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)

CLOSING SUBMISSIONS
ON BEHALF OF THE APPELLANT

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1. These submissions address the issues as you identified them at the beginning of this appeal. However, it is important to place those issues within the framework of the relevant planning policy approach to proposals relating to schools at both the national level and within the Development Plan.

Schools and Planning Policy

2. 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**.
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> 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.'

3. Paragraph 94 of the NPPF states:

"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.

4. This Inquiry has heard ample evidence from local residents of Belsize Park of the "black hole" in school provision which existed prior to the creation of the Abacus Belsize primary school. That evidence establishes that there was a dearth of choice both in terms of the number of places available, the extent to which parents were able to access schools of their choice and the lack of non-faith school provision. Evidence has been given that people actually moved away from Belsize Park as a result.

5. The creation of a permanent non-faith primary school to address the "black hole" was clearly necessary. Abacus Belsize Primary has done just that and continues to address the need for the non-faith school that Belsize Park requires.

6. But to date the "black hole" issue has only been partially addressed. Whilst Abacus Belsize primary school exists as an entity, it does not have a permanent home. Its existing lease only runs to 2024. It also is temporarily located far away from the

catchment it serves requiring children as young as four to have to travel on buses to and from school each day in a journey that must feel to such youngsters like they are travelling halfway across North London.

7. The proposed development which finds a permanent home for the Abacus Belsize Primary School just 250m outside of its catchment is strongly supported by policy at a national level. Locating the school on the Appeal Site will finally provide an OFSTED "outstanding" school with a permanent home close to the catchment it serves. The high calibre of education that the school already provides to the children of the Belsize Park despite the distance from its catchment area cannot be doubted. This is in large measure due to the quality and dedication of the teachers under the under the remarkable leadership of Vicki Briody. The school has consistently been in the top five schools within the whole of the London Borough of Camden (LBC) for Early Years classes and Key Stage 1 outcomes. In 2018, the reception class attained the highest outcomes in the Borough as a whole.

8. The school 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 (Fitzjohn's Primary School in Hampstead) is consistently over-subscribed. There is an evidenced need for additional choice of student places at a non-faith non fee-paying primary school within walking distance from Belsize Park catchment area.

9. Providing the school with a permanent home is strongly in the national interest and the policy approach requires planning decision-makers to support that objective. That can only be done by giving great weight to the need to provide the school with a permanent home in this location (see paragraph 94 of the NPPF).

10. 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.". The grant of permission for a permanent home for the school in this location will precisely achieve those objectives.

11. Any argument that the policy statement or paragraph 94 referred to above do not support the proposed development being given great weight in favour of the grant of planning permission must be rejected. Any submission to the effect that the proposed development does not involve the creation, expansion or alteration of a school for the purposes of paragraph 94 of the NPPF must similarly be rejected.

12. The proposed development secures a permanent home for a school which currently only has a temporary one. It is submitted that this is an "alteration" of a school, from one located miles from its catchment without a permanent home to a school with a permanent home within 250 metres of its catchment. Parents who until now may have had concerns about sending their children to a school with an uncertain future will no longer have such concerns. Children starting at the school will know that their school has a permanent base.

13. Further, it would be a nonsense if paragraph 94 were interpreted in such a way that a free school set up in temporary accommodation were unable to secure the benefit of the great weight in paragraph 94 of the NPPF when it seeks planning permission for its permanent location. Such an interpretation cannot be the purport or intent of that policy when set against the background of the ministerial statement (see above). Such an approach would not achieve the objective of securing the expansion of school provision which lies at the heart of Government policy. The approach advocated by LBC in closing (paragraph 6.7) of giving reduced weight must therefore be rejected.

14. The proposed development in securing a permanent home for the Abacus Belsize Primary school will secure the future of this outstanding school for the benefit of the Belsize Park community. It will permanently result in more provision and greater diversity in the state-funded school sector in a manner which meets the local demographic needs for a non-faith school, it drives increased choice and, since other schools will have to compete against this outstanding one, will lead to higher standards. Granting planning permission for a permanent home for Abacus Belsize Primary Schools increases both the number of school places and the choice of state-funded schools. As a result, in accordance with the Governments approach it will raise educational standards and so transform children's lives by helping them to reach their

full potential. This is strongly in the national interest. It is to be given great weight in the planning balance.

15. This policy support seems to have been rather lost in the approach and submissions of the other parties to this Appeal who are, to say the least, muted in the extent to which they recognise the great weight to be ascribed in favour of the grant of proposed development. Indeed, the R6 party did not may any reference whatsoever to it in their submissions, whilst LBC did not state that it should be given great weigh in the planning balance. This means that the LBC and R6 party's approach to the overall planning balance is wrongly skewed in favour of the refusal of planning permission since it fails to give the great weight required by national planning policy in favour of the grant of planning permission; this is thus the first of many reasons why their approach is to be rejected.

16. The London Plan also contains policies in a similar vein to those at a national level. 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.

17. 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. Part D cannot sensibly be disapplied where a school already has a temporary home having been set up quickly to meet an existing need – to do so would undermine the provision of permanent school facilities in London and it would not achieve the purpose of Policy 3.18 which is to support applications for permanent new school provision.

18. It is submitted that the Development Plan effectively creates a presumption in favour of the grant of permission in the present case. This 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.

19. We explain now that such local impacts as have been identified do not substantially outweigh the great weight to be given to providing Abacus Belsize Primary with a permanent home.

Transport Impacts

20. In this section we address the issues relating to transportation.

21. I so doing, we ask you to note that it is manifestly not the case that the Appellant's case is "predicated on" the series of assumptions as alleged by he R6 Party (R6 closing paragraph 7). That is not the case and mischaracterises entirely the Appellant's case.

22. Some points have been raised regarding the potential effect of the Coronavirus pandemic. It is submitted that it is too soon to be able to address with any certainty the potential long-term effect upon society arising from the pandemic. It may be, as Mr Ferguson suggested, that in the short term to more working from home but whether this would continue to be the case is entirely unknown. Whilst this uncertainty is a factor to take into account, it would be an error to assess the impacts of the scheme generally and transport in particular by reference to assumed changes in behaviour as a result of the pandemic. The Appellant's is not predicated upon any long terms view of the implications of the pandemic and it is wrong to suggest otherwise (see R6 closing paragraph 13).

23. There is no conflict with the relevant policies within the NPPF relating to highways, highway safety and transportation.

24. Mr. Burke confirmed in XX that the proposed development accords with paragraph 109 of the NPPF in that it would not give rise to unacceptable impacts upon highway safety and would not give rise to residual cumulative impacts upon the road network which would be severe.

25. Mr Burke also confirmed in XX that the proposed development would accord with paragraph 108 of the NPPF. He confirmed that all appropriate opportunities to promote sustainable transport modes have been taken up and that there is no mitigation in this regard that LBC is seeking which was not being provided. He confirmed that safe and suitable access to the site would be achieved for all users. He confirmed that there would not be any significant impacts from the development on the transport network (in terms of capacity and congestion).

26. Mr Burke confirmed that the proposed development did not give rise to any conflict with paragraphs 110 or 111 of the NPPF.

27. The result is that the proposed development was accepted to accord with Part 9 of the NPPF – Promoting Sustainable Transport and in particular the "development management" section within that part "Considering Development Proposals".

28. LBC contended that Policy T1 of the CLP (CD5/03 p300) was breached by the proposed development. That policy provides that Council will promote sustainable transport by prioritising walking, cycling and public transport in the borough. Mr Burke confirmed in XX that since the proposed development was doing all that could reasonably be done to promote sustainable transport, there is no breach of Policy T1.

29. Policy TT2 of the HMP (CD5/04 p56) was also said to be breached by the proposed development. That policy states "…public realm improvement works supported by development should be consistent with the following objectives.". It then sets out a series of objectives. Giving the words of Policy TT2 their ordinary meaning, it is submitted that Policy TT2 applies to require "public realm improvements works" which development proposals bring forward to be consistent with the objectives set out in that policy.

30. In XX Mr Burke was unable to identify any public realm improvement works that were contrary to the listed objectives. Indeed, in XX he was wholly unable to explain what aspect of the proposed development gave rise to conflict with this policy. The simple reason for that is because the proposed development does not propose any public realm improvement works which are inconsistent with the policy objectives set out in Policy TT2. As a result, there is no conflict with the development plan policy.

31. Policy TT3 of the HNP supports the proposed development since it is a development for educational purposes on a site with a PTAL score of 4.

32. That leaves Policy C2 of the CLP (CD5/03 p158). It provides that

"The Council will work with its partners to ensure that community facilities and services are developed and modernised to meet the changing needs of our community and reflect new approaches to the delivery of services."

33. It then sets out a series of outcomes that the Council will seek to achieve.

34. Each of the these in so far as they were relevant to transportation issues was put to Mr Burke.

"c. ensure that facilities provide access to a service on foot and by sustainable modes of travel"

35. Mr Burke confirmed that this objective was achieved by the proposed development.

"d. facilitate multi-purpose community facilities and the secure sharing or extended use of facilities that can be accessed by the wider community, except for facilities occupied by the emergency services due to their distinct operating needs;"

36. Mr Burke confirmed that this objective was achieved by the proposed development.

"e. support the investment plans of educational, health, scientific and research bodies to expand and enhance their operations, taking into account the social and economic benefits they generate for Camden, London and the UK. In assessing proposals, the Council will also balance the impact proposals may have on residential amenity and transport infrastructure"

37. Mr Burke confirmed that the proposed development did not have any unacceptable impact upon transport infrastructure. Indeed, Mr Burke confirmed in XX that, from a

highway and transportation perspective, the proposed development accorded with the words within Policy C2.

38. Giving the words of Policy C2 their ordinary meaning, it is clear that, once it has been concluded that the proposed development accords with paragraphs 108-111 of the NPPF, there can be no conflict with Policy C2 of the CLP.

39. Indeed, if it is concluded that the proposed development accords with the NPPF but conflicts with Policy C2, then Policy C2 could only be seen as inconsistent with the transportation policies of the NPPF. As a result, in accordance with the approach set out in paragraph 213 of the NPPF, Policy C2 would have to be given little if any weight.

40. LBC contend otherwise however. LBC relies upon paragraph 4.33 of the explanatory text within the CLP. That states:

"The scale and intensity of use of some community facilities, such as schools, colleges and higher education facilities 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. The Council will ensure schemes satisfactorily address the impacts of changes to the balance and mix of uses in the area, including the cumulative impact of schemes with planning permission or awaiting determination. 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.** Policy A1 Managing the impact of development refers to how the Council will manage the impact of traffic movements." (emphasis added).

41. Thus, LBC contends that if a new school proposal comes forward within the Hampstead and Belsize Park area, that school proposal will be contrary to the development unless it is demonstrated that the number of traffic movements will not increase.

42. In response it is submitted that:

a. The LBC approach to the interpretation of the CLP is wrong in law; and
b. It has, in any event, been demonstrated that the number of traffic movements "will not increase".

a) <u>Wrong Interpretation</u>

43. In *R (Cherkley Campaign Limited) v Mole Valley District Council* [2014] 2 E.G.L.R. 98 (approved and extended in *Fox Land & Property Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298) the Court had to consider the relationship between policies within a development plan and the explanatory text. In that case a new golf course was proposed. The explanatory text of the relevant development plan stated:

"Applicants proposing new courses will be required to demonstrate that there is a need for further facilities."

The text of the relevant Policy did not contain any requirement to demonstrate need.

44. At paragraph 16 Richards LJH explained:

"Leaving aside the effect of the saving direction, it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the polices will be implemented."

45. Further at paragraph 21 Richards LJ continued:

"It should already be clear why I disagree with that reasoning. The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy."

46. LBC seeks to create a test of requiring a school development not to increase traffic by reference to the words of the explanatory text. That test is not included in the words of Policy C2; rather the test in Policy C2 requires regard to be has to the impact upon "transport infrastructure". Mr Burke confirmed that the proposed development would not have an unacceptable impact on transport infrastructure.

47. As in ***Cherkley***, to treat as part of the policy what is said in the supporting text and to conclude that he Development Plan policies in a requirement to demonstrate no increase in traffic is to read too much in the policy. Such an approach would be wrong in law.

48. It is incorrect to submit that *Chichester DC v SSHCLG* [2019] EWCA Civ 1640 alters the approach in *Cherkley*. It does not. *Chichester* held that it is possible to conflict with the strategy of a development plan having regard to policies and supporting text without being in conflict with a particular policy, but that is not relevant here since there is no conflict with the strategy of the Plan. The Court stated at paragraph 47:

"What those two cases show is that there will sometimes be circumstances in which a proposal for housing development, though it neither complies with nor offends the terms of any particular policy of the development plan, is nevertheless in conflict with the plan because it is manifestly incompatible with the relevant strategy in it. This may be a matter of "natural and necessary inference" from the relevant policies of the plan, read sensibly and as a whole. The effect of those policies may be—I stress "may be"—that a proposal they do not explicitly support is also, inevitably, contrary to them. Whether this is so will always depend on the particular context, and, critically, the wording of the relevant policies, their objectives, and their supporting text."

49. In the present case the strategy of the Development Plan reflected in Policy S3 is to ensure that there is no adverse impact upon transport infrastructure. The agreed position

is that there is not. There is then no question of the proposed development being manifestly incompatible with the transport strategy of the Development Plan.

b) <u>No Increase in Traffic</u>

50. In any event, the text in paragraph 4.33 of the CLP is directed to address a particular problem. That problem is described as:

"Hampstead and Belsize Park have a very high concentration of schools where significant issues **<u>exist</u>** 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." (emphasis added)

51. So, the problem which paragraph 4.33 relates to and considers should be addressed is one relating to the scale of transport movements which existed at the time when the CLP was promulgated (i.e. 2016). As a result, the appropriate baseline against which any test arising out of paragraph 4.33 should apply has to be a baseline of then existing traffic movement (i.e. that existing in 2016). It must have been against that baseline that a judgment was reached that a response is appropriate. The text in the plan does not support the view that a response is appropriate no matter what the baseline might reduce to in the future.

52. Mr Ferguson produced unchallenged data on traffic movement in his evidence. He explained that there has been an observed decrease in school peak period traffic flow on Haverstock Hill (just south of the appeal site) between 2016 and 2018, with 225 or 13% fewer total two-way vehicle movements in the period 8-9.15am, and 56 or 3.5% fewer total two-way vehicle movements in the period 3-4.15pm. He further identified that there had been a significant decrease in the background traffic average annual daily flow (AADF) volumes on the A502 immediately adjoining the appeal site. 16204 AADF in 2016 reducing to 14657 in 2018 – a drop of 1547 movements per day. He explained that if that trend continued from 2018 to the open day of the school a further reduction of 944 movements could be expected – a total reduction of 2491 daily movements 2016 to September 2022.

53. Even on the basis of the traffic generation for the proposed school identified by Mr Burke and Mr Murdoch in their evidence, there would be no increase in traffic movement when compared to the 2016 baseline adopted by paragraph 4.33 on a daily basis. Indeed, on their assessment of the trip generating potential of a school use at the appeal site, the traffic generation would fall within daily fluctuations in traffic flow on the adjoining A502 Rosslyn Hill (Ferguson rebuttal 2.36).

54. Accordingly, even if the test of no increase in traffic within Hampstead and Belsize were applied (which it should not be), the evidence amply demonstrates that the proposed development will not cause any material increase in traffic over the relevant baseline.

55. Further, it is important to remember that the proposed use of the appeal site as a permanent home for the existing established Abacus Belsize Primary School means that there will be no 'new' traffic on the adjoining road network in any event. School related trips associated with Abacus Belsize Primary School by all modes of travel are already present on the network within and around the catchment area. As Mr Ferguson explained (Proof of Evidence paragraphs 6.8 to 6.10), the proposed development does not result in new trips on the network but simply represents a reassignment of existing trips by existing residents and their children.

