



## Determination

<b>Case reference:</b>	<b>ADA4214</b>
<b>Objector:</b>	<b>A member of the public</b>
<b>Admission authority:</b>	<b>The governing board of The Howard Partnership Trust for the Howard of Effingham School, Surrey</b>
<b>Date of decision:</b>	<b>11 October 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 governing board of The Howard Partnership Trust for the Howard of Effingham School, Surrey.

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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 October 2023.

## 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 a member of the public (the objector), about the admission arrangements (the arrangements) for the Howard of Effingham School (the school or HES), an 11-18 secondary academy, for September 2024.
2. The objection concerns the change to prioritising applicants from the school's catchment area by distance from the school. Particularly, the objector considers the

consultation process that led to that change to have allowed no discussion with consultees about the proposed changes and to have been flawed by virtue of the misrepresentation of information. The objector asserts that the implementation of that change to the distance measurement will cause disadvantage to children living in rural areas and who have no alternative local school. The objector also raises concerns about the disadvantage caused to applicants who were not originally able to gain places at the primary schools named as feeders in the arrangements and the school's catchment area overlapping with that of another school.

3. The school is a member of The Howard Partnership Trust (the trust), the governing board of which acts as the admission authority for the school (the admission authority). The local authority (LA) for the area in which the school is located is Surrey County Council. The trust and the LA are parties to this objection. Other parties to the objection are the objector and the school.

## **Jurisdiction**

4. 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. These arrangements were determined by the trust on that basis.

5. The objector submitted her objection to these determined arrangements on 14 May 2023. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

6. Through my consideration of the objection, I identified two matters where the arrangements do not conform to the requirements relating to admission arrangements. These were not raised by the objector. I have, therefore, done so myself using my power to do so as conferred by Section 88I of the Act. The two concerns relate to the school's oversubscription criteria. One in particular concerns the misuse of the term 'tie-breaker' which has a bearing on how the objection and responses from the trust and LA have been worded, given that parts of the objection are focussed on that part of the arrangements. As a result, I have covered my concerns about these matters where those criteria are listed (see the 'Background' section) in order that the matters can be highlighted before progressing to the 'Consideration of Case' section.

## **Procedure**

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

8. The documents and information I have considered in reaching my decision include:

- a. a copy of the minutes of the meeting of the governing board of the trust at which the arrangements were determined;

- b. a copy of the determined arrangements for 2023/24 and 2024/25;
- c. the objector's form of objection dated 14 May 2023;
- d. the responses of the trust and LA to the objection along with supporting documents;
- e. confirmation of when consultation on the arrangements took place and details of the nature of the consultation;
- f. a copy of the trust's master and supplementary funding agreements;
- g. information available on the websites of the school, the LA, the Department for Education (DfE) (particularly the 'Get Information About Schools' (GIAS) site) and Ofsted;
- h. the Map Developers' 'draw a circle' website tool; and
- i. a previous determination for Stamford Green Primary School (case reference number ADA3589), referred to by the objector.

## The Objection

- 9. The objector expressed the following concerns:
  - 9.1. The change in the arrangements for 2024/25 to prioritising by distance from school within each individual oversubscription criteria (thereby removing prioritisation for those 'who live furthest from their nearest alternative school' for those applying from within catchment) causes disadvantage to children in rural parts of the catchment area where there is no alternative local school.
  - 9.2. The consultation to introduce the change to that distance measurement for oversubscription criteria prioritising those applying from the catchment area:
    - 9.2.1. provided misleading information and was therefore flawed, in that:
      - 9.2.1.1. the outcome of the determination of the arrangements for Stamford Green Primary School (case reference number: ADA3589), in respect of the use of the 'nearest school' oversubscription criterion, was misrepresented in order to justify the change to the school's arrangements being proposed; and
      - 9.2.1.2. the reason why the LA subsequently removed the 'nearest school' criterion from its arrangements was misrepresented.
    - and
    - 9.2.2. did not allow for any discussion regarding the proposed changes.

- 9.3. The catchment area of the school overlaps that of the Cobham Free School (in the KT11 postcode area), which means that some children are in the priority area for two schools and the catchment area for the school therefore should be altered so that it does not include that area.
- 9.4. Parents living in catchment, who are unable to get places for their children in the closest five out of the six named feeder primary schools, are disadvantaged because they are not then prioritised for a place at the school (which is their local secondary school) by virtue of their children having to attend primary schools that are not named as feeders and which are further away from the school.

10. The objector did not indicate the parts of the Code that she believed the arrangements contravene in respect of the matters she raised. I have determined that the following parts of the Code are applicable in respect of the objection:

- 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 15 b) (part): The “consultation period allows parents, other schools, religious authorities, and the local community to raise any concerns about the proposed admission arrangements.”
- Paragraph 1.13 (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. This **must** include making clear how the ‘home’ address will be determined and the point(s) in the school or nodal points from which all distances will be measured. 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.”
- Paragraph 1.14 (part): “Catchment areas **must** be designed so that they are reasonable and clearly defined.”
- 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.”
- Paragraph 1.8: “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that

other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

- Paragraph 1.34 (part): “Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after children and previously looked after children are prioritised.”
- Paragraph 1.45 (part): “When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year.”
- Paragraph 1.46: “Consultation **must** last for a minimum of 6 weeks and must take place between 1 October and 31 January in the determination year.”
- Paragraph 1.47 (part): “Admission authorities **must** consult with:
  - a) parents of children between the ages of two and eighteen;
  - b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
  - c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
  - d) whichever of the governing body and the local authority is not the admission authority;”
- Paragraph 1.48: “For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on the school’s website or its own website (in the case of a local authority) together with details of where comments may be sent and the areas on which comments are not sought. Admission authorities **must** also send, upon request, a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals.”

