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FORMER HAMPSTEAD POLICE STATION, 26 ROSSLYN HILL, LONDON NW3 1PD

CLOSING SUBMISSIONS ON BEHALF OF HAMPSTEAD COMMUNITY FOR RESPONSSIBLE DEVELOPMENT

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1. The Hampstead Community for Responsible Development's (HCRD's) case remains, as in Opening, that the proposal to redevelop the Former Hampstead Police Station as a primary school is wrong—it is the wrong development in the wrong location. The Proposed Development will result in a number of planning harms: an increase in traffic and congestion, air pollution, and noise; as well as a reduction in the significance of a listed building. Any benefits provided by the scheme are outweighed by these harms.

2. The inappropriateness of the Appeal Site for a school was a view shared by the Trust which manages the school. In a newsletter to parents dated 15 January 2015, the Trust informed them that "*having balanced the convenience of the site for parents with the key objective of providing the pupils at the school with a physical environment that is appropriate for high quality teaching and learning, [the Police Station] was found not to be a viable option – it would have compromised our mission of providing an excellent learning experience for our children.*"[1] While the Trust now seeks to distance itself from this statement by means of an after-the-event explanation that it

[1] ID-27.

only concerned the unsuitability of the site for temporary accommodation, no such qualification is evident in the terms of the newsletter.[2] If the Trust had considered the school an appropriate location for its permanent home, it would not have emphasised its unsuitability in such forceful terms – particularly given that by the time the newsletter was written the Trust would have been aware that the Department for Education had purchased the Appeal Site with a view to developing it as a school.

3. As well as breaching a number of policies within the Camden Local Plan 2017, the London Plan 2016, the Intend to Publish London Plan as well as the Hampstead Neighbourhood Plan 2018, the proposed development goes against the Development Plan's strategy for the location of schools. **Above all, s**tanding back and applying practical knowledge and good judgement—using a common sense approach, as urged by the Inspector at the pre-inquiry meeting—the proposed development fails the test of common sense.

Transport and traffic

4. The Proposed Development is in clear breach of locational policies of the adopted and emerging Development Plan which seek to site schools, entrances and playgrounds away from busy roads and areas of poor air quality (Policy 7.14 of the London Plan 2016; Policy S3 of the Intend to Publish London Plan) and also indicate that due to problems associated with the school run, planning permission for schools should be refused in Hampstead unless it can be demonstrated that there will not be an increase in traffic (Policy C2(e) and para.4.33). HCRD makes two points in relation to these policies.

[2] ID-29.

a. First, as became clear during the inquiry, it is accepted by the Appellant's witnesses that the A502 is a busy road[3] and that the Intend to Publish London Plan should be given significant weight.[4] In relation to Policy S3, this is clearly the correct approach applying NPPF para.48 given that the draft Plan has been subject to examination in public and Policy S3 is not referred to in the Direction issued by the Secretary of State on 13 March 2020.

b. Second, the fact that the prohibition on granting planning permission for schools unless proposals demonstrate that there will not be an increase in traffic movements is contained in the supporting text to a policy does not mean that the Proposed Development is not in conflict with Policy C2. Para.4.33 is plainly relevant to the approach that must be taken when applying the requirement in Policy C2(e) to "*balance the impact [educational] proposals may have on residential amenity and transport infrastructure*". It expresses the Council's intention in the clearest of terms: "*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 increas*e". While the Appellant relies on *R (Cherkley Campaign Limited) v Mole Valley District Council* [2014] 2 EGLR 98 and *Fox Land & Property Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298 to say that there is no additional policy requirement in C2 to demonstrate no increase in traffic, the position in those cases has been overtaken by a more recent decision of the Court of Appeal, (*R (Chichester*

[3] Kearney XX (ME QC).
[4] Ferguson Proof para 5.30; Ferguson XX (EDR).

District Council) *v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 1640. That judgment establishes that the supporting text to a policy can be highly relevant for determining whether a proposal conflicts with the strategy of a development plan, even if the proposal does not obviously comply or conflict with the words in the policy box (at para.47). In the present case, this plainly applies: para.4.33 read with Policy C2(e) demonstrates a clear locational strategy of the Local Plan, based on evidenced concerns around the school run and the number of schools in the Hampstead area, directing schools away from Hampstead and Belsize Park unless it can be demonstrated that traffic movements will not increase. It is also important to note that the Appellant's Transport witness has also indicated that in his view Policy C2 would be breached in principle by an increase in traffic movements[5], a view he confirmed in cross-examination.[6]

5. The Proposed Development is also in breach of development plan policies on transport as it fails to prioritise walking, cycling and public transport by reason of its location (Policy T1 of the Camden Local Plan) and has not provided a sufficiently robust assessment of transport impacts (Policy TT1 of the Hampstead Neighbourhood Plan).