56. Indeed, by reducing journey times and distances, the proposed development results in benefit in sustainable transportation terms. If Abacus Belsize Primary School did not exist then the families of this area wanting a secular, state funded education would have to travel much greater distances to find this sort of school e.g. New End Primary School where the drop-off rate by car is much higher.

57. Accordingly, it is submitted that in transportation terms the proposed development accords with the NPPF and the Development Plan.

58. As a consequence of the above, to a large extent the precise likely traffic generation of the proposed development is something of a sideshow in the determination of this appeal. Nevertheless, should you disagree, we submit that Mr Ferguson's assessment of likely traffic generation is to be preferred. His view was that the proposed

development would be likely to generate a total of 44 total car trips on a weekday during term time (11 arrivals and departures) in the mornings and afternoons with a very small number of additional servicing related movements.

59. Mr Ferguson's approach is to be preferred because it reflects the existing reality of vehicular movement associated with the school.

60. Belsize Park is a place where 53% of people do not own a car or van (Ferguson para 4.29 Table 2). There is then low dependence on the use of the car. This propensity not to drive was also borne out by the evidence of local residents who described walking with their children as a principle means for travelling to Heath and elsewhere.

61. Belsize park is an area where very few drive to work (7% - see Ferguson para 4.27 Table 1). Most people travel to work by bus, tube or train (43%). Further, the school is located at the northern end of the catchment in the opposite direction to central London where most will work. As a result, people are unlikely to use the car to drop their child on the way to work.

62. Further, there is a series of hands up surveys of the children themselves and how they get to Abacus Belsize Primary/ the bus pick up points at present.

63. Based on 'hands-up' travel mode data from the school's time at the Haverstock Hill site (2013-2015) a short distance to the south of the appeal site, 70% of children walked, scooted, or cycled to school, 25% by public transport, and 5% by car. On this basis a full 1FE school with 210 pupils will generate 147 total walk/scooter/cycle trips, 53 trips on public transport, and only 11 trips by private car in the morning and again in the afternoon peak periods. Since there is little difference in terms of the factors affecting decisions regarding choice of mode as between the Haverstock Hill site and the Appeal site, this survey supports Mr Ferguson's assessment strongly.

64. A further hands up survey in September 2019 was conducted looking at how children are dropped off at the private bus stop pick-up points within the catchment area. This showed that that of the 138 children who used the private bus service that day 91% (125 children) walked, scooted, or cycled to the pick-up points, 5% (7 children) used public transport, and 4% (6 children) were dropped off by car. A total of 27 children were

taken directly to the Jubilee Waterside Centre in Kings Cross on the day of the survey. The survey conducted in September 2020 also showed this same pattern on an entirely consistent basis.

65. The criticism of the hands-up surveys was unfounded. Neither Mr Burke nor Mr Murdoch produced any different surveys of their own looking at the travel mode of existing students. LBC's highway officers, in the more than four years the transport issues have been considered by the Council, had never questioned the use of hands-up surveys. Indeed, the Council imposes by way of planning condition/planning obligation a requirement for schools to conduct their transport planning on the basis of hands up surveys. Hands-up surveys are used by TfL as the basis of assessing STARs accreditation (Ferguson paragraph 6.55). Abacus Belsize Primary School is not an isolated case – other schools also achieve very low car drop-off rates in the Borough. According to TfL's STARS database there are a number of other primary schools in Camden which also achieve 0-5% car drop-offs in LBC (Ferguson paragraph 6.18), including Torriano with a PTAL of 4. Since that school can manage it and since Abacus already manage it, there is no reason to suppose that this would not be the case in the future.

66. It is also important to remember that since its inception Abacus Belsize has adopted a walk to school and car free-ethos – (see Ferguson Proof 4.25). Indeed, the Inquiry heard about the parent lead proposal for a walking bus to enable children to walk to the Appeal Site with the friends when then school obtains planning permission.

67. All of these factors taken together mean that Mr Ferguson's assessment of the likely traffic generation of the school is reasonable and justified.

68. By contrast, Mr Burke and Mr Murdoch's assessments are hugely at odds with reality. They rely on establishing that moving the school, from a location behind St Pancras station to a location within 250m of the catchment area it serves, will result in an increase in journeys by private car on the road network.

69. They also disagree with one another – Mr Burke taking the extreme view that 22% of the journeys by pupils to the Appeal Site will be by private car. Mr Murdoch adopted 8

to 10%. the fact that Mr Murdoch identifies 8-10% suggests that Mr Burke's 22% is a very long way from any kind of reality and must immediately be rejected.

70. Mr Burke's 22% figure relied upon applying average data taken from two existing primary schools – New End and Christchurch. Neither of those schools is comparable in any meaningful way

71. As Mr Ferguson explained (Proof Paragraph 6.47 and following) New End has a PTAL of 3 (not 4) I.e. only two buses within the PTAL walk distance. The Appeal site has 4 such services. New End has nursery classes which tends to increase the mode split using the private car since parents with very small children will use this mode more than those with older children. New End also has a larger catchment area as Mr Ferguson explained (Proof paragraph 6.47) and Mr Burke agreed. Church Primary School is similarly not comparable to Abacus Belsize Primary. The site has a PTAL score of 2 'poor'. There are only 2 bus services available within a PTAL prescribed walking distance (640 metres) of the school.

72. Mr Burke produced no evidence to demonstrate that New End has a comparable walk to school ethos to that which exists at Abacus. Mr. Burke also produced no data on car ownership within the catchment not the travel to work modes of those living in the catchment

73. Mr Murdoch's approach was not based upon any comparable data. He relied upon three sources none of which were related to the characteristics of the proposed Abacus Belsize Primary School.

74. Firstly, the 2019 Neighbourhoods of the Future Schools Engagement Meeting quotes an average of 36% travelling to school across the Borough by car – However this is a borough wide figure which includes private schools which tend to have wider catchments and higher private car use.

75. Secondly, Mr Murdoch relies upon the 2017 / 2018 National Travel Survey (Appendix F) which he says suggests that 21% of pupils in London aged between 5 and 16 travel to school by car with 52% walking and 21% by bus. That is a London wide figure and cannot be read across to the proposed development.

76. Lastly, Mr Murdoch relied upon TRICS data from Primrose Hill Primary School. The traffic data was collected in December 2012. It is old and no attempt has been made to look at whether circumstances have change in the intervening years in a many which might affect mode choice e.g. changed catchment area, better public transport, greater peak time congestion. Mr Ferguson considered that it is reasonable to expect that car use may have dropped further at Primrose Primary School since 2012 (Ferguson rebuttal. paragraph 3.6). This makes this data highly unreliable to begin with.

77. In addition, Primrose Hill Primary School has a PTAL rating of 2 'poor' as opposed to the appeal site's PTAL rating of 4 'good'. There is only one local bus route running close to Primrose Hill Primary School, and it is around 700 metres from Chalk Farm Underground Station. By contrast, the appeal site is close to 4 different bus services within PTAL walk distance. Finally, Primrose Hill Primary School has a nursery, therefore there would have been a class worth of 3-year olds included in the data who may be more likely to be dropped-off by car than older children. The proposed development has no nursery. In addition, no evidence was adduced to demonstrate that in 2012 Primrose Hill Primary School had a similar car free policy and walk to school ethos to that at Abacus Belsize Primary School

78. Further and more importantly, neither Mr Burke nor Mr Murdoch had any convincing response to a very simple point put in XX. At present, those in the north of catchment walk to the bus pickup points and walk home. They walk down the hill in the morning and up the hill in the afternoon. At present those in the South have a short walk to the bus pick up points.

79. With the proposed school operating from the Appeal Site. Those in the south of the catchment would have to walk up the hill in the morning and back down the hill in the afternoon.

80. In other words, with the proposed school operating, the position would be the reverse of that which currently exists depending on whether you live in the north or the south of the catchment. But the same journey which is currently done on foot/scooter/cycle by the those currently living in the north would be done by those living in the south. There is no reasonable basis for concluding that those living in the south of the

catchment would be any less likely to undertake the same movements currently undertaken by those living in the north. Mr Burke and Mr Murdoch were unable to identify a factor which would mean that there would be a change in mode share as a result of the switch around for parents. That is because there no such factor.

81. The reference to studies of walking preference over using a tram on a 10% gradient in Zurich do nothing to assist in the present case. That study simply shows that where presented with a steep hill people will prefer to get on a tram going up it. That study is beside the point and does not demonstrate that the proposed development will result in parents in the south of the catchment using a car in a way which existing parents in the north of the catchment do not when negotiating the gradient within the catchment.

82. The key factor for a parent in either dropping a child at school or picking a child up from school is certainty; they need to be able to ensure that they can get their children to school on time and they need to ensure that they are at the school gate at pick up time. The road conditions in the vicinity of the school are variable. The parking availability in the vicinity of the school is variable. Mr Burke considered that parents would "struggle to find an appropriate place to stop near the school" (Burke paragraph 3.6); a conclusion wholly at odds with his contention that driving to school would be an attractive proposition.

83. Bringing these factors together, the reality is that there would be considerable uncertainty in terms of the ability to drop-off or pick up on time if a car were used. Mr Burke and Mr Murdoch both accepted that such uncertainty would not exist for the relatively short walking journeys within the catchment. A parent walking would know when they would arrive at the school, a parent in a car would not. Parents will choose to walk.

84. There is then no reasonable basis for concluding anything other than that the mode share currently experienced at the bus pickup points is highly likely to continue if planning permission is granted. There would be no sudden mode shift towards use of the private car once the school locates closer to the catchment. The views of Mr Burke and Mr Murdoch should be rejected. Mr Ferguson's assessment should be preferred. The only conclusion to be drawn here is that the school is unlikely to generate significant movement by private car.

Past Use as a Police Station

85. In the light of the submissions above to the effect that the proposed development accords with the NPPF and the Development Plan, the utility of considering the proposed development against the historic use of the police station as a police station may not be significant.

86. Nevertheless, if you feel it is instructive then it is submitted that Mr Ferguson's assessment of likely traffic generation should be accepted. It has to be remembered here that what is being considered the potential traffic generation of a police station use and not its actual traffic generation. For this reason, the evidence of Mr Grosz as to historic use is by the by and should be given little if any weight.

87. This issue did not go well for Mr Burke. In XinC he conceded the point regarding the Kentish Town station and the session house and changed his evidence such that 26 to 51 two-way movements a day might be generated by a police station. But that approach relies upon applying correction factors to the Kentish Town data which are simply not justified. The corrections based upon parking spaces or floorspace are flawed as Mr Ferguson explained (proof para 6.27 and following).

88. In relation to the West Hampstead Police station, the Appellant queried a number of issues relating to the data collected. No satisfactory answers have ever been provided. Neither Mr Burke nor Mr Murdoch provided answers to the questions asked in para 6.38 of Mr Ferguson's proof. In the absence of answers to those questions, the West Hampstead work is cannot reasonably be relied upon.

89. To the extent that you consider that a comparison with the historic use of the site as a police station is relevant, it is submitted that the former site uses would have generated a steady stream of vehicle trips throughout a typical weekday. By contrast the proposed school will generate fewer trips and will aim to generate zero vehicle trips during the 'school run' from the outset of first occupation at the new premises. This will be set out in the School's Travel Plan which will be secured as a S106 Agreement as part of any future planning permission.

90. Mr Ferguson suggested a trip generation by private car of 22 trips in each peak period. In the morning and afternoon peak periods referenced above, the survey at the Kentish Town Police Station observed 12 and 41 total two-way vehicle trips respectively (53 total trips, refer to Table 3). Whilst this is likely to represent an underestimate of the number of vehicle trips that would have been generated by the former Hampstead Police Station and magistrate's court, it demonstrates that the proposal will generate less vehicle traffic than the historic use (Ferguson proof paragraph 6.44).

The Baseline for Assessment

91. In the light of the submissions above to the effect that the proposed development accords with the NPPF and the Development Plan, you may also question the utility of considering the proposed development against its lawful use.

92. If, however you do consider that to be a relevant matter, there is an issue which arose shortly before the start of the Inquiry in that regard.

93. 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.

94. 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.

95. 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."

96. Mr Sheehey 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."

97. However, a few weeks before the Inquiry started the Appellant received a letter from LBC in which it sought change its position on this issue. The council now resiles from the signed agreement in the SoCG and argues 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.

98. 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 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?

99. 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 Frognal 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.

100. 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.

101. 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).

102. Accordingly, it is submitted that there 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.

103. The Appellant submits that, since the use has not been abandoned, and it is considered necessary to have regard to a baseline use, it is appropriate have regard to a baseline which includes in being in use as a police station

104. Notwithstanding that these matters were raised in opening; LBC has not presented any explanation to the Inquiry for the change in 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 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". That is because it is not. It is a prime example of a Council desperately and determinedly seeking to do the very opposite. It is LBC hunting for any reason it can find, no matter how lacking in merit, to say no.

Use of the Appeal Site for Other Purposes

105. You may think it relevant to consider the potential traffic generation of other uses for the police station, in order to consider whether the traffic likely to be generated by a school would be worse, comparable or better than other uses that the listed building might be put to. Mr Ferguson explained in his evidence that residential or commercial uses would be likely to generate traffic movement even if they were made to be car free via taxi trips, drop-offs of visitors and deliveries.

106. It is submitted that even if you took the view that the trips associated with such alternate uses might be less than those associated with a school, you should conclude that they would not be likely to be materially less. In any event, in terms of the acceptability of the appeal proposal, this comparison does not change the key conclusion.

Conclusion on Transport

107. The only rational conclusion here is that the proposed development accords with the NPPF, accords with the Development Plan and is acceptable in terms of its transport impacts.

Air Quality

108. Paragraph 181 of the NPPF provides:

> "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."

109. Dr Bull confirmed that the proposed development would not breach the first sentence of NPPF paragraph 181. He confirmed that the Council did not argue that the proposed development would result in or cause breach of relevant limit values or national objectives for pollutants. He agreed that it would not give rise to any prejudice to policies within the local air quality management plan. Dr Bull confirmed that no additional mitigation measures were being sought by the Council which were not already being provided. As a result, as Dr Bull agreed in XX, the proposed development accords with paragraph 181 of the NPPF.

110. Paragraph 170 of the NPPF states that:

> "Planning policies and decisions should contribute to and enhance the natural and local environment by…
>
> e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability."

111. LBCs reason for refusal relating to air quality refers to the location on a main road harming the health of pupils and not being an "appropriate location for a school". LBC does not contend that the proposed development will itself give rise to emissions to air which would be unacceptable as Dr Bull confirmed in XX. Its concern lies in the exposure of the children who would attend the school to air pollution as a result of the proposed location.

112. Thus, framed in the context of paragraph 170 of the NPPF the issue is whether the children associated with the proposed development would be put at unacceptable risk from "unacceptable levels" of air pollution if planning permission was granted?

113. Dr Bull confirmed that LBCs concerns only arise in relation to a single pollutant namely nitrogen dioxide (NO2). He did not contend that the children attending the proposed school would be at risk of harm from exposure to PM10 or PM2.5 emissions. That was for good reason. The evidence demonstrates that the exposure on Rosslyn Hill would be an annual average of 20 to 23 mg/m3 for PM10 compared to a limit value of 40 mg/m3 and for MP2.5 14-16 mg/m3 compared to a limit value of 25 mg/m3. Exposure even in the worst location is thus very significantly below the limit values. The WHO guideline values referred to by the R6 party have not been adopted as legal limit values and there is no statutory duty to achieve them. They do not them form an appropriate threshold for determining the acceptability of this location. In any event, children will not in fact be exposure to PM10 and PM2/5 levels over the averaging period that the guideline values apply to – their exposure will be to those pollutants over much shorter periods of time. Attempts by local residents who are not qualified in relation to air quality matters to measure PM levels locally should be rejected. They were not measured in the same location consistently. They were not measured over the relevant time periods to enable comparison with the limit values.

