



## Determination

<b>Case references:</b>	<b>ADA4104</b>
<b>Objectors:</b>	<b>Two members of the public living at the same address</b>
<b>Admission authority:</b>	<b>Tudor Grange Academies Trust for Tudor Grange Academy, Solihull</b>
<b>Date of decision:</b>	<b>14 August 2023</b>

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2024 determined by the Tudor Grange Academies Trust for Tudor Grange Academy, Solihull.**

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

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

## The referral

- 1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by two members of the public living at the same address (the objectors). The objection is in respect of the admission arrangements (the arrangements) for Tudor Grange Academy, Solihull (the school or TGAS), a secondary academy for 11 to 18 year olds, for September 2024.**
- 2. The objectors raise a concern about the introduction of an oversubscription criterion from September 2024 which may result in families living in a specific part of the catchment area facing difficulties securing places at the school.**

3. The school is part of a multi-academy trust called the Tudor Grange Academies Trust (the trust). The local authority (LA) for the area in which the school is located is Solihull Metropolitan Borough Council. The trust and the LA are parties to this objection as are the objectors and the governing board of the school.

4. A second objection was raised on 13 February 2023 (which was concerned that the change in the arrangements for 2024 introduced an inconsistency between the way that children attending the two named feeder schools would be prioritised for places). This was to be considered under case reference number ADA4105. However, the objector in that case withdrew that objection on 13 July 2023.

## Jurisdiction

5. The terms of the academy agreement between the 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 trust, which is the admission authority for the school, on that basis.

6. The objectors submitted the objection to the determined arrangements on 7 February 2023.

7. I have also used my power under section 88I of the Act to consider the arrangements as a whole and to determine whether or not they conform with the requirements relating to admissions and, if not, in what ways they do not so conform. I will refer to these as 'Other Matters' and these are covered in the sections of the determination under that name.

## Procedure

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

9. The documents and sources of information 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. a copy of the determined arrangements for 2022 and 2023;
- d. the objectors' form of objection dated 7 February 2023 and supporting documents;
- e. the responses to the objection and supporting documents by the school, trust and LA;
- f. the LA's online composite prospectus for admissions to secondary schools;

- g. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it;
- h. Google Maps;
- i. the IoD 2019 (indices of deprivation in 2019) Interactive Dashboard website from the former Ministry of Housing, Communities and Local Government;
- j. information available on the websites of the school, trust, LA, the Department for Education (DfE) (particularly the 'Get Information About Schools' (GIAS) site) and Ofsted; and
- k. school admissions data available on the websites of Worcestershire and Birmingham local authorities.

10. I have also had sight of a determination by an adjudicator (case reference numbers: ADA2421 and ADA2440), dated 28 August 2013. The objections dealt with in that determination were in respect of matters arising from the introduction of an oversubscription criterion prioritising admission of children from Tudor Grange Primary Academy St James (TGPASJ) from September 2014. I note here that previous determinations do not set precedents and that I have considered the arrangements on their merits against the requirements set out in legislation and the Code and in the light of the facts and circumstances as they are now.

## The Objection

11. The objectors' concern is in respect of the introduction of oversubscription criterion 3 (prioritising children from Tudor Grange Primary Academy Hockley Heath (TGPAHH) living in the catchment area) from September 2024. The objectors assert that it will result in families living in Tidbury Green, in a part of the catchment area closer to the school (previously criterion 3 and now at criterion 4 and therefore a lower priority) facing difficulties securing places at the school.

12. The objectors did not indicate the parts of the Code that they believe the arrangements contravene in respect of the matter raised. I have determined that the following parts of the Code are applicable in respect of the objection (others may apply in respect of the 'Other Matters' and that is addressed in those sections):

- Paragraph 14: "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 1.8 (part): "Oversubscription criteria **must** be reasonable, clear, objective [...]".

- Paragraph 1.10 (part): “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances. [...]”
- Paragraph 1.15: “Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”

## Other Matters

13. The aspects of the arrangements which I identified as not or possibly not conforming with the requirements relating to admissions have been identified in detail towards the end of this determination.

14. In summary, I raised the following: that looked after and previously looked after children and children with social and medical needs are afforded the same priority in the oversubscription criteria; matters which may be unclear for parents, such as in respect of the admission of siblings; issues with the way that the school describes the operation of its waiting list and how it deals with late applications; the use of the address to which child benefit is awarded as the sole indicator of where a child is resident for the purposes of determining the ‘home address’; not including information for parents on the process for admission outside of the normal age group; and matters related to the information available on the school’s website.

## Background

15. According to GIAS, the school is a secondary academy for 11 to 18 year olds, located in Solihull in the West Midlands. The school converted to academy status on 1 October 2010. It is a non-selective and co-educational school. The school is one of six secondary academies in the trust (one of which is an all-through school). There are six primary schools in the trust. Ofsted rated the school as ‘Outstanding’ in 2014. The number of pupils at the school is 1673, out of a capacity of 1690. The published admission number (PAN) for the school is 280.

16. The arrangements for 2024 were determined by the trust on 24 January 2023 after a consultation period which took place between 1 November and 13 December 2022. The focus of the consultation was on the proposal to introduce priority to the admission of children who both attend TGPAHH and live in the catchment area of the school.