[5] Ferguson Rebuttal Proof para.2.13.
[6] Ferguson XX (EDR): in response to the question "you say that an increase in traffic would breach Policy C2 of the Camden Local Plan?" Mr Ferguson replied "Yes, with accompanying paragraph. Apologies for missing the context".

The A502 Rosslyn Hill – a busy, congested road

6. The grant of planning permission for the Proposed Development would result in the introduction of a traffic-generating use in an area already plagued with congestion issues at peak times. There is specific recognition of this in Policy C2, as explained above, and corroborated by the evidence of Mr Froment based on 20 years' experience of walking along Rosslyn Hill during the morning traffic peak. His evidence, not challenged in cross-examination, was that during rush hour and the school run Rosslyn Hill is very congested most of the time, and that the pictures at Appendix 27 and 28 to his Rebuttal Proof reflected the level of traffic around two-thirds to three-quarters of the time in his experience of the peak traffic period.[7] Mr Ferguson was not able to refute that evidence.[8]

Assumptions reached by the Appellant

7. The Appellant's case – that the proposed use will not lead to an increase in trips by private motor vehicle or an increase in traffic congestion and would not fail to sufficiently prioritise sustainable modes of transport,[9] is predicated on a number of assumptions which are demonstrably flawed.

8. First, it is based on the premise that the Police Station was once staffed by 300 police officers, with a canteen, magistrates' court and cells with 14 spaces provided at the rear, and that the former site use could therefore have generated many more trips than

[7] Mr Froment confirmed, as corroborated by ID-13, that these photographs were taken prior to the closure of Rosslyn Hill later on 8 September 2020 as a result of a burst water main. To the extent that ID-14 seeks to refute this, it simply refers to routine works, and does not shed any light on the impact (if any) of those works on traffic on Rosslyn Hill.
[8] Ferguson XX (ME QC): in response to the photos "whether or not that congestion is typical I don't know".
[9] Ferguson Proof para 0.19

the Proposed Development.[10] However, this claim is wholly unsupported by documentary evidence, and as confirmed by Mr Ferguson he himself has no experience of the police station while in operation.[11] It is mere speculation, and is convincingly refuted by only eyewitness account before the inquiry, Mr Stephen Grosz, who gave detailed evidence—which included both his personal experience and corroborating contemporaneous emails and documentation—on the staffing and vehicle movements of the police station in the period from 1985 to its closure in 2013. His experience as a neighbour of the Police Station of 35 years is that it has always been quiet, and became much more so around the turn of the century. In the period from 1985 to 1999, when as confirmed in documentary evidence appended to his proof the station had been staffed by around 45 response policemen[12] he recalls a maximum of 10 daily vehicle movements, a fact he was able to note due to the fact that the Downshire Hill gate was generally kept shut and banged on his wall every time it opened to let a vehicle in or out. The car park was used for the storage and sorting of evidence, and for occasional training operations, but not for response teams, which were concentrated at Kentish Town Police Station.[13] By 1998, when the entire police station staff turned out to watch the World Cup Final in the rear car park, there were only 15 officers in the station. In the period between 2002 and 2013 the station was staffed by the Safer Neighbourhood Teams, at most a group of five officers.[14] The reliance on an aerial photograph to demonstrate "*that as recently as 2006 the police were operating close to capacity at Hampstead Police station*"[15] is also clearly misplaced. First, Mr Grosz provided contemporaneous corroborating documents

[10] Ferguson Proof para 6.19.
[11] Ferguson XX (ME QC).
[12] Grosz Appendix p.7
[13] Grosz XIC.
[14] Grosz XIC; Grosz Appendix p.11.
[15] Ferguson Rebuttal para.2.19.

which confirmed minimal staffing levels in 2006.[16] In his evidence he pointed out that the car park was mainly for storage, and that the vehicles in the 2006 image more closely resembled the vans used for forensics than operational police vehicles with flashing lights.[17] Even Mr Ferguson admitted that it could only be treated a snapshot.[18]

9. For these reasons, and also by reason of the fact that the Borough of Camden is policed as a single entity with different stations having different roles and responsibilities,[19] any comparison with trip rates at existing police stations is of limited value for determining with any certainty that there would not be an increase in trips relative to the proposed use.[20] However, what the trip rate figures obtained from surveys at Kentish Town Police Station and West Hampstead Police Station do demonstrate is that trips associated with police station uses are spread out through the day – as accepted by Mr Ferguson they are not concentrated in the main morning and afternoon peak.[21] In the light of the objective of para.4.33 of Policy C2 to prevent worsening of traffic as a result of the school run, this is clearly a relevant factor for determining whether the proposed use will result in an increase in trips and/or increased traffic congestion.

