

Former Hampstead Police Station, Rosslyn Hill, London NW3 1PD

Appeal refs: APP/X5210/W/20/3248002 &
APP/X5210/Y/20/3248003

London Borough of Camden Planning Application Nos: 2019/2375/P (Planning Permission)
& 2019/2491/L (Listed Building Consent)

OPENING STATEMENT
ON BEHALF OF THE APPELLANT

1. These two appeals are into the refusal by the London Borough of Camden to grant planning permission (LPA Ref: 2019/2375/P) and listed building consent (LPA Ref: 2019/2491/L) for

“Change of use of the site from a police station (sui generis) to a one-form entry school (Use Class D1) for 210 pupils and business/enterprise space (Class B1) including alterations and extensions to the rear and associated works.”

2. If these appeals are allowed, Abacus Belsize School may relocate to the former Hampstead Police Station.
3. The Abacus Belsize Primary School is a free school set up under the Government’s free school programme. Many agree with that programme and many disagree. But this is not an Inquiry into the rights and wrongs of free schools. Indeed, Government policy is not a matter that may legitimately be questioned at a planning inquiry; rather, at its core, this Appeal is one the outcome of which will profoundly affect the education of 210 children.
4. The outcome of this Inquiry will determine whether 210 primary school children get to have a school within their own community, whether they have to continue to bussed half way across north London every day. It will determine whether a school created in 2013 will finally have a new permanent home which is fit for purpose and connected to the community it serves. It will also determine whether a listed building will be brought back into viable use securing its future within the community.

5. Abacus Belsize Primary School is a mixed 1FE (210 pupils) primary school that opened in September 2013 under the Free Schools Programme to serve the children of Belsize Park NW3. The school was to be a state school to fill a need for non-religious, non-fee-paying schools in Belsize – the DfE sanctioned its establishment for both choice and need with at its heart, outdoor learning, languages (in particular Mandarin) and quality education for all. Since the school opened, it has been located in temporary accommodation. The school was originally located in the WAC Arts Centre (the Old Town Hall, 213 Haverstock Hill, NW3 4QP) from September 2013 to September 2015. The school is now in its second temporary premises at Jubilee Waterside Centre, 105 Camley St, London N1C 4PF. This location is 2.7 miles outside of the school's catchment area, and currently the pupils have to be bussed from two collection points. These collection locations, one on Haverstock Hill opposite the junction with Parkhill Road (NW3 4RR), and another close to Swiss Cottage Leisure Centre (NW3 3NF).
6. The school is OFSTED 'Outstanding' (June 2015) and has consistently been in the top five schools within London Borough of Camden (LBC) for Early years classes and Key Stage 1 outcomes. In 2018, the reception class attained the highest outcomes in LBC; illustrating the high calibre of education that the school provides to the children of the Belsize Park despite the distance from its catchment area.

The Appeal Site

7. The Appeal Site is approximately 0.16 hectares and is located on the north side of Rosslyn Hill at the junction with Downshire Hill, between Hampstead and Belsize Park.
8. The main building is Grade II listed, it was a former Police Station and Magistrates Court. It is also situated within the Hampstead Conservation Area. Ancillary to the main red brick building is the Stable Block (which is curtilage listed) and outbuildings to the rear of the Appeal Site. The main building is three storeys plus basement, however due to the sloping gradient towards the north east of the site, the basement is level at the rear of the building. The main building has two wings, thus forming a U shape with the main frontage onto Rosslyn Hill. In the south-eastern corner of the site is the two-storey former Stable Block. The building combines a mix of Classical and Arts and Crafts

styles conveying a vernacular character, exhibiting a strong sense of civic identity. Constructed in red brick with stone dressings, the building conveys strong architectural quality and is a local landmark.