11. In respect of those parts of the objection relating to the consultation carried out by the trust, I pause here to note that it is my role to consider whether the arrangements are compliant with the Code or not. If I find that there are no breaches of the consultation requirements as set out in the Code, it would not necessarily follow that the arrangements would be compliant with the Code. Should I find there have been breaches of the consultation requirements as set out in the Code, it would not necessarily follow that the arrangements would not be compliant with the Code and it would not be the case that a

direction would be made for further consultation on the arrangements be held. I have no power to require that and, in any case, it is self-evident that no such consultation could be held before the arrangements have to be implemented. Nor do I have a power to require the admission authority to revert to its previous arrangements. A finding that consultation did not meet requirements can be made by the adjudicator. Such a finding would form part of my consideration of the compliance of the arrangements; any defects I might find in the consultation process would be remedied by raising any resulting non-compliance with the admission authority and the admission authority consequently meeting the requirement to ensure that the arrangements are varied such that they do comply with the Code.

12. Two of the concerns raised by the objector assert the relevant parts of the arrangements cause disadvantage. I note here that all admission arrangements create advantage for some applicants and disadvantage to others; indeed, that is their purpose. However, any disadvantage must not be unfair. To test the fairness of those parts of the arrangements that have troubled the objector, I will first consider whether those aspects are reasonable. Only if they are found to be reasonable will I then consider whether the arrangements are fair. I will say more about how I will go about testing ‘reasonableness’ and ‘fairness’ at the relevant point in the determination.

## Background

13. The school is a secondary academy for 11 to 18 year olds, located in Effingham, near Leatherhead in Surrey. Information on the GIAS website states that the school converted to academy status on 1 July 2011. It is a non-selective and co-educational school with a sixth form. The school is one of 13 academies in the trust (four of which are secondary academies, six are primary academies and three are special academies). Ofsted rated the school as ‘Good’ in December 2019. The published admission number (PAN) for the school is 240.

14. The trust provided me with data showing the number of children in each year group (as of July 2023). I have put that data into Table 1.

Table 1: Number of children in each year group (as of July 2023)

<b>Year Group</b>	<b>Number of children</b>
7	246
8	227
9	238
10	249
11	232
12	177
13	151
<b>Total</b>	<b>1520</b>

15. The arrangements for 2024 were determined by the trust on 7 February 2023 after a consultation period which took place between 25 November 2022 and 13 January 2023. The focus of the consultation was reported by the trust to have been exclusively on

removing prioritisation for those 'who live furthest from their nearest alternative school' from those applying from within the catchment area (oversubscription criteria 3, 4 and 5 – see below) and standardising those in-catchment oversubscription criteria with other criteria which prioritised by distance from the school.

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

1. Looked after and previously looked after children.
2. Children with an exceptional social / medical need.
3. Children with siblings at the school who live within the catchment area.
4. Children who live in the catchment area and who attend one of the following feeder schools:
  - Oakfield Junior School
  - Eastwick Junior School
  - St Lawrence Primary School
  - The Raleigh School
  - Great Bookham School
  - The Royal Kent CofE Primary School.
5. Children who live in the catchment area who do not attend one of the feeder schools named above.
6. Children with siblings at the school who do not live in the catchment area.
7. All other children.

The arrangements then say:

“Tiebreak

If there is oversubscription within any criterion, priority will be given to children who live closest to the school (see Note 6).”

The relevant parts of Note 6 then state:

“Note 6: Distance Measurements & Tiebreakers

Where any category is oversubscribed, applicants will be ranked according to the straight line distance that they live from the school, with priority being given to children who live closest to the school. Home to school distances are measured in a

straight line from the address point of the child's home, as set by Ordnance Survey, to the nearest school gate for students to use. The measurement does not take into account the mode of transport used. This distance will be calculated using Surrey County Council's Admissions Team's Geographical Information System.

If, within the category above there are more children than places available, any remaining places will be offered to children who meet this criterion on the basis of proximity of the child's home address to the school. Where two or more children are deemed to be equidistant, random allocation will be used to determine priority”.

(There is an issue with the way the distance measurement has been labelled (as 'Tiebreak') in the arrangements which is dealt with below).

17. Although the 2023/24 arrangements are not the focus of my determination, for the purposes of comparison with the 2024/25 arrangements I include what has been labelled the 'Tie-break' from the school's arrangements for 2023/24 here:

“Tiebreak within catchment

If there is oversubscription within a catchment area criterion, priority will be given to children who live furthest from their nearest alternative school, regardless of whether or not a place could have been gained at that school (see Note 6).

Tiebreak outside catchment

If there is oversubscription within a non-catchment area criterion, priority will be given to children who live nearest the school [...]"

18. I raise here two concerns I have with this part of the arrangements. The objector has not raised these matters and I am, therefore, doing so myself under Section 88I of the Act:

18.1. The sections entitled 'Tiebreak' do not describe the tie-breaker, but the distance measurement used to prioritise admission within each of the oversubscription criteria. This means that these mislabelled sections will cause the arrangements not to be clear for parents (paragraph 14 of the Code).