114. As a consequence, we focus upon NO2 as a pollutant.

115. Dr Bull argued that the school is proposed in a building adjacent to a busy road in a location where roadside ground level concentrations currently exceed the NO2 annual limit value. Thus, the children attending the school would be put at unacceptable

risk from" unacceptable levels" of air pollution if planning permission was granted and they attended school there.

116. LBC's position in this regard is overly simplistic and flawed. It omits to consider two key factors:

a. The actual likely exposure period of children attending the school; and
b. Whether the grant of planning permission would in fact give rise to a greater risk of harm compared to the position if planning permission were refused.

Whether would be Exposure to "Unacceptable Levels" of Air Pollution

117. NO2 levels are expected to reduce so that they are met throughout London by 2026 (as Dr Bull confirmed in XX). The anticipated change in annual mean NO2 levels is being delivered via policy initiatives pursued by national government and explained in the national air quality plan and via the Air Quality Plan for Greater London. That means that even at the roadside on Rosslyn Hill within 4 years of opening the air quality, the likelihood is that the environment will not be one in which, even on an annual mean basis, "unacceptable levels" of air pollution would be expected to be experienced.

118. That policies are having this affect is evident from the latest LBC monitoring data which showed significant falls in the annual average ground level concentrations in the vicinity of the appeal site (see ID15 p8-9). Site CA47 (Fitzjohns Avenue) is the closest site to the Appeal Site and it shows a reduction in annual average concentrations of NO2 from 66 mg/m3 in 2017 to 42.53 mg/m3 in 2019. The same pattern can be observed in respect of sites CD1: Swiss Cottage and CA7 Frognal Way. The R6 referred to and used date from 2016 for comparative purposes but failed to recognise the substantial improvement in air quality which has been delivered locally since then (R6 closing paragraph 20).

119. Accordingly, since the Secretary of State is under a legal obligation to achieve the annual limit value for NO2, there are policies and plans in place to achieve that objective and those policies and plans as implemented are resulting in reductions in ground level concentrations, it is submitted that the likelihood is that the air quality

around the school will be within the annual mean NO2 limit value in the very near future.

120. Secondly, when the actual exposure of children to NO2 in the vicinity of the Appeal Site is considered, the only rational conclusion is that they would not in any event be exposed to "unacceptable levels" of air pollution as a consequence of attending the proposed school.

121. That is because the children attending the school are not exposed to the external air quality environment on Rosslyn Hill on an annual basis – indeed they are only at the school 183 days of the year. When they are at school, they will spend only limited time in Rosslyn Hill or Downshire Hill. The remaining time will be spent either inside the school, where the environment will be acceptable in air quality terms as Dr Bull confirmed in XX, or they will be in the playground for periods of up to 45 minutes.

122. Local Air Quality Management Technical Guidance (TG16) (CD 8/04) confirms that exposure has to be considered at an individual level and "for the purpose of assisting local authorities, some examples of where the objectives should, and should not apply" are set out in Box 1.1 of that Guidance.

123. Box 1.1 reveals in relation to air quality objectives with an annual mean averaging time that these should not be applied "at kerbside sites and where public exposure is expected to be short term."

124. Box 1.1 explains that locations where air quality objectives with a 1 hour averaging time do apply include "kerbside sites" and "any outdoor locations where members of the public might reasonably expected to spend one hour or longer".

125. In other words, the amount of time that an individual will spend in a particular location determines whether one has regard to an annual mean (where individuals are likely to be exposed for long periods) or an hourly mean (where individuals are likely to be exposure for an hour or a little longer.

126. In the present case, since the children will not spend long periods exposed to the annual average concentrations experienced on Rosslyn Hill, it would be an error to

appraise the impact of the proposed development upon them utilising the annual average exposure period. Rather, what should be utilised is the hourly average exposure period since this correlates with their actual potential time exposed to pollutant levels on Rosslyn Hill.

127. Dr Bull and Mr Kearney both agreed that the air quality environment on Rosslyn Hill meets the NO2 limit hourly average limit value and that children will not experience short term exposure to ground level concentration above the hourly limit value. Dr Bull confirmed in XX that he had no concerns about impacts upon children arising from exposure of less than 1 hour.

128. Children coming and going from school will experience the environment of Rosslyn Hill for some 5 to 10 minutes each way as they walk to and from home. It is submitted that in the present case, the children attending the school will not be exposed to the elevated levels of NO2 on Rosslyn Hill between now and the date in the near future when compliance with the annual limit value for more than an hour a day.

129. Mr Kearney modelled the levels of exposure within the playground on an annual mean basis. But he explained that he did so assuming that the police station was not physically present and that emissions from the roads were free to drift across the site in a manner unimpeded by buildings. Even on that highly robust basis, the forecast levels within the playground meet the annual limit value – that means that the short-term exposure levels within the playground will be even better than the already acceptable levels on Rosslyn Hill.

130. Accordingly, since the hourly average limit value is health-based and aimed at protecting the most vulnerable in society(CD1/01 page 4) from unacceptable short term exposure to NO2, it can be concluded that the children attending the school will not in fact suffer any exposure to, nor be at unacceptable risk from "unacceptable levels" of air pollution. During the limited time in which they will experience exposure to elevated levels of NO2, they will be exposed to levels of that pollutant that are acceptable over that time period.

131. Dr Bull confirmed in XX that he did not produce any evidence which demonstrated that exposure to short term concentrations of NO2 below the hourly limit

value level presents any risk to children's health; rather, such evidence as he did adduce related to studies of long term annual average exposure to levels of NO2. This is a fact entirely overlooked in the closing submissions for LBC (see LBC closing para 4.6 and following). That is a hugely significant omission. LBC is relying upon research relating to long term exposure as indicative of potential health issues for short term exposure. That approach is flawed.

132. The WHO Expert Consultation from 2015 concluded that new evidence from cohort studies might result in a numerical recommendation below the current level of 40 mg/m3 for the annual limit of NO2 (Bull Appendix D1). In the event five years later neither the WHO nor the EU have altered the limit value.

133. The Lancet extract (Bull Appendix E1) again examines long term i.e. annual exposure to NO2 and concludes that the changes in lung function identified in that study "are unlikely to be clinically significant in the healthy population". Also, that study states specifically: "our study only infers change sin lung growth from the association of FVC with long term, **and not short term,** exposure" (emphasis added). This makes the very point we have set out above, this study does not demonstrate any clinical consequence for the children who would attend the proposed school. Their exposure to pollution associated with the elevated levels outside the school is short term, not the sort of long-term exposure examined by the Lancet extract.

134. As such it is submitted that there is no evidence that children attending the proposed school would be at risk of harm from air pollution, nor is there any evidence that they would be at risk from unacceptable levels of air pollution.

135. It follows that, since it is inappropriate to assess the risk to children on the basis of an annual exposure they will not actually experience as a result of attending the propose school and since the short term exposure associated with attending the proposed school is at levels which are not unacceptable, it must be concluded that, for the purposes of applying paragraph 170 of the NPPF, the likelihood is that children attending the proposed school would not be exposed to "unacceptable levels" of air pollution. As a result, the only reasonable conclusion is that the proposed development would not conflict with paragraph 170 of the NPPF.

Greater Harm if Planning Permission is Refused

136. It is a remarkable feature of this case, that in presenting its evidence on air quality and risk to children LBC did not stop once to consider whether the children attending the proposed school would otherwise be at greater or less risk of harm if planning permission were refused.

137. Given that the objective of both national and local development plan policy is to reduce risk of harm it is plainly relevant to consider whether refusing planning permission for the proposed school would be likely to give rise to greater risk of harm to the children. If that were the case, then achieving the objective of reducing risk to children's health from air pollution would be best served by granting planning permission.

138. It is a simple matter to consider. Children coming to the proposed school will walk, scoot or cycle to get there (see above). They will have to negotiate Rosslyn Hill for a short section and would be within that section of poorer air quality for 5 to 10 minutes each way every school day. Within school they will be in an environment where the proposed mitigation and air intake will ensure an acceptable quality of air to breath as Dr Bull agreed. In the playground, as Mr Kearney demonstrated and Dr Bull accepted, they will be exposed to lower levels of pollution and within the relevant limit values.

139. If permission is refused, those attending the school at Jubilee Waterside will walk to the bus pick up points and will wait at Swiss Cottage or on Haverstock Hill next to the busy roads. Those roads are comparable in traffic and thus pollution terms to the environment on Rosslyn Hill by the Appeal Site. The evidence is that because of uncertainty and unreliability in the arrival times of the busses the children regularly have to wait 20 to 30 minutes for the buses in that polluted environment.

140. They then get on the buses for a journey on congested and polluted roads for journeys of up to 25 minutes each way as the Inquiry heard. There is a considerable body of evidence that travelling on congested roads within a vehicle results in a much higher exposure than walking along the same road (see ID17). The former government chief scientific adviser Sir David King has stated:

"Children sitting in the backseat of vehicles are likely to be exposed to dangerous levels [of air pollution]…You may be driving a cleaner vehicle but your children are sitting in a box collecting toxic gases from all the vehicles around you."

141. Prof Stephen Holgate, an asthma expert at Southampton University and chair of the Royal College of Physicians working party on air pollution, said that air pollution is:

"nine to 12 times higher inside the car than outside. Children are in the back of the car and often the car has the fans on, just sucking the fresh exhaust coming out of the car or lorry in front of them straight into the back of the car."

142. Ben Barratt, from King's College London, measured the exposure of people travelling by car, bus, bicycle and walking in London in 2014. "The car driver, by a very long way, was exposed to the highest level of pollution," he said. "The fumes from the vehicles in front and behind were coming into the car and getting trapped there. It is not true that you can escape pollution by sitting inside a vehicle."

143. Thus, the children are subjected to a greater exposure to poor air on their journey to and from school at present.

144. LBC's response to this was to suggest that the buses might have air filters. They adduced no evidence to demonstrate that effective filters are available for the buses utilised nor that if they were available they would be effective in reducing the internal pollution within the buses down from the nine to 12 times higher figure spoken to by Prof King.

145. In relation to children who choose not to attend Abacus in the event that permission is refused, they would have to go to school elsewhere. The likelihood is that they would have a longer journey on Rosslyn Hill or spend a longer time than the 5 - 10-minute exposure associated with the proposed school in a car on polluted roads to and from school.

146. The plain fact is that there is ample evidence on which you can reach a rational judgment that if planning permission were refused for the proposed development, the risk to the health of children would be greater than if you grant planning permission. We submit that you should so conclude.

Air Quality and the Development Plan

147. In terms of the relevant development plan policies, the reasons for refusal refer to policies A1 and CC4 of the CLP.

148. When this issue is framed in the context of Policy A1 and Policy CC4 of the CLP (CD5/03 page 184), the issue is whether unacceptable harm to the amenity of the school children would be caused? For the reasons set out above the children who will attend the school will not be subject to acceptable risk from unacceptable levels of air pollution. Thus, there will be no unacceptable impact upon their amenity. There is no breach of Policy A1 or CC4.

149. Policy TT1 of the HNP states:

"Due to the critical need to improve air quality and tackle congestion within the Plan Area:

1. Planning applications which can reasonably be expected to result in a significant number of additional motor vehicle journeys post-completion should provide the following information at an appropriate level of detail to allow a robust assessment of the impact of the proposal on air quality and levels of pollution:

a. A Transport Assessment (or Statement);

b. A full or outline Delivery and Servicing Management Plan (DSMP);

c. An Air Quality Assessment;

which should together demonstrate (if necessary, through mitigation measures) that the impact of any such vehicle journeys will be offset so that approval will not lead to an overall decrease in air quality in the Plan Area."

150. Policy TT1 only applies to developments which can reasonably be expected to result in a "significant number" of additional motor vehicle journeys. For reasons set

out above the proposed development will not give rise to such a number of additional motor vehicle journeys.

151. In addition, Dr Bull accepted in XX that LBC did not object to the proposed development on the basis that emissions associated with it would result in a decrease in air quality. Indeed, there is no evidence that the proposed development would give rise to any material decrease in air quality locally.

152. As a result, the proposed development accords with Policy TT1 of the HNP.

153. It is also submitted that the proposed development will accord with adopted London Plan Policies 3.2, 5.3 and 7.14.

154. LBC does not contend that there is any breach of draft London Plan policy SI1. For the reasons set out above, it is submitted that the proposed development accords with that policy.

155. Much has been made of draft Policy S3 in the draft London Plan. That states:

"Development proposals for education and childcare facilities should:
…
3) locate entrances and playgrounds away from busy roads, with traffic calming at entrances"

156. One of the entrances of the proposed development is on Rosslyn Hill and this is a busy road. Thus, taken at face value there is a breach of the wording of this draft policy.

157. In determining the weight to ascribe to the breach of this policy it is crucial to understand its policy objective. Paragraph 5.3.10 of the draft London Plan explains it:

"The design of education and childcare facilities is critical to the creation of a good learning environment. Education and childcare facilities should be in locations that are easily accessible on foot, by cycling or using public transport. The design of entrances to schools and playgrounds is important in ensuring that children are encouraged to

walk and cycle to the school gate and can do so safely. **Facilities should be located away from busy roads, with traffic calming at entrances, to benefit from reduced levels of air pollution, noise and road danger.** Where possible, natural features such as trees, greenery, forest schools and spaces for food growing should be incorporated into playgrounds and school sites, recognising both the health and educational benefits these can provide. Healthy and safe routes to education and childcare facilities, should be considered through the design process."

158. The purposes of this part of Policy S3 is to reduce road danger – there is no evidence that the children who will attend the proposed school will face any unacceptable risk to road danger. LBC does not object to the proposed development on that basis. Thus, that element of the policy does not justify conflict with it being given any material weight.

159. The other objective is to obtain benefit from reduced levels of air pollution. Thus, the policy objective is to reduce the exposure of children attending school to air pollution. It is then necessary to consider whether given Policy S3 significant weight would achieve that objective. We submit that it would not.

160. If Policy S3 is given significant weight and applied, that would suggest that a scheme with a single entrance in Downshire Hill which is not a busy road would be acceptable. If a school opened on the appeal site with a single entrance on Downshire Hill, the children from the catchment would thus have to walk along Rosslyn Hill to Downshire Hill and would be exposed to the same air pollution as they would with the proposed development. Locating a single entrance to the school in Downshire Hill would not thus achieve the policy objective of Policy S3 – it would not result in any material reduction in exposure compared to the proposed development.

161. Further, if planning permission were refused because an entrance on Rosslyn Hill were contrary to the development plan, it has been established above that this would be likely to result in greater risk to the children in terms of exposure to polluted air. The objective of reducing risk to children that lies behind Policy S3 is thus better achieved by giving policy S3 limited if any weight and by granting planning permission.

162. Further, the NPPF paragraph 48 provides that decision makers should give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

163. It is accepted that the draft London Plan is at an advanced stage. There are no known relevant objections to this part of Policy S3. However, as has been established above, the proposed development accords with the NPPF policies relating to air quality. Refusing planning permission would not be consistent with the NPPF for the reasons explained. To give significant weight to the text of draft Policy S3 regarding locating school entrances away from busy roads on the basis of air quality considerations would not achieve the policy objectives of the NPPF or indeed of the London Plan and draft policy S3 itself and would be inconsistent with the NPPF. In the circumstances, the text of draft Policy S3 concerning location of the school entrance should be given limited if any weight; indeed, to give significant weight to a literal and superficial application of the text would be irrational because to do so would be at odds with the achievement of the intention, aims and purpose of the draft policy.

Technical Matters

164. In the light of the above, the technical points raised by Dr Bull in relation to the modelling work undertaken relating to annual mean exposure may not be something that you feel you need to consider. The following section of our submissions is provided in case you do.