17. Children with Education, Health and Care Plans (EHCPs) will be admitted first. Then, in times when oversubscribed, children will be prioritised according to the oversubscription criteria. These can be summarised as follows:

- |            |   |
|------------|---|
| Priority 1 | Looked after children and previously looked after children. |
| Priority 2 | Children in Year 6 attending TGPASJ.                        |

- Priority 3 Children in Year 6 attending TGPAHH, living in the catchment area of the school.
- Priority 4 \* Children living in the catchment area of the school.
- Priority 5 \*\* Children who live closest to the school measured in a straight line from the child's home to the school.

\* For applicants under Priority 4, the arrangements state that if there are more children wanting places than there are places available, places will be offered to children living in the catchment area in the following order:

- Children living in catchment who will have an older brother or sister at the school on roll in years 7 to 11 in September 2024.
- Children living nearest the school, measured in a straight line from home to school.

\*\* For applicants under Priority 5, when there are more children than places at the school available, those living nearest the school (measured in a straight line from home to school) will be offered places first. Distances are measured by the LA's computerised admissions system.

If two or more applications in the same priority have the same distance, but only one place can be offered, the LA will use a computerised random allocation system to decide which applicant has the highest priority.

18. According to GIAS, there are seven other schools admitting secondary-aged pupils within three miles of the school's location. All of those schools are academies and one has a Roman Catholic religious character. None of these schools is part of the trust. Within three miles of the school there are 46 primary schools (27 of which are community schools, 16 are academies and three are voluntary aided schools). Two of these schools are part of the same trust (TGPASJ and Tudor Grange Primary Academy Yew Tree). Parents applying for places for children who attend TGPASJ are prioritised under Priority 2. TGPAHH (from which children are prioritised under Priority 3 (if residing in the catchment area)) is 3.66 miles away from the school.

19. The school's catchment area is used to prioritise places under Priorities 3 and 4. The school provides a link to a map of the catchment area, created by the LA, on the admission pages of its website. The catchment area is made up of three distinct zones (which I have labelled and will refer to as Zones 1 to 3 for ease of reference):

Zone 1: The 'Tudor Grange Academy Catchment Area' located to the south and south-east of Solihull. This part of the catchment area is distinct from the other two parts.

Zone 2: The 'Tudor Grange Academy Remote Catchment Area' located adjacent to and in contact with the 'Light Hall School / Tudor Grange Academy Shared

Catchment Area' to the south-east of Cheswick Green crossing the M42 to encompass Hockley Heath.

Zone 3: The 'Light Hall School / Tudor Grange Academy Shared Catchment Area' located to the south-west of Cheswick Green and north of Earlswood.

20. The school provided the following explanation in respect of the arrangement of its catchment area:

"As you can see from the map, the school has an unusual catchment area which is essentially three separate defined geographical areas. On the map, these areas are highlighted in light blue with one area [Zone 1] being adjacent to the school and two areas [Zone 2 and 3] further away.

This is a historical arrangement originally determined by the Local Authority, and based on the premise that, although everywhere in Solihull has always been in a catchment area for a secondary school, families living in the outer catchment areas [Zones 2 and 3] were not geographically close to any secondary school and therefore children living in those areas were not securing places."

21. In respect of the part of the catchment area which is shared between the school and Light Hall School (Zone 3), the LA told me that:

"Children living in the shared catchment area are given catchment priority for both schools, if they express them as one of their preferences. If either school is oversubscribed from within its catchment area, places are allocated in accordance with the tie breaker arrangements stated within each oversubscription criteria. Both schools give priority to those with a sibling at the school first then the closest on straight line distance, home to school."

22. The LA also told me that: "Having three parts to the catchment area does not impact on how the admission arrangements are applied".

23. TGPASJ is located just outside the western-most boundary of Zone 1 of the catchment area, near Shirley Park. TGPAHH is located in Hockley Heath which is within Zone 2 of the catchment area. Tidbury Green, the area which is the focus of the objection, is located on the northern boundary of Zone 3 of the catchment area.

24. At relevant points in this determination, I will need to use measurements from Tidbury Green and Hockley Heath to other places, such as the school. To ensure consistency, unless otherwise specified, I have measured from the location of Tidbury Green (Primary) School (for Tidbury Green) and TGPAHH (for Hockley Heath).

## **Consideration of Case**

25. It is necessary first to look at the current oversubscription criteria in order to understand what has been changed for September 2024. The 2022 and 2023

arrangements have prioritised admission (when oversubscribed) in four Priority categories, which can be summarised as:

- Priority 1      Looked after children and previously looked after children.
- Priority 2      Children in Year 6 attending Tudor Grange Primary Academy St James (TGPASJ).
- Priority 3      Children living in the catchment area of the school.
- Priority 4      Children who live closest to the school measured in a straight line from the child's home to the school.

(As notes relevant to Priorities 3 and 4 are, save for relevant dates, the same as for Priorities 4 (\*) and 5 (\*\*) (respectively) for the 2024 arrangements and have been set out already in this determination, I have not repeated them here).

26. From this point forward, I will refer to Priorities 3, 4 and 5 from the 2024 arrangements with the prefix 'new', where it is clear a distinction needs to be made with the way that the Priorities are expressed in the current arrangements.

27. I note here the LA's description of the change to the arrangements in 2024:

"Under the revised criteria, the majority of catchment children will now be offered places under criterion 4 [that is living in the catchment area but not attending TGPAHH]. However, the number of applications from the catchment area will be split between the new criteria 3 [that is living in the catchment area and attending TGPAHH] and 4, with the new criterion 3 being a subset of the applications that were previously considered under the old criterion 3."