10. Second, the Appellant's case depends on a complete replication of the way pupils currently travel to the private school bus stops in their new journeys to the Appeal

[16] Grosz Appendix.
[17] Grosz XX.
[18] Ferguson XX (EDR).
[19] Grosz Appendix p.3.
[20] A view shared by the Appellant: Ferguson Proof para.6.20; Ferguson XX (ME QC).
[21] Murdoch Proof para 3.5; Ferguson XX (ME QC).

Site.[22] The factors relied on by Mr Ferguson in this regard do not robustly demonstrate this to be the case.

a. Hands up surveys: The Appellant relies on three hands up surveys to support its position that no or a very small proportion of parents will drive their children to school. These surveys were all undertaken without a full school cohort and their findings have had to be extrapolated – the first hands up survey was undertaken at the Haverstock Hill site with only 60 children in attendance at the school and is necessarily less representative. The two later surveys were undertaken in September, at the start of the school year, when the weather is more likely to be fine and there may be a greater incentive to follow new term resolutions to travel sustainably. As accepted by Mr Ferguson, they are only snapshots of one day in the school year. Crucially, given the Appellant's reliance on a simple reversal of journeys at the start and the beginning of the day, there is no evidence before the inquiry about how children currently return from the school bus pick up points. This journey, uphill, is likely to be less attractive for walking and cycling, particularly if it must be done in the morning rush. The hands up surveys are also of limited use in predicting journeys to a location that is located 500m outside the opposite end of the catchment area to the current pick up points, as there is no evidence before the inquiry regarding where the cohort of Abacus pupils as a whole currently live.[23] Clearly, if pupils reside towards the south of the catchment area, their journey to school will be much further than the current journey to the school bus pick up locations.

[22] Ferguson XX (ME QC).
[23] Evidence provided in the Transport Assessment only gives the location of the reception intake.

b. Reliance on other schools achieving 0-5% mode share: at para.6.18 Mr Ferguson refers to other schools achieving a 0-5% mode share in the borough. While these figures do not present the whole picture,[24] it is also important to note that these are the only schools in the borough which achieve a 0-5% mode share. They are located in highly accessible, more central parts of London, and none are in the Hampstead and Belsize Park area, where there is an identified school run problem.[25]

c. Children would be more likely to travel by sustainable means than by car in poor weather or where they have heavy bags or are running late: The analysis of walking, bus and car journeys undertaken by Mr Murdoch demonstrates that driving would be a much quicker than taking the bus, even taking account of congestion.[26] For many locations in the catchment area, there is no obvious bus route to the Appeal Site – a journey by bus would involve a walk at either end that would be longer than the bus journey itself. The Appellant's parking assessment demonstrates a lack of parking stress in the vicinity of the school, and the CPZ which only starts at 9am would not operate as a deterrent for parents dropping their children off in the morning.[27] Both Mr Murdoch and Mr Burke were of the view that the congestion experienced on Rosslyn Hill would not be a deterrent for parents driving within the catchment.[28] Mr Ferguson relied on the fact that only 50% of Abacus parents own a car, but this means that 50% of parents do have the option of driving their children to school.

[24] Burke Rebuttal para.2.5.
[25] Camden Local Plan Policy C2 para.4.33
[26] Murdoch Rebuttal. As explained in XX, the ranges in the figures obtained from Google Maps take into account differing congestion levels on different Mondays during the year.
[27] Murdoch Proof para.2.24-2.25.
[28] Murdoch XX; Burke XX

They may not do so every day, but it may well be more convenient on some days of the year. With regard to walking, Mr Ferguson's desktop assessment that all children within the catchment area live within a 20 minute walk of the Appeal Site[29] is highly optimistic given that a trial run of the walking bus took just under 20 minutes and the starting point for the walking bus is roughly in the centre of the catchment area.[30]

11. Third, Mr Ferguson assumes that the percentage of children attending the school from within the catchment will be 100% once the school is established at its new site, but as indicated by Mr Burke, this is mere conjecture.[31] It is also not borne out by the evidence of the last three years of pupils enrolled at the school, which indicates that notwithstanding a reduction in out of borough (and by definition out of catchment) intake at reception level, there has been an increase at the school of children attending from outside the borough in other year groups. For the last recorded school year, 15% of children attending Abacus Belsize were from outside of the borough.[32] Clearly, family situations can change as children move through the school and parents may decide to move further away from central London to less densely populated areas.[33] As accepted by Mr Ferguson, there can be no certainty based on reception intake that 100% of children attending the school will live within the catchment area.[34]