9. The appeal site currently has four entrances, and a designated escape exit. There is a principal entrance on Rosslyn Hill; previously the public entrance for the Police Station. This entrance is stepped over a lightwell and between the two listed police lamps. The Downshire Hill elevation provides two entrances to the building. There is also a vehicular entry point from Downshire Hill to the rear which was used as a car park and previously for stables under the Metropolitan Police. The Appeal site is situated within the Hampstead Conservation Area.
10. The surrounding area is predominantly residential in character, comprising mainly of Victorian semi-detached properties. Adjoining the northern boundary of the site are the rear gardens of residential properties accessed from Downshire Hill. Beyond this, approximately 0.5 miles to the north of the site is Hampstead Heath. The site's eastern boundaries are formed by further residential rear gardens accessed from Hampstead Hill Gardens and the southern boundary is Rosslyn Hill. It is bordered to the west by Downshire Hill.
11. The Public Transport Accessibility Level (PTAL) is 4 (on a scale of 1-6 where 6B is the highest), which is described as 'good'. Hampstead Heath mainline station is 0.4 miles north east of the site and Hampstead Underground Station which is served by the northern line, is 0.4 miles north west of the site. Belsize Park Underground Station is located 0.4 miles to the south east of the site and is also served by the northern line. There are also a number of bus stops located within walking distance from the site. There are five bus routes (C11, 46,168, 24 and 268) four of which are likely to provide ease of access to the proposed school location from throughout the school's catchment area.

The Proposed Development

12. The proposed development seeks to redevelop the site for educational use for a one-form entry ("1FE") primary school (Use Class D1) and local business/enterprise space (Use Class B1).

13. The proposed development comprises the following main components:

- 7 teaching classrooms;
- 3 additional learning rooms;
- A library;
- Food technology room;
- 2 halls;
- A kitchen;
- Playground;
- 214 sqm of local business/enterprise space;
- 28 secure and sheltered cycle parking spaces and a covered store for 18 scooters;
- Four secure and sheltered cycle parking spaces for the business/enterprise space;
- Four short-stay Sheffield stand spaces on Rosslyn Hill
- Staff and Administration rooms; and
- Toilets, personal care and storage.

Greater detail on the disposition of the uses can be found in the Statement of Common Ground.

Refusal of Permission

14. A previous planning application (Ref:2016/1590/P) and Listed Building Consent (LPA Ref: 2016/2042/L) for a 2FE (420 pupil) school which included the substantial demolition of the listed building, with a large extension added to the rear was refused in 9th August 2016.

15. The current revised development proposal sought to address the reasons for refusal. It garnered the support of Officers who considered that the previous reasons for refusal had been overcome and who recommended that planning permission and listed building consent should be granted.

16. Members disagreed and identified three reasons for refusal for the grant of planning permission and a single reason for refusal of listed building consent.

17. The issues that these reasons for refusal have been fairly summarised by the Inspector as:

- a. Whether the proposed development would be sustainable development in terms of transport, having regard to the effect on trips by private motor vehicles, traffic congestion and air pollution;
- b. The effect on the living conditions of local occupiers in terms of noise; and
- c. Whether the location would be appropriate for a school, having regard to air quality
- d. The effect of the proposed development on the architectural quality and historic interest of the former police station, which is listed Grade II

18. Of course, the Inspector rightly recognised that an overall planning balance has to be struck to determine the outcome of the appeals.

The Planning Framework

19. The Secretary of State for Communities and Local Government and the Secretary of State for Education published a policy statement in August 2011 (CD04/03) which sets out the Government's commitment to support the development of state-funded schools and their delivery through the planning system. It states:

“The Government wants to enable new schools to open, good schools to expand and all schools to adapt and improve their facilities. This will allow for more provision and greater diversity in the state-funded school sector to meet both demographic needs and the drive for increased choice and higher standards. For instance, creating free schools remains one of the Government's flagship policies, enabling parents, teachers, charities and faith organisations to use their new freedoms to establish state-funded schools and make a real difference in their communities. By increasing both the number of school places and the choice of state-funded schools, we can raise educational standards and so transform children's lives by helping them to reach their full potential.

