



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4605, ADA4606, ADA4607

Objector: Sandwell Schools Admissions Service

Admission Authority: The Forge Brook Trust for Delves Infant School, Hillary Primary School, and Palfrey Infant School

Date of advice: 1 September 2026

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 determined by The Forge Brook Trust for Delves Infant School, Hillary Primary School, and Palfrey Infant School for 2027/28.

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 Sandwell Schools Admissions Service (the Objector), about the admission arrangements (the Arrangements) for September 2027/28 for Delves Infant School, Hillary Primary School and Palfrey Infant School (the Schools). The Schools are all a part of The Forge Brook Trust (the Trust, the Admission Authority), a multi-academy trust with five schools in Walsall.
2. The Local Authority for the area in which the Schools are located is Walsall Metropolitan Borough Council (the LA).
3. The LA is a party to this objection. Other parties to the objection are:
 - The Objector
 - The Trust

4. This determination refers to three separate objections to the same issue for the Schools within the same multi-academy trust. The Objector has not requested anonymity. Table 1 sets out the case reference numbers and the date each objection was submitted.

Table 1: Details of case reference numbers considered within this determination.

Case reference	School	Date objection received
ADA4605	Delves Infant School	20/3/2026
ADA4606	Hillary Primary School	20/3/2026
ADA4607	Palfrey Infants School	20/3/2026

5. The objections are all to the oversubscription criterion determined by the Trust to prioritise pupils attending the Schools' nursery provision for admission to Reception (Year R). The objections are that:

“this criterion is not pursuant to the statutory guidance, issued under paragraph 1.8 of the School Admissions Code 2021, which clearly states: oversubscription criteria must be reasonable, clear, objective, procedurally fair and comply with relevant legislation, including equalities legislation.”

The Objector states that:

“as this criterion cannot be applied to all children fairly, I believe this breaches the School Admissions Code”.

6. I would like to take the opportunity to give my thanks to all parties for the way in which they presented their views, responded respectfully to each other's submissions, and for their responses to my requests for further information / data.

Jurisdiction

7. The terms of the academy agreement between The Forge Brook Trust (the Trust) and the Secretary of State for Education require that the admissions policy and arrangements for the Schools are in accordance with admissions law as it applies to foundation and voluntary aided schools.

8. These Arrangements were determined under section 88C of the Act by the Trust which is the Admission Authority for the Schools in February 2026.

9. A consultation period took place prior to the determination of the Arrangements between 19 December 2025 and 31 January 2026.

10. The Objector submitted objections to the determined arrangements on 20 March 2026.

11. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

12. I have read findings in case reference number ADA4193 Holyoakes Field First School and other determinations referred to in that case which considered the introduction of a similar oversubscription criterion. Previous determinations by other schools adjudicators may be relevant and informative. However, they do not set precedent, and I have, therefore, considered the Arrangements in accordance with the requirements set out in legislation and the Code and in the light of the facts and circumstances as they are now.

Procedure

13. In considering this matter I have had regard to all relevant legislation and the Code.

14. The information I have considered in reaching my decision includes:

- the objection dated 20 March 2026;
- a copy of the minutes of the meeting of Admission Authority at which the Arrangements were determined;
- the determined Arrangements for 2027/28;
- responses from the LA, and Trust to the objections and to my requests for further information;
- responses from the Objector to my request for further information;
- confirmation of when consultation on the Arrangements last took place and details of the nature of the consultation and responses to it;
- information available on the websites of gov.uk (including the 'Get Information About Schools' (GIAS) and 'Financial Benchmarking and Insights Tool' (FBIT) websites), the LA, the School and Ofsted;
- previous determinations including ADA4193 Holyoakes Field First School.

15. I have been provided with a substantial amount of information / data by the Objector, the LA and the Trust. I have referred only to that which has a bearing on my determination.

Background

16. The three Schools are all part of The Forge Brook Trust, a multi-academy trust with five schools in the Walsall Metropolitan Borough Council area. The Trust includes two infant schools, a junior school, a primary school and a secondary school. The Schools do not have a religious character. They have not been inspected by OFSTED since joining the Trust and converting to academy status in June 2025.