12. Fourth, he relies on the location of the school in an area of good PTAL. As explained by Mr Burke, PTAL is of limited value as a predictor of modal habits for school runs

[29] CD 1/43 Fig.7.
[30] CD 1/44 para.2.18.
[31] Burke XX.
[32] Froment Rebuttal Proof Appendix 23.
[33] This was the evidence of Kim Isstrof, Chair of Governors of a nearby primary school, to the inquiry.
[34] Ferguson XX (EDR).

and there is a very weak correlation between PTAL and car mode share in journeys to school.[35] In the case of primary schools, where catchment areas are generally tighter knit, PTAL is of even more limited relevance.[36] Furthermore, rail stations are taken into account in calculating PTAL, which as accepted by Mr Ferguson will be of no use whatsoever for children travelling from within the catchment area to the Appeal Site.

13. Fifth, Mr Ferguson assumes that due to changing working patterns as a result of the coronavirus pandemic "*many more*" parents now work from home and "*there are likely to be many more households where both parents/carers are able to assist with the school run*".[37] He did not offer any evidence to back up this claim, and ultimately had to accept that "*it wouldn't be proper to draw foregone conclusions*" regarding the effects of the coronavirus pandemic on traffic movements and the school run.[38]

14. The combined effect of these flawed assumptions is that the Appellant has failed to demonstrate that there will not be an increase in trips or traffic congestion resulting from the Proposed Development or that the Proposed Development will encourage sustainable modes of transport as opposed to use of the private car.

Fluctuations in the range of traffic

15. The Appellant also sought to argue that any increase in trips generated by the proposed development would be absorbed by fluctuations in the range of traffic experienced on different days in any case. This approach does not help the Appellant

[35] Burke XIC and XX.
[36] Murdoch XIC.
[37] Ferguson Proof paras.6.89-6.90.
[38] Ferguson XIC.

either. As explained by Mr Burke, increased traffic movements as a result of the Proposed Development are more likely to occur when background traffic is higher in any case, for example as a result of inclement weather.[39] Furthermore, an increase in the number of vehicles on a road is not the only factor which can lead to increased traffic congestion. Parking manoeuvres, turning in the road, pedestrian crossings, loading and unloading could all lead to greater congestion.[40]

Air quality

16. The application of Development Plan policies on air quality further demonstrates the inappropriateness of the Appeal Site for a school use. Policy 7.14 of the London Plan 2016 requires development proposals to minimise exposure to poor air quality where development is likely to be used by those particularly vulnerable to poor air quality, such as children – this is further explained in para.7.51 of the supporting text which provides that "*Increased exposure to existing poor air quality should be minimised by avoiding introduction of potentially new sensitive receptors in locations where they will be affected by existing sources of air pollution (such as road traffic and industrial processes). Particular attention should be paid to development proposals such as housing, homes for elderly people, schools and nurseries*." This locational steer is strengthened in Policy S3 of the Intend to Publish London Plan which provides at B3 that educational facilities should *"locate entrances and playgrounds away from busy roads*" and explains more generally at para.5.3.10 that "*facilities should be located away from busy roads … to benefit from reduced levels of air pollution*".

[39] Burke XX.
[40] Murdoch XIC.

17. The Proposed Development fails to comply with these policies by introducing a new sensitive receptor into an area of poor air quality that is particularly affected by road traffic and in particular by locating the Appeal Site on what is accepted to be a busy road. It also fails to comply with para.170(e) NPPF by locating a sensitive use on a site where predicted levels will be above the national legal objectives for annual mean concentrations of NO_2.[41] Although Mr Kearney maintained that there was no need for concern at entrances due to compliance with the short term objective for NO_2, he ultimately had to accept that, in the light of Policy S3, in his words "*there may be cause for concern for short-term exposure exceedances at such locations*".[42]