It is the Government's view that the creation and development of state-funded schools is strongly in the national interest and that planning decision-makers can and should support that objective, in a manner consistent with their statutory

obligations. We expect all parties to work together proactively from an early stage to help plan for state-school development and to shape strong planning applications. This collaborative working would help to ensure that the answer to proposals for the development of state-funded schools should be, wherever possible, “yes”.

The Government believes that the planning system should operate in a positive manner when dealing with proposals for the creation, expansion and alteration of state-funded schools, and that the following principles should apply with immediate effect:

- There should be a presumption in favour of the development of state-funded schools, as expressed in the National Planning Policy Framework.

- Local authorities should give full and thorough consideration to the importance of enabling the development of state-funded schools in their planning decisions. The Secretary of State will attach significant weight to the need to establish and develop state-funded schools when determining applications and appeals that come before him for decision.’

20. Paragraph 94 of the NPPF

“It is important that a **sufficient choice of school places is available** to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

- (a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and

- (b) work with schools’ promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.

21. The Appellant intends to explore with the witness for LBC the extent to which they have sought to ensure that the proposals for this scheme is “yes” and the extent to which they have sought to resolve the key planning issues.

22. The Appellant will contend that the proposed development which finds a permanent home for the Abacus Belsize Primary School just 250m outside of its catchment is strongly supported at a national level. It will be argued that locating the school on the Appeal Site will finally provide an OFSTED “outstanding” school with a permanent home close to the catchment it served. It broadens the choice of (non-faith) schools located locally for which there is a need since the other nearest state school (non-faith) to the catchment area is Fitzjohn's Primary School in Hampstead, which is consistently

over-subscribed. This highlights the need for additional choice of student places at a nonfaith primary school within walking distance from Belsize Park catchment area.

23. Providing the school with a permanent home is, as the Secretary of State explained (see above), strongly in the national interest and planning decision-makers can and should support that objective. That is done, we shall submit, by giving great weight to the need to provide the school with a permanent home in this location (see paragraph 94 of the NPPF). The Secretary of State explained that “by increasing both the number of school places and the choice of state-funded schools, we can raise educational standards and so transform children’s lives by helping them to reach their full potential.” It will be submitted that the grant of permission for a permanent home for the school in this location will precisely achieve those objectives.
24. The London Plan also contains policies in a similar vein. London Plan Policy 3.16 requires local planning authorities to protect existing resources and facilitate the provision of additional social infrastructure, such as schools, with a particular focus and priority where there is a defined need for the facilities. Policy 3.18 highlights that the Mayor will support the provision of new education facilities,
25. Part D of Policy 3.18 states that proposals for new schools, including free schools should be given positive consideration and should only be refused where there are demonstrable negative local impacts which substantially outweigh the desirability of establishing a new school and which cannot be addressed through the appropriate use of planning conditions or obligations.
26. Consequently, it will be argued that the Development Plan effectively creates a presumption in favour of the grant of permission which can only be rebutted where local impacts “substantially outweigh” the desirability of establishing a school. This reflects the approach in paragraph 94 of the NPPF to give “great weight” to the need to create schools.

Relevance of Alternative Schemes

27. As a matter of generality alternative schemes are only ever exceptionally relevant in planning decision making. In a heritage context, it will be submitted that if the planning decision maker concludes that the unusually strong public interest benefits in this case outweigh any less than substantial harm to significance, then the proposed development is acceptable in policy terms. Where that is the case there is then no requirement to consider whether a yet more acceptable scheme could be identified: *MR Dean & Sons* [2007] EWCA Civ 1083. This means that where the public interests benefits outweigh any harm to the significance of relevant designated heritage assets, there is no obligation to go further and to ask whether a scheme could be identified whereby less harm could be caused.
28. In *R. (on the application of Mount Cook Land Ltd) v Westminster City Council* [2004] 2 P. & C.R. 22 the Court concluded that, in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant in planning terms. Further the Court found that, even in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight.
29. The later *Langley Park* [2010] P & C.R. 10 decision of the Court of Appeal does not depart from this position. Indeed, at paragraph 55, the Court expressly had regard to “the extent to which the feasibility of such alternatives has been demonstrated (i.e. the weight which can be attached to them).”
30. It will be submitted that that no party to this Inquiry has in fact established that there is any realistic alternative to the Appeal Scheme which would achieve the same benefits with less planning harm resulting. No specific alternative schemes have been identified. Instead, what is floated by objectors are simply ideas or thoughts. They are not specific schemes which can be assessed on a basis which enables fair comparison with the Appeal Scheme. They are inchoate or vague schemes. Further, there is no evidence which establishes that there is any reasonable likelihood of them coming about.