28. I also note here that the objection is not directly concerned with the school's catchment area. However, living in the catchment area is a condition of being prioritised under the new Priority 3 from 2024/25. I, therefore, wanted to stress here that living in a catchment area does not and cannot guarantee a place. That will be the same whether being prioritised for admission under the new Priorities 3 or 4.

29. According to Google Maps, the straight line distances of Tidbury Green and Hockley Heath from the school are 2.96 and 3.64 miles (respectively) and so Hockley Heath is further away (though both are still in the catchment area). By inserting the new Priority 3, the objectors assert that those applicants living in Tidbury Green (who live closer to the school and thus had a higher priority in the event that the school could not accommodate all who lived in the catchment) are less likely to get a place from 2024/25. This is because children who meet both of the requirements for admission under the new Priority 3 (to attend TGPAHH and to live in the catchment area) will be admitted ahead of them.

30. All admission authorities must have oversubscription criteria to decide who will be admitted if the school is oversubscribed. These must be in accordance with the Code, and the adoption of named feeder schools as a means of doing this is perfectly lawful provided

the reason for doing so is transparent and made on reasonable grounds (as set out in paragraph 1.15 of the Code) and, of course, provided its use does not make the arrangements unfair overall. Paragraph 14 of the Code requires, amongst other things, that arrangements must be clear and fair. Paragraph 1.8 requires that oversubscription criteria be reasonable and clear. In respect of being 'reasonable' and 'fair' it appears to me that, although the objectors have not used those terms overtly in the objection, the matters raised do question the reasonableness and fairness of the introduction of TGPAHH as a named feeder school in any event.

31. When considering the reasonableness and fairness of this aspect of the school's arrangements, I will adopt a two stage approach which can generally be described thus: first, I will assess whether the criterion in question is reasonable. If I find that it is unreasonable, the criterion would be non-compliant with the Code and I would not need to proceed to the second stage. If the criterion is found to be reasonable, I will go on to look whether the effect of the criterion is fair.

32. The Code uses the term 'reasonable' but does not define it. An everyday definition is of having sound judgement; being sensible and rational. It is the requirement of public bodies, including admission authorities, that they must act reasonably in adopting any policy or making any decision. The test I will apply to reach a conclusion on this aspect of the objection, therefore, is whether the introduction of the new Priority 3 is one which a reasonable admission authority acting rationally and taking into account all relevant factors and no irrelevant factors would choose (the 'reasonableness test'). This is an objective test. It will be necessary to consider the rationale for adopting it (Part 1 of the test) and the effect of its practical operation (Part 2). Part 1 follows.

33. I looked first at the school's rationale for introducing the new Priority 3 into its arrangements in 2024. The (then proposed) reason for the introduction of this Priority was set out by the school in its consultation documentation in 2022:

"The change is being proposed to ensure that children who live in the remote catchment area and attend TGPAHH secure places at TGAS. Where children do not secure places at TGAS, they have difficulty in securing places at other Solihull Schools.

This reflects our stronger relationship with the school given that it is now a member of the Tudor Grange Academies Trust. [...]

The change is being proposed to ensure that children who live in the remote catchment area [Zone 2] and attend TGPAHH secure places at TGAS. We believe that children benefit from the certainty of being able to continue their education in a Tudor Grange school, we are able to offer continuation of curriculum, support processes and structures, and ethos and values. Where we see that it is fair to offer this certainty we are committed to do so, we believe it is fair to offer this certainty to children living in the catchment area and attending TGPAHH."

34. At my request, the school provided further information on its rationale:



“Living in any part of the catchment area has never guaranteed a place at the school, as there is always the possibility that there are more children living in catchment than there are places in the school. Hockley Heath is a remote area of the borough [Zone 2] and is located in a catchment area for TGAS (but not for any other secondary school). If these families had to rely on distance to school alone and were not eligible under any higher priority groups, these children would be likely to miss out on securing places at TGAS. This is increasingly the case as the school becomes more oversubscribed.

We are aware that the proposed changes may mean that, if the tie breaker (i.e. distance and random allocation) has to be applied, then children attending Tudor Grange Primary Academy Hockley Heath (TGPAHH) living in the remote catchment area will be prioritised over children who live nearer to the school but who do not attend TGPAHH. This could potentially include families living in Tidbury Green. However, we believe this is reasonable as the children in Tidbury Green live in [Zone 3] which is a catchment areas [sic] shared with another secondary school (Light Hall).

In respect of the decision to name TGPAHH as a feeder school, we believe that its selection was transparent and made on reasonable because of the very strong relationships in place between the two schools mean that children will benefit from the certainty of being able to continue their education at TGAS. [...]

Where we see that it is fair to offer a certainty to children and families that secondary education will be a continuation of the primary education, we are committed to doing so. We believe it is fair to offer this certainty to children living in TGAS's own catchment area and attending TGPAHH. [...]

Finally, the shared ethos and values of the schools means that the children attending TGPAHH and then TGAS benefit from the continuity of education from primary to secondary school. Using the Tudor Habits and Values to underpin all aspects of school life mean that children are well supported in their journey to becoming flourishing adults who play an active part in their communities. We know that being able to anticipate the language and behaviours of teachers significantly reduces anxiety for children and we have seen the impact of this where we have all through provision in the Trust.”