18. It is clear from adopted and emerging planning policy (and was accepted by Mr Kearney) that there is a general policy aim to improve air quality and not merely comply with legal limits.[43] It is also important to note that the policy goal of Camden to attain WHO guideline values for air pollution by 2030, and that the emerging draft Camden Planning Guidance on Air Quality (July 2020) explicitly includes a commitment to achieving the WHO guideline values for particulates.[44] As confirmed by Dr Bull, health impacts can be experienced even where predicted levels of pollutants are below the legally specified limits, a factor that is plainly relevant in the context of a Proposed Development which will be used by a significant number of vulnerable users.[45] Furthermore, a higher annual exposure is made up of elevated short term exposures, even if these do not breach the short term objective for NO_2. In this regard it is important to note that the predicted annual mean value for NO_2

[41] Bull RXN.
[42] Kearney XX (ME QC).
[43] See e.g. NPPF para.170(e); ItP London Plan Policy SI para.9.1.22; CD 6/05 CPG on Air Quality paras.2.6-2.7.
[44] Para.2.7; the emerging guidance is referred to at Sheehy Proof para.3.12.
[45] Bull XIC.

necessarily contains periods of lower traffic activity (overnight, at weekends and during school holidays) where NO_2 levels are likely to be lower, bringing the annual mean down. It is also common ground that high levels of NO_2 may act as a marker for other pollutants.[46]

19. In this regard, it is important to note that the modelled levels of PM10 and PM2.5 at the proposed development are above the WHO guideline figures. Mr Kearney agreed in cross-examination that "*it is widely accepted that there is no safe level for particulates*"[47] and that smaller particles have a greater propensity to filter into the lungs and are therefore more harmful.[48] The only evidence of monitored particulate levels before the inquiry indicates that significant peaks in particulate emissions occur along Rosslyn Hill at rush hour times.[49]

20. In the context of a strategic approach in the adopted Development Plan to direct development away from busy roads and areas of poor quality, it is highly relevant that HCRD has identified a number of potential alternative sites which are located in areas of better air quality.[50] Diffusion tube monitoring of NO_2 conducted by the Hampstead Neighbourhood Forum in 2016, the results of which were not challenged by the Appellant in cross-examination and correspond with the GLA's modelled concentrations as reported on the LondonAir website,[51] and presented in the CPG on Air Quality,[52] vividly demonstrate the difference in air pollution between main roads and areas away from those roads. Specifically, the measurements conducted by the

[46] Bull Proof Appenidix A; Bull XIC; Kearney XX.
[47] Kearney XX (EDR); CD 6/05 CPR on Air Quality para.2.1.
[48] Kearney XX (EDR).
[49] Froment Appendix 4 pp.6-9. To the extent that this evidence is challenged on the basis that Mr Froment failed to carry out regular maintenance to the instrument he used, it must be noted that Mr Froment began taking measurements a month after he purchased the instrument: Froment RXN.
[50] Froment XIC; Neale Proof para.2.6 referring to The Hoo and Gloucester House.
[51] Bull Figure 7.
[52] CD 6/05 p.5 Map 1.

Hampstead Neighbourhood Forum demonstrate around a 35-50% reduction in pollution as one moves away from the main roads. The Hoo and Gloucester House, brought to the attention of the Appellant by HCRD as potential alternative locations for the Proposed Development, are located in an area where levels corresponding to an annual mean of 33-39 μg/m3 were recorded, in comparison with the Appeal Site where a recording of 56 μg/m3 was made. The coronavirus pandemic has demonstrated the importance of natural ventilation, something that could be achieved by locating the school in an area of better air quality.[53]

21. The failure by the Appellant to robustly assess traffic and congestion impacts of the proposed development, as explained above, also means that there is a lack of certainty regarding the air quality effects of traffic movements generated by the Proposed Development. This has a wider impact on Hampstead as a whole, in particular the older members of the population, and patients including the elderly, infirm and children, waiting outside the Keats Grove NHS Surgery opposite the Appeal Site before attending appointments.[54] For this and the reasons given above, the Proposed Development will also have a negative effect on the amenity both of school pupils and neighbouring residents, and will not ensure that exposure to poor air quality is reduced in the borough, contrary to Policies A1 and CC4 of the Camden Local Plan 2017.

22. Polices A1 and CC4 require a planning judgement to be reached as to whether the impacts of the Proposed Development, which include the journey to school and waiting time outside the school, are unacceptable. In this regard, the Appellant's

[53] ID-2, p.30.
[54] Froment Proof Appendix 17.

suggested comparative approach – considering the impact on the amenity or health of the children if planning permission were granted and if it were not[55] is wrong and proves too much. If this was the correct interpretation of Policy A1, it would require planning permission to be refused in every case where a wholly new use (rather than a transfer of an existing use) had some negative impact on neighbouring occupiers, as the impact on amenity of granting planning permission would always be greater than refusing it. It is similarly not appropriate to judge the suitability or acceptability of the Appeal Site for a school in relation to other schools which may have been granted planning permission a long time ago or have been established before the advent of planning control. In any case, there is no evidence before the inquiry by which a comparative judgement on the relative impacts on the amenity of the school children of granting or refusing planning permission can be reached.[56]