The Baseline for Assessment

31. There is also an issue relating to the appropriate baseline for assessment. During the consideration of the applications, LBC officers asked the Appellant to produce an assessment of the likely traffic generation of the Hampstead Police Station so it could be used as baseline for impact assessment. That was done.

32. The Committee minutes do not reveal that Members considered the use to be abandoned and that the baseline they adopted was one of the building having a nil use.

33. Indeed, the signed SoCG states (para 5.24):

“It would not be appropriate to use a vacant building as a nil baseline for measuring transport impact.”

34. Mr Sheehy for LBC in his Proof explains (paragraph 5.7):

“The Council accepts that looking, in an informed and qualified way, at trip generation from Kentish Town Police Station may be useful as a comparator to establish the historic trip generation from the former Hampstead Police Station although the Kentish Town Police station was and is significantly busier than the Hampstead Police station ever was.”

35. However, a few weeks ago the Appellant received a letter from LBC in which it sought change its position on this issue. The council now seeks to resile from the signed agreement in the SoCG and argue that the existing use of Building (i.e. a use since before the 31st July 1948) has been abandoned. This is wrong as a matter of law.

36. It is a question of fact whether planning permission would be required for the resumption of the sui generis use (see *Young v Secretary of State for the Environment* [1983] J.P.L. 465 (Court of Appeal- subsequently upheld by the House of Lords [1983] J.P.L. 677), and *Hartley v Minister of Housing and Local Government* [1970] 1 Q.B. 413. The test may also be put the test this way: would London Borough of Camden be entitled to take enforcement action against the police if they decided to recommence use of the building today?

37. A number of factors are relevant to assessing whether the use has been abandoned are:

- a. This is not a case of a purported abandonment of a planning permission for operational development (the *Pioneer Aggregates* category). The contention is of abandonment of an established use (as to which, see *Hartley*). The police/magistrates court use is a sui generis established use dating back to well before 1948.
- b. The continuous use ceased in 2013. Disuse for seven years is not commensurate with the “considerable time” that Lord Denning had in mind in *Hartley* before it would be reasonable to infer abandonment.
- c. There has been no alternative use or change of use in the interim (contrast *Hartley*).
- d. Subjective intention is not decisive, but is a relevant factor, particularly where there is only one organisation capable of using it for the established use. There is no evidence that the Metropolitan Police has abandoned all intention of a re-use of any sort in accordance with the established use right. There is, by contrast, evidence that the Metropolitan Police retains interest in re-using the building in some way consistent with its established use. Mr Byrne says in his evidence at paragraph 3.29:

On 14th August 2020 Camden Legal wrote stating that they now deem the site has a nil planning use. Also seeking to establish the use had been abandoned as there is no suggestion that there is any prospect of the police buying it back again and reopening Hampstead Police Station. The Department for Education have been in correspondence since March 2018 with local organisations and the Camden Neighbourhood Policing Teams. There is an interest in the Safer Neighbourhood Teams for Froggnal and Fitzjohns, Hampstead Town, Belsize and Gospel Oak being based in the appeal site or adjoining Police House. There is continued interest in the Police using the site in the context of modern policing requirements.

38. There is no evidence the Department for Education would not entertain reversion to Police use temporarily or indeed permanently if the appeal does not succeed.