18.2. Under Note 6 in the arrangements, it is stated that in the event of two applicants being equidistant from the school, then random allocation will be used to determine priority. However, the arrangements do not then clearly set out how this will operate. As a consequence, the arrangements are in breach of paragraph 1.34 of the Code.

The mislabelling of this part of the arrangements means that this particular objection has been referred to by parties as the 'tie-breaker' rather than the 'distance measurement'. This means that I have amended quoted material to refer to the 'distance measurement' and not the 'tie-breaker'.



The trust must address these matters in the school's arrangements within the timescale set out in this determination.

19. According to GIAS, there are five other secondary schools and one all through school within five miles of the school's postcode (with distance in miles in brackets): Therfield School (3.46); The Ashcombe School (3.72); The Priory CofE Voluntary Aided School (3.96); St Andrew's Catholic School (3.98); and Cobham Free School (4.57). Cobham Free School is the all-through school. The six feeder schools listed under oversubscription criterion 4 are the following distances from the school (miles in brackets): St Lawrence Primary School (0.21); Great Bookham School (0.92); Eastwick Junior School (1.35); Oakfield Junior School (2.04); The Raleigh School (2.29); and The Royal Kent CofE Primary School (4.24). There are eight other schools with students in Year 6 (who may apply for places at the school) within the same distance from the school's postcode as the furthest feeder school (The Royal Kent CofE Primary School) that are not feeder schools (again with miles in brackets): Leatherhead Trinity School and Nursery (3.48); St Martin's CofE Controlled Primary School, Dorking (3.51); Surrey Hills All Saints Primary School (3.71); St Peter's Catholic Primary School (3.93); Powell Corderoy Primary School (3.97); St Joseph's Catholic Primary School (4); and St Andrew's CofE Primary School (4.24).

20. The LA has a duty to make sure that there are sufficient places for the children in its area. To fulfil this duty the LA assesses the likely future number of places to be needed and plans to meet that need. The LA uses planning areas, which are geographical groups of schools, for this purpose. Therfield School, St Andrew's Catholic School and HES are the three schools that make up the LA's Leatherhead planning area (the planning area). The LA provided me with projections for the numbers of children for the schools in the planning area, which I have put into Table 2.

Table 2: Forecast demand for places in Year 7 in the planning area between 2023/24 and 2031/32

<b>Year</b>	<b>Year 7 places</b>	<b>Year 7 forecast</b>	<b>Surplus / deficit</b>
2023/24	690	665	25
2024/25	690	633	57
2025/26	690	662	28
2026/27	690	688	2
2027/28	690	651	39
2028/29	690	654	36
2029/30	690	669	21
2030/31	690	656	34
2031/32	690	652	38

21. As can be seen from the data, other than in 2026/27 when there is only a surplus of two places, there is a projected surplus of between 21 and 57 places (between 3 and 8.2 percent of the total number of places) in Year 7 in the planning area over the period shown.

22. The LA administers the admission process on behalf of the trust for the school.

## Consideration of Case

23. I deal with the matters raised in the objection in three sections: the consultation process (which is covered first as it also sets the scene for the second of the three matters); the disadvantage the objector asserts that two parts of the arrangements will have on specific groups of children; and the catchment area. The first two of those sections are related and the third appears to me to be a separate issue.

### The consultation process

24. Before I look at the objector's specific concerns, I pause here to look at the consultation process overall. In respect of the requirements for consultation, as set out in the Code, the trust told me that:

"In respect of para[graph] 1.45 [of the Code], we confirm that consultation was duly carried out.

[...] In respect of para[graph] 1.47, the consultation was distributed as follows:

a) parents of children between the ages of two and eighteen; The consultation was sent to all Nursery, Infant and Primary Schools in the Leatherhead cluster, including our traditional feeder schools, and all Heads in South West Surrey Secondary Schools, a copy of our consultation for their consideration

b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions The consultation was sent to stakeholders in surrounding Parish Councils, District Councils and local churches

c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools) By consulting the [LA] and all other schools, including faith schools in the relevant areas, we have fulfilled the requirement to consult all other admission authorities

d) whichever of the governing body and the local authority is not the admission authority; In complying with c) above, our consultation encompassed both the [LA] and the governing body of every LA maintained school in the relevant area[.]

[...]

In respect of para[graph] 1.48, we can confirm the consultation was published on the Howard of Effingham School's website for the duration of the consultation period."

25. I note that a consultation took place and the period over which the consultation was held (25 November 2022 and 13 January 2023) was in line with the requirements as set out under paragraph 1.46 of the Code. I also note what the trust has told me it did in terms of ensuring the requirements of paragraph 1.47 were met. The objector provided me with evidence that she submitted a response including her views on the proposal during the

consultation. I note, therefore, that she was aware that the consultation was taking place at the appropriate time and understood that she could make such a submission.

26. About the consultation process, the objector was specifically concerned that the information provided about the reason for the change to the way admissions would be prioritised for those applying for places from within the catchment area was ‘misleading’. The objector asserts this was because the trust misrepresented the findings of the adjudicator in the Stamford Green Primary School determination (case reference number: ADA3589) and the reason why the LA subsequently removed the ‘nearest school’ criterion from its arrangements. The misrepresentations, the objector opines, were in order to justify the change the trust was proposing to make. The objector was also concerned that no opportunity for discussion of the proposal was provided during the consultation period. I will deal with both of these matters separately and the second of those matters first.