Noise

23. The Proposed Development will have an unacceptable harmful impact on neighbouring residents by reason of noise contrary to Policies A1 and A4 of the Camden Local Plan 2017 and para.170(e) of the NPPF. While Mr Taylor QC for the Appellant relied heavily on the existence or absence of scientific research and on threshold levels for entertainment noise set out in Appendix 3 of the Camden Local Plan, as recognised in an intervention by the Inspector the application of the policy and whether a noise impact will be unacceptable is ultimately a matter of planning judgment taking into account the specific circumstances of the Proposed Development, the existing sound environment and the proximity and sensitivity of

[55] In Mr Taylor QC's words "In looking their amenity, would this be unacceptably harmed by granted position at police station site compared to permission being refused?": Bull XX.
[56] Bull XX.

neighbouring uses, to which it is impossible to apply scientific data. As explained by Mr Fiumicelli, dose response research is limited and often conflicting, and should be treated with caution.[57]

24. As emphasised by para.6 of the PPG on Noise and accepted by Mr Jarman in cross-examination a flexible approach must be taken to the application of noise thresholds – these cannot simply be applied in a fixed way. In the present case, and especially because they do not set thresholds for the noise-generating source in question, the noise levels set out in Appendix 3 must not be applied rigidly.[58] Furthermore, while it is clear that in the case of significant observed adverse effect levels (SOAEL) of noise planning permission should generally be refused, the requirement in the PPG that effects between the lowest observed adverse effect level (LOAEL) and SOAEL be mitigated to a minimum indicates that planning permission might also be refused for noise effects below the SOAEL level where these are incapable of being mitigated and reduced to a minimum.[59]

25. The evidence of Mr Grosz in examination-in-chief as a longstanding neighbour of the police station is that it has been quiet and peaceful for a very long time. He was not challenged on this and there is no evidence before the inquiry to contradict his eye- or earwitness account. It is corroborated by the observations made by Mr Fiumicelli that the prevailing ambient noise at Rosslyn Hill is of road traffic, sound which is largely screened by the tall properties along Rosslyn Hill and Downshire Hill which present as a contiguous terrace and provide substantial screening. Mr Fiumicelli also

[57] Fiumicelli RXN.
[58] Jarman XX (ME QC).
[59] PPG on Noise, Noise Exposure Hierarchy Table.

described the noise levels to the rear of the properties on Rosslyn Hill and Downshire Hill as "*rather modest*" for an urban location and "*tranquil*".

26. In this existing context, the full nature of the change that will be brought about by the Proposed Development has not been appreciated by the Appellant or its noise consultants. The Appellant relies on thresholds which apply to entertainment noise and not school playgrounds: even Mr Jarman only went as far as saying that this "*provides some guidance*".[60] As Mr Fiumicelli explained, there are characteristics in children's voices, in particular the strong tonal elements, high pitched voices, shouting, screaming and greater emotional content that is quite different to the character of noise generated by adults frequenting entertainment premises, which will generally be more controlled, quieter and may sometimes be managed.[61] Children at play are also likely to be less astute to their surroundings than adults. As explained by Mr Grosz, the approach taken by adults in the police station car park (as demonstrated by the example of the Inspector himself on the site visit) is that due to the proximity of neighbouring residential properties adults tend to gather close together and speak in lowered voices. It is hard to imagine children lowering their voices in this way during playtime, or when entering or leaving the school.

27. Applying the flexible approach mandated by the PPG, the different and potentially more disturbing nature of sounds produced by children at play indicates that the threshold levels for entertainment noise set out in Appendix 3 to the Camden Local Plan should be revised downwards. Furthermore, in most locations, there will be at

[60] Jarman XIC.
[61] Fiumicelli XIC and RXN.

least or more than a doubling of sound levels in relation to the existing baseline, demonstrating a significant change for neighbouring residents.

28. Even on the figures adopted by Mr Jarman, the garden at 52A Downshire Hill (AP1) is above the threshold for SOAEL by 3 dB, a perceptible effect. Furthermore, the modelled indoor noise levels do not achieve the limit of NR35 for a LAeq 15 minute interval.[62] There is also no indication in Appendix 3 that this figure is to be assessed, as Mr Jarman has done, with windows closed. If it is necessary to keep windows closed all the time to achieve NR35, this is a strong indication in line with the guidance at para.5 of the PPG on Noise that the SOAEL threshold has been reached. It is also no answer to say that NR35 is a LOAEL threshold, as the text on the preceding page 349 makes clear that "*planning permission will not be granted in instances where it is not possible to achieve suitable and sufficient internal noise levels*". No other level is specified.