35. I note here that TGPAHH joined the trust on 1 January 2022. It would be understandable that the school would seek to develop closer ties with the trust's (then) newest member, which is also in close proximity, as it did when TGPASJ joined the trust in January 2013 (the school added Priority 2 to its arrangements from September 2014). I also considered the point made by the school in respect of children at TGPAHH finding it harder to secure places at other secondary schools because of the location of Hockley Heath. Within three miles of TGPAHH, GIAS indicated that there is only one secondary school, Arden (Academy) in Solihull, which is 2.88 miles from TGPAHH. TGPAHH is not in the Arden catchment area. By way of comparison, and as will be shown later in Table 9, there

are five secondary schools (one of which is the school) within three miles of Tidbury Green Primary School. It appears to me that the rationale put forward by the school is borne out by the reality of the geographical location of TGPAHH in relation to the nearest secondary schools to it in the area.

36. In respect of Part 1 of the ‘reasonableness test’, I find that the school has been transparent about its rationale for the introduction of the new Priority 3. The information included in the consultation documentation sets out the school’s reasoning clearly. In my view, the further information provided by the school at my request provides compelling additional rational, and therefore reasonable, justification for the change it has made.

37. Turning now to Part 2 of the test of reasonableness, I intend to look at the effect of the practical operation of the arrangements in respect of those concerns raised by the objectors and in the context of my findings in Part 1 of the test. As the change has not yet been implemented, I will use current and projected data and information already available to me and which has been provided by the school and LA insofar as that is relevant and which indicates how this change might practically operate from September 2024.

38. For context, the school provided the data in Table 1 below.

Table 1: Capacity of and the number of children in each year group (in July 2023) and the number on waiting lists

<b>Year group</b>	<b>Capacity</b>	<b>Number of children</b>	<b>Number on waiting lists</b>
<b>7</b>	280	283	48
<b>8</b>	280	283	34
<b>9</b>	280	282	39
<b>10</b>	280	279	18
<b>11</b>	280	280	1
<b>12</b>	160	153	0
<b>13</b>	160	152	0
<b>Total</b>	<b>1720</b>	<b>1712</b>	<b>140</b>

39. The school told me it is becoming increasingly oversubscribed and the data show this to be the case, both from the increasing numbers on the school’s waiting lists, but also from the fact that the school has 39 more children on roll than is recorded by the dataset shown on GIAS (which records that there are 1673 children on roll). The school has 22 more children than its capacity (for 1690 children) as indicated on GIAS. The LA explained the reason for this:

“The school also recently expanded to take account of a housing development in its catchment area. 150 additional children across 5 year groups.”

40. At my request, the school provided the data which I have put into Tables 2, 3 and 4 below. I have put further data, from my own calculations from the data provided by the school, into Table 5.

Table 2: Breakdown of the numbers of children admitted between 2020/21 and 2022/23 and offered for 2023/24

<b>Numbers admitted / offered</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
EHCP	2	11	6	7
Priority 1	7	5	5	3
Priority 2	22	24	24	24
Priority 3	178	169	245	246
Priority 4	71	71	0	0
<b>Total admitted / offered</b>	<b>280</b>	<b>280</b>	<b>280</b>	<b>280</b>
<b>PAN</b>	<b>280</b>	<b>280</b>	<b>280</b>	<b>280</b>

Table 3: Numbers admitted / offered from Tidbury Green under Priority 3 between 2020/21 and 2023/24

	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
<b>Number admitted / offered</b>	11	15	13	7

Table 4: Numbers admitted / offered who attended TGPAHH and live in the catchment area (under any Priority) between 2020/21 and 2023/24

	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
<b>Number admitted / offered</b>	7	12	12	5

Table 5: Percentage (of the school's PAN) of admissions of children from Tidbury Green and Hockley Heath between 2020/21 and 2023/24

<b>Percentage of school's PAN (280) made up from:</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
Tidbury Green	3.9	5.4	4.6	2.5
Hockley Heath	2.5	4.3	4.3	1.8
<b>TOTAL</b>	<b>6.4</b>	<b>9.7</b>	<b>8.9</b>	<b>4.3</b>

41. I make the following points about what the data show:

41.1 Over the four year period, the numbers admitted with EHCPs and under Priority 1 have remained relatively consistent and at a low proportion of the total. The numbers admitted under Priority 2 (from TGPASJ) have remained consistent at no more than 8.6 per cent of the PAN.

41.2 The numbers admitted under Priority 3 (catchment) over the same period have increased markedly (particularly from 2022/23) such that 68 more children have been offered places at the school in 2023/24 than were admitted in 2020/21 under that Priority. In 2023/24, offers under Priority 3 made up 87.9 per cent of the total. By way of comparison, 63.6 per cent were admitted in 2020 under this Priority.

41.3 The increase in numbers admitted under Priority 3 has meant that no children were admitted (in 2022/23) or offered places (in 2023/24) under Priority 4 (out of catchment).

41.4 Despite the fact that more children have been admitted / offered places under Priority 3 over that period, the data in Table 3 show that the number of children admitted from Tidbury Green has been very low. Applying a linear trend line to that data also shows that admissions of children from Tidbury Green have been decreasing over that period.

41.5 The data in Table 4 show the numbers of children admitted in the four year period who would have met the criteria for the new Priority 3 to be implemented from September 2024 (attending TGPAHH and living in the catchment area). The data show that the proportion of the intake of children from Hockley Heath has been smaller than that of Tidbury Green. Again, applying a linear trend line to that data, it also shows that the number admitted from Hockley Heath has decreased over that period.