165. The starting point for considering the modelling is to understand that it has adopted very robust assumptions:

a. It was assumed that traffic on Rosslyn Hill would grow. However, as set out above the evidence is that traffic levels have fallen considerably since 2016 on that road;

b. It was assumed that expected decreases in future road fleet exhaust emissions would not occur. DEFRA advises that when Local authorities undertake their assessments of air quality for the purposes of identifying areas above objective levels and declaring AQ Management Areas that the Emission Factors Toolkit (EFT) is used. The EFT as it is known contains a forecast that Government considers should be used of the likely reduction in emissions on roads due to changes in the road traffic fleet (more EVs) and changes in combustion engine emissions. This was not used in the modelling. The difference this makes can be seen in Mr Kearney's proof page 14 graph 1 – the red line shows the reduction in emissions that the EFT requires to be applied. The blue shows the absence of any reduction applied by Mr Kearney;

c. It was also assumed that there would be no decrease in pollutant background levels would not occur. This is a highly robust assumption given that levels of pollution have been falling significantly locally (see above);

d. No reduction in pollution levels was made to take account of the Ultra-Low Emission Zone extension (ULEZ); and

e. The site was assumed to be open i.e. no screening of roadside pollutants from the existing built forms on the site. This means that the model assumes that pollution from the road can drift directly into the playground when in reality it cannot since the buildings are in the way;

166. All of these matters combine to ensure that the results from the modelling are highly likely to overestimate the level of annual mean concentrations of NO2.

167. Dr Bull raised a number of matters.

168. Dealing firstly with the measurement of the existing environment in the vicinity of the school. Dr Bull produced The London Air maps (his figures 6 and 7) he noted that modelling work is "largely in agreement" with these.

169. In addition, there is an LBC monitoring site at Fitzjohns Avenue (see above). Mr Kearney explained that that monitoring site is located at a similar distance from the road and urban setting as the proposed development site and is located on a road with similar traffic volumes and characteristics. That site shows an annual mean level of 42.53 mg/m3 in 2019.

170. The modelling was verified in that context. Dr Bull was critical of the fact that a verification adjustment had to be made, but this is an entirely normal practice in air quality modelling. TG16 has an entire section on it – (CD8/04 p 7-125 and following). Indeed, it explains what to do under the heading "How do I Verify and Adjust my Modelling?" (see CD8/04 p7/128 and following). Adjustment following verification is then a perfectly normal thing to do.

171. The model was verified using the comparable Fitzjohn's Avenue site and three months of diffusion tube data measured at the appeal site. Dr Bull criticised the use of three months data and the use of annualisation. But again, this is a normal process. TG16 explains at paragraph 7,190:

"For any monitoring sites with fewer than 9 months' worth of data, it is necessary to perform annualisation. A minimum of three months monitoring is required for annualisation to be completed."

172. The work by Mr Kearney thus accords with the DEFRA TG16 guidance.

173. Dr Bull suggested that the modelling does not take into account the potential for pollution to be trapped with the street between buildings; the so-called canyon effect. He relied upon a research paper that presents data relating to impact of canyons on concentration levels at various levels of the facades facing the street. Thus, he suggested that for upper levels of the building facing the street the model might underpredict.

174. Mr Kearney explains in his proof that the proposed site is not located in a true urban street canyon where the height of buildings flanking the street are is greater than the canyon width.

175. Further, the point goes nowhere once it is understood that the school is not taking its air from the front façade of the building. The windows will not open on that façade. Rather the air is to be taken via an inlet at height and to the rear of the property where the canyon effect as identified by Dr Bull is not relevant and where the quality of the air is good - significantly below relevant limit values.

176. Yet further, Mr Kearney's sensitivity analysis (see his Table in proof page 20) demonstrated that the canyon effect would make very little difference to air quality at the inlet location. This can be seen comparing scenario 1 and 2 - difference of 0.07 g/m3 (in a context where levels are around 7 mg/m3 below the annual limit value) and comparing scenarios 3 with 4 - difference of 0.46mg/m2 (in a context where levels are 13 mg/m3 below the annual limit value). The point makes no material difference.

177. This makes Dr Bull's suggestion that computational fluid dynamic modelling should have been considered somewhat odd. This is a highly detailed and very expensive form of modelling which takes a very long time produce. It requires a detailed 3D model of the physical form of the environment to be produced. It is also a form of modelling which TG16 does not consider to be useful to address issues relating to canyon effects. DEFRA advises (CD8/04 p 7-107 at apar 7.410):

"Even when using complex three-dimensional models (Computational Fluid Dynamics – CFD models), it is unlikely that such degrees of complexity are adequately accounted for, and the uncertainties of modelled results can be difficult to quantify."

178. In other words, undertaking such modelling is unlikely to assist further.

179. It is submitted that it can be concluded that the issues raised regarding the canyon effect are unlikely to have any material effect so as to render the modelling output unreliable. It can be concluded that the model is likely to continue to overpredict.

180. To conclude, the proposed development accords with the NPPF and the adopted development plan in relation to its air quality implications. Any breach of draft Policy S3 of the draft London Plan should be given little if any weigh for the reasons explained.

Impacts upon Residential Amenity

181. Introducing a school onto the appeal site will inevitably result in a change in noise environment for some of the time. The approach to noise impacts 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.

182. Mr Fiumicelli agreed in XX that at levels between LOAEL and SOAEL, planning permission can be granted so long as all practicable mitigation to reduce noise exposure is in place. He agreed that all practicable mitigation has been provided by the Appellant to protect local amenity in this case. Local Residents have been offered an acoustic barrier and some have agreed that they wish to be provided with this. It is not accepted that consultation on this was ad hoc or confused. It was not – residents were all written to, a demonstration arranged and a two-hour meeting was held on site. The barrier was assessed in terms of its impact upon sunlight/daylight which did not identify any significant impacts (CD1/18). Accordingly, it has been open to residents to adopt acoustic mitigation which would not cause significant impacts. Some chose not to.

183. It follows that if you conclude that the noise levels that would be experience by residents would be below SOAEL, the proposed development will be acceptable in terms of NPPF noise policy. Since the relevant development plan Policies also reflect the NPPF approach, if you conclude that the proposed development is acceptable in terms of NPPF noise policy then it will also accord with the development plan.

184. The Noise exposure Hierarchy Table (CD9/02) that forms part of the NPPG identifies that noise above LOAEL but below SOAEL will be present and intrusive. It is not the case that in order for a development to be acceptable in noise terms a development should not be heard and should not intrude at all upon residential amenity. The policy approach recognises that some intrusion upon residential amenity is

acceptable. The Table identifies the likely behavioural response to noise above LOAEL but below SOAEL as

"Noise can be heard and causes small changes in behaviour, attitude or other physiological response, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life."

185. Levels above SOAEL are described in the Table as "present and disruptive". The likely behavioural response is described as:

"The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area."

186. The noise at issue is noise from children arriving/leaving the school and playing in the playground. In this regard, it is the properties around the appeal site but primarily those in Downshire Hill adjacent that are potentially affected.

187. In assessing the potential noise impacts it is important to remember the views of the planning officer and the environmental health offices that was expressed to Members (CD 2/05):

"The school hours would be 08:50 to 15:30 Monday to Friday. The site would be open 08:00 to 18:00 to accommodate pre-school and after-school clubs. It is proposed that the site would be used for activities at the weekend on occasions such as a summer fair and a winter festival. The applicant states that the site would be in use approximately 183 days per year (i.e. 50.1% of days in a non-leap year). A condition is attached regarding the school hours. The hours of the community use would be detailed in the

Community Use Plan as well as the detailing how the public would go about booking and using the facilities.

9.6 The school would have staggered break times. They have stated that they would need the playground for a combined maximum time of 120 minutes per day, during the week. A condition is recommended limiting the use to a combined maximum of 120 minutes accordingly, which is not considered a significant amount of time, but would allow the school some flexibility. The area under the canopy is excluded from this condition. This area is further away from residential properties, more enclosed and could only accommodate much smaller numbers of pupils than the whole external rear area.

9.7 The playground would be the main source of noise from the proposed use. This would be located at rear ground floor level. The playground would be adjacent to properties on Downshire Hill, Rosslyn Hill and Hampstead Hill Gardens. The neighbouring properties fronting Downshire Hill (50-52) are the closest to the application site and the proposed playground. These dwellings are separated from the site by their rear gardens, which vary in depth between 1m and 5m from the rear building line of these properties. The playground would be 12m away from the house at 24 Rosslyn Hill and approximately 30m away from the nearest house on Hampstead Hill Gardens. The main entrance for children would also be located adjacent to 50 Downshire Hill.

188. The report continues at paragraph 9.9:

"A noise assessment was submitted in support of the application. **The report is considered to sufficiently assess the effects of the resulting noise from the playground. This has been reviewed by environmental health officers who have no objections subject to a noise condition.** The playground would only be used 120 minutes in total per day, during weekdays, during term time. The school have indicated that they would not use the playground for more than four weekends a year, for community events, and a condition is recommended to secure this. **Officers recognise that the playground would generate significant noise levels, but given the limited times, this is not considered a significant issue.** Noise averaged out over a day would

not be an issue. Many people would be at work when the playground would be in use, and during the summer holidays and at weekends, when people are most likely to use their gardens, the playground would not be in use. Given the limited hours of use, officers consider that there would not be a material amenity impact in terms of noise from the playground." (emphasis added)

189. Thus, Officers considered that the noise impact assessment utilised by Mr Jarman was appropriate to assess the effects of noise. Further they concluded that although noise would be generated it is "not a significant issue". Mr Jarman, having cited these views of officers also observed in his proof that it was relevant to consideration of amenity impacts that 20 schools in Camden have residential windows within 5m plan distance of a school playground area (paragraph 4.33 and appendix B): that stands on its own feet as a relevant consideration: there is no need for comparisons with baselines (contrary to HCRD closing para 34).

190. The Appellant has always sought a planning permission which allows for outdoor teaching and use of the outside area colour in yellow on Plan 100E (CD1.145) by the reception class (Plan 100E has been superseded to a revision H however the extent of the area shown in yellow on 100E is correct and it can be used for the purpose of delineating that area in any condition). This was assessed (see CD1/30). Table 7 in the assessment (page 16) looks at the use of this area for learning between 9 and 10.15 a.m. and Table 9 shows the highest 5-minute Laeq at the nearest garden of 43 dB, almost 20 dB below the threshold of 61 dB8. Mr Jarman's proof was directed to addressing LBC's case as set out in its Statement of Case. It does not engage with the issue now raised by the Camden at the very end of this Inquiry relating to the reception use of outdoor space beyond the canopy because that issue was not raised. It has always been proposed that reception would use his area. The draft conditions have always recognised this. Mr Fiumicelli presented no evidence in his proof or to the Inquiry that the use of this area by the reception class would give rise to unacceptable impacts. Further, neither Mr Jarman nor the EH officers have identified that this element of the proposed use would give rise to any unacceptable impacts upon residential amenity. There is no evidence that this proposed use would give rise to any unacceptable impacts. There is no objection to this use by any

professionally qualified acoustician. If you, however, consider that it is necessary to constrain the position so that the reception class only uses the area under the canopy then it is open to you to do so. You would need to consider requiring the submission of further details for a means of constraining children to with that area however.

191. It is not correct to suggest that noise generated by children being dropped off for the breakfast club or being taken to and from Hampstead Heath will give rise to a noise impact above SOAEL. The level of noise associated with these events will be low and significantly below a level likely to cause that level of impact.

192. Members disagreed with their officers and Mr Fiumicelli's services were engaged. He has presented a case in which he rejects entirely the methodology used in the assessment which the planning officers and the EHOs had accepted and agreed was appropriate.

193. Mr Jarman and Mr Fiumicelli both agree that there is no accepted defined level of LOAEL or SOAEL when examining the impact of noise from children in a playground upon residential properties.

194. The central development plan policy relating to noise is policy A4 (we note as an aside that the reasons for refusal and Mr Sheehy's evidence do not allege any breach of Policy A4). That policy states that "the Council will seek to ensure that noise and vibration is controlled and managed. Development should have regard to Camden's Noise and Vibration Thresholds (Appendix 3)." So not unnaturally Mr Jarman's starting point was the CLP.

195. Appendix 3 of the CLP includes a number of thresholds, one of which relates to noise from entertainment and leisure uses. The noise sources associated with such uses are identified as being "amplified and unamplified music, human voices, footfall and vehicle movements and other general activity." (see CD5/03 p 349)

196. The thresholds presented here are in two parts. The first relating to noise levels in residential gardens and the second relating to internal noise within residential properties.

197. Mr Jarman identified that the first criteria was headed “customer noise”. Mr Fiumicelli agreed that this first threshold applied to noise from customers and thus related noise from human voices, footfall and other general activity”. Since the noise from children in a playground is from the same source i.e. voices, footfall and other general activity Mr Jarman utilised the LOAEL and SOAEL’s presented in this part of the CLP as a useful proxy. Indeed, it is to be noted that these criteria are used to address noise in streets including screaming and shouting of people in the street at night who have over-indulged. These levels thus take into account the emotional response that residents are likely to have to noise created by other humans be they drunks in the street or children in a playground.

198. Mr Fiumicelli simply rejects this approach. He pays it no regard and he explained in his evidence to the Inquiry that it was not “relevant”. It is highly relevant for the reasons set out above. If you treat it as irrelevant, as he did you, would err in law.

199. Mr Fiumicelli’s approach then is not founded upon assessment of the likely noise generated against any relevant or identified criteria. As a result, it is difficult to see how he can have identified what the likely response residents would have to noise in playground would be – it is even harder to understand the basis on which he concluded that their response would be such that the level experienced must be categorised as lying above SOAEL.

200. Mr Fiumicelli was clear however that he did not dispute the correctness of the calculations undertaken by Mr Jarman.

201. A number of criticisms were raised. Firstly, it was suggested that thresholds used by Mr Jarman only apply to gardens used for amenity purposes and they have no relevance to impacts inside dwellings. That is plain wrong. The first criterion used applies to garden locations. The second criterion used was one relating to internal noise within residential properties. Further the two parts are inter-related since generally noise has to travel across gardens before entering the fabric of a house. It follows that if noise in a garden is acceptable, it is likely to be acceptable internally where internal rooms are located at a similar distance from the noise, and particularly where, as here

the rooms are behind a noise attenuation barrier and garden wall. External noise limits are frequently used to protect internal amenity in noise conditions for example since they are easier to measure without having to get a homeowner's permission for entry every time an assessment is required.

202. The second point pursued related to the Lmax index and was somewhat bizarrely put in XX of Mr Jarman. It relates to the use of the Lmax noise index. The way the matter was put to Mr Jarman betrayed a lack of understanding of the nature of that metric. The Lmax is, as Mr Jarman explained, a measure of the highest instantaneous peak of noise. The highest point of a sudden bang or crash.

203. Dose response research has established a link between certain levels of Lmax events and awakening events result in sleep disturbance i.e. it has been established that a sudden loud bang of a high enough level will wake you up. For this reason, Lmax levels are used to assess the potential impact upon human beings at night. The WHO guidelines for example (see CD9/03 page 65) contain a series of guidelines for the day but none of them use the Lmax index (other than to protect against hearing impairment). Only guidelines applicable at night use the Lmax index. The same is true of Camden's own thresholds (see CD 5/04 pares 346 to 350).

204. The WHO Guidelines explain at p viii:

"Currently, the recommended practice is to assume that the equal energy principle is approximately valid for most types of noise and that a simple LAeq,T measure will indicate the expected effects of the noise reasonably well. When the noise consists of a small number of discrete events, the A-weighted maximum level (LAmax) is a better indicator of the disturbance to sleep…"

205. The noise of children is not a small number of discrete events nor will it take place at night. Lmax as an index is not of any use when reaching a judgment in the present case, since there is no research that can be used to connect any particular absolute threshold level of Lmax or any increase in Lmax levels to a particular likely response in humans within their homes during the day.

206. Further, the evidence establishes that the highest levels of Lmax recorded were recorded at the appeal site in the absence of the school – the Lmax levels at jubilee waterside did not reach the same peaks of over 100 dB that were measured in the vicinity of the appeal site (see CD1/30 comparing figures Figure 19/0084/TH02 and 3).

