In considering fairness, a balancing exercise should be undertaken, weighing the advantage said to accrue to children who would be offered places (or afforded a high priority for places) at the school in consequence of the arrangements, against any disadvantage caused to any other relevant group of children who would not be offered places (or would not be afforded a high priority for places). Unfairness can be found when the disadvantage is considered to outweigh the advantage.

48. The benefit which will accrue under the new oversubscription criterion 5 is said to be certainty, continuity and stability for children attending the nursery, both in terms of their emotional wellbeing and academically. The disadvantage argued by the LA is that parents will be 'forced' to seek places in the nursery in order to gain priority for a place in Reception which will then give priority for admission to Birchensale Middle School and, as a result, for Trinity High School as well. But many parents would welcome this and see it as a benefit. Any potential disadvantage will be that a small number of children in the southern part of

the catchment may not be offered a place because they have not attended the nursery. These children have access to primary schools which are closer to their homes and are likely to have places available; however, there will be an expectation of a place at Holyoakes by virtue of living in the catchment area. I have weighed the benefits of continuity of education, educational ethos and philosophy against the disadvantages for the children at the southern end of the catchment who may not get places. I do not see either disadvantage as being greater or lesser.

49. Fortunately, I am assisted by the DfE Guidance which sets out parameters for determining whether giving priority for admission to Reception for children in the nursery is fair. A determination on the issue of fairness in these circumstances can be arrived at by posing a series of questions. Taking each in order:

(a) Is the number of places available in the nursery the same or similar to the PAN for Reception, such that it could be said that attendance at the nursery is a pre-requisite for admission to the school?

I have dealt with this above.

(b) Are parents effectively being denied the choice not to send their children to nursery? The answer to this question is no. I do not believe that parents are being denied the choice to not send their child to nursery. In very general terms, parents may decide not to send their child to a nursery at the age of 3 for a number of reasons, for example: because they do not wish their child to be in any sort of nursery provision at such an early age; a placement in a nursery class in a primary school is unworkable because they may have work commitments which do not coincide with the limited number of hours on offer, school holidays and pick up/drop off times, therefore the parents choose an alternative form of child care; some have the choice to access subsidised child care at their workplace.

But parents are given a choice - the choice of whether or not to increase the likelihood of their child getting a place in Reception because, based upon the data, it could be said that attendance at the nursery (although not a prerequisite for admission to Reception) would assure a Reception place in their particular circumstances. Parents often make similar choices in order to gain priority for admission to an oversubscribed school. This is not unfair, it is simply the reality of school admissions. Do I send my child to x primary because it is a feeder school and this will give priority for y secondary school even though there is a nearer primary school? Do I encourage my child to practice selection tests? Do I buy, or rent, this house because it is located in the catchment area for good local schools?

It is possible that a small number of children living in the catchment area but not attending the nursery will be denied a place in Reception. However, this may not prove to be the case. There is predicted to be a lower number of children aged 3+ living in the catchment area in 2024 (109 as compared to 124 in 2023). Of the 18 pupils due to start nursery in the autumn, 15 live in catchment area. The choice under the arrangements is clear to parents. A parent living at the southern end of the

catchment area is able to look at the area and know that their home is located at some distance from the school (0.9 miles maximum). Knowing that the school is oversubscribed and that children attending the nursery are given higher priority, a parent can decide whether to maximise the prospects of their application being successful by securing a place at the nursery, or take a gamble in the knowledge that there are other nearer schools with available places, albeit with low Ofsted ratings.

(c) Are the arrangements for admission to the nursery compliant with the Code?

They are not, and for this reason my view is that giving higher priority to children attending the nursery over children living in the catchment is unfair and I for this reason I uphold this ground of objection. The requirements relating to admissions to schools do not apply to nurseries. This means that the school can set arrangements for the nursery that would not be permitted for admission to Reception, and it can also change those arrangements without following the procedures laid down in the the Code and other relevant legislation for changes to school admission arrangements.

Where priority for admission to Reception is given on the basis of attendance at a nursery it is appropriate to consider whether the nursery arrangements would satisfy the Code. This is because if they do not, children may – through their attendance at the nursery – gain places at a school on the basis of arrangements that would not be lawful for that school. This would undermine the Code and be unfair to other children. The arrangements for the nursery are based upon age which could not be used to determine priority in arrangements for admission to a school. Although the arrangements for admission to the nursery are not bound by admissions legislation or the Code, attendance at the nursery will now affect the prospects of gaining a place at the school. This therefore leads to an outcome where children who have been offered a place at the nursery on the basis of age, which is unlawful under the Code for admissions to Reception, will have higher priority than children living in catchment, which is a lawful oversubscription criterion.

Whilst I understand the validity of wanting to ensure continuity of progression for children between nursery and Reception, those children who will be assured of continuity are not those who could lawfully acquire priority under the Code. I was unable to find the admission arrangements for the nursery on the school's website, and indeed there is no requirement for the arrangements to be published; therefore the possibility exists that the school could select children to the nursery by any means it chooses. I am not suggesting that the school is selecting children for nursery admission other than by using the methodology that has been described to me, but the fact of this being a possibility serves to highlight the point that I am making. In my view the lack of any transparency (and indeed lack of a transparency requirement) together with the fact that the arrangements for admission to the nursery are not Code compliant renders oversubscription criterion 5 unfair. The arrangements will therefore need to be revised.

If the trust were to adopt Code compliant admission arrangements for the nursery, it would be open to them to offer children living in the catchment area some level of priority for admission to the nursery (after looked after and previously looked after children, of course). From what the trust has said, this is unlikely to make much difference to the intake of the nursery since the nursery mostly comprises children who live in the catchment area. However it would provide a greater assurance of continuity for local children under a transparent and fair methodology.

(d) Is the nursery fee paying?

I have dealt with this point above.

Other matters

50. Having considered the arrangements as a whole there is one other matter which does not conform with the requirements of the Code. I was unable to find the required information explaining to parents that children below compulsory school age are permitted to attend part-time and to defer entry. Neither could I find the information referred to in paragraphs 2.18 and 2.20 of the Code about children who are summer born starting school in Reception after their fifth birthday (although there was some information about admissions outside the normal year group). The arrangements will need to be revised in order to include the required information.

Summary of Findings

51. I partially uphold this objection.

52. I find the arrangements to operate unfairly to children who live in the school's catchment area but do not attend the nursery. My reasons for this finding are that the arrangements for admission to the nursery do not comply with the requirements of the Code. Although they are not required to do so, the result of their application will be that children selected for admission under non-Code compliant criteria may displace children living in the catchment area, which is a Code compliant oversubscription criterion. I therefore uphold this ground of objection.

53. I do not find oversubscription criterion 5 to be unlawful even though it is not an oversubscription criterion permitted expressly by the Code; I do not find oversubscription 5 to be in breach of paragraph 1.9e of the Code. Applicants are not being given priority as a result of their parents' financial contributions to the school; I do not find oversubscription criterion 5 to be in breach of paragraph 1.9a of the Code. Admission to the school is not conditional upon attendance at the nursery. I do not uphold these grounds of objection.

54. I find that there are other matters which do not comply with the requirements set out in the Code relating to the information which must be published in the arrangements about part-time attendance in Reception, deferred entry and the admission of summer born children.

Determination

55. 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 2024 determined by Bordesley Multi Academy Trust for Holyoakes Field First School, Worcestershire.

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

57. 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: 3 August 2023

Signed:

Schools Adjudicator: Marisa Vallely