39. There are numerous appeal decisions which show that even very lengthy periods of non-use do not give rise to the loss of an existing use right as a result of abandonment. For example at [1978] J.P.L. 651 and 653 (no abandonment although dwelling-houses out of use for 35 years and 25 years respectively); [1977] J.P.L. 326 (abandonment where dwelling-house unoccupied for at least 35 years and uninhabitable); [1986] J.P.L. 846 (house vacant for 30 years but no evidence of any positive action to abandon the use or prevent its future use for residential occupation).
40. Accordingly, it will be argued that is no question of an abandoned use here. The Council would not be entitled to enforce against the resumption of police use if that began today.
41. The Appellant will contend that, since the use has not been abandoned it is appropriate have regard to a baseline which includes in being in use as a police station
42. LBC has not presented any explanation for the change in the presentation of its case in relation to the baseline. Nothing has been provided to explain what change in circumstances has arisen since it signed the SoCG and sent out its statement of case to justify the new way in which the case is presented. We have not even been told whether this change is in fact lawfully the result of the exercise of the Council's powers. Further, no explanation has been provided as to how this behaviour is remotely consistent with the Secretary of State's expectation that local planning authorities should work proactively so that the answer for state funded schools is "yes"; rather we shall explore whether this behaviour by LBC (along with others) is an example of a Council doing the very opposite and hunting for reasons to say no.

Transport Impacts

43. The NPPF Para 109 provides that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. It is not understood to be LBC's case that the proposed development will not have an unacceptable impact on highway safety or that it would have severe residual cumulative impact on the road network.

44. LBC contends that Policies C2 and T1 of the Camden Local Plan would be breached by the proposed development. The Appellant will contend that this is not the case. In particular, the Appellant intends to explore the extent to which the Development Plan actually contains a policy to the effect that planning permission should be refused for a school if the number of traffic movements would increase.
45. Further and in any event, the Appellant will contend that the proposed development merely results in a redistribution of journeys currently occurring to and from the school's existing location to the Appeal Site.
46. The school currently utilises a mini bus to transport pupils from two locations/pick up points on the boundary of the Belsize catchment to the school site on Camley Street. The latest survey information of pupils and staff travelling to the bus pick up points shows that 96% travel by sustainable modes of transport (public transport, walk, scooter, or cycle) and 4% were dropped off by car. This 4% would equate to approximately 8 private vehicle trips (or 16 two-way trips) in the AM and PM peak for the 210-pupil capacity (see OR paras 10.10 to 10.11) A survey last week showed once again 4% travelling to the school by private car.
47. Indeed, this position reflects the mode split at the School's previous site, before it moved to Camley Street, when it was located at the old Hampstead Town Hall on Haverstock Hill which is 500m south of the proposed location. The school operated from this location for a two-year period, and a survey found that 70% of pupils walked, scooted or cycled to school, 26% arrived by public transport and 4% arrived by private vehicle. There is criticism of the hands up method used to generate this data but no other data set is provided and LBC rely upon in in the travel planning of other schools.
48. The suggestion that there will be an increase in the number of journeys by private compared to the present situation must be rejected. It will be argued that it is very unlikely indeed that driving a car to school will be an attractive option for any parent given:
- a. Limited car ownership by parents (only 50% own a car);
 - b. Existing traffic congestion

- c. Access to parking in the vicinity of the school;
- d. All parents have to subscribe to the school's walk to school ethos and its Car Free Policy.

49. It will be argued that the comparisons with other schools relied upon by Mr Burke and Mr Murdock to suggest that 22% (Mr Burke) or 8 to 10% will come by car are not appropriate since the circumstances of other schools are entirely different in terms of the PTAL scores, access to public transport catchment areas, whether they have nursery classes, availability of parking, whether they require parents to sign up to a car free walk to school policy. Other schools in the area also achieve similar levels of 0-5% car drop offs (see Ferguson para 6.18)

50. The gradient is already negotiated by parents living in the north of the catchment walking south to the existing bus collection points. It is unlikely to present any change in behaviour when the drop off point shifts to the north. In any event, there are plentiful buses through the catchment.

51. Given that the proposed development will not change the mode used for trips which are already happening on the network, it will be concluded that the proposed development will not result in a material increase in the use of the private car or traffic generally.