207. It is right that the CLP states at page 349 "appropriate metrics must be used to measure and assess the noise impact including LAeq and LAmax metrics and appropriate frequency spectrum." The Lmax metric is however not an appropriate metric for assessment of impact during the day and is not used by Camden for such a purpose in its own thresholds. Lmax data is not indicative of the scale of change (LBC closing para 3.16) – that is shown by using LAeq as the WHO guidelines quoted above makes clear.

208. An Lmax is just a number. To be of use in assessing whether a change of behaviour will result, you have to show that any particular level of Lmax or number of Lmax events translates into a change in behaviour (e.g. it correlates with awakening events for those sleeping at night). In relation to the use of a residential property during the day there is no evidence or study which establishes any particular behavioural response. The point is then a total red herring and does nothing to assist you in determining whether the likely noise levels will be above SOAEL.

209. LBC also alleged that no consideration has been given to the frequency spectrum of the noise. That too is wrong.

210. The Noise Assessment identified the frequency spectrum of the noise of children in the playground (CD1/30 at Table T6 p16). It also identifies the existing frequency spectrum at the appeal site (Cd 1/30 at Table T2 page 11).

211. Mr Fiumicelli's point was that children's voices contain high frequency content and that this may be more intrusive for residents as a result. It is the case however that high frequency sound is more readily attenuated by building fabric. Table T6 shows elevated levels at the 1K and 2K frequency bands. When he assessed the internal impact of the proposed development Mr Jarman explained that he had made certain assumptions regarding the attenuation that would be achieved (CD1/30 Table T9 p20). These show the most attenuation from walls and glazing is in the 1k and 2K bands.

212. Further, Mr Jarman assessed internal noise impacts utilising a method that requires the use of the Noise Rating curves (NR). The NR method is the method identified and used by LBC to protect internal residential amenity in relation to entertainment noise including sources of noise from voices, footfall and other general activity. It is wrong to suggest otherwise (LBC closing para 3.14). Mr Jarman explained when he gave his evidence that these curves are used to produce a level by reference to individual frequency bands. In other words, the process requires a very detail examination of noise levels at each band in the frequency spectrum. That is why he produced Table T9 – so he would know how much attenuation should be applied at each frequency band in order to produce his NR values. As a result, the assessment process has carefully considered the frequency spectrum and it is simply wrong to suggest otherwise. Mr Fiumicelli has not produced any comparable assessment; indeed, it is difficult to how he has taken account of frequency given that he has assumed that Mr Jarman had not looked at this. It seems that he cannot have done so.

213. It was also suggested that the relevant threshold used by Mr Jarman were for use in town centres and not in locations such as the appeal site. That is wrong too. The criteria used apply to all entertainment and leisure uses proposed anywhere within the Borough. There is no indication otherwise. Indeed, one could have expected the EHOs to have rejected Mr Jarman's assessment approach if this point raised by Mr Fiumicelli were right. But they did not. They did not because they use these thresholds every day and they know that they apply throughout the borough including to locations such as the appeal site.

214. The next point put to Mr Jarman was that his assessment had not taken into account any kind of change comparison i.e. it was not referable to the existing noise climate. That too was wrong. The criteria on page 349 of the CLP require the selection of the relevant threshold to adopt to be made based upon the existing noise climate. It is the higher of a specific dB level or a figure a few dB below existing noise levels. It seemed in XX of Mr Jarman that the words "without entertainment noise" had not been understood to relate to the criteria above them. They are however to be read with the words above. What is being sought is a selection of a criterion by reference to the

existing noise climate absent the proposed entertainment noise. It may be that that misunderstanding explains why such a poor point has been taken.

215. Further and in any event, Mr Fiumicelli did not produce any evidence which demonstrates that any particular change in noise levels will produce any particular response which could be classified as a behavioural response on a par with a SOAEL level. If there is no means of ascertaining whether a particular change in level produces a particular response in people, then examining that change does not assist in determining whether levels of SOAEL will be experienced or not.

216. The result is that the criticism of the use of the criteria within the CLP as a proxy for the impact of children's voices, footfall and other activity in the playground is wholly misconceived – it is in truth a smoke screen to cover the fact that LBC has produced not a shred of evidence to demonstrate that residents would have a behavioural response to the likely noise generated in the playground that can be classified as above SOAEL. That point is asserted by Mr Fiumicelli but it is not established by evidence.

217. What the evidence demonstrates is as follows. In relation to the impact upon residential gardens, all the gardens would experience levels below SOAEL other than the garden at 52 Downshire Hill. That property would experience levels marginally above SOAEL for around 90 minutes during weekdays 183 days of the year. That is the only property so affected. The likelihood is that at the times when this impact would arise, the occupant of Flat A would not be using the garden in any event since they would be at work either inside the flat or elsewhere outside of the property. It is submitted that the nature of this impact is not so great as to conclude that the proposed development would have unacceptable impacts sufficient to justify a conclusion that the impacts are above SOAEL so as to justify refusal.

218. The R6 party appeared to suggest that the levels identified in the top part of Mr Jarman's Table T2 should be compared with the WHO guideline values and indeed other values with the WHO report. The LAeq values set out in the table are 5-minute as such they can only be compared to other 5-minute LAeq values. The WHO guidelines relating to annoyance are measured by reference to a 16-hour referencing time – to compare the 5 min LAeq values to a 16-hour LAeq value is to compare apples

with oranges. Similarly, the other values within the WHO report that were used for comparison were not established to be 5 min LAeq values. Mr Jarman's Table T2 demonstrates- that the 16-hour LAeq levels are below the levels for serious annoyance in all of the gardens. This further supports the contention that the levels experienced will not be above SOAEL levels.

219. In relation to the assessment of internal noise, Mr Jarman explained that the threshold contained in the CLP is the LOAEL threshold. He explained in RX that this was because it were the SOAEL level it would be so stringent that there would be no need for the garden criteria on the previous page of the CLP – i.e. it would render than criteria otiose. Whereas it is entirely consistent with the garden criteria to adopt the NR levels as LOAEL. Mr Jarman explained that he adopted a +5dB approach to the NR criteria as his SOAEL. That approach was accepted by the EHOs who use the criteria everyday as acceptable and appropriate. Mr Fiumicelli was unable to explain in any coherent way why the NR levels in the CLP should be taken to represent SOAEL thresholds. Mr Jarman is plainly to be preferred.

220. Using that measure, Mr Jarman identified that a similar pattern to the noise impacts for the gardens would be seen. With windows closed exceedance by 1dB only of a significant adverse noise impact is assessed where the relevant residents have indicated they would prefer no new acoustic screening be erected to the relevant section of the site boundary. This 1dB excess should be seen in the context that only a 3dB change in noise levels is considered perceptible. It of course only applies for a limited period of each school day. It also needs to be remembered that this assessment assumes that the windows only have single 4mm glazing. If any properties do have thermal double glazing or secondary glazing the levels of sound insulation would be expected to be higher than assumed at the 1 dB exceedance would be likely to be lost. Such glazing is already installed in the windows of the rear consulting room as you will have seen on your site visit. We understand that on your site visit you also saw that new glazing with a higher specification that that assumed by Mr Jarman is being installed in in the upper floor rear windows at 52 Downshire Hill. That is an important factor to take into account. It means that it is highly likely that with windows closed the SOAEL levels are unlikely to be exceeded within that property when the children are at play outside. In any properties that have thermal double glazing or secondary glazing the

levels of sound attenuation will be greater than assumed and the 1 dB exceedance would be lost and levels above SOAEL will not be experienced with the windows closed.

221. Mr Jarman explained that with windows shut, the ability to conduct a conversation would not be adversely affected. It follows that the likelihood is that some residents may respond to noise from the playground by closing their windows for some of the time during the days when it is in use but they would be far from the situation described for SOAEL; they would not have to have their windows closed for most of the time. This is even accepted by the R6 party in closing (see R6 closing paragraph 33). LBC did not address this aspect of the definition of SOAEL at all in closing – that is a significant omission and it means that the approach advocated by LBC must be flawed. A key indicator of a noise level is that windows would have to be closed for most of the times. That is simply not the case here.

222. That this is the case is demonstrated by a visit to jubilee waterside – a trip which Mr Fiumicelli had not made. If he had he would have seen as no doubt you did that there are residential properties with windows looking directly not the playground on a basis not dissimilar to that which would occur for Downshire Hill residents. The residents at Jubilee Waterside however routinely have their windows open when the children are coming and going and when they in the playground as you will no doubt have seen. That is a key indicator that the noise likely to be experienced by the residents of Downshire Hill will not be above SOAEL – if it were then one could expect the residents at Jubilee waterside to have their windows closed but they do not. Mr Fiumicelli did not take this into account of course when making his assertions because he had not been there.

223. In terms of the impact upon Mr Grosz, it is important to note that despite the assertion in his proof that his family would lose access to the garden, he and they have no such access. In terms of the impact upon his business, we shall leave to one side issues relating to the lawfulness of that use and of business rates. Mr Grosz explained in XX facts which one might have expected to have been put forward in a proof. He operates from the front consulting room in Flat B. As such he is highly unlikely to be affected by noise from the playground. On the basis of his own evidence it is incorrect to submit that he would not be able to work for two hours a day (see R6 closing

paragraph 33). He explained that he effectively rents out the space in the second consulting room to the rear but already has it in the rear consulting room. This will mean that the internal impacts within that property with windows closed will be materially reduce compared to those identified by Mr Jarman.

224. The evidence is that the couch is at the rear of the room away from the window. Mr Jarman explained that with the window such conversation would not be affected. Thus, the room can still be used as a consulting room even during playground use. If it gets hot – it is possible to use portable air conditioning. Thus, there is no inability to use the room even assuming the use is lawful. There would be no impact upon the use of that room which could be identified as comparable to an impact at a level above SOAEL. Also, during the site inspection, it was observed that the room already had secondary glazing fitted which can be expected to improve the sound insulation beyond that assumed by Mr Jarman.

225. For these reasons, it is submitted that the proposed development will cause a noticeable change in the environment for residents for some of the time – of course it will. But the impact that will be experienced is not one that can reasonably be classified as falling above SOAEL. Rather the impact falls between LOAEL and SOAEL. Since all reasonable mitigation has been provided the proposed development is acceptable in noise terms and accords with the NPPF and the Development Plan in that regard.

Heritage Assets

226. 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.

227. The proper approach is familiar and fully addressed in the latest cases ***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). If the approach in those cases and the NPPF is followed, then the statutory duties within sections 16, 66 and 72 of the Planning Listed Buildings and Conservation Areas) Act 1990 will be fulfilled.

228. Once it is identified that a development would cause less than substantial harm to a heritage asset, paragraph 196 is engaged. That means that a balance then has to be struck between the harm to significance which is to carry great weight and any public interest benefits that the proposed development would deliver.

229. 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 on the other hand is more problematic in that it requires application of the policy approach set out in the superseded 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 is wording is likely to matter.

230. Accordingly, the focus must be upon identifying the extent to which the proposed development:

a. Adversely effects the significance of the building
b. Enhances the significance of the building

Significance

231. The Appellant has always understood that delivering a school within this building would be difficult, require careful consideration and requiring compromise in terms of the school's requirements. With that in mind and 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 that the building exhibits two particular elements of value which contributed to significance: architectural and historic value.

232. Both Mr Baxter and Ms Watt describe the listed building in their evidence and they refer to the list description in order to identify features of significance. However, that approach is not sufficient. It does not dot go far enough. As Mr Crisp explained in giving his evidence, it is not consistent with the approach as outlined in Historic England's Good Practice Advice Note 2: Managing Significance in Decision-Taking in the Historic Environment (hereinafter referred to as GPA2).

233. Paragraphs 7 onwards of GPA outline that it is essential to understand the nature, extent and level of significance. In undertaking this exercise, the list description is the starting point for understanding those areas that contribute to significance, but it does not identify the nature, extent or level of significance that those elements contribute. Whilst a reference to a feature in the list description means that it contributes to significance it does not necessarily follow that it contributed to that significance to a great extent.

234. It is not sufficient simply to identify that a feature is on the list description as Mr Baxter and Ms Watt have done – the relevant guidance requires one to go further and to ask what nature extent and level of contribution to the significance of the building overall does that feature take. Any failure to adopt this approach represents a fundamental failing in the assessment of significance and thus means that any assessment of the likely level of impact on significance will be flawed.

235. Mr Crisp explained in his evidence that he had followed the GPA2 approach in his evidence and in his assessment process – as we shall explain, contrary to the R6 party's suggestion (R6 closing paragraph 39) he is the only heritage professional who presented evidence who had regard to the list description and who then applied the GPA2 approach properly. As a result, his conclusions are the only ones founded upon a reliable methodology which accords with the approach in the relevant guidance.

Contribution of plan form

236. The appeal proposals have been informed by a detailed understanding of the significance of the building, informed by heritage assessment work carried out in connection with the previously refused proposals, the enhanced list description and the assessment carried out by JLL Heritage. This is demonstrated on page 20 of the

submitted Design and Access Statement which identified the strategic priorities in developing the design proposals. Central to the proposals is the need to work with the plan form of the building with demolition and/or alteration only proposed where absolutely necessary. Aligned with this is the need to adapt the building, as far as possible, to government guidance contained within the area guidelines contained within BB103. This guidance provides the broad parameters for new schools and allows for a degree of flexibility to reflect individual site circumstances. Nevertheless, it is inevitable that the plan form of the building would need to change to accommodate a school use.

237. In respect of the interior, Mr Baxter and Ms Watt place great weight on the ability to read the original plan form of the building, largely because the interior is referred to at such great length in the list description. However, neither of them refers to the nature, extent and level of significance that the ability to read the original plan form makes to the significance of the building as a whole.

238. They proceed on the basis that it contributes significance because it largely remains intact and therefore must be of significance. Ms Watt goes further to say that the plan form of the building was carefully planned to limit the ability for users to move through the building.

239. It is accepted by Mr Crisp that the historic interest of the building in that it is a purpose built Police Station with Magistrates Court and stable block which were originally planned to be within the same building but entirely separate – this is noted in the list description. However, in line with the GPA2 steps, consideration must be given to the nature, extent and level of significance that the plan form contributes. In this regard, it is important for the historic interest of the building to be reflected in the building. That is, the extent to which these three uses remain are reflected and separate within the existing plan form of the building.

240. It is submitted that considerable changes to the building over time have reduced the ability to understand and perceive the divisions between the original uses to the extent that the three components are now no longer read as separate in any way (a matter referenced in the list description). Contrary to Ms Watt's assertions, the current plan

form of the building does not limit the ability to move from one part of the building to another. Instead, openings have been made throughout the building which affects this legibility. The hierarchy of spaces is accordingly difficult to discern in the building as it exists today. Thus, the plan form cannot be said to contribute to a great extent to the historic interest of the building as in its current form is does not reveal itself to be a building that was used and divided into 3 separate functioning entities. This is referred to in the list description, stating that changes in the operation and organisation of police stations resulted in a number of alterations to the building, the greatest of which is the insertion of internal doorways to unify, and enable passage between, the separate areas of the building. It further states that although the original layout remains discernible, particularly given the existence of Dixon Butler's plans of the basement and ground floor, but the alterations have lessened its clarity. That is why Mr Crisp concludes that as a result of the inability to distinguish the original three separate uses (which forms the historic interest of the building), plan form can only make a limited contribution to the significance of the building.

241. Mr Baxter and Ms Watt suggest that, at ground floor, it is proposed to remove every internal wall, resulting in the 'gutting' of the building. Specific reference is made to the loss of triangular chimney breasts. Mr Baxter refers to the loss of the 'sitting room, bedroom and kitchen', which formed part of the married quarters of the Section House. As described in the list description, the historic interest of the listed building is derived from the three separate uses that were present on the site, being the section house, the police station and the Magistrates Court, but this interest is not manifested in the building fabric itself. Changes over the years have removed the distinction between these three uses, instead amalgamating into one single general arrangement. These rooms at ground floor, which originally comprised living quarters have been incorporated into the wider police station use and do not contain any vestige of its former domestic use, which includes the loss of the fireplace to a single corner fireplace. In line with the GPA2 process, given the degree of change to this area, the contribution that is made to historic interest has to be very limited, if not no, contribution to the understanding of the listed building.