41.6 I caveat here that, as the PAN was reached under Priority 3 in 2022/23 and has been reached in 2023/24, the data for those years in Tables 3 and 4 does not necessarily indicate the entirety of the number of applications from parents of children in Tidbury Green or Hockley Heath. The LA told me that:

“This academic year, children in Tidbury Green were only successful in obtaining a place [under Priority 3] where they had a sibling at the school, this was the same for those children in Hockley Heath. This is the first year of intake where the children of Tidbury Green have been impacted.”

Within the current Priority 3, priority is given first to those applicants with siblings at the school, then by distance from the school. It is the case that children from Hockley Heath, with siblings in the school, are already prioritised above those from Tidbury Green if the latter do not have siblings at the school.

41.7 The data in Table 5 show that the number of children admitted from both the Tidbury Green (under the current Priority 3) and Hockley Green (under any priority) areas is a relatively small proportion of the PAN. Admissions from Tidbury Green have not been higher than 5.7 per cent of the PAN during the period covered by the data and is only 2.5 per cent for 2023/24.

41.8 As the change in priority that has concerned the objectors has not yet been implemented, the data in Table 3 for 2022/23 and 2024/25 show that admissions from Tidbury Green are likely already declining as a result of the other pressures from the wider catchment area under the current Priority 3, as shown in Table 2 and explained as a result of looking at the data in Table 1.

42. In order to understand better the likely impact of the introduction of the new Priority 3 from September 2024, I asked the LA how many children there are in each year group currently at TGPAHH. I have put that data into Table 6.

Table 6: Number of children currently in each year group at TGPAHH

<b>Year Group</b>	<b>Number of children</b>
Reception Year (YR)	26
1	26
2	30
3	30
4	29
5	29
6	29
<b>TOTAL</b>	<b>199</b>

43. The PAN at TGPAHH is 30 and there are no more than 30 in any year group currently. That means that for the next six years (taking into account that the revised arrangements would only first affect applications from parents of children who are currently in Year 5), and assuming no significant changes to the intake at TGPAHH in the same period, there could not be any more than 30 applicants. However, the number is likely to be much less. The LA told me that:

“The location of Tudor Grange Primary Academy Hockley Heath means that places [there] are often allocated to those children living outside of Solihull, in the most part in Warwickshire.”

44. I asked the LA to provide me with list of the secondary schools to which children in the current Year 6 at TGPAHH have been offered places in 2023 (or any other destinations). I have converted that data into a percentage of the number of children in Year 6 and put the results in Table 7.

Table 7: Secondary schools to which children in the current Year 6 at TGPAHH have been offered places in 2023

<b>Secondary school (LA) at which places have been offered</b>	<b>Per cent of children from Year 6 at TGPAHH</b>
Alcester Grammar School (Warwickshire)	6.7
Alderbrook School (Solihull)	3.3
Arden Academy (Solihull)	3.3
Heart of England (Solihull)	40.0
King Edward VI School (Warwickshire)	3.3
Light Hall School (Solihull)	3.3
St Peter’s Catholic School (Solihull)	6.7
TGAS	16.7
<b>Other circumstance</b>	-
Moving within UK	3.3
Warwickshire resident – placed in home LA	10.0
Birmingham resident – placed in home LA	3.3

45. The LA also provided the number of first, second and third preferences for places at TGAS from parents of children in Year 6 at TGPAHH for September 2023. I have put that data into Table 8.

Table 8: First, second and third preference data for places at TGAS from parents of children in Year 6 at TGPAHH for September 2023

	<b>First Preference</b>	<b>Second Preference</b>	<b>Third Preference</b>
Number of preferences	16	3	5
Number offered	5	0	0

46. The data in Tables 7 and 8 show that for 2023, only five children (16.7 per cent of Year 6 at TGPAHH) have been offered places at the school in September 2023. The LA told me that they were admitted as they had siblings at the school and lived in the catchment area. Table 8 shows, however, that 24 preferences were expressed for places at the school (53.3 per cent of the year group expressed a first preference, 10 per cent a second preference and 16.7 per cent a third preference). If there are similar preferences expressed for 2024 (putting aside the potential for an increase in first preferences as a result of the increase in priority and the increase in possibility of admission to the school) then there could be around 24 children admitted under the new Priority 3. However, although this is 80 per cent of that year group, it is still only 8.6 per cent of the PAN for Year 7 at TGAS. In my view, the numbers are likely to be smaller than that on the basis of the following factors: the LA told me that many of the children attending TGPAHH do not reside in the catchment area and so would not be eligible for admission under the new Priority 3 (though might be under Priority 5); and not all parents whose children do meet the requirements under the new Priority 3 will necessarily want to apply for a place for their child(ren) at TGAS. I am of the view that:

46.1 the number of admissions shown in Table 4 for 2022 (I am not counting 2023 as the LA told me that is the first year where admissions by distance within the catchment area under the current Priority 3 have been impacted by the increase in population in the wider catchment area) is likely to be a realistic indicator of the lower level of applications that might be expected; and

46.2 the number of first and second preferences for 2023 shown in Table 8 (I have included second preferences as a way of reflecting that some parents may choose to express a first preference on the basis of the increased priority) is likely to be a realistic indicator of the upper level of applications that might be expected.

This provides a potential range of admissions of between 4.3 and 6.8 per cent of the PAN under the new Priority 3. Even if more parents are encouraged to apply for places for their children by the increased priority for a place afforded by this change to the arrangements, this is still a small proportion of the total future admissions.