52. That conclusion means that arguments relating to the likely traffic generation of the Appeal Site from its use as a police station are somewhat misguided. In any event, it will be argued that if a fair comparison is made, the only reasonable conclusion is that the proposed development would not give rise to a greater number of movements than would be associated with use as a police station. Further, such movements would be new movements to the network. Use of the building for residential or office purposes would also result in new movements upon the network as Mr Ferguson will explain.

53. It will be argued that LBC Officers were correct when they concluded that the proposed development would not result in an increase in trips by private car on the network. Indeed, it will be submitted that, if anything, there is likely to be a reduction in trips by private car on the highway network should permission be granted. Thus, it will be argued that the proposed development does not give rise to any conflict with the policies

in the NPPF relating to sustainable transport and that there is no conflict with the Development Plan.

Air Quality

54. National Policy NPPF para 181

“Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

55. The proposed development lies within an Air Quality Management Area which consists of the entire Borough.

56. The NPPG explains

“Whether air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to have an adverse effect on air quality in areas where it is already known to be poor, particularly if it could affect the implementation of air quality strategies and action plans and/or breach legal obligations (including those relating to the conservation of habitats and species). Air quality may also be a material consideration if the proposed development would be particularly sensitive to poor air quality in its vicinity.”

57. We shall explore the extent to which it is alleged that a grant of planning permission for the proposed development would affect the implementation of air quality strategies and action plans and/or breach legal obligations. The Appellant will contend that it would not have any material effect on these considerations.

58. Where air quality is a relevant consideration the NPPG advises that it is relevant to examine

- a. the ‘baseline’ local air quality, including what would happen to air quality in the absence of the development;
 - b. whether the proposed development could significantly change air quality during the construction and operational phases (and the consequences of this for public health and biodiversity); and
 - c. whether occupiers or users of the development could experience poor living conditions or health due to poor air quality.
59. The Appellant will argue that the proposed development will make no material difference to the attainment of NO₂ annual limit values in this area – it is other more radical policy interventions via the national and London Wide air quality plans which are intended to reduce concentrations to meet limit values as soon as possible.
60. The Council’s case appears to be predicated on the basis that this is the wrong location for a school and that to locate one here would expose the children to unacceptable health risks. We shall explore whether that is in fact the case.
61. The school is designed to ensure that the air inside the building is filtered. Exposure to external air quality as a result of attendance at the school is only for limited time periods.
62. It will be argued that no child as a result of their attendance at a school on the Appeal Site would be exposed to levels of exposure above the relevant limit values for the periods of time they relate to. As a consequence, it will be argued that the children are highly unlikely to experience poor health due to poor quality associated with attendance at a School on the Appeal Site.
63. The proposed development (including mitigation) will thus result in compliance with the requirements of the NPPF and the Development Plan Policy CLP Policy CC4 or HNP Policy TT1.

Impact on Existing Occupiers

64. Introducing a school onto the appeal site will result in a change in noise environment. The approach to noise set out in the NPPF requires classification of whether the noise is above the lowest observable adverse effect level or above a significant observable adverse effect level. Where the impact lies is a matter of judgment for the decision maker.

65. At levels above LOAEL, the policy response required is to use reasonable mitigation to reduce noise exposure. Policy is that it is undesirable for noise exposure at levels above SOAEL to occur.

66. Noise above SOAEL is described in the NPPG as follows:

“Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present.”

67. The test of whether adjacent occupiers would keep windows closed for most of the time is an intriguing one given the context of the School at present with its playground overlooked by the windows of residential properties. The Appellant will explore the extent to which those windows remain open or closed.

68. Further factors that have to be taken into account are:

- a. The predictions of likely noise levels
- b. A comparison of those noise levels against relevant guidance
- c. The effect of windows and patio doors being open;
- d. the character of the school noise;
- e. the periodic nature of higher noise levels;
- f. the effect of school holidays; weekends and non-school hours;
- g. any relevant fluctuations in ambient noise levels.