17. According to GIAS, Delves Infant School (DIS) is a mixed, non-selective school for children aged between 2 and 7 years old. The School has approximately 335 pupils on roll with a stated capacity of 270 pupils. The School has a published admission number of 90 pupils for Year R in 2027/28.

18. Hillary Primary School (HPS) is a mixed, non-selective school for children aged between 3 and 11 years old. The School has approximately 675 children on roll with a capacity of 708 pupils. The School has a published admission number of 90 pupils for Year R in 2027/28.

19. Palfrey Infant School (PIS) is a mixed, non-selective school for children aged between 3 and 7 years old. The School has 310 pupils on roll with a capacity of 360. The School has a published admission number of 90 pupils for Year R in 2027/28.

20. The Arrangements for all three Schools follow the same structure as determined by the Trust. They set out that children with education, health and care plans (EHC plans) will be admitted first. Then, in times when oversubscribed, children will be prioritised according to the oversubscription criteria. These can be summarised as follows:

- a. Highest priority will be given to looked after children and all previously looked after children who apply for a place at the School.
- b. Priority will next be given to children on the basis of social or medical need.
- c. Priority will next be given to children with siblings on roll of the School at the point of application.
- d. Priority will next be given to children who attend the School nursery provision.
- e. Proximity of the child's home to the School, with those living nearest being given the higher priority, the distance being measured in a straight line.

Oversubscription criterion d, related to children who attend the School nursery provision, has been added as a new criterion for 2027/28 following consultation and consideration by the Trust.

21. The Objector, Sandwell Schools Admissions Service, is a part of Sandwell Metropolitan Borough Council which is one of the local authorities that borders Walsall LA, where the Schools are located.

Consideration of Case

22. The Objector has objected to the same aspect of the admission arrangements for three schools within the same multi-academy trust. The objections, as they relate to the same issue for different schools within the same Trust, are therefore considered together under this determination. There are separate case reference numbers related to each school as outlined in Table 1 above.

23. I will now set out my consideration of the matters raised by the Objector. I will conclude each section with a statement as to whether or not I uphold that particular aspect of the objection, preceded by my reasons for that conclusion.

24. The Objector expressed concerns about the Admission Authority's decision to prioritise "children who attend the School nursery provision" at all three Schools. The Objector states that:

"I object on the basis that the addition of this criterion is not pursuant to the statutory guidance, issued under paragraph 1.8 of the School Admissions Code 2021, which clearly states: oversubscription criteria must be reasonable, clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation."

25. Paragraph 1.8 of the Code, as identified by the Objector, is relevant to their objection. I also note that paragraphs 1.9e, 1.14 and 1.42 are relevant in this case.

26. The Code sets out under paragraph 1.8 that "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 [...]".

27. The Code at paragraph 1.42 does permit admission authorities to give priority in their oversubscription criteria for children "eligible for the early years premium, the pupil premium, or the service premium who:

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

28. The Code does not prohibit the giving of priority to children who attend the school's nursery provision in all other circumstances. Therefore, as a matter of general statutory interpretation, as the Code does not explicitly prevent it, it is allowable for an admission authority to prioritise nursery attendance in its oversubscription criteria so long as that is done within the framework of the Code's general requirements and within the public law principles of reasonableness and fairness.

29. In this case, the Trust has taken the decision not to differentiate between groups of pupils in the School nurseries, giving all children who attend a nursery class associated with the School priority within admission criteria.

30. It is for admission authorities to formulate their admission arrangements Paragraph 1.9e of the Code states that they **must not**: "give priority to children on the basis of any practical or financial support parents may give to the school.... The exception to this is where parents pay optional nursery fees to the school or school run nursery, for additional hours on top of their 15-hour funded early education, where children from the school nursery class or school-run nursery are given priority for admission to Reception."

31. The Admission authority confirmed that appropriate consultation on the arrangements had taken place and provided evidence that responses to the consultation had been considered by Trustees before final arrangements were determined. The Trust sought legal advice and determined that the Arrangements are both reasonable and procedurally fair because in each case:

"the nursery is not a fee-paying feeder school and is therefore inclusive and open to all members of the community, irrespective of financial means. The school actively encourages all members of the local community to apply for places in its nursery as it believes this provides the children with the best education start to their schooling."