27. The term ‘consultation’ is not defined in the Code, though paragraphs 1.45 to 1.47 of the Code require an admission authority, should a change to admission arrangements be proposed: to undertake a consultation; to do so during a set time period; and that specified stakeholders (as summarised under paragraph 15 b) of the Code) are to be part of that consultation. Public consultation prior to the determination by admission authorities of their arrangements is an important feature of the Code’s general stance that school places are offered in an open and fair way. The process of consultation allows public bodies to seek views and consider the impact on those affected by the change(s) being proposed. Paragraph 15 b) of the Code states that consultations allow stakeholders to raise any concerns about the proposed admission arrangements. The objector was concerned that no opportunity for ‘discussion’ of the proposal was provided by the trust. By ‘discussion’, I have taken the objector to mean ‘a debate or conversation’ about the proposal. The Code does not require that such an opportunity is provided; only that it should provide a mechanism by which views can be expressed. Whilst those views should be ‘taken into account’, they do not have to be discussed with those submitting such views – though I note that the objector told me that the trust did respond to her submission (despite not being compelled to do so) – or adopted by the trust. On the basis that the Code does not require an admission authority to enter into discussions with stakeholders during consultation periods, I do not uphold this part of the objection.

28. I turn now to that which the objector asserted was misleading in the trust’s consultation documentation. When looking at a copy of that documentation, I noted the following rationale was put forward for the change proposed:

“We are proposing to make this change to our admission arrangements because of the outcome of an objection made in respect of another Surrey school to the Office of the Schools Adjudicator (OSA), which is the body responsible for such matters. The OSA identified some concerns with the use of ‘nearest school’ in that school’s admission arrangements and the objectivity and clarity regarding this. Following this outcome, Surrey County Council carried out a consultation process to remove the use of the term ‘nearest school’ in the admission arrangements for all schools for

which it is responsible. Most academies and Multi-Academy Trusts in Surrey, including The Howard Partnership Trust, have also taken the decision to do this.

The removal of use of 'nearest school' makes the admission arrangements for the school simpler and more transparent as it enables every family to understand how their application will be considered and prioritises a child based on their home's proximity to the school.

It is important to note that home to school distance is not being removed as a category for admission. After siblings, priority will be based on straight line distance from the child's home address to the school.

The proposal reflects the need to clarify the mechanisms used for determining distance when using a tie-breaker in the event of oversubscription. The explanatory Note 6 will be adjusted to explain how we will prioritise applicants and how we measure distance."

29. I note that the trust used the term 'nearest school' in the consultation documentation and not 'nearest alternative school' as was in the wording of the distance measurement in the arrangements at that time. As I pointed out earlier, it also referred to the 'tie-breaker' which was not the appropriate part of the arrangements (though it was mislabelled as such). With regard to the use of 'nearest school', the trust should have been careful to reproduce the wording as it was then in the arrangements and to which the proposed change related. Also, it should have referred to 'distance measurement' and not 'tie-breaker'. However, I do not find that these matters constitute the trust being misleading or that it causes the consultation to be found flawed; it would have been clear to consultees which part of the arrangements the proposed change was referring to.

30. The objector provided the following response submitted to the trust during the consultation:

"The information presented for the consultation implies that using "nearest school" in admissions criteria is inherently unfair and against the school code. This is not, in fact, the case. The Office of the Schools Adjudicator (OSA) does not have concerns about having "nearest school" in the oversubscription criteria. In the report cited, the OSA concluded only that "the definition of nearest school in [Stamford Green Primary's] arrangements is not clear and the exclusion of some schools from consideration as nearest school is not objective. [The arrangements] need to be clearly defined. At the moment they are not." There was no obligation for the school to remove the "nearest school" criterion - only that the information had to be made clear.

The report also stated, "Determinations by the Schools Adjudicator do not set precedents and circumstances in each case are different." They did not recommend that any Surrey school remove "nearest school" as an oversubscription criterion.

[The LA] subsequently elected to remove “nearest school” from the admissions criteria for the schools where they felt it had no bearing on places being allocated. They have, however, kept the principle for some schools and have proposed to use a catchment area based on “nearest school” in lieu of reviewing definitions and amending where necessary.”

31. I start by noting that the objector is quite right that adjudicator determinations do not set precedents. However, it is useful for the reader if I set out what was at issue in the Stamford Green Primary School case in 2019. The adjudicator found that the definition of ‘nearest school’ in the 2020 arrangements for that school was not clear or objective and so did not conform with paragraphs 14 and 1.14 of the Code (in respect of paragraph 1.14, the use of ‘nearest school’ criterion defines a polygonal geographical area, residence within which gives a child priority for a place at the school, which meets the definition of a catchment area). To be clear, it was how ‘nearest school’ was defined in those arrangements and not the use of ‘nearest school’ as a means of prioritising admission that the adjudicator determined the admission authority in that case needed to address to conform with the requirements of the Code.