69. The Appellant will contend that having regard to these factors, the proposed use will not give rise to impacts above SOAEL but rather below that level. It will argue that it has offered all reasonable mitigation to local residents. A number of local residents

have chosen not to accept noise mitigation in the form of a noise barrier. That is their choice. It will be argued that as a result, the Appellant has pursued the use of reasonable mitigation and has consequently complied with the requirements of national noise policy. The Development Plan does not contain a policy approach which is any different the NPPF; to the extent that it did then it would be inconsistent with the NPPF and carry reduced weight.

Heritage Issues

70. The NPPF focusses attention upon protecting the significance of heritage assets. Where a proposed development will result in less than substantial harm to the significance of a heritage asset then paragraph 196 of the NPPF is engaged. That requires any harm to significance of a heritage asset to be weighed against any public interest benefits that the proposed development will deliver. In carrying out that balance any harm to significance is to be given great weight.
71. It has also been held in relation to the statutory duties under [ss66 and 72 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) , for example in the decisions of *City and Country Bramshill Ltd and SoS for HCLG vs Hart DC and Historic England* [2019] EWHC 3437 (Admin) and *Safe Rottingdean v Brighton and Hove City Council* [2019] EWHC 2632 (Admin) that the s.66 duty can be complied with, in line with the jurisprudence, even if there is some harm to a setting, if it is not as significant as the benefit to the building and its setting.
72. The Appellant will contend that there is no separate requirement for a clear and convincing justification and for harm to significance to be outweighed by public interest benefits. If the paragraph 196 balance comes out in favour of benefits outweighing harm (having given harm to significance greater weight) then a clear and convincing justification exists for the purposes of NPPF paragraph 194.
73. In addition, the NPPF requires opportunities to be taken to better reveal significance. We intend to explore whether this approach has been fully appreciated by Mr Baxter in his evidence.

74. The relevant Development Plan Policies are Policy D2 of the Local Plan and Policy DH2 of the HNP. Policy D2 contains a requirement to weigh less than substantial harm to significance against benefits and is to be interpreted with that in mind. On that basis it is consistent with the NPPF and to be given full weight. Policy DH2 requires application of the policy approach set out in the NPPF 2012. The words of paragraph 196 are different from those in the previous paragraph 134. Technically this means that Policy DH2 is not consistent with the NPPF 2019 but in practice for this appeal it is not considered that the difference in wording is likely to matter.
75. In order to obtain a better understanding of the significance of the Listed Building, the Appellant commissioned an enhanced listing from Historic England. That identified two particular elements of value which contributed to significance: architectural and historic value.
76. However, merely because a matter is mentioned in the enhanced listing description, that does not mean that it contributes in a very substantial way to significance. The enhanced list description does not seek to identify the extent to which particular features contribute to significance; rather that, as Historic England's Good Practice Guide explains is a step that has to be considered by the decision maker. The Appellant intends to explore with Mr Baxter and Ms Watts the extent to which they have considered the which particular features contribute to significance.
77. Mr Baxter's proof raises a large number of matters which were not discussed by Members at the Committee meeting, which are not referred to in the reasons for refusal and do not form part of the Council's case as set out in its Statement of Case. The Appellant intends to explore with Mr Baxter the extent to which the points he raises represent his personal views or those of the Council. Further, the Appellant intends to explore the extent to which Mr Baxter and Ms Watts have been proactive and sought to look for solutions, so the answer for this school is "yes" in accordance with the policy approach required by the Secretary of State (see above).
78. In terms of external changes, the Appellant will contend that the works proposed to the rear façade better reveal the significance of the listed building as required by the NPPF.

Overall, it will be argued that the external works to the rear of the building enhance the significance of the building.