242. It is also important when considering plan form to remember that one of the scheme intentions is to reinstate the Magistrates Court element of the building as a

separate entity in itself. In this way, the appeal proposals would reinstate one of the three separate uses. This which would enhance the historic interest of the listed building. This is an important element of the proposals given the history of alterations to the building which have reduced the ability to appreciate the separate original uses.

243. In the light of the above, it is accepted that the proposals would remove some elements of the original plan form of the listed building. However, these elements make a limited contribution to the significance of the listed building for reasons we have explained. The removal of these elements has been demonstrated to be necessary to allow for the building to be back into a beneficial use. As a result, it is submitted that the changes to plan form proposed result in an impact at the lower end of the less than substantial scale.

Role of Juvenile Enforcement system

244. Turning to the references to how this site tells a story about the development of the juvenile law enforcement process (Mr Baxter para 2.5). This is an element of historic interest, as identified in paragraph 4.54 of the submitted Heritage Statement (CD1/25). The original Dixon Butler plans for the building identify a series of juvenile rooms at ground floor within the Downshire Hill element of the building. Today, whilst these spaces retain their original plan form, these, when originally built featured fireplaces (now lost) within the Magistrates and Clerks Room (to highlight their higher status). Following the GPA2 steps of assessment of significance, it is important to note that there is no manifestation, as originally built or as now surviving, which would identify the former use of these areas as a juvenile suite. Instead, they are devoid of any vestiges which would hint at their original use. In this regard, Mr Crisp concluded that this element cannot be said to make a significant contribution to significance.

Magistrates Court Room

245. Within this same part of the building, the first floor is occupied by the former Court Room. This area features wooden panelling to half height of the walls with fixed court room furniture. It is assumed by Mr Baxter and Ms Watt that this furniture is original to the building but there is no evidence that this is in fact the case as Mr Crisp

pointed out. From the position of the Magistrates stair, it has to be assumed that the magistrates bench remains in the original place, but this is, again, is unfortunately not supported by any documentary evidence.

246. As Mr Crisp explained in his Rebuttal evidence, it is important to note the precise elements that will be removed from the Court room. The abri soleil to the lightwell and signage will be removed. With the exception of the magistrates' bench and the timber wall panelling, the remainder of the fixtures and fittings will be removed.

247. The removal of these elements from within the Magistrates Court was discussed at length during the pre-application process and agreed with the Conservation Officer. Whatever use is to be made of the space in the future, there needs to be a positive strategy for re-use which allows for the important elements of the space to be retained but for a new use to be introduced to allow for its upkeep.

248. It is accepted that this room makes a significant contribution to the significance of the building as it helps to understand one of the key historic uses within the building, contributing to an understanding of the historic interest of the building. The list description specifically refers to the furniture as a means to signify the higher status of the room. These elements do plainly contribute to historic interest.

249. The issue then is to consider the degree to which the proposed development harms the ability to appreciate the original use of the room as a court room. There is a balance to be struck between the loss of some elements within the Magistrates Court to allow for its re-use and the retention of the most important elements to allow for the original use to still be understood. The retention of all of the elements is not possible as it would result in a compromised space which would not be readily re-useable. On this basis it is then appropriate to retain the most significant elements so that the original purpose of the court can still be appreciated. Officers agreed stating:

"Officers consider it unreasonable to require the retention of all of these fittings as this would render the premises impossible to use for anything except a courtroom and even then it is questionable whether the current layout would suit a modern court." (OR CD 2/04 para 8.18)

250. As shown in the CGi of the proposed room (Crisp Proof p17 Figure 6.2), it will still be possible to identify this room as a Court Room. As such it will still contribute as a key element of significance.

251. Further, the elements that are to be retained will also be refurbished. The wall panelling is generally in a poor condition. The proposals will allow for its refurbishment and restoration. Further, the works proposed to the Magistrates Court also include the removal of the non-original blind to the glazed toplight. Its removal will enhance the appearance of the space by reinstating this original feature.

252. On this basis, whilst there may be an element of harm arising from the loss of the furniture within the Court Room, since the original use would still be appreciable, the affect on the significance of the building as a whole will be limited as Mr Crisp explained.

253. The suggestions for alternative uses by the Rule 6 party are interesting in that they have failed to demonstrate any lesser degree of harm – Mr Neale suggested a coffee shop but where would the kitchen be? What lesser degree of furniture would be removed? How would M&E be provided whilst causing less harm than the proposed development? Which element of the Court room would remain with Mr Neale's proposals which would be removed by the proposed development? These questions are unanswered by Mr Neale and while they remain unanswered it cannot be said to have been established that there is any other viable/practicable use for the Courtroom which would be less harmful.

254. Leaving a space within a converted building which is unused and which does not generate income to assist in the maintenance and upkeep of the building as a whole is not an approach to heritage conservation which is generally supported. The suggestions that it might be used simply as a meeting room or an occasional film set simply ignore the onus to identify a use for all spaces which is viable and which ensures the continued conservation of the significance of the building going forward. These suggestions do not form a credible basis of the conservation of the Court room going forward.

255. It is submitted that the proposed development preserves the courtroom in a manner which appropriately strikes the balance between the loss of some elements within the Magistrates Court to allow for its re-use and the retention of the most important elements to allow for the original use to still be understood. It is recognised however that this will cause a limited degree of harm to significance which must be weighed in the balance.

Impact of M&E and the Level of Detail

256. Section 6 of Mr Baxter's proof considers the harm that the proposal would cause to other surviving fabric, suggesting that there is insufficient information in the submitted drawings to identify features within the listed building, such as glazed brick and curved wall junctions and that the lack of detail in the drawings could lead to loss of valuable historic fabric and finishes which, should this Appeal be allowed, the loss of which could not be enforced by the Council.

257. This is not a fair point to raise at this stage. As Mr Crisp explained in paragraph 2.11 of his Rebuttal Statement, in effect Mr Baxter is that Officers were wrong to validate, consider, report the application to Committee and that the Committee were wrong to determine the application in absence of additional information.

258. His position is extreme and should be rejected. The reality here is that all assessment of impact and provision of information has to be proportionate. Given the limited contribution that the remaining features he is concerned about make to significance, given the difficulty in retaining them in situ and given the mitigation proposed (of re-using any affected elements wherever possible) sufficient information has been provided. As Mr Crisp explained, his view is that the drawings are clear in the fabric that is proposed to be removed, as it is clearly shown in the submitted demolition set of drawings. It must also be noted that where specific fabric is affected, sufficient detail has been included to allow assessment, such as the green and white tiles within the stair compartment. This specific detail allows an understanding of how a set of double doors will be inserted to replace a single leaf door.

259. The Appellant has sought to address your concerns regarding M&E matters by reference to the plans and a further explanation (ID26 and ID28). We hope that we have addressed your question sufficiently clearly for you to be able to understand what is proposed and what the likely impacts are.

Police Station Stair

260. In respect of the alterations to the central staircase – referred to as the 'Police Station' stair, where it is proposed to encase the bannisters. Both Mr Baxter and Ms Watt refer to alternative approaches of the methods through which the stair could be made to comply with Building Regulations, where glass panels could be inserted into the large gaps.

261. Options for making the stair comply with building regulations were discussed during pre-application discussions with the Council's Conservation Officer. These discussions included, as per Mr Baxter and Ms Watt's suggestion, the insertion of glass panels or the encasement of the stair. Both options were presented and discussed. In this instance, the Conservation Officer expressed a presence for the encasement of the stair rather than the glazed panels.

262. Therefore, contrary to Mr Baxter's suggestion at paragraph 6.4 of his evidence, the insertion of glass panels within the large gaps of the stair was investigated but was not chosen as the appropriate way forward following pre-application discussions with the Council and its Conservation Officer.

263. If you consider that a different approach is appropriate then this could be required by conditions.

The Planning of WC's

264. Mr Baxter highlights, at paragraph 7.8 of his proof that the proposed WC's will lead to the obscuring of glazing on the front elevation. This is not correct and is not show on any of the submitted drawings. At the lower ground floor, it must be noted that the windows are already obscured glazed. Notwithstanding this, views into the lavatories will be limited as a result of the presence of the access ramp within the lightwell, which will achieve privacy to these rooms. On other floors, lavatories have

been planned so that they are enclosed in cubicles to create privacy. There is one exception, which is at ground floor where there is a WC where the access ramp would potentially allow views into one cubicle. This could be addressed by the addition of a blind, to be lowered when in use. It is submitted that the Rosslyn Hill façade of the building would not be harmed by the need for obscured glazing, not only because it is not shown on the submitted drawings but also because the location of lavatories has been designed so that obscure glazing is not required.

The Third Staircase and its Effect on Plan Form

265. Mr Baxter refers to the proposed third staircase to be introduced to the building which he considers would harm the original plan form of the building. Mr Baxter states that this will harm the plan form of the Inspectors Office (at ground floor) and the Clothes Room (lower ground floor).

266. It is important to note that this additional stair is required to allow for fire safety reasons and to allow for the safe evacuation of the building. That reason notwithstanding, as per the GPA2 assessment process, it is not sufficient to just consider original plan form, but instead, consideration must be given to the contribution that it the existing plan form affected by the proposed staircase makes to significance. As we have identified above, it is the ability to appreciate the original three uses of the building as separate use that is potentially of significance. However, the parts of the building affected by the proposed staircase do not contribute to an appreciation of this factor. Whilst the insertion of a staircase affects plan form, there is nothing within the rooms affected which hint at their former use. Nor do they make any physical contribution to an appreciation of the separation of the three uses. It is therefore submitted that the significance of the building as a whole is not materially affected by the insertion of a stair in the location proposed to enable the building to meet fire safety standards.

Changes to the rear elevations

267. Section 4 of Mr Baxter's proof relates to the changes to the rear elevation. At the outset, it is stated that one of the benefits of the proposals is to remove the new build elements and remove the exposed services to restore the original appearance of the building as far as possible. Mr Baxter suggests that the removal of later additions is a 'spurious' benefit as there is no ideal state to strip the building back to. This is in

contrast to Ms Watt who at least accepts that the loss of the later additions and services to the rear would not harm the significance of the listed building.

268. Mr Baxter suggests that the true character of the rear elevation was intended to be simple and utilitarian. It is assumed that this suggests that it is considered that servicing and accretions would have been anticipated to be attached to the rear elevation. At the time of the building, there were very different servicing requirements for buildings than today. This is exemplified by the cells which did not include foul water pipes but instead pans were incorporated into the cell benches. There was not a requirement for the service runs that are now present on and within the building today. Changes in police requirements meant that it was necessary to add soil pipes and other services to allow the Police Station to operate to reasonable standards. The result is the accretion of various elements that obscure the simple plain utilitarian facades to which Mr Baxter refers. These elements are not therefore original. A comparison of the above floor plans illustrates that the staircases shown at lower ground floor, contrary to Mr Baxter's suggestion, do not resemble those as shown on the original plans. These cannot be considered to be original, but later additions.

269. At paragraph 4.4, Mr Baxter refers to the bridges and external staircases there he contends were original features of the Dixon Butler design. A comparison of the original plans with the existing plans shows the degree of changes that has taken place to these elements.

270. A comparison of the floor plans illustrates that of the staircases shown at lower ground floor, contrary to Mr Baxter's suggestion, they do not resemble those as shown on the original plans. These cannot be considered to be original, but are evidently later additions. A comparison of the ground floor, as originally proposed and as existing provides a similar picture and illustrates the significant changes that have taken place to the rear of the building. The staircase to the cell wing is of a different orientation and the link between the cell block and the magistrates court also appears as a different form (which can also be seen on a comparison of the rear elevations).

271. It is therefore simply wrong for Mr Baxter to assert that these elements form part of the original design of the building and that their removal cannot be said to be

beneficial. Their loss would, in fact, allow a better appreciation of this simple rear elevation in accordance with the NPPF objective of so doing.

272. Further, Mr Baxter suggests that the link between the cell block and the Magistrates Court is original. Whilst the link – part of its historic interest – formed part of the original design – it has clearly been replaced and the structure that is in place today differs from its original form. Indeed, it is difficult to see that link being retained as a functional route whatever use the Police Station were put into – with whatever development comes along, that link is likely to be lost.

273. At paragraph 4.8, Mr Baxter refers to the loss of pipes on the east elevation of the cell wing. He does in fact accept that this could be considered to be a benefit, but he considers that it does not outweigh the proposed damage to the interior. This is an important point; it is accepted that this is a benefit that could form part of a balancing exercise where the proposals cause a level of harm. Mr Baxter continues further that whilst this might be considered to be a benefit (and thereby accepting that it does constitute a benefit), it is neutralised by replacement servicing equipment which would be highly visible. The M&E drawings do show four units located on the roof, behind a chimney stack and parapet. The location of these units would be very difficult to discern from any location if they could be seen at all. It is submitted that they could not be said to cause an equal amount of harm to significance in comparison to the existing servicing on the cell block wing.

274. Mr Baxter refers to a number of additions within the central yard the removal of which he does not consider to be a benefit of the scheme. This approach is simply confused. There are three structures – a bin store, a double cell lock-up and a metal tower. These can be viewed on site.

275. Mr Baxter firstly mistakes the metal tower as enclosing a staircase when it is a goods lift and completely of modern construction. This element is also not shown on any of the original floor plans. The loss of this modern staircase has to be seen as beneficial as it will remove a modern addition. Further, he considers that the removal of the bin store cannot be considered to be a benefit when a new bin store is being

provided elsewhere on the site. The new bin store is located well away from the listed building and will be discretely located within the corner of the site.

276. In respect of the double cell lock up, Mr Baxter suggests that this tells us an important part of penal history at the site as it was, presumably used for individuals waiting to be put into a van. This assertion is not based on any fact, but is solely an assertion on his part. Whilst the exact use of this modern extension is not clear, it is questionable why it would be used to hold individuals pending transferral to a vehicle when there is such easy access from either of the cell blocks. It is submitted that this suggestion – which is pure speculation – should not cannot be given any weight.

277. Mr Baxter's approach to the consideration of elements at the rear also reinforces his failure to addressing and apply the approach in the GPA2 guidance. Mr Baxter has made no attempt to understand the role that each of these elements has in contributing to significance and the importance of the building. Contrary to Mr Baxter's assertion that these elements have been misidentified and their removal does not present a benefit, it is clear from a comparison of elevations and floor plans that the removal of such elements would better reveal the significance of Dixon Butlers original, simple, utilitarian rear elevations. Indeed, Ms Watt takes a different view to Mr Baxter in that she accepts that the removal of such elements (and the proposed canopy) would not harm the significance of the listed building (paragraph 4.3.1). But even her position is illogical since it does not recognise that the removal of these elements will better reveal the significance of the rear design.

Rosslyn Hill Access Ramp

278. The appeal proposals will provide equality of access to the listed building through the incorporation of an access ramp within the lightwell of the building fronting Rosslyn Hill.

279. The importance of this and legal context for considering this issue cannot be overstated or overlooked.

280. The duty to make reasonable adjustments is a key element of the measures designed to eliminate barriers to access and participation for disabled people. Broadly, it requires those caught by the provisions of the Equality Act to avoid putting disabled people at a substantial disadvantage compared to able bodied people by removing, alternatively modifying or avoiding physical barriers. A failure to comply with the duty to make reasonable adjustments is a form of discrimination. The main elements of the duty are set out in section 20 of the Equality Act 2010.

281. Discrimination from disability arises when a person is treated unfavourably because of something arising from a characteristic of their disability. A requirement to have to lift a wheelchair upstairs or otherwise to use a side-entrance is an obvious example. Either would involve segregation of disabled pupils from the able bodied: they would arrive and depart on a daily basis in a way that singled them out and reinforced a sense of difference and might well offend their dignity. In a school context there is a risk of stigmatisation and re-enforcing a child's sense of exclusion from the mainstream.