47. In concluding the 'reasonableness test', I do not see evidence in the data presented by the school and the LA that the concern raised will affect the practical operation of the

arrangements in the way that the objectors assert. Paragraph 1.10 of the Code allows an admission authority to, “decide which criteria would be most suitable to the school according to the local circumstances”. In my view, the school has amended its arrangements to give priority to a small number of children who live within its catchment area, who go to a primary school which has recently joined the same trust and where that primary school is located such that: it is some distance away from any other secondary schools in Solihull and, therefore, there is less chance of being admitted on the grounds of distance; and is not in any other secondary school catchment area, including of its nearest secondary school (Arden (Academy)). This means those children cannot easily get places anywhere else. After considering the rationale and future practical operation of the arrangements, I conclude that the addition of TGPAHH as a feeder school under the new Priority 3 meets the reasonableness test and therefore conforms to those parts of paragraphs 1.8 and 1.15 of the Code which require the relevant parts of the arrangements to be reasonable.

48. I have found the arrangements, by way of the new Priority 3, to be reasonable, and therefore now go on to consider the second stage – the fairness of this part of the arrangements. Fairness is a concept, not unlike being ‘reasonable’, that is used in the Code but is not defined. Fairness can be described as a ‘protean concept’, in that it cannot be defined in universal terms, but its requirements will depend on the circumstances. Fairness is focussed on the effect of the arrangements on any relevant group. I stress here that oversubscription criteria create advantage for some applicants and disadvantage to others; indeed, that is their purpose. In relation to admission arrangements, fairness is often best evaluated by undertaking a balancing exercise, 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. In this context, the disadvantage to assess is to those applicants from Tidbury Green who might not get a place at the school, because of the priority that will be afforded to children under the new Priority 3. I will assess fairness in terms of the scale of the disadvantage to those applicants to the school from Tidbury Green, the options – in terms of other schools – available for parents of children in Tidbury Green (compared to those from Hockley Heath), whether the change to the arrangements disadvantages those from lower socio-economic groups and whether the change affects the LA’s ability to fulfil its duty to provide a sufficiency of school places in the area.

49. The data used to test for reasonableness can also be employed in the test for fairness. The data considered earlier show that, although there will be an impact from the change to the arrangements from September 2024, that impact will be small (between 4.3 and 6.8 per cent of the PAN). That data also show that admission numbers from those residing in Tidbury Green are already being impacted by other factors, before the introduction of the new Priority 3. The LA explained the reason for that impact:

“2023 Year 7 intake is the highest nationally as the primary bulge in cohorts now moves into secondary schools. In Solihull pressure on places is also being

experienced due to significant overseas migration into the area, which has taken place over the last two years, in particular within the Tudor Grange Academy catchment area.”

50. These factors are starting to and will have a more significant impact on the admission of children from Tidbury Green going forward than the prioritisation of the admission of children who attend TGPAHH and who live in the catchment area will have when it is implemented.

51. Tidbury Green is in close proximity to one of the largest urban areas in the country (the conurbation of Birmingham, Solihull, Dudley, Wolverhampton and Walsall). Tidbury Green is situated next to the border of Worcestershire (to the west) and Birmingham is to the north. The school, therefore, is unlikely to be the only choice for parents in the area. Using GIAS, I looked at how many secondary schools can be found within three miles of Tidbury Green (again using its primary school as the point from which to measure). I found that there are five schools, one of which is TGAS (which is the furthest away at 2.96 miles). I have put the results for the four remaining schools into Table 9.

Table 9: Secondary schools located within three miles of Tidbury Green

<b>Name of school (and its LA)</b>	<b>Miles from Tidbury Green (Primary) School</b>	<b>School information</b>	<b>Latest Ofsted judgement</b>
Woodrush High School (Worcestershire)	1.27	Non-selective and co-educational	Good
Light Hall School (Solihull)	1.55	Non-selective and co-educational	Good
Christ Church, Church of England Secondary Academy (Birmingham)	2.33	Non-selective and co-educational with a Church of England religious character	None – opened in 2021
Alderbrook School (Solihull)	2.88	Non-selective and co-educational	Good

52. I then found furthest distance data for the last child admitted for 2021 and 2022 and offered for 2023 on the local authority websites for the four schools in Table 9. I have put that data into Table 8, which also includes my calculation of the average furthest distance over that period for the four schools.

Table 10: Furthest distance of last child admitted (in miles) in 2021 and 2022 and offered for 2023



Name of school (LA)	Furthest distance 2021 (miles)	Furthest distance 2022 (miles)	Furthest distance 2023 (miles)	Average furthest distance (miles)
Woodrush High School (Worcestershire)	1.811	1.76	0.992	1.521
Light Hall School (Solihull)	All admitted	3	1.39	2.15
Christ Church, Church of England Secondary Academy (Birmingham)	Not available	All admitted	All offered	n/a
Alderbrook School (Solihull)	1.83	1.02	1.73	1.53

53. The four schools all share the same characteristics as TGAS (non-selective and co-educational). Christ Church, Church of England Secondary Academy is a free school opened in 2021 and so it has not yet been inspected. It is also a school with a religious character.