32. In its response to the objection, the LA told me, in respect of the Stamford Green Primary School determination, that:

“The immediate clarification was applied to the admission arrangements for 2020, as required by the adjudication, and thereafter the local authority committed to review this aspect of its arrangements. As a result, over the last few years, [the LA] has carried out a review of the admission arrangements for all of its community and voluntary controlled schools which used ‘nearest school’ as a criterion, to assess whether it had made any difference to the intake, the value of retaining this as a criterion and to consider alternatives, such as a published catchment. Different approaches have been taken for different schools, depending on the circumstances and, as changes have been proposed, [the LA] has undergone full consultation with stakeholders [in] 2022, 2023 and 2024 [...].

As a number of own admission authority schools in Surrey also used ‘nearest school’ as a criterion within their admission arrangements, the [LA] wrote to these schools to flag the 2019 determination and to suggest they review their arrangements to ensure they were compliant with the Code. [...].”

And that:

“We do not accept that ‘the reason why Surrey County Council subsequently removed the ‘nearest school’ criterion from its arrangements was misrepresented’ by the school and believe that the principles of the OSA determination in 2019 in relation to nearest school apply equally to the tie-breaker used by [HES]. Whilst the previous OSA determination referred mainly to the assessment of ‘nearest school’ and how parents might know whether or not a school was deemed to be their nearest, the same principle applies to the assessment of ‘nearest alternative school’ that might allow a parent to consider how the tie-breaker might be applied to them.”

33. After looking at how the rationale for the proposed change was presented by the trust in the consultation documentation, I do not find that it misrepresented the outcome of the Stamford Green Primary School determination. In any case, what is of paramount importance is that the consultation met the requirements of the Code and set out clearly what was proposed. In this case, the rationale clearly set out what prompted the trust's decision to propose the change and provided an objective high-level summary of the outcome of the Stamford Green Primary school determination. The objector raised the concern that: "The information presented for the consultation implies that using "nearest school" in admissions criteria is inherently unfair and against the school code." I do not find that the rationale implied that which the objector asserts. The explanation of the outcome of the determination in that case was that: the adjudicator had 'concerns' about the 'objectivity and clarity' of use of the 'nearest school' criterion in that school's arrangements; and that the trust removing this from the distance measurement in the arrangements for HES would make it 'simpler and more transparent'. I do not find that the rationale stated or implied that "using 'nearest school' in admissions criteria is inherently unfair and against the school Code". I do not uphold this part of the objection.

34. In respect of how the consultation documentation represented the action the LA subsequently took as a result of the adjudicator's findings, the LA stated that: "Following this outcome, [the LA] carried out a consultation process to remove the use of the term 'nearest school' in the admission arrangements for all schools for which it is responsible." The LA told me that the adjudicator's finding in the Stamford Green Primary School case triggered its subsequent consultations and it provided me with the materials it has produced for consultations in respect of the arrangements for its community and voluntary controlled schools in 2022, 2023 and 2024. In the 2022 consultation documentation, it stated:

"What changes are being proposed?"

1. Removal of use of 'nearest school' as a criterion – majority of community and voluntary controlled schools

Surrey has 92 community and voluntary controlled schools. Of these, 87 currently give some level of priority to children who have the school as their nearest school, as measured in a straight line from the child's home address. As part of this consultation it is proposed that, for 79 of these schools, priority for children who have the school as their nearest school will be removed [...]"

35. I find that the statement about this in the trust's consultation documentation was inaccurate (as the LA consulted on the removal of the use of 'nearest school' for the majority of its schools, but not all of them). The objector raised the concern that the trust mislead with the intent to achieve its goal. Whilst the statement may have had the effect of misrepresenting the situation, I have not been provided with any evidence that this was a deliberate or calculated plan by the trust to mislead consultees. I find, on the balance of probabilities, that the trust has rather oversimplified the reason for the LA's consultation process on the same issue but not that it has done so in bad faith. I therefore do not uphold this aspect of the objection.

## Disadvantage to children

36. The objector asserted that there are two ways that applicants for places at the school will be disadvantaged by the arrangements:

1. The change to prioritising admission by distance from the school for those applying from within the catchment area would disadvantage children in rural parts of the catchment area who do not have access to an alternative local school.
2. Under oversubscription criterion 4, children in-catchment who cannot get places in the closest five out of the six named feeder primary schools would not then be prioritised for a place at the school (which is their local secondary school) by virtue of their children having to attend primary schools that are not named as feeders and are further away.

I will consider each one in turn.

The change to prioritising admission by distance from the school for those applying from within the catchment area will disadvantage children in rural areas who do not have access to an alternative local school

37. When considering the disadvantage that the objector asserts is caused by the change to the distance measurement for oversubscription criteria 3, 4 and 5, I will consider the reasonableness and fairness of this aspect of the school's arrangements. I will adopt a two stage approach: first, I will assess whether the change to the distance measurement is reasonable. If I find that it is unreasonable, the change to the distance measurement would be non-compliant with the Code and I would not need to proceed to the second stage. If the change to the distance measurement is found to be reasonable, I will go on to look whether the effect of the change is fair.

38. 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 change to the distance measurement (affecting oversubscription criteria 3, 4 and 5) 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.