79. In relation to the ramped access proposed to the front of the building, the Appellant will refer the Inquiry to the requirements of the Equality Act 2010 and to Policy C6 of the Camden Local Plan. The extent to which Mr Baxter and Ms Watts have considered these legal and policy obligations will be explored. The suggestion it is sufficient for level access to be provided at the side of the building and not at the front will be examined in the context of this legal and policy context. In particular, the Appellant will explore whether it really is Camden Council's case that in 2020 the Council considers that it is appropriate to require those who have to have level access to a building via a side entrance when the more able bodied can come in the front door.
80. In relation to the interior of the building, it will be argued that the architectural and historic value of the plan form lay in the original separation between the session house quarters, the courtroom and the police station. The Appellant will submit that that separation has been largely lost due to the significant internal changes introduced over the years to the extent that the existing plan form does not make an extensive contribution to the significance of the building. Accordingly, whilst the proposed development results in internal changes to the plan form, in most instances these are not to elements which contribute to any recognisable separation between the three uses. As a result, it will be contended that the changes to the plan form give rise to only a low level of less than substantial harm to significance.
81. It is proposed to box in a staircase to protect it from wear and tear and for health and safety reasons. That suggestion raised no objection from the conservation officer at LBC, nor Members, nor Historic England. The Appellant intends to explore the extent to which the proposal is at issue and the extent to which it may be addressed via the imposition of a relevant condition.
82. In relation to the previous connection with juvenile justice, nothing remains either architecturally or historically that visibly links the building to that use.

83. In terms of the magistrate court, that does remain. It is proposed to retain a substantial part of the fabric of that room whilst introducing changes which mean that it can be used going forward but will also remain recognisable as a courtroom. It is recognised that the removal of fabric here does give rise to less than substantial harm but that any viable use of this space will do so. The Appellant intends to explore whether an approach of preserving the room in aspic is likely to be viable, attainable or reasonable going forward.

84. The Appellant also intends to explore the extent to which residential or office use of the entire building would be likely to be less harmful to significance going forward. The Appellant will contend that it will not. The Appellant will contend that it is likely that the proposed development represents that optimum viable use.

85. No party is seriously suggesting that there is any adverse impact upon the significance of the Hampstead Conservation Area.

86. The Appellant will contend that the proposed development will deliver a number of elements which result in enhancement of the significance of the listed building, such that when a balance is struck between harm to significance and benefit to significance, the conclusion is reached that the balance lies in favour of allowing the proposed development to proceed. When the additional public interests are added to that balance in order to fulfil the requirements of paragraph 196 then the balance simply shifts even further towards the need to grant planning permission.

87. On that basis it will be submitted that the proposed development accords with the NPPF section 16 and the Development Plan in terms of its heritage impacts.

Benefits of the Scheme

88. As explained above, any proposal for a school is to be ascribed great weight in favour of the grant of planning permission (see NPPF paragraph 94 and London Plan 3.16).

89. In addition, Mr Byrne has identified the myriad benefits of the proposed development in his evidence. They include:

- a. Increasing choice of school places through the provisions of non-faith state school;
- b. The reuse of the building to secure its future and its significance going forward.
- c. Placing the listed building in the hands of a responsible owner (the DfE and School Trust) aware of their ongoing obligations for maintenance and preservation of significance;
- d. The creation of a new community hub and a return of the building to civic use;
- e. The use of the building on a basis that will not result in any material increase in trips on the network and trips which will be almost entirely by non-car modes;
- f. The cessation of the costly bus operation which means that the funds currently used for this purpose can be focused on the education of the children rather than spent on them coming to school;
- g. The return of the school to a location where pupils, staff, parents and the community can engage with one another – where parents are able to access the school and create a relationship with it instead of being divorced and distant from it;
- h. The school’s approach to outdoor learning can be reinforced with far greater access to the Heath than is possible now;

90. All of the benefits have to weighed as material considerations in the planning balance. Overall, they are factors that must be given very great weight indeed in favour of the grant of planning permission.

Conclusion

91. It will be argued that the proposed development represents the only means for securing Abacus Belsize Primary School a permanent home and the only means for securing an ongoing and viable use of the listed building. It does this in a manner which accords with the NPPF and the Development Plan. As such s38(6) requires that planning permission should be granted since there are no material considerations sufficient to outweigh the policy support and the very significant benefits that the proposed development will deliver.

REUBEN TAYLOR Q.C.

ALEX GOODMAN