I note here that although the Schools "believe" nursery attendance provides children with the "best education start to their schooling", this view is unsupported by the Code and legislation. Compulsory schooling does not start until the term after a child's fifth birthday. There is nothing in the Code to prevent admission authorities from encouraging children to attend nursery.

32. My next consideration relates to concern raised by the Objector about whether or not children who do not attend the nurseries for understandable reasons, are disadvantaged within the arrangements. They state:

"It is not a statutory requirement for a child to attend a nursery provision, and there may be such cases where parents have not been able to take up this opportunity due to other commitments or clearly were unable to gain a place in the nursery, this would make this criterion unreasonable and procedurally unfair."

33. The Objector confirmed that their response to the consultation “requested that this criterion be reconsidered and removed from the proposed admission arrangements for 2027 (sic)” The Admission Authority confirmed they had considered the response in determining the arrangements. In their response to comments during the consultation, the Trust stated, “we have carefully considered your concerns however the decision has been made to retain this criterion within the policy”.

34. The Objector confirmed that they are “unable to provide evidence that parents have been unable to secure a place” in the Schools. They point out that this is, in part, because the nursery priority has not previously been included in oversubscription criteria and therefore, they have not been in a position to consider its impact at this time.

35. At my request, the Admission Authority provided me with data showing the number of children for each school who have attended nursery and have been admitted to Reception for the last three years in each year group (as of 29 April 2026). I have put that data into Table 2.

36. The data in Table 2 illustrates that for all three Schools, there were at least 30 places available for pupils in each school who had not attended the nursery but applied for places in Reception. For both HPS and PIS, every child who applied for a place in Year R was admitted because there remained places in those year groups. DIS had more applicants than there are places in Year R and, therefore, oversubscription criteria were used to prioritise children

Table 2: Number of children attending nursery and admitted to Year R in the last three years for the Schools.

	PAN	2023/24	2024/25	2025/26
DIS				
Number of pupils attending nursery provision	-	54	54	57
Number of pupils admitted to Reception	90	90	90	90
HPS				
Number of pupils attending nursery provision	-	60	60	56
Number of pupils admitted to Reception	90	91	84	84
PIS				
Number of pupils attending nursery provision	-	81	62	60
Number of pupils admitted to Reception	90	90	90	83

37. The number of pupils attending nursery at each of the Schools is made up of those who attend part-time and those who attend full-time. For example, Delves Infant School website identifies 78 part-time places available (morning or afternoon places). In 2026, this is comprised of 24 children who attend full-time and 30 who attend part-time.

38. The LA considered how the introduction of nursery priority would have impacted allocations for admission to reception in September 2026, had it been in place for that year. Table 3 illustrates how places were allocated using the existing oversubscription criteria with comments as to how the nursery criterion would have affected allocation of places in 2026.

Table 3: How Oversubscription Criteria influenced the allocation of places to the Schools in 2026:

	PAN	Offers	SEN	CIC	Medical	Sibling	Distance	Furthest Distance	Spaces
DIS	90	90	1	1	0	38	50	0.85	0
HPS	90	82	1	0	0	41	40	n/a	8
PIS	90	74	1	0	0	29	44	n/a	16

The Local Authority state that, had the nursery priority been in place, the impact would be:

“DIS – 15 children would have qualified under a higher nursery priority; they were all successful in 2026 under distance criteria.

HPS – 26 children would have qualified under a higher nursery priority; they were all successful in 2026 under distance criteria as the school was undersubscribed.

PIS – 21 children would have qualified under a higher nursery priority; they were all successful in 2026 under distance criteria as the school was undersubscribed.”

The LA therefore concluded that they “do not feel that the inclusion of this criterion has a detrimental effect on non-nursery attending children”.

39. The LA conclusions contradict information provided by the Trust for DIS which highlighted that in 2026, six children who attended the nursery have not been allocated places in Year R. This means that if the nursery priority were in place, those six pupils would have been allocated places ahead of children who live closer to the School.