282. Where there is such a disadvantage, the obligation on the "service provider" is to aim to remove the disadvantage by making, as far as possible, "reasonable adjustments".

283. Here, that duty applies in the design stage for the proposed adaptation of the building, since there is a general duty to anticipate and obviate any such discrimination or disadvantage. The ordinary approach in application of these duties is to make those "reasonable adjustments" to ensure that disabled people and able-bodied people should access a building in the same way (i.e. a ramp for everyone through the front entrance rather than stairs and a ramp). Any scheme like this for a school where segregation would be a highly sensitive issue should aim to integrate access for all people in the same way. This is explained in the statutory guidance to the Equality Act, the Equality Act Code of Practice Services, Functions and Associations 2011, page 106, para 7.56

"Where there is a physical barrier, the service provider's aim should be to make its services accessible to disabled people and, in particular, to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public

at large. When considering which option to adopt, service providers must balance and compare the alternatives in light of the policy of the Act, which is, as far as is reasonably practicable, to approximate the access enjoyed by disabled persons to that enjoyed by the rest of the public."

284. Further Policy C6 of the CLP provides:

"Policy C6 Access for all
The Council will seek to promote fair access and remove the barriers that prevent everyone from accessing facilities and opportunities.
We will:

a. expect all buildings and places to meet the **highest practicable** standards of accessible and inclusive design so they can be used safely, easily and with dignity by all."

285. These hugely important statutory and policy provisions have been wholly overlooked by Mr Baxter and Ms Watt in their evidence. The suggestion it is sufficient for level access to be provided at the side of the building is plainly flawed. That suggestion would mean that the less able could only enter the school via the side or rear and not share the experience open to the able bodied of entering via the front.

286. In this case therefore, providing a side entrance for disabled children would obviously place disabled staff or children at a substantial disadvantage. A failure to make reasonable adjustments to that substantial disadvantage would discriminate against them.

287. In essence, it is for you to determine whether the failure to make adjustments to make the same entrance accessible, and the stigmatisation and offence to the dignity of disabled children and teachers that segregating disabled people would engender is justified by preserving the façade of the building from the alleged harm of a disabled ramp. If it is not then that is a factor to which you can give weight in the planning balance.

288. Mr Baxter's suggestion, contrary to the advice of LBC's own access officer, that it is appropriate to require those who have to have level access, should have to use an entrance round the side when everyone else can come in the front door has been made without any material consideration of these duties. To suggest that without having conducted any form of equalities impact assessment to justify the stance adopted is unacceptable.

289. Ms Watt does not suggest that the current proposals are unacceptable, but only that less harmful solutions have not been explored. CD 10/07 clearly shows that discussions were had on a range of options for access to the front step and that this was the preferred option for providing access for all to the building. During pre-application discussions, various access options were discussed with the Conservation Officer (CD10/07). It was at this stage that the Council's Conservation Officer expressed a clear preference for the option which had the access ramp within the lightwell. The requirement for such an access ramp was predicated on the need to meet policy C6 of the Local Plan which encourages equality of access.

290. Ms Watt suggested that insufficient information is provided on the proposed access ramp. The submitted drawings show sufficient detail to understand the impact on the listed building (CD01/86 and CD01/87) which show the ramp at an appropriate scale to understand its form. Further, the submitted DAS includes a specific section on design and appearance.

291. Mr Baxter considers that the proposals will affect the ability to understand the architectural quality of the external elevation and affect the spatial character of the lower ground floor rooms as a result of diminished light levels.

292. This suggestion that the proposed access ramp will affect the significance of the listed building in any material way is simply wrong. The clever and thoughtful way in which it integrates with the front of the existing building is readily appreciated from the CGi produced (Crisp Proof p 19 Figure 6.3)

293. It must be noted that many of the windows on the lower ground floor are already obscure glazed, affecting the amount of light to these rooms. The access ramp is proposed to be a made of a grille type base which would allow natural light to penetrate

into these rooms. As a result, the access ramp would not materially affect the light levels to these rooms.

294. The railings to the access ramp are proposed to be iron railings which Mr Baxter considers would be jarring. The proposed elevation does not support his view. The architectural composition of the building would not be harmed by the ramp which passes in front of six windows, leaving the rest of the façade to be appreciated in its entirety. The railings were a further element specifically discussed with the Council's Conservation Officer during pre-application discussions, with suggestions of the railings be a glazed panel or more traditional railings. Following discussion of the merits of each potential solution, the recommendation was made to use iron railings as it was considered that glazed panels would be out of keeping with the listed building. It is submitted that the current access ramp proposals are an entirely appropriate response to the listed building.

295. Mr Neale, in the Appendices to his Proof of Evidence presents an alternative proposition for achieving equality of access throughout the building with the addition of a glazed atrium within the courtyard to the rear of the building. This he contends, would avoid the harm caused to the principal elevation of the building. It is submitted that that this proposal, which includes a structure extending to the full height of the building would harm the significance of the listed building. Indeed, Mr Baxter considers that the proposed canopy and extension to create the hall are harmful, so presumably he would reach the same conclusion albeit more forcefully in response to Mr Neale's proposals.

Proposed Alterations

296. In respect of the lower ground floor, Mr Baxter accepts at paragraph 11.4 that this floor has 'relatively low significance' and that some change is possible. The changes to the Parade Room will restore part of its plan form, and involves change in floor levels to allow for level access through this part. The proposed raising of the floor will be entirely reversible and could, at some point in the future, be removed to restore the floor to ceiling height. It must be noted that in this area, there is already a modern

ceiling in which there are considerable service runs which already affect the spatial characteristics of this space. Whilst Mr Baxter contends that this will change the spatial character of the space with the relationship to the windows. The raised floor level will remain under the window cills and will, with the loss of the large ceiling void, will increase the amount of light within this space. There is no loss of plan form in this space. Further, there are no vestiges of the former use of the space and it can therefore only be concluded that this element does contribute to an understanding of the historic interest of the building. It is therefore submitted that the changes to this area would, at worst, be neutral.

297. The insertion of a lift within the Magistrates Court wing is considered by Mr Baxter as blocking the connection between the front and the southern wing all the way up the building. Yet this is a connection which is in fact original as part of the previous separation of the uses within the building. The lift would provide equality of access throughout the building and would, at the upper floors, reinstate the divisions between the Court and the rest of the building. Yet again, Mr Baxter has overlooked the need for equality of access and the legal and policy duties that go with that consideration.

298. Ms Watt's views on this element are confused, suggesting that there is no reinstatement of this space under the proposals (paragraph 4.2.30). As already explained, the Magistrates Court element of the building will be reinstated as a separate entity.

299. In relation to the lift, it is intended that access to the lift will be controlled by a key card system. Ms Watt suggests that this means that the Business and Enterprise Space would have limited public access. This is not correct. It is the lift which has controlled access to it. It can only be operated by holders of an appropriate card and there would be no movement allowed between the different components of the buildings. Ms Watt's assertions on limiting public access are not correct.

300. At ground floor, Mr Baxter makes reference to the demolition of the custody suite and suggests that the cells could be used as toilets as they could replace the cellular rooms on the Rosslyn Hill elevation. This approach would not provide the school with

a hall for its daily activities, since it would not be possible to provide a hall of a similar size within the rest of the building.

301. The limited potential for re-use of the existing cells and custody suite provides an opportunity to create a hall which the school could occupy. It is accepted that this loss of the cells would cause a small element of harm to the significance of the listed building as it would remove an element which allows for appreciation of the original use of the building. However, as set out earlier, if the GPA2 steps are considered, the importance of the plan is in the separation of the three uses. The cells do not contribute to the separation of these uses and so do not contribute to an understanding of the disposition of the individual uses across the site as originally designed. On that basis any harm arising from their loss can only be very slight.

302. At the ground floor, Mr Baxter is silent on alterations to the listed building which have the potential to reinstate plan form. In fact, the proposals will reinstate the entrance vestibule to the building from Rosslyn Hill. This is based on the plan form as shown on the Dixon Butler plan which shows a reconfigured entrance hall with the relocated Magistrates entrance screen. Ms Watt considers that this element will affect the distinction to be made between the decorative court wing and the utilitarian police wing. The high level of decoration attributed to the Magistrates Court was not derived just from an entrance screen, but from a much wider package of decoration of stair detail, cornice and spatial characteristics. There is likely to have been a decorative entrance screen within the Police part of the building to illustrate the civic presence of the Police and such a feature may have been commonplace. This relocated entrance screen will allow for a greater appreciation of the use of this part of the building which will enhance the ability to understand the historic interest of the listed building. Indeed, the original Dixon Butler plans show a screen within the porch of the public entrance to the Police Station.

303. Similarly, Mr Baxter is also silent on the enhancements identified by Ms Watt at paragraph 4.2.20 where a later inserted partition wall alongside the staircase ascending from the Magistrates Court entrance to the public waiting room on the first floor will be removed. It must also be noted that the removal of the modern ceiling and

the restoration of the cornice in this space must also be considered to constitute a heritage benefit.

304. At second floor, Ms Watt suggests that the removal of the structural posts within the former Section House dormitory would add to the overall degree of loss and impact throughout the building. However, this space was originally open to the roof structure, with the posts inserted at a later date. These are not elements of the original design and are certainly a later addition. These cannot therefore be concluded to contribute to historic or architectural significance in any way whatsoever. Their removal and the removal of the modern ceiling the open up of the space to the roof structure would reinstate and enhance this space.

Stable Block

305. Ms Watt does not make any reference to the proposed alterations to the stable block. It must therefore be assumed that Ms Watt does not have any concerns in respect of the proposed alterations.

306. Mr Baxter acknowledges that the stable block is now difficult to discern and suggests that there has been no historic analysis of its interior, instead suggesting it would be better used as a house. The list description notes that the building was converted to office use by 1986 and it contains no features related to its original use. It is therefore difficult to understand why Mr Baxter comes to the conclusions regarding this building – his position could be described as extreme.

307. The condition of the building is very poor with the stair collapsed, with the building being derelict (having been mothballed) when the Police left the site in 2013. There is a suggestion that one of the dormer windows was originally an access to a hayloft although this an assertion unsupported by evidence such as elevations or floor plans. It is plain that the interior of the building has been subject to significant alteration as part of the occupation of the building by the Police. The loss of the modern extension will restore its original appearance.

308. The existing stable block does not contain any vestiges of its former use as a stable block/harness room and is instead a series of individual spaces. It is not possible

to understand the original use of the building in its current guise. On this basis, in line with the GPA2 guidance, the existing building cannot be said to contribute materially to the historic interest of the site. As a result, proposals in relation to the stable block will not cause harm to significance by way of any effect on historic interest. In relation to architectural interest, the loss of the modern extension will improve the external appearance of the building and whilst there will be some minor changes to the window/door, this will improve the appearance and therefore enhance the architectural interest of the building.

The Degree of Harm

309. Both Mr Baxter and Ms Watt identify levels of harm to the building which are overstated. This is partly because they have not applied the GPA 2 approach as explained above, but it is also because they have not followed the relevant guidance and case law on what "substantial harm' is.

310. National Planning Guidance (updated 2014) provides clear and unambiguous advice on how decision makers should identify whether harm to a heritage asset is substantial or less than substantial for the purposes of the NPPF. It states that:

"Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed".

311. The NPPG goes on further to state that:

"Historic England have also produced guidance on assessing the level of harm to be attributed to proposed works which are considered to harm a heritage asset. The Historic Environment Good Practice Advice in Planning: Note 2 – Managing

Significance in Decision Taking (Historic England, 2017) identifies, similar to the NPPF, that substantial harm is a high test which may not arise in many cases".

312. Case law which has provided clarification regarding the interpretation of the legislation and guidance relating to assessing the degree of harm. The most relevant case is the 'Bedford case'. Mr Justice Jay agreed with the Inspector that 'for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away'. 'One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced'.

313. Ms Watt view that substantial harm arises to the proposed buildings must in this context be rejected as extreme. The significance of the building cannot be said to be vitiated or drained away. The external presence of the building as seen from Rosslyn Hill would remain with its architectural and historic interest intact. Since this is the most important external view for the public to appreciate the significance of the building, the only conclusion that can be reached is that Ms Watt judgement on the degree of harm must be rejected.

314. The same is true of Mr Baxter, who doesn't go as far as Ms Watt but indicates that harm would be caused at the top end of the less than substantial scale. In other words, with the proposed development we would be nearing a position where very much if not all of the significance of the building would be drained away. Again, that cannot be the case for the reasons we have just explained. Mr Baxter's assessment of the degree of harm must also be rejected.

Heritage Benefits

315. As part of the paragraph 196 balancing exercise it is necessary to take into account any benefits to heritage significance that may accrue from the proposed development. Mr Crisp identified these as including

(a) The reinstatement of the experience of the route from the Magistrates Court entrance to the Court room itself through;

(b) Removal of the modern partition within the stairwell to the Magistrates Court to restore the original appearance of this route to the Court room;
(c) Removal of the modern ceiling to the reception area outside of the Magistrates Court;
(d) The restoration of the decorative plasterwork to the reception area to the Magistrates Court;
(e) The re-establishment of the Court related area as a separate space within the building to better reveal the original division of use within the building;
(f) The removal of the modern accretions to the rear of the building to better reveal the original rear elevations. This is supported by a comprehensive approach to servicing;
(g) The restoration of the external envelope of the building;
(h) The removal of modern additions to the Stable block;
(i) The sensitive re-use of the Stable block which would allow for the refurbishment and renewal of the exterior envelope.

316. These benefits are also confirmed by LBC in their Statement of Case at paragraph 6.37. Since LBC has not indicated to the Inquiry that it wishes to resile from this part of its Statement of Case, it is assumed that it continues to recognise these benefits even if Mr Baxter does not.

317. It is submitted that if it is consistent to give great weight to harm to significance when applying the statutory duty relating to listed building to have regard to their conservation, then it is also consistent with those duties to give enhancement to significance great weight. Each of the enhancements to the significance of the listed building identified is then a matter to be given great weight in the planning balance.

318. It is also relevant to consider whether the proposed development represents the "optimum viable use" – that is to say the use which is financially viable which does the least harm to the significance of the building.

319. Mr Crisp was clear in his evidence (paragraph 6.19) that alternative uses of the building – such as commercial, restaurant and residential – would have a more significant effect on the listed building as these would require more intervention within the built fabric to allow the adaptation of the building to alternative uses.

320. Residential use of the building would necessarily require substantial alterations to the plan form. In addition, significant servicing of each residential unit would be required in terms of kitchen extract, heating and plumbing. The same is true of an Office use. Further, the office market is a mature one – modern office requirements are for flexible open plan space. This would be likely to require a greater level of intervention than is necessary for a school proposal. Suggestions from the R6 party that the existing layout could be used are simply naive. There is no evidence that the redevelopment for office space which utilised the existing layout would be remotely attractive in the market compared to other available modern flexible office space. There is no evidence that such a use would be viable.

321. Throughout pre-application discussions, the matter of use was raised with Officers and, as reported, in the Committee Report (paragraph 8.24), it was agreed that the proposed educational use of the building would be entirely appropriate in the building. This opinion was confirmed in comments from the Council's Conservation Officer, Antonia Powell, who confirmed that the proposed use was the most reasonable and apt. Ms Powell further commented that the residential use of the property, she considered, would involve more harmful interventions and fundamentally alter the character for institutional with some public access to a closed and private use.

322. The private nature of an entirely residential or office use would thus cause material harm to significance through the loss of a public function/connection within the building. The educational use provides for an element of public access to a building which is commensurate to its former use as a Police Station and Magistrates Court. The Police Station element of the building would be occupied by a 1FE Primary School which would retain an element of controlled public access. This is important as public enjoyment of the historic fabric of an area is ultimately a key objective of the legislation and policy on listed buildings and conservation areas.

323. To conclude on this point, it is submitted that the proposed use is the optimum viable use and that this is a factor which should weigh heavily in favour of the grant of planning permission when carrying out the balancing exercise required by paragraph 196.