29. Furthermore, the assessment undertaken by Mr Jarman of sound pressure levels at particular garden locations and residential facades around the appeal site is incomplete. He has not taken any account of noise generated by children being dropped off for breakfast clubs before 8.30am, being collected at the end of the school day or lining up in the playground or at the Downshire Hill gate to walk to the Heath for PE lessons (something which might occur up to 6 times a week).[63] In relation to drop off and pick up, the school's headteacher Ms Briody emphasises the importance of interaction between teachers and parents at the classroom door and the conversations this enables.[64] Arrival and departure from school are unlikely to be a

[62] CD 5/03 p 350.
[63] Briody Statement to Inquiry.
[64] Byrne Proof Appendix 1 p.2

completely silent affair. Regarding the impact of such noise on residents, 52 and 52A Downshire Hill are adjacent to the gate through which half the school would enter.[65]

30. The sound that will be experienced indoors by residents with windows open during periods when the playground is in full occupation is such that it will affect indoor conversation and speech intelligibility.[66] This is crucial for a use such as that undertaken by Mr Grosz as a psychotherapist whose consulting rooms are part of the property in which he resides. With windows open, the LAeq level for the period while the playground is fully occupied at 61dB will be well over the recommended level for speech intelligibility. Even applying an averaging approach over the school day it will still be 56dB. There is no evidence before the inquiry to suggest that it will be lower than 35dB if averaged over a 16 hour period. Indeed, if one considers that in relation to AP1 the 64dB peak figure becomes 54dB when averaged over a 16 hour period,[67] the worst case scenario for noise levels experienced internally with windows open is likely to be much higher than 35dB even averaged over a 16 hour period.

31. No reliance can realistically be placed by the Appellant on the acoustic barrier as mitigating these effects. As explained by Mr Grosz, the acoustic barrier was presented to residents at an ad hoc meeting, in a confused manner, with no section drawings to indicate its height or proposed extent and conflicting views at the meeting as to its actual height relative to the boundary wall between the properties on Downshire Hill and the police station car park. In any case, residents were advised by an officer of Council, David Fowler, that it would only have the effect of slightly reducing noise to

[65] Grosz XIC.
[66] CD 9/03 WHO Guidelines on Community Noise p.xiii and p.10.
[67] As suggested to Jarman in RXN. See Jarman Proof Table 2.

amenity areas and not residential facades. It was also clear from the demonstration meeting that the barrier would have some negative impact on outlook (ID-18).

32. As is clear from a comparison between the Noise Assessments undertaken with and without the 4m proposed acoustic barrier (CD 1/29 and CD 1/30), the acoustic barrier offered to residents would have a negligible to minimal effect.[68] David Fowler was correct to indicate that it would be of no use to Mr Grosz; Mr Jarman agreed that there would not be any perceptible effect for residents at first floor level and above.[69] In relation to amenity areas, the level of change to two of these, AP4 (the Joseph's Property at 24 Rosslyn Hill) and AP5 (a currently unoccupied property owned by the Appellant which it is understood will be sold in due course) will be imperceptible. In relation to the other amenity areas modelled, only a small difference of 3-4dB will result.[70]

33. With regard to the indicators set out in para.5 of the PPG for the threshold between LOAEL and SOAEL, on the evidence before the inquiry a number of these are engaged. Certain activities would be avoided during times of peak playground use – as suggested by Mr Jarman, residents might refrain from having their morning coffee in the garden.[71] Mr Grosz would simply not be able to work for 2 hours of the day: he explained that due to the nature of his work he could not arrange this around school breaktimes.[72] Bedrooms that over look the playground would be unusable for sleep during these hours. It would be necessary for residents to keep windows closed for a significant minority of the time if they did not wish to be disturbed by noise indoors.[73]

[68] Compare Tables 6.5.7 and Tables 8 in CD 1/29 and CD 1/30.
[69] Jarman XX (ME QC and EDR).
[70] Jarman XX (EDR).
[71] Jarman XX (ME QC).
[72] Grosz XIC.
[73] Fiumicelli XX.

And furthermore there would be a material change in the quality of life of neighbouring residents due to the extent of difference between the baseline noise environment and the levels and nature of noise experienced when the playground is in use.