39. The rationale for the change, when it was proposed in the consultation, was set out in the previous section of this determination. The trigger for the change was the advice from the LA to all schools in its area on the issue of the use of 'nearest school' for prioritising admission arising from the outcome of the adjudication on the Stamford Green Primary School case. Whilst it was open to the trust to act on the advice of the LA by providing a

clearer definition of what prioritising admission by 'nearest alternative school' meant, it chose to take the opportunity to review how it could make the distance measurement, that applied to oversubscription criteria covering applications from those living in the catchment area, simpler and more transparent, and enable "every family to understand how their application will be considered". The LA's view about this was:

"it is our view that the introduction of [prioritising admission] by straight line distance will be easier for parents to understand. The previous [measure] of 'furthest distance from the nearest alternative school' was difficult for parents to assess or to understand how they might be ranked and so might be considered to be contrary to paragraphs 14 and 1.8 of the School Admissions Code."

40. In respect of Part 1 of the 'reasonableness test', I find that the trust was transparent about its rationale for the introduction of the new distance measure. The information included in the consultation documentation and in the responses to the objection by the trust and the LA sets out clear reasoning and provides a rational, and therefore reasonable, justification for the change it was proposing at that time and has since implemented in its arrangements for 2024/25.

41. 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 the concern raised by the objector and in the context of my findings in Part 1 of the test. As the change in question has not yet been implemented, I will use recent, current and projected data and information which has been provided by the trust and LA insofar as that is relevant and which indicates how this change might practically operate from September 2024.

42. The school has a wide catchment area encompassing Great Bookham and Fetcham to the east, Cobham to the north, West Horley to the west and Ranmore Common to the south. The school is in Effingham, which is roughly south-south-east of the centre of the catchment area. Save for Great Bookham, Fetcham and East Horley, the catchment area is predominantly rural, though the area south of Effingham is the most sparsely populated.

43. The trust told me that the school admitted 232 children in 2020, 207 children in 2021 and 246 children in 2022. The PAN of 240 was only exceeded for 2022 as a result of a special request from the LA to admit refugee children after the start of the academic year. Taking that into account, it is clear from this data that the school is not oversubscribed and this meant that everyone that applied, whether living in an urban or rural area and whether in or out of the catchment, was admitted. In fact, the trust told me that "the tie-breaker has never had to be implemented". Given the misuse of the term 'tie-breaker', I take the trust to have meant that the oversubscription criteria, employing the distance measurement (currently 'nearest alternative school'), has never had to be implemented.

44. The data recorded earlier in Table 2 show that there will be a surplus of places in the planning area until 2031/32 which means that the school is unlikely to be oversubscribed for the next eight years. In its response to the objection, the LA said:



”It is the Local Authority’s view that the change of [distance measurement] within catchment, so children are prioritised based on straight line distance to the school rather than the furthest distance from the nearest alternative school, will not cause disadvantage to children in rural areas because, for at least the past ten years, all children in catchment who have applied on time have been offered a place at the Howard of Effingham School. As such, it is not anticipated that this change in [the distance measurement] will have any impact on the pattern of admission to the school.”

45. The objector was concerned that those in rural parts of the catchment area would be disadvantaged by the change to the distance measurement because they had no alternative local school. Earlier, I noted that there are five other secondary schools within five miles of the postcode of HES. They are (with distance from the school’s postcode in miles in brackets): Therfield School (3.46); The Ashcombe School (3.72); The Priory CofE Voluntary Aided School (3.96); St Andrew’s Catholic School (3.98); and Cobham Free School (4.57). I looked at the admission data summary document published on its website by the LA for 2023, which included furthest distance data (in km) for the last child admitted (where distance is used as an admission criteria) to all of these schools. Three of those five schools use distance as part of their oversubscription criteria. I have put the data into Table 3.

Table 3: Furthest distance data (in km) for the last child admitted in 2023 for the three schools within five miles of HES that use distance in admission criteria

<b>School</b>	<b>Furthest Distance (km) 2023</b>
The Ashcombe School	6.518
St Andrew’s Catholic School	4.449
Cobham Free School	1.132

46. Although a crude method, the data in Table 3 does provide a means by which it is possible to see whether applicants from rural parts of the school’s catchment area could be admitted to any of the three schools. I plotted the data using the Map Developers’ ‘draw a circle’ website tool. The ‘draw a circle’ website tool allows a user to input a postcode and a distance from it. The tool then draws a circle, the radius of which is the distance input, onto a Google map. I used this tool to plot the postcodes and the furthest distance of the last child admitted for each of the schools in Table 3. I found that, although children from rural parts of the school’s catchment area would not have been admitted to Cobham Free School, they could have been admitted to The Ashcombe School or St Andrew’s Catholic School in 2023, as the circles created by the furthest distance data for the schools encompass almost the entirety of the catchment area for HES. The small area in the north-west of the catchment, which is not covered by the circles created by the further distance data for the two schools, is close to Woking where there are other local secondary schools families in that area are able to apply to.

47. Data from the LA in Table 2 show that there will be a surplus of places in the planning area for at least the next eight years. I note the responses of the trust and LA which state that it is unlikely that the distance measurement will need to be used as HES will not be oversubscribed in the period shown in Table 2. However, should the school be oversubscribed for any reason, I do not see evidence that the concern raised by the objector would be played out in the practical operation of the arrangements in the way that has been asserted. The objector's argument is based on children in the rural parts of the catchment area being disadvantaged because they do not have access to another local school. That is not borne out by the most recent admission data. For that reason, I conclude that the new distance measurement meets the reasonableness test and therefore conforms to those parts of paragraphs 14 and 1.8 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 distance measurement to those oversubscription criteria prioritising admission from the catchment area, 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 re-state here that it is the purpose of oversubscription criteria to create advantage for some applicants and disadvantage to others. 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 who apply for places at HES from rural parts of the catchment area.