Conclusions on Heritage Assets

324. Indeed, it is submitted that when a balance is struck between harm to heritage significance and benefit to heritage significance that the proposed development would deliver, the conclusion is reached that the balance lies in favour of allowing the proposed development to proceed.

325. It can then be concluded that the proposed development is acceptable in terms of its heritage impacts. It accords with the NPPF and the relevant Development Plan policies.

326. Indeed, 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 more decisively towards the need to grant planning permission as we shall explain further below.

Relevance of Alternative Schemes

327. As a matter of generality alternative schemes are only ever exceptionally relevant in planning decision making. In a heritage context, it is submitted that if you conclude that the 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 for the same site could be identified: ***MR Dean & Sons*** [2007] EWCA Civ 1083. This means that where the public interests benefits (as to which see further below) 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.

328. 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.

329. The later case of ***Langley Park*** **[2010] P & C.R. 10** a 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)."

330. An example of the kind of special circumstances where an alternative site for the same use is required to be considered was given by Carnwath J in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2009] EWHC 1729 (Admin) at §19-22 as being where there were before the decision-maker extant applications for the same use at alternative sites, an acknowledged need for the proposed development, but clear planning objections pertaining in respect of development of each site such that a comparative assessment of the relative merits of the sites was a means of enabling an appraisal of which best minimised the harm so as to satisfy the need. Clearly no such special circumstances pertain here. Indeed, in HCRC's closing at para 47 it is now accepted that there is no legal obligation in this context to have regard to alternative sites and at paragraph 45 of the closing it is expressly conceded that HCRC "do not seek to argue that the Proposed Development should be refused simply on the basis that there are alternative sites that avoid the planning harms identified above."

331. It is submitted that no party to this Inquiry has established as a matter of fact that there is any realistic alternative to the Appeal Scheme which would achieve the same benefits with less planning harm resulting. Having failed to evidence an available and suitable alternative site, HCRD is restricted at paragraph 49 of its closing submissions at para to the speculative submission that "Had a proper approach to alternatives been taken, it is submitted that the Appellant would have found an alternative, more appropriate site for the Proposed Development." No specific

alternative schemes have been identified. Instead, what is floated by objectors are simply ideas or thoughts in large parts on sites that are not available and/or which have been rejected by the very thorough site selection process undertaken by the Appellant. HCRD relied at the roundtable on "Gloucester House" as an alternative site. That was rejected in the Appellant's site search because it was not available (CD01/33), The R6 apparently accepts (paragraph 49 of its closing) that it was not available, but relies on Mr Neale's assertion that Gloucester House is "provisionally planned for disposal in 2021". An alternative site in respect of which there is an asserted provisional possibility that it will become available for disposal in the future is not a material consideration of any or any significant weight. The R6 also referred to the site at "the Hoo" which was rejected for being too small (and requiring substantial adaptation). Other parties have not presented specific schemes the impacts of 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 on a time scale remotely comparable to that which the appeal scheme could deliver. The School needs a permanent home and it needs one now.

332. It is submitted that, even if the matter were relevant which it is not, there is no reasonable alternative to the proposed development.

The Benefits

333. The Appellant's evidence on the benefits of the proposal is set out in the evidence of Mr Byrne and was largely unchallenged. There is a rather begrudging acceptance by John Sheehy in his proof of at least some of the benefits of the proposal, albeit downgrading the obvious significance of most of them, and leaving out of account many of them entirely.

Education Benefits

334. The proposed development will provide this outstanding school with a permanent home near its catchment. That will help meet the Secretary of State's objectives of providing increased choice; driving improved standards; increasing the number of school places and choice of state-funded schools and ensuring the planning

system acts in a positive manner in the national interest to secure the provision or alteration of state funded schools (CD04/03). The proposed development has been brought forward and funded by the Department for Education in order to further these objectives.

335. The proposal similarly meets the objectives of the NPPF para 94 in ensuring a sufficient choice of school places is available to meet the needs of existing and new communities. Para 94 requires great weight to be given to the creation, expansion and alteration of schools through planning applications. Neither LBC nor the R6 party gave this policy any material weight in their closing submissions.

336. At a regional level, the London Plan (2016) is also very supportive of the need to ensure a diversity of educational facilities and particularly refers to promoting and encouraging the development of Free Schools such as Abacus Belsize Primary School.

337. There is clearly a demand for Abacus Belsize Primary School that has been demonstrated since it opened in 2013. The 'black hole' in non-faith, state-funded school provision for the residents of Belsize ward is being filled (the nearest state-funded secular school otherwise is Fitzjohn's primary, which is consistently oversubscribed and residents of Belsize rarely fall in its catchment) and will be met all the better by the school relocating to its catchment. The school is one of only 6 out of 40 primary schools within a mile radius of the Belsize Park that have an OFSTED rating of 'Outstanding'. The school provides much needed choice for the Belsize residents to send their child to a secular school.

338. The school itself will benefit from being located within its community, with teachers able to give more time to their teaching and preparation by not having to accompany the children to and from school on buses and organise the logistics of getting children to and from school (seatbelts; registers; medicines etc). Delays and missed school time getting to or from school from roadworks or the like will be a thing of the past. Parents and children who are late for the school bus will no longer face a 45-minute journey to St. Pancras. Teachers will be able to have a closer connection to parents and the wider community of the school, particularly through contact with vulnerable families.

339. The children will be able to enjoy much improved outdoor space in the playground; on the heath; and at local swimming pools in place of the limited playgrounds at Jubilee Waterside and the limited green spaces of St Pancras. The outdoor curriculum can be fulfilled and indeed can flower without the school budget being severely compromised by the cost of coaches to Hampstead Heath as at present. The R6 party has asserted that access to the Heath may be limited by the need to obtain licences. No legal submissions have been made to establish that this is the case and no evidence has been provided from the City of London to demonstrate that the school will not obtain access. Mr Byrne explained in his evidence to the Inquiry that the school has spoken to the City of London and it is not an issue. Other schools access the Heath without license and the City has not indicated that any licence will be required. The point raised by the R6 party can thus be rejected as incorrect unsubstantiated assertion. The children will be able to assemble in a proper sized hall capable of accommodating indoor physical education. The school will benefit from a newly converted and admirable building, rather than a poorly maintained aging building originally designed for just 25 SEND children. School events; after school clubs; breakfast clubs and the like- the wider reach of the school can all be held within the school rather than in disparate hired venues around the catchment. Extra attention before or after school for children needing additional help may be possible once again. Finally, the anxiety of the impermanence and the corrosive effect of the homelessness and dislocation of the school will be halted: concerns as to the loss of good staff and parent confidence will be allayed once it is known that the end of the wilderness years is in sight for this school and all the children who attend it.

340. The Appellant has huge experience in delivering schools which meet fire safety standards. The Design and Access Statement sets out the fire exist strategy (CD1/19 p37). During the passage of the application the R6 party raised concerns. The Appellant's fire consultants responded in CD1/40. It was addressed in the OR (CD 2/05 section 17 para 7.13

341. Which confirmed that:

"17.3 The applicant team's fire consultant has responded to the objections raised and state that the proposals will meet standard BB100, with sufficient stairways, refuges for wheelchair users and an escape strategy, amongst other provisions.

17.4 The fire safety issues have been discussed with Building Control officers who do not consider there any reason why the building is unsuitable for use as a school. The proposed school would require a Building Regulations application and construction drawings demonstrating compliance with all relevant parts of the Building Regulations. The Building Regulations application process requires a consultation with the local fire service to ensure compliance can be achieved with both the Building Regulations and The Regulatory Reform (Fire Safety) Order 2015."

342. The expectation of government policy is that there should be co-operation from LPA's which avoids delay, ensures the minimum disruption to children and teachers. There have been significant delays in the planning process since 2013 and there is an urgency in the need to find a stable long-term solution for the school. In particular you, sir, are asked to note that admissions arrangements for next year are made in January and it would be hugely beneficial to the school for it and its prospective parents to know ahead of that time it will have the security of a new location.

343. The failure of London Borough of Camden; of the Rule 6 parties, and of many of the objectors to properly acknowledge the obvious force of these considerations; let alone factor them properly into their submissions and evidence on the planning balance undermines their credibility and limits the weight which can be given to their case.

344. We ask you to give great weight to the proposal's raising of educational standards through the provision of high-quality education and securing the longevity of an outstanding secular state school. You are invited when considering all these benefits to give them, collectively, great weight in the determination of the appeal.

Sustainability

345. The site is in a sustainable and accessible location and utilises previously developed brownfield land effectively and efficiently, bringing a vacant building back into a use that complies with the Development Plan. The proposal contributes towards sustainable development providing environmental, social and economic benefits.

Environmental Benefits

346. The proposed development will deliver a range of sustainability benefits with a BREEAM Very Good rating (69.72%). The proposal will achieve an 87% reduction in carbon emissions (CD01.22) and includes the use of renewable technologies such as air source heat pumps and photovoltaics on the roof to the extent feasible. A minimum of two bird and bat boxes will be installed as controlled by Planning Condition. The rear playground will improve on the existing car park with its landscaping.

Transport Benefits

347. The full case on transport is set out above. There is no dispute that the development accords with the relevant policies in part 9 to the NPPF, and no credible case of any breach of any development plan policy. Further, as we have explained, the development will not lead to any increase in traffic and indeed, by reducing journey times and distances for children from Belsize Park attending a state funded primary school, the proposed development would deliver benefits in sustainable transport terms.

348. Relocation of the school to the appeal site will ensure the use of private minibuses for getting children to and from the temporary site will be replaced in most instances by short walks; scoots; cycles. The temporary site at Jubilee Waterside Centre is leased from LBC. The majority of the children live within the Belsize Park catchment area and are currently transported by private mini-bus to their temporary site each day. This is a costly and time-consuming process for parents and staff. The bus does not offer a long-term solution and the relocation will meet the critical need for the school to move closer to its pupils and the catchment area. Removing the need for the minibus

will decrease congestion and improve air quality and general support for mode shift to active transport will reduce carbon emissions.

349. The proposed travel plan will promote active travel. The development proposes to be car-free and promote sustainable modes of transport through hard and soft measures such as not providing car parking spaces. Active travel will play a role in preventing child obesity. Cycling and walking measures have moved to the very heart of considerations for all transport policy and planning (CD11.05) and the proposal meets those objectives by continuing to prioritise the school's car free and walk to school ethos at the heart of the school travel plan, which will be secured by section 106 agreement.

350. The appeal site is located 400m from Hampstead Heath. The Heath is already used by the school for twice termly "Heath days" without any need for permission from the City of London Corporation (there is no evidence that special permissions have to be acquired for conventional uses of the Heath or would not be granted to the extent exceptionally they might be (e.g. for sports day)) and children will be able to walk to the Heath for outdoor learning and exercise. Relocating closer to the catchment so that pupils walk or scoot or cycle to and from school will deliver substantial benefits.

Reduction in Air Quality Risks

351. The full case on air quality has also been addressed above. We have submitted that the children who would otherwise attend the propose school would in all likelihood be subject to a greater exposure to adverse air quality if planning permission is refused compared to the position if planning permission is granted; in particular, as a result of the likely greater exposure to elevated levels of road traffic related air pollution as a result of the commute to school at the Jubilee Waterside site when compared with the walk to the proposed location at Hampstead Police Station. The improvement in air quality experienced by the children by the relocation of the school is therefore to be regarded as a benefit to be weighed in favour of allowing the appeal.

Social and Community Benefits

352. As the Head Teacher explained to the Inquiry, locating the school within its catchment will carry immediate benefits to the community: allowing the school to

operate within its community and as a hub for that community. The school will be more readily visible in the community, particularly to some of the more marginalised or vulnerable families. Being local to the community will facilitate working with and reaching more difficult to reach sections of the school community.

353. The Main Hall, Small Hall and Kitchen will be available for community use within the school element of the proposal. All levels of policy support the provision of community facilities such as LBC's Local Plan (2017) Policy C2 (Community) and Hampstead Neighbourhood Plan (2018) Policy HC2 (Community facilities). The community use will be secured and controlled via a condition requiring the school to adopt a Community Use Agreement which outlines details of the proposed type, frequency and scale of use. The community use will regenerate and reinstate the building as a key focus for the local community by allowing members of the public to access the facility and fully appreciated the heritage features. This carries a substantial public benefit in the determination of the application.

354. Social Schools help support strong, vibrant and healthy communities by providing a hub for community interactions.

Economic Benefits

355. The local business/enterprise space in the Magistrate's Court is intended to provide flexible office accommodation could help support small businesses within the local area by providing co-working space.

356. The school employs 24 Full time Equivalent Staff and 18 Full time Equivalent employees could be accommodated within the Business and Enterprise Space. Construction Employment would also follow. These are unchallenged matters of significant weight in accordance with paragraph 80 of NPPF.

Heritage Benefits

357. The appeal seeks to re-use and restore an existing Listed building which is located in a sustainable location. The heritage benefits have already been addressed in detail above.

358. The DfE and Trust are a responsible long-term occupant of the building. They are fully aware of obligations for maintenance and upkeep of the Listed Building. Bringing a vacant building into beneficial use; regenerating and reinstating a public building as a key focus for the local community by allowing members of the public to access the facility and fully appreciate the heritage features is a substantial public benefit in the determination of the appeal carrying significant weight

359. The design has been carefully developed to ensure that any alterations to the historic building fabric have been kept to a minimum and areas of historical significance have been preserved and enhanced. The heritage benefits identified specifically by Mr Crisp are summarised above and in LBC's statement of case at 6.37. These include the contribution of the proposal to understanding the original plan form (para 226-233 above); refurbishment and restoration of the Magistrates' Court and its restoration as a separate space; better revealing the original intention on the rear elevations; removal of the modern ceilings. The levelling up of access arrangements by insertion of the ramp and lift to ensure the highest practicable standards of accessibility and near-equality of access to all is a significant benefit.

360. The preservation and the elements of enhancement to the Grade II Listed Building and Hampstead Conservation Area must be given significant weight in the balancing exercise as the as a whole.

Other Matters

361. HCRD relies in closing paragraph 2 that a 2015 Newsletter from the Anthem Trust referred to the Police Station as unsuitable. It is quite obvious reading the letter that it was being said that the site was unsuitable as an immediate temporary site, not that it was saying it was unsuitable following redevelopment as a permanent location (see Inquiry Documents 27 and 29)

The Planning Balance

362. As explained above, the proposed development gives rise to less than substantial harm to significance which is to be given great weight when applying the paragraph 196 balance. The proposed development also give rise to benefits to significance which, for reasons already explained, should also be given great weight. The additional

benefits identified above are also matters which cumulatively are to be given significant weight not least the support of national planning policy for providing this outstanding school with a permanent home at long last. It is submitted that the outcome of the paragraph 196 balance is straightforward: the public interest benefits outweigh the harm by a significant degree.

363. As a result of the above, we submit that the proposed development accords with the NPPF and the adopted development plan. As a result, applying the approach in section 38(6) of the 2004 Act planning permission should be granted unless material considerations indicate otherwise.

364. The proposed development is acknowledged to breach draft Policy S3 of the draft London Plan. For reason set out above, that conflict should be given limited if any weight in the planning balance. That is certainly insufficient to justify refusal of planning permission for the proposed school.

Conclusions

365. Sir, your decision will determine the future of a thriving and highly successful school community. This is a school which is in desperate need of a permanent home so that it can finally meet the need for a non-faith non-fee-paying school in the Belsize area. It is a school that already delivers and will continue to deliver the highest standards of excellence in education. Giving this school a permanent home will raise educational standards and will transform children's lives by helping them to reach their full potential. Granting permission for this school is significantly in the public interest. So, we ask you to do that which the politicians at LBC could not – we ask you to say "yes". We ask you on behalf of all of the children at the school now and in the years to come to allow this appeal and to grant planning permission for this wonderful school.

REUBEN TAYLOR Q.C.

ALEX GOODMAN