

FORMER HAMPSTEAD POLICE STATION

**OPENING STATEMENT
on behalf of the
LOCAL PLANNING AUTHORITY**

1. **INTRODUCTION**

1.1. These appeals relate to:

- (A) the refusal of planning permission for change of use of the Appeal 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 – “Appeal A”, which is made under s.78 Town and Country Planning Act 1990 (“TCPA 1990”); and
- (B) The refusal of listed building consent (“LBC”) for physical changes associated with the proposed change of use – “Appeal B”, which is

made under s.20 Planning (Listed Buildings and Conservation Areas) Act 1990 (“LBCAA 1990”).

1.2. The reasons for refusal (“RfR”) in respect of Application A were as follows:

- “1. *The proposed development by virtue of its use, location and catchment area is likely to result in an increase in trips by private motor vehicles, increased traffic congestion and exacerbating air pollution and would fail to sufficiently prioritise sustainable modes of transport, contrary to policies T1 (Prioritising, walking, cycling and public transport) and C2 (Community facilities) of the Camden Local Plan 2017 and policies TT1 (Traffic volumes and vehicle size) and TT2 (Pedestrian environment) of the Hampstead Neighbourhood Plan.*
2. *The proposed development, by virtue of the proximity of its outdoor amenity space to neighbouring residential properties would result in an unacceptable increase in noise disturbance to the detriment of the amenity of neighbouring residents contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.*
3. *The proposed development by virtue of its location on a main road with poor air quality, which could harm the health of pupils, would not be an appropriate location for a school, contrary to policies A1 (Managing the impact of development) and CC4 (Air quality) of the Camden Local Plan 2017 and policy S3 of the emerging London Plan December 2017.”*

1.3. The RfR in respect of Application B was as follows:

- “1. *The proposed internal works would result in the loss of plan form and original fabric including the fixtures and fittings of the magistrates court which would fail to preserve the special architectural and historic interest of the host building, contrary to policy D2 (Heritage) of the London Borough of Camden Local Plan and*

policy DH2 (Conservation areas and listed buildings) of the Hampstead Neighbourhood Plan.”

1.4. It is clear that determining these appeals engages a number of statutory provisions and policies and LBC's case on these matters will be briefly set out here.

2. THE TOWN AND COUNTRY PLANNING (USE CLASSES) (AMENDMENT) (ENGLAND) REGULATIONS 2020

2.1. The new Regulations contain transitional provisions in Regs 2 to 4, the effect of which is that the description of development for Appeal A remains unaffected. The “*material period*” of transition ends on 31st July 2021, therefore consideration of the implications of the new provisions will be required in relation to any conditions which might be imposed in the event of Appeal A's succeeding.

3. STATUTORY AND POLICY PARAMETERS FOR DECISION MAKING

3.1. Appeal A is to be determined pursuant to s.70 TCPA 1990 and s.38(6) Planning and Compulsory Purchase Act 2004 (“PACPA 2004”), in accordance with the development plan unless material considerations indicate otherwise.

3.2. S.38(6) PACPA 2004 is not engaged in Appeal B.¹ Clearly, development plan, national and other relevant policy/draft policy are material considerations, but the important statutory provision for Appeal B is s.16(2) LBCAA 1990, which provides:

“In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

The same obligation applies in relation to Appeal A by virtue of s.66 LBCAA 1990.

Provision of Schools – Planning Policy

3.3. The most up to date statement² of Government policy in NPPF 94 enunciates the importance of choice and requires LPAs to *“give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications”*. This policy does not mean, however, that the other principles of spatial planning are to be overridden.

3.4. LBC’s RfR raise 4 fundamental spatial planning issues: transport, air quality, noise and heritage. Local Plan **Policy C2: Community Facilities**³ provides

¹ Because s.16 LBCAA 1990 does not require regard to be had to the development plan and s.22 places the inspector in the shoes of the Local Planning Authority in this respect.

² A Coalition Government policy statement published in August 2011 but which is still extant.

³ Defined in para 4.21 to include *“youth provision”*.

that “the Council will ... balance the impact proposals may have on residential amenity and transport infrastructure.” Supporting text⁴ specifically states:

“The scale and intensity of use of some community facilities, such as schools ... can lead to adverse impacts on residential amenity. This is principally related to the movement of large numbers of people at certain times of day, impacts such as noise and air pollution and the pressure on the transport system ... Hampstead and Belsize Park have a very high concentration of schools where significant issues exist concerning the ‘school run’. We will refuse applications for new schools or the expansion of existing schools in these areas, unless it can be demonstrated the number of traffic movements will not increase...”

This statement in the Local Plan is landuse- and location-specific.

3.5. General policy in **A1: Managing the impact of development** is directed to protecting quality of life of occupiers and neighbours of development, seeking to balance needs and protect amenity with specific reference to transport, noise and fumes impacts, all of which are relevant in this case. Finally, the advanced draft London Plan Intend to Publish Version, **Policy S3: Education and childcare facilities** provides, in Section B, locational principles to be applied in development management decisions, including:

“3) locate entrances and playgrounds away from busy roads, with traffic calming at entrances.”

This is another landuse-specific locational policy which, at its advanced stage of preparation,⁵ and giving effect to national policy and guidance⁶ is entitled to considerable weight.

⁴ Para 4.33

⁵ This Policy is not the subject of the Secretary of State’s Direction.