40. For DIS, there is a possible impact of the nursery priority on two groups of children; firstly those who attend the nursery who now gain a place in Year R and secondly those who do not attend nursery who will now be offered places in other local schools.

41. To be contrary to paragraph 1.8 of the Code, any disadvantage arising from an oversubscription criterion would have to be unfair to one or more identified groups. Based on information provided by the Objector and the LA, I can find no evidence that any particular group is disadvantaged by the introduction of nursery attendance as an oversubscription criterion below siblings and higher priority than distance from the School at both HPS and PIS.

42. In contrast, unfairness in paragraph 14 of the Code, which is unfairness of a more general nature, relates to the group identified by the Objector, that is those children who are

unable to or do not attend the School nursery who may live closer to the Schools than some of the children who attend the nursery who will now be allocated places because of a higher priority. At this time there is no evidence that the introduction of nursery priority at HPS and PIS will have any impact on children applying for a place in Reception. Based on the number of applications received in recent years, both Schools have vacant places and so all applicants will be offered a place regardless. LA estimates do not suggest numbers will be significantly higher in 2027/28. This could be distinguished from a theoretical future scenario where 3 or 4 years of evidence illustrate a detrimental impact on pupils who do not attend nursery provision.

43. I can find no evidence that the determined oversubscription criterion would be unfair to one or more identified groups in paragraph 1.8 of the Code for HPS and PIS, I therefore do not uphold this aspect of the objection.

44. Table 2 illustrates there is a difference in circumstances between DIS and the other two Schools. That is, including admission from the nursery, both HPS and PIS remain undersubscribed in reception, therefore there is no evidence that children who choose, or are unable to attend a nursery class at those schools are disadvantaged because, based on historical data, if they apply for a place at either HPS or PIS, they are highly likely to be admitted.

45. DIS is full in Reception and oversubscribed. I will consider the extent to which children who do not attend the School's nursery provision are disadvantaged in relation to accessing Reception places.

46. DIS is the School that the Objector believes will have most impact on children from Sandwell Local Authority. The Objector expressed concern that "potentially 78 places" could be allocated to nursery children from DIS leaving only twelve places for other children. This is because a significant group of children who live in the Sandwell Local Authority area live close to the School which is near the border of Walsall and Sandwell.

47. The Admission authority challenged this assertion on the basis that the nursery places are made up of a combination of full-time places and part-time places. This means there could in theory be 78 individual part-time children, but in practice the number attending nursery is substantially fewer, as illustrated in Table 2. With a PAN of 90, this means that there is a minimum of 12 places available in Reception for children who have not attended the nursery but in practice there are more. For example, in 2026, with 57 children in nursery there are at least 33 places available. It is theoretically possible, that there could be 78 part-time nursery attendees who would be higher priority within admission arrangements than children who potentially live closer to the School.

48. In 2026, Sandwell Local Authority received 55 preferences for DIS. 34 were offered places, 13 had higher preferences and 8 were declined, meaning they were necessarily

offered places at a lower preference school. This is in 2026, when nursery priority was not considered and as illustrated in table 3 most places were allocated on the basis of sibling or distance priority, with the maximum distance travelled by a child to the School admitted in 2026 is 0.85 miles.

49. There are data available via Gov.uk website illustrates that Sandwell has been able to offer over 93% of pupils their first-choice primary school in the last three years. There are 12 Sandwell primary schools within 2 miles of DIS, with at least nine having fewer children on roll than the School capacity according to GIAS, which, although it does not necessarily indicate availability of places in Year R, it does suggest that it is unlikely that Sandwell Local Authority will not be able to meet its statutory duty to provide sufficient places in appropriate schools for children in the Local Authority.

50. The Admission authority confirmed that for the last three years, a number of children who have attended DIS nursery have not secured places in Reception at the School.

Table 4: Number of children who have attended nursery and then have been unable to secure a place in Reception.

Delves Infant School	2024/25	2025/26	2026/27
Number of Children who attended nursery and then did not secure reception place.	3	7	6

51. All admission arrangements create advantage for some applicants and disadvantage to others; indeed, their purpose is to give higher priority to some applicants than to others. The Code, as set out under paragraph 1.7 sets out that “All schools must have oversubscription criteria for each ‘relevant age group’ [...]”