54. Although a crude method, the average furthest distance data in Table 8 does provide a means by which it is possible to see whether applicants from Tidbury Green could be admitted to any of the four schools. The data show that, on average, applicants from Tidbury Green could be admitted to three of the schools (Woodrush High School, Light Hall School and Christ Church, Church of England Secondary Academy). Applicants from Tidbury Green also have the advantage of being prioritised for Light Hall School by virtue of being located in Zone 3 of the catchment area, which is shared between the school and Light Hall School. In comparison, there is only one school within three miles of TGPAHH (Arden). Looking at the furthest distance data for Arden for the same period as the data in Table 8 (2.22 miles (2021), 3.54 miles (2022) and 1.73 miles (2023)), I calculate an average furthest distance of 2.62 miles. Arden is 2.88 miles from TGAPHH and this means that there are no schools within three miles of Hockley Heath that children from that area are likely to be admitted to (at least not consistently as admission in respect of distance could have been possible in 2022).

55. In carrying out the balancing exercise, I find that the rationale for introduction of the new Priority 3 (“Where children [at TGPAHH] do not secure places at TGAS, they have difficulty in securing places at other Solihull Schools”) appears to be fair to those from Hockley Heath. I also find it not to be unfair to those from Tidbury Green. Parents of children from Tidbury Green can still apply to TGAS and are close enough to other schools such that they have a choice for their children’s secondary education that those in Hockley Heath do not. It is also the case for both areas that admission to the school is not restricted to the new Priority 3; it is also possible that children can be admitted if they have an EHCP that names the school or under Priority 1 or Priority 5 (though the data in Table 2 show that admission under the final Priority is much less likely for the near future).

56. As part of my consideration of fairness, I have taken the opportunity to look at whether the introduction of the new Priority 3 could be unfair to those in lower socio-

economic groups using data from the IoD 2019. The IoD 2019 uses Lower-Layer Super Output Areas (LSOAs) which are standard statistical geographical areas of England designed to be of a similar population size, with an average of approximately 1,500 residents or 650 households. Tidbury Green (LSOA 029B) is calculated to be a marginally more affluent area than Hockley Heath (LSOA 029E), though both are in decile 10 (deciles are calculated by ranking the 32,844 LSOAs in England from most deprived to least deprived and dividing them into 10 equal groups, where '1' is the 10 per cent most deprived and '10' is the 10 per cent least deprived). It is the case that Tidbury Green and Hockley Heath are amongst the most affluent areas in the country and are in the same decile. I find that the change to the 2024 arrangements is not unfair on the basis of it disadvantaging any less affluent groups.

57. I asked the LA if the introduction of the new Priority 3 in the school's arrangements for 2024 will frustrate its ability to fulfil its duty to ensure a sufficiency of places in the area. The LA told me that it would not, stating:

"Based on current migration trends, the LA forecast expects there to be ongoing oversubscription at Tudor Grange Academy – Solihull. In September 2024 and 2027 there is expected to be oversubscription from the catchment area, but sufficient places are planned within the planning area to ensure sufficiency is maintained. Ongoing in-year migration will be monitored as will the pupil forecast to ensure that any change in demand over the coming years is reflected in the number of places available. Solihull LA has secured £7.8M in basic need funding to support the creation of additional places due to the increase in in-year migration."

58. The balancing exercise shows that there is very little potential for disadvantage by the introduction of the new Priority 3 evident in the data provided by the school and the LA. Although there is likely to be an impact on the numbers of children admitted from Tidbury Green in the coming years, the main reason for this will have little to do with the introduction of the new Priority 3 and more to do with factors in the wider catchment area. The impact of the prioritisation of the admission of children who attend TGPAHH and who live in the catchment area is likely to be very small. I have found that the arrangements for 2024 are reasonable and are not causing any unfairness to any identifiable group of children.

59. For these reasons, I do not find the effect of the introduction of TGPAHH as a named feeder primary school, in the way the objectors assert, to be unfair. I, therefore, do not uphold the objection.

## Other Matters

60. Having considered the arrangements as a whole it appeared to me that the following matters do not conform with the requirements of the Code and so I brought them to the attention of the school. These matters are (paragraphs of the Code are indicated where relevant):

- 60.1 As is required by paragraph 1.7 of the Code, Priority (oversubscription criterion) 1 prioritises looked after children and previously looked after children. However, the admission authority has also sought to include, in the same oversubscription criterion, those children who have social and medical needs. There are a number of matters I wish to raise about Priority 1:
- 60.1.1 The Code is clear that looked after children and previously looked after children must be prioritised first in oversubscription criteria. Adding those with social and medical needs to the same criterion does not conform to paragraph 1.7 of the Code.
- 60.1.2 Paragraph 1.16 of the Code states: “If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) [...]” None of the Notes provided in the arrangements explain that which must be included if priority is to be given to those with social and medical needs.
- 60.1.3 Paragraph 1.7 makes clear that: “All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children, including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. Previously looked after children are children who were looked after but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order). All references to previously looked after children in this Code mean such children who were adopted (or subject to child arrangements orders<sup>18</sup> or special guardianship orders) immediately following having been looked after and those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.” Footnote 18 reads: “<sup>18</sup> Child arrangements orders are defined in Section 8 of the Children Act 1989, as amended by Section 12 of the Children and Families Act 2014. Child arrangements orders replace residence orders and any residence order in force prior to 22 April 2014 is deemed to be a child arrangements order.” Priority 1 refers to ‘residence orders’ which were replaced by ‘child arrangements orders’ in 2014. Priority 1 does not, therefore, conform to paragraph 1.7 in this regard and is unclear for parents (paragraph 14).