⁶ NPPF 181, NPPG 005, 006, Ref. ID:32-005-006/20191101

3.6. Therefore, although school provision is to be given great weight, national policy is not “*Anything Goes*”, and adopted and emerging post-NPPF development plan policy enjoins a properly careful approach, “*balancing the impact proposals may have on residential amenity and transport infrastructure.*”⁷ Here, the principal entrance to the Site sits on a “*busy road*”⁸ in an Air Quality Management Area. The proposed playground, which will, naturally, generate noise as young children play, immediately abuts dense residential development on Downshire Hill, yet the Appellant’s team has considered impacts in the context of guidance for town centre uses. Although the school would be relocating, Burke does not accept that the Appellant has demonstrated that there would be no increase in car journeys associated with the school run, servicing and out of hours activities; this is irrespective of the vexed question of the correct baseline. The robustness of the Appellant’s assumptions in relation to transport, air quality and noise, will be explored in evidence.

3.7. Applying “*common sense*” judgment, as the Inspector urged at the first Case Management Conference, the choice of this Site represents poor spatial planning. In the Council’s view, it would not accord with relevant development plan policy having regard to the proper needs of either its neighbours or its pupils, the latter being a category of people who are recognised in policy and research at all levels as particularly sensitive to poor air quality.

⁷ Camden Local Plan Policy C2 (e)
⁸ Burke paras 1.2-1.5

Baseline

- 3.8. The environmental baseline is important. There are two relevant legal concepts in play here: fall-back and abandonment. This is because the Appellant wants the environmental impacts of the proposals to be judged against a baseline which does not consist of the actual situation on the ground at present. It would, however, be meaningless to carry out the assessment on a purely theoretical basis of the (unmeasured) state of affairs in 2013. It is clear that the former use was sui generis; that the Site was declared surplus to requirements by the police and that occupation for this purpose ceased in 2013; that the Site was sold to the DFES in 2013 or 2014; and that the only body or bodies capable of resuming the former use would be the police⁹, with or without the courts service. There is no evidence that there is a reasonable likelihood of the former use being resumed; indeed, a major part of the Appellant's case on heritage is that a new use needs to be found for the building. Caselaw on the materiality of fall-back establishes that there must be a finding of an actually intended use as opposed to a mere legal or theoretical entitlement: see R v SoSE ex p. Ahern [1998] JPL 351 and cases there summarised.
- 3.9. The former use of the Site pre-dated planning control. Such a use may be abandoned, it being a question of fact whether or not such an inference should be drawn. The test is objective, not a matter of subjective intention:

⁹ Or possibly the police and the courts service, because this sui generis use was, when both parts were operational, actually a composite of two uses. However, the court function appears to have ceased sometime before the police station was vacated.

see: Northavon DC v SoSE [1990] JPL 519; Hughes v SoSETR [2000] 80 P&CR 397. Many of the reported cases have involved private residences rather than buildings in public ownership and are therefore distinguishable because they did not involve the properties being declared surplus to requirements and transferred to other departments.

- 3.10. LBC recognise that it is not desirable for this LB to remain vacant, therefore Burke and Sheehy consider what the traffic generation position would be under relevant policy for potentially suitable alternative uses, which would be for car free forms of development.

Heritage

- 3.11. It is self-evident that, in order for the relevant statutory duties to be discharged in the determination of the Appeals, all matters relevant to reaching an informed judgment about the extent to which the special interest of the LB would or would not be preserved by the proposals must be taken into account.¹⁰ To the extent that any harm to the special interest of the LB or its setting is found to result from the proposals, that is a matter to which *“considerable importance and weight”* must be attached in the determination of both Appeals.¹¹
- 3.12. Local Plan policy D2 and Neighbourhood Plan Policy DH2 reflect NPPF policy. The differences to be resolved here are whether the proposals would,

¹⁰ Therefore, whilst the criticisms about the scope of Baxter’s evidence raised in Crisp’s Rebuttal and JLL’s letter of 13th September are not accepted, there can be no question of relevant matters concerning the nature and details of the proposals or their effect upon significance being left out of account.

¹¹ Barnwell manor Wind Energy Ltd v East Northants DC and Others [2014] EWCA Civ 137 at 22

in fact, preserve the significance of the LB or whether they would cause harm and, if so, the degree of such harm. Baxter demonstrates:

- (a) that the significance of the LB lies in its historical and evidential interest, as well as aesthetic considerations;
- (b) that the site retains fittings, surfaces, planning and fabric that endow it with great significance internally and externally;
- (c) that the rear elevation is of interest as well as the façade;
- (d) that the proposals involve extensive loss of historic fabric and of legible and intact plan form, resulting in less than substantial harm at the top end of that category.

3.13. Baxter and Sheehy recognise the importance of there being a new use for this LB. This, and other beneficial aspects of the proposals are assessed, by him and Sheehy. But LBC's case is that, properly assessed, the harm to an important, interesting designated heritage asset has not been justified as required by development plan and national policy, both of which reflect ss.16 and 66 LBCAA 1990 and caselaw.

3.14. As indicated at the Rehearsal hearing, if any possibility of a split decision were to arise, LBC would request the opportunity to consider its position and to make further representations.

4. CONCLUSIONS

4.1. LBC submit that both Appeals should be refused.

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