52. Oversubscription criteria must be included in admission arrangements to make clear how admission will be prioritised when the number of applications is greater than the number of places available in the relevant age group (the ‘relevant age group’ is defined in the Code as “the age group to which pupils are normally admitted to the school”). In situations of oversubscription, there will be applicants who are not admitted.

53. The purpose of admission arrangements is to set out how places will be allocated. It is not their purpose to give parents confidence as to whether they will be allocated places at a particular school, to provide any guarantee of admission or how children will get to the school they are admitted to.

54. The Admission Authority has taken the decision to prioritise children from the nursery and provide the opportunity for children to continue their education, with their peers from nursery into reception. They argue that the inclusion of the nursery oversubscription criteria has the potential to encourage greater engagement with early years provision although this is not yet evident. It must be noted that attendance at nursery is not compulsory and cannot therefore be required as a condition of entry to reception.

55. The Trust also state that:

“ the main rationale is to promote stability and continuity for young children by avoiding an unnecessary additional transition for those who begin their education in the trust’s nursery, particularly for families who have chosen school-based provision to minimise disruption”.

56. The Code states in paragraph 1.8 that “Oversubscription criteria must be reasonable, clear, objective and procedurally fair ...” I will now consider whether the introduction of nursery priority is reasonable.

57. 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.

58. Reasonableness in this instance is a balance of the impact on children who have spent up to two years in nursery being required to move to another school for Year R, against children who live close to the School, who have for whatever reason, not attended the School nursery being asked to start Year R elsewhere.

59. The Trust have demonstrated that between 3 and 7 pupils who have attended nursery each year have not secured a place in Year R. It is therefore likely that the nursery priority introduction will displace up to 7 pupils who have previously been admitted based on their proximity to the School. However, this is not certain, and it is not possible, at this time, to confirm that is the case. If it is the case then there are other suitable places available at schools within the local area, for example, PIS has 16 Year R places, HPS has 8 places and both are within 1.5 miles of the School. GIAS indicates that the closest Sandwell school, Yew Primary School, which is 0.56 miles away, has significantly fewer pupils on roll than the school capacity. Therefore, any children displaced by nursery preference children would be allocated suitable Year R places in other schools in the local area, which, although may not be their preference, is not the same as a clear disadvantage.

60. Parents make choices about schools for a wide range of reasons including the logistics of family life. It seems reasonable, at this time, that with the availability of suitable Year R places locally, it is unnecessary to require a group of children who have settled into

an environment with their peers through attended nursery to be disrupted to move elsewhere for Year R. This is particularly the case because the nursery is actively promoted to the whole community, is non-fee paying and is accessible to all.

61. I determine that, at this time there is no evidence that individuals or groups of pupils are unfairly disadvantaged by the introduction of nursery priority for 2027/28, the decisions taken by the Admission authority about arrangements for DIS are reasonable. The Trust have made the decision based on an intention to encourage greater participation in early years education in the local area, supported by the LA. They have also considered the benefits of continuity of education and care for children who have spent substantial time in the nursery transitioning to Year R in the same, familiar setting.

62. At this time, I do not find evidence that any group of children are disadvantaged by the introduction of nursery priority to the DIS admission arrangements. **I, therefore, do not uphold the objection in relation to DIS.**

63. Although there is currently no evidence that individuals or groups of pupils are unfairly disadvantaged by the introduction of nursery priority for 2027/28, that does not mean evidence will not emerge in future that could indicate pupils who do not attend nursery are placed at an unfair disadvantage. This may require the reasonableness and fairness of the oversubscription criteria to be reconsidered.

64. In future, should it be evident that children who live closer to the School are being displaced by children attending the nursery and that Year R is populated almost exclusively by nursery attenders, then, it may be necessary for the Trust to reconsider the oversubscription criteria, particularly if the nursery is oversubscribed and, therefore, children who wish to attend are unable to gain a place.

Determination

65. **In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by The Forge Brook Trust for Delves Infant School, Hillary Primary School, and Palfrey Infant School for 2027/28.**

Dated: 1 September 2026

Signed:

Schools Adjudicator: Mr Philip Lloyd