- 60.2 Under Note 1, the second bullet point states: “Children living nearest the school, measured in a straight line from home to school.” Paragraph 1.13 of the Code states (in part): “Admission authorities **must** clearly set out how distance from home to the school and/or any nodal points used in the arrangements will be measured. [...]” The arrangements do explain that under Note 4, but because of the way it is written, it appears only to be relevant to Priority 5.
- 60.3 In respect of Note 6, paragraph 2.15 of the Code (part) states: “Each admission authority **must** maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. [...]”. The arrangements do not state that when children are added to the list it will be ranked again. The school have not put a date by until when they will maintain the waiting list.
- 60.4 Note 7 states: “Applications received after the closing date are late and will not be processed until after the published offer day. Late applications will be considered when places are allocated from the waiting list.” I raise two issues here:
- 60.4.1 This Note outlines the process in respect of oversubscription. However, it is not clear that if the school is undersubscribed then it is bound by paragraph 15 d) of the Code, which states: “If a school is undersubscribed, any parent that applies **must** be offered a place.” When undersubscribed, children whose parents have applied late must be admitted.
- 60.4.2 Paragraph 2.15 of the Code (in part) states: “[...] Priority **must not** be given to children based on the date their application was received, or their name was added to the list.” It appears that by considering late applications after places are allocated from the waiting list the arrangements do not conform to the Code.
- 60.5 Paragraph 1.13 of the Code (in part) states: “[...] This **must** include making clear how the ‘home’ address will be determined [...]. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent. [...]”. Note 9 states: “The home address is the place where the child is permanently resident with his or her parents. If care is shared between two parents, you will need to provide a copy of the court order defining the arrangement to the council. In the absence of a court order, the council will use the address of the parent who is in receipt of the child benefit. You will need to send a copy of your child benefit award for the last two years”. The use of child benefit is not a reliable indicator of where a child actually lives for most of the time Monday to Friday during school terms. Its use, with no scope for other indicators to be used to establish the address of a

child of parents who do not live together, is unreasonable and unfair and not compliant with the Code.

- 60.6 The arrangements do not include information for parents in respect of the process for admissions outside of the normal age group and is not compliant with the relevant parts of paragraphs 2.18 to 2.20 of the Code.
- 60.7 Paragraph 1.50 states (in part): “Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on the school’s website or their own website (in the case of a local authority) by 15 March in the determination year [...]”. On the school’s website, the 2024 arrangements are still marked as ‘proposed’. Additionally, the catchment area map is marked as 2022. Whilst it may not have changed for 2024, it is unclear for parents in that that the map is relevant to the arrangements for other years (paragraph 14).

61. The school has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed.

62. I raised an additional matter with the school about Note 1:

- 62.1 The first bullet point states: “Children living in catchment who will have an older brother or sister at the school on roll in years 7 to 11 in September 2024.” Given that Year 7 will not have been admitted, this is not clear for parents, in that this is only referring to older siblings in Years 8 to 11 from September 2024.

63. About this, the school responded:

“While we accept that this would be the case in the normal admission round, this oversubscription criteria would also need to be used in the event of two or more in-year applications being received and processed at the same time in circumstances where not all applicants can be offered a place.

Unfortunately, despite the inclusion of the word “older”, it was never our intention to require that sibling priority only applies where the applicant has an older sibling, as that would mean that those applying in-year for higher year groups would not receive this priority if they had a sibling in a younger year group. This scenario is increasingly likely in these days of ‘blended’ families, which could form at any point that students are on our roll in any year group.

We are therefore proposing to keep the reference to Year 7 and to remove the reference to “older” [...]”

64. The school have made a compelling argument in respect of the matter I raised and have also rightly identified an issue that it wishes to address. It is now for the school to ensure that the changes they are now empowered to make to this part of the arrangements (under paragraph 3.6 of the Code) meet the requirements of paragraph 14 of the Code for arrangements to be clear for parents.

65. The Code requires that the arrangements be amended to address the points I have raised within the timescale set out in this determination.

66. I have, while considering this case, been provided by the school with a copy of proposed revised arrangements for 2024/25 in which it has told me that it has addressed the matters I raised. It is not my role to advise admission authorities on how they address matters raised with them, but to indicate where arrangements may not or do not adhere to the Code. It is for the admission authority to ensure that the arrangements adhere to the Code. I record here that I have not looked at those draft arrangements. I do not have jurisdiction to do so, as they are not the determined version of the arrangements. However, I note the commitment that the school has shown to ensuring that the matters I have raised are addressed.

## Summary of Findings

67. The objectors raised a concern in respect of the introduction of a new Priority 3 (prioritising children from Tudor Grange Primary Academy Hockley Heath (TGPAHH) living in the catchment area) from September 2024. The objectors asserted that it will result in families living in Tidbury Green, in a part of the catchment area closer to the school (previously Priority 3 and now at Priority 4 and therefore a lower priority) facing difficulties securing places at the school.

68. I have found that there will be an impact, but that it is small. There are population factors at play in the wider catchment area that have started to and will have more of an impact in the foreseeable future than the implementation of the change to the schools arrangements will have. I have found the rationale and the future practical operation of the new Priority 3 to be reasonable and there to be no indication that its implementation will cause unfairness.

69. I have found other matters in respect of the school's arrangements which I have detailed in the 'Other Matters' section. The school has said it will address them and it must do so in the timescale set out in this determination.

## Determination

70. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2004 determined by the Tudor Grange Academies Trust for Tudor Grange Academy, Solihull.

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

72. 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: 14 August 2023

Signed:

Schools Adjudicator: Dr Robert Cawley