

ROYAL FREE HOSPITAL APPLICATION (ref: 2014/6845/)
SUBMISSION ON BEHALF OF HAMPSTEAD HILL SCHOOL LIMITED

1. **Overview:** The Officers Report fails to advise on the correct legal test that should be applied to the heritage impact of these proposals. In consequence, inadequate scrutiny and analysis has been provided for Committee Members to be satisfied that they have been properly advised. Consequently, the recommendation should be rejected and planning permission refused.
2. **Legal Duties:** Because of the acknowledged adverse impact of the proposals on the setting of St Stephen's, a Grade I listed Building (and potentially its fabric) s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is engaged. This requires special regard to the desirability of preserving the (listed) building or its setting or any features of special architectural or historic interest it possesses. Recent case law confirms that this statutory duty must be specifically considered. Furthermore, the strong presumption against planning permission being granted still has to be applied even if it is in tension with a relevant development plan policy (*Barnwell Manor Wind Energy Ltd v SSCLG and East Northamptonshire DC [2014] EWCA Civ 137*, as applied in e.g. *R (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)*). Their outworking requires a specific exercise to be undertaken to consider whether the public benefit from a proposal outweighs the strong presumption against planning permission being granted.
3. **The NPPF:** The policies within the NPPF are an important material consideration but they do not override or remove specific reference to and application of the s.66 statutory duty. Accordingly, for the Report (paras. 6.59 to 6.67) simply to draw attention to the NPPF's application without any reference to the statutory duty, and, its application, provides an inadequate framework by which Members can make their own assessment. It also needs to be borne in mind that NPPF para. 132 reminds that the more important the asset the greater the weight that should be given to its conservation, and, that as heritage assets are irreplaceable, "*any harm or loss should require clear and convincing justification*". Para. 133 advises that where the proposed development will lead to substantial harm, local authorities should refuse consent unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss. Para. 134 advises that where a development proposal will lead to less than substantial harm to the significance of the asset this harm should be weighed against the public benefits of the proposal. Both paragraphs require a careful and reasoned exercise to be undertaken.
4. **The Officer views:** The Report (para. 6.59) finds that harm will be caused to the setting of St Stephen's but that it would be less than substantial harm. At para. 6.60 it refers to the public benefit that would be derived and concludes that, on balance, "*the scheme's various benefits compensate for the 'less than substantial harm' caused to heritage assets here*". However, the Report not only fails to mention the relevant statutory test but also applies the wrong weighting

to the necessary balancing exercise, namely, that the public benefit should outweigh rather than simply compensate. Whilst para. 7.2 concludes that it is outweighed by the public benefits of the new health facility as well as specific benefits offered by the applicant to the listed church no proper analysis has been undertaken of these benefits. Therefore, a simple and belated assertion still constitutes an inadequate discharge of the s.66(1) statutory duty.

5. **The Wrong Approach:** Having identified harm (and thereby that the proposal was contrary to the development plan (Core Strategy policy DP25) the Officers Report should have considered whether the Proposals are the least harmful to the setting of St Stephen's. In so doing, they should have sought further justification of each element of the Proposals and not simply accepted them at face value including the absence of alternative solutions (paras. 6.15; 6.60). It is further to be noted that the requirement to consider alternatives also arises under Core Strategy policy CS16 in respect of the need for new health and medical facilities which is not limited to polyclinics. Again, insufficient advice has been provided on the outworking of these requirements.
6. These shortcomings are reflected in the acceptance by the Officers at face value of the benefits offered to St Stephen's without any assessment as to whether material and substantial weight can be placed upon them. In fact, little weight can be attributed in view of the, already, well-publicised community use of its facilities.
7. **The Basement Impact Assessment (BIA):** This is another significant omission; for the contents of the Report do not identify whether the impact of the construction works has not taken into account in the Officers assessment of "substantial harm". In any event, as the Council's own assessment (via its independent assessors) of the BIA is that it is inadequate in its detail and certainty (para. 6.83), contrary to development plan policies DP27 and CPG4, it would be premature to make this overall judgment; for there still remains a significant level of uncertainty as to whether structural damage will be caused to the fabric of St Stephen's and/or to its boundary wall (Grade II). Furthermore, reliance upon planning conditions and s.106 obligations cannot provide the level of certainty required, at this stage, for this key element of the decision-making process. Accordingly, in the continuing absence of further material to remedy this important technical omission, Members are not able, properly, to make their own assessment as to whether the effects of the Proposals would have "less than substantial harm" on these heritage assets.
8. **Conclusion:** Due to the inadequacies identified above, it is strongly recommended that the application is refused by Members.

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