49. About fairness, the objector argued in her response to the consultation:

"Changing admissions criteria to make them simpler does not necessarily make them fairer. The Nearest Alternative School (NAS) [distance measurement] was introduced by Surrey County Council (SCC) to make the process fairer for children in rural areas who have no alternative local school. The proposed change would create a disadvantage for those children. The [NAS distance measurement] was clear, objective, and fair at the time it was introduced, and that is still the case today."

50. The objector has not provided any evidence of the how the change to the distance measurement for those applying from the catchment area would create a disadvantage for children in rural areas in-catchment who have no alternative local school. The trust and the LA told me that there has been no disadvantage to those applicants in previous years; the 'nearest alternative school' measurement has never had to be implemented. About the use of that measurement, the LA said in its response to the objection that:

“[...] it might be considered to be unfair [...] to give priority on the basis of a child’s distance to another school. Just because a child lives closer/further away from their nearest alternative school when compared to other applicants does not necessarily mean that it is fair for them to receive lesser/higher priority for their preferred school of [HES], as this does not take in to account whether or not they might be offered a place at their nearest alternative school. It seems unfair to give higher priority to a child who lives further away from their nearest alternative school but might have been eligible for a place at that school, than a child who lives closer to their nearest alternative school but would not have been eligible for a place there.”

51. I have already shown, when considering the reasonableness test, that it is not the case that there is no alternative local school. It does not appear that the new distance measurement will be implemented for the foreseeable future. However, if circumstances change and the school was to be oversubscribed, then disadvantage is mitigated to the extent that it would not necessarily be the case that applicants from rural parts of the school’s catchment are limited only to admission to HES.

52. I asked the LA if the introduction of the new distance measurement 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:

“[...] the LA does not expect this change to frustrate its ability to fulfil its duty to ensure a sufficiency of places in the area from September 2024. For at least the past 10 years, all children have been offered a place under criteria 3, 4 and 5. Forecasts for the Leatherhead planning area [...] also show a surplus of places until 2031/32 and so we do not anticipate that a change to the [distance measurement] for criteria 3, 4 and 5 will affect the school’s ability to offer a place to children ranked under these criteria.”

53. The balancing exercise in this regard shows that there is very little disadvantage evident in the data and information provided by the school and the LA. I have found the change to the distance measurement to be reasonable and I do not find that it is likely to cause unfairness in the way that has troubled the objector. For these reasons, I do not uphold this part of the objection.

Children living in the catchment area who cannot get places in the feeder schools named under oversubscription criterion 4 and consequently would not be prioritised as highly when it comes to applying later for places at HES

54. About this, the objector wrote in her response to the consultation:

“Oversubscription criterion #4 gives priority to those attending six named ‘feeder’ schools. These are the five nearest primary/junior schools plus a school that is 14th closest to [HES]. Many children living in the catchment area of [HES] are unable to get places at any of the named feeder schools and have to travel out of the local area: eg to Clandon, Leatherhead and Guildford. Such children have been deprived of the opportunity to attend a local primary school, and it is wrong to disadvantage

them further by using this as a reason to assign them a lower priority for admission to a local secondary school. Removing criteria #4 completely would simplify the process and make it fairer for all children living within the catchment area.”

55. 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’ I will look at this concern using the same reasonableness test and assessment of fairness that I applied in the previous section of this determination when considering the concern the objector raised regarding the new distance measurement for those applying from in-catchment.

56. In terms of Part 1 of the reasonableness test, the trust told me that the reason for the specific feeder schools being named under oversubscription criterion 4 was:

“Our transparent and reasonable grounds for including these schools are that they have been the natural and traditional feeder schools to Howard of Effingham School for at least 25 years.

[...] these traditional links have encouraged cohesive and partnership working between Howard of Effingham and our feeder schools, which supports effective transition for children into Year 7 in the local area.”

57. The LA responded with a similar explanation, telling me that:

“The schools that have been named as feeder schools are deemed by the Local Authority to be transparent and made on reasonable grounds as they are clearly named and they reflect the schools that have historically fed children to the Howard of Effingham school.”

58. Paragraph 1.15 requires that the naming of feeder schools in arrangements is transparent and made on reasonable grounds. The arrangements are transparent in that the schools are clearly identified. So far as reasonableness is concerned here, I find that the longstanding relationship between the named feeder schools and HES is a reasonable ground for the naming of those specific schools under oversubscription criterion 4.

59. I turn now to Part 2 of the reasonableness test. The consideration of the practical operation of the arrangements is, as with the consideration of the matter covered in the previous section of determination, largely understood through the fact that the school has been undersubscribed for over ten years and is likely not to be oversubscribed for at least the next eight years. About the objector’s concern, the LA responded:

“There appears to be no disadvantage if parents are unable to get their children in to the closest five out of six named feeder primary schools, because historically for at least the last ten years, all children who live in the catchment have been allocated a place at the school. Notwithstanding this, not all of the named feeder schools were oversubscribed in the 2023 admissions round. After the initial allocation of Reception places for 2023, St Lawrence Primary and Great Bookham Primary [...] schools still had vacancies remaining; and after the initial allocation of Junior places for 2023 Eastwick Junior and Great Bookham Primary [...] schools were also undersubscribed.”

60. I note that the objector has not provided me with evidence that “Many children living in the catchment area of [HES] are unable to get places at any of the named feeder schools and have to travel out of the local area: eg to Clandon, Leatherhead and Guildford” or that there has been disadvantage to any children as a result of the prioritisation of admission under oversubscription criterion 4. The LA have told me that there were surplus places in three of the named feeder schools after initial allocation for admission in September 2023; it is therefore possible for parents to apply for places at named feeder schools. However, even if there were no places in those schools, the situation in respect of prioritisation for admission to HES remains that all children whose parents have applied have been admitted for at least the last ten years and it appears that that situation will continue for at least the next eight years.

61. Having now undertaken Part 2 of the reasonableness test, I do not see evidence that the practical operation of the arrangements in this regard is unreasonable. The prioritisation of admission using named feeder schools meets the reasonableness test and therefore conforms to those parts of paragraphs 14 and 1.8 of the Code which require the relevant parts of the arrangements to be reasonable. Going on to consider the issue of fairness, the balancing exercise shows that there is very little disadvantage evident to children in the catchment area as a result of the application of oversubscription criterion 4. I have found the reasons for the naming of the feeder schools under oversubscription criterion 4 to be reasonable and I do not find that it has caused or is likely to cause unfairness in the way that the objector asserts. For these reasons, I do not uphold this part of the objection.

### **Catchment area**

62. Of the concern about the school’s catchment area, the objector said in her consultation response that:

“When it was created, the catchment area for [HES] was defined using “nearest school”. Since then, however, Cobham Free school has opened nearby and now some children live within the priority catchment areas for both schools. Cobham Free gives priority to those living in the KT11 postcode. Therefore, the [HES] catchment area should be redrawn: either to exclude KT11 or to exclude those living in KT11 for whom Cobham Free is their nearest school.”

63. Paragraph 1.14 of the Code requires admission authorities to design catchment areas which are reasonable and clearly defined. The school’s catchment covers a wide

area. The school's website has a link to a page upon which there is a map of the catchment area. That same webpage includes large scale maps providing a clearer view of eight parts of the catchment area. This provides a resource which allows parents to see more clearly where the boundary of the catchment is in relation to their address than is possible on the small scale map of the whole catchment area. I find that the school has clearly defined its catchment area.

64. I note the response from the LA in respect of this aspect of the objection:

"The catchment area for [HES] is longstanding and existed prior to the opening of Cobham Free School. There is nothing within the School Admissions Code that precludes a school from sharing a catchment area with another school and there are times when a catchment may reasonably serve two schools. . Any proposal to change catchment would need to be consulted on and the school would need to consider who would be displaced as a result and whether that was fair. For the past two years (2023 and 2022) not all children living within the KT11 postcode have been eligible for an offer at Cobham Free School and so any proposal to remove children in the KT11 postcode from the catchment for [HES] must be carefully considered as it may leave some of these children without a school place."

65. There is nothing in the Code which explicitly states that the boundary of one school's catchment area cannot overlap another school's catchment area. Indeed, there are many cases of shared and overlapping catchment areas and, consequently, children living in the catchment area of more than one school. I do not find it to be unreasonable that the school's catchment area overlaps with the catchment area of Cobham Free School or that children may live in the catchment area of both schools.

66. I do not uphold this part of the objection.

## Summary of Findings

67. The objector raised concerns that: the consultation documentation contained information that misrepresented the basis for the reasons for the proposed change to the distance measurement in order for the trust 'to achieve its goals' and such that the consultation was flawed; the change to the distance measurement disadvantages children living in rural parts of the catchment area and who do not have access to an alternative local school; the arrangements cause disadvantage to those in the catchment area who do not secure places in the named feeder primary schools under oversubscription criterion 4 who later go on to apply for places at HES; and the catchment area should not overlap that of Cobham Free School.

68. I have found that: the trust did not set out to deliberately mislead consultees and the consultation process was not flawed; the change to the distance measurement for those applying from the catchment area is reasonable and is not likely to cause unfairness; the reasons for the named feeder primary schools are reasonable and not likely to cause any

unfairness; and that there is nothing in the Code to prohibit catchment areas from overlapping.

69. I, therefore, do not uphold any part of the objection.

70. Whilst considering the objector's concerns, I found that there were two matters that do not conform with the requirements relating to admission arrangements:

- the section entitled 'Tiebreak' in the arrangements does not then go on to describe the tie-breaker, but the distance measurement that will be used under each of the oversubscription criteria. This renders this aspect of the arrangements unclear for parents (paragraph 14 of the Code); and
- under 'Note 6' it is stated that any tie-break situations will be decided by random allocation. The arrangements do not then explain the process of random allocation as is required by paragraph 1.34 of the Code.

71. The school has until the timescale set out in this determination to address these two matters. These are relatively straightforward matters and I have therefore allowed only a short deadline so that the arrangements can be revised by the deadline for secondary school applications of 31 October 2023.

## Determination

72. 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 governing board of The Howard Partnership Trust for the Howard of Effingham School, Surrey.

73. 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.

74. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 October 2023.

Dated: 11 October 2023

Signed:

Schools Adjudicator: Dr Robert Cawley