34. There are three final points to make on noise. First, it is wholly inappropriate for the Appellant to suggest that Mr Grosz should pay to install a mitigating measure – air conditioning – to make the Appellant's scheme acceptable. In any case, a number of the properties surrounding the Appeal Site are listed buildings which would restrict the ability to install mitigating measures such as double glazing. Second, the evidence in Mr Jarman's proof regarding other schools in Camden is of very limited relevance given that there is no evidence before the inquiry regarding the baseline noise levels at those sites, or the effect of the built environment on the transfer of noise from the playground to residential properties. Finally, if Mr Ferguson's predictions about greater levels of working from home do turn out to be correct, this will result in daytime noise having a greater impact on amenity than might previously have been the case.

Heritage

35. It is now common ground between the parties that harm to the significance of the listed building would be caused by the Proposed Development.[74] The statutory duties in ss.16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 along with paras.193-196 NPPF require that any harm to significance, of whatever magnitude, be given "*considerable importance and weight*" in the planning balance.

[74] Watt Proof paras.5.1-5.36; Baxter Proof para.12.4; Appellant's Opening Statement paras.80-84.

Furthermore, any identified harm to significance engages a "*strong presumption*" against the grant of planning permission (*R (Barnwell Manor Wind Energy Ltd) v East Northamptonshire District Council* [2014] EWCA Civ 137 at paras.20-29). The onus is then on an applicant to demonstrate why the benefits of the proposed development are so weighty that planning permission (or listed building consent) should nonetheless be granted.

36. As made clear in *R (Kay) v Secretary of State for Housing, Communities and Local Government* at para.34, brought to the Inspector's attention by a letter from the Appellant's advisors dated 8 September 2020, there is no role for any kind of "internal heritage balance" in the application of paragraphs 193-196 NPPF. The correct approach is to first establish the harm to significance and give that "considerable importance and weight" in the planning balance as required by *Barnwell*, and then to consider any heritage benefits of the scheme as part of the balancing act required by paras.195-196 NPPF. The Appellant's approach effectively seeks to bring in the internal heritage balance by the back door by claiming that the heritage benefits must also be given considerable weight and therefore outweigh the harm[75] – this is contrary to *Kay* and also does not accord with the principle that conservation of an asset means that no harm should be done to it (*Barnwell* at para.20). In any case, as explained below, the heritage benefits of the proposed scheme are minimal.

[75] Crisp Proof para.6.49; Rebuttal Proof para.2.23; Appellant's Opening para.86.

37. Having established that the Proposed Development does harm the significance of the listed building, it is then necessary to establish the level of harm to significance.[76] In this regard the Appellant's position – that there will be only a low level of less than substantial harm to significance – stands in stark contrast to the evidence provided by the other two heritage experts to the inquiry, that a significant amount of harm would be caused – in Ms Watt's view substantial harm and Mr Baxter's view the highest level of less than substantial harm without becoming substantial harm. These assessments are based in part on the high degree of internal demolition required in order to fit a school use into the existing building.[77]

38. The Appellant's assessment that only a limited amount of harm will be caused is predicated on the view that the interior and the plan form of the building contribute little to its significance, in comparison to the exterior and façade of the building.

39. This approach ignores the recently updated Historic England Listing (CD 10/02) and in particular the Reasons for Designation of which only one concerns the exterior of the building. By referring in those Reasons to the asset as "*intricately planned to provide separate areas for the different primary functions of the building, with careful consideration of the requirements of the various parts*"; "*the hierarchy of spaces*" as expressed in the "*internal detailing*" and stairs and "*architectural features, such as the rounded angles of the walls, and its plan form, which reflect [the police station's] function*" Historic England is clearly emphasising the important contribution to significance of aspects of the asset other than its exterior appearance. If, as asserted by

[76] PPG on the Historic Environment, para.18: "*Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated*".
[77] Demonstrated most graphically by comparison of the existing Ground Floor plan (CD 01/51) and the demolition plan (CD 01/64).

the Appellant,[78] the significance of plan form is only in the separation of functions which has now largely been lost and therefore justifies further erosion of plan form, there would have been no reason to refer to this as a reason for designating the asset in the enhanced list description. It also ignores the advice in Historic England's Advice Note 2 (ID-24) that "*the plan form of a building is frequently one of its most important characteristics*" (para.45).

40. The Appellant's approach is based on an erroneous view that the significance of the plan form only relates to the original separation of the building into three different functions, and that the "utilitarian" nature of the interior of the building means it makes a lesser contribution to significance.[79] However, the significance of the plan form does not just arise from the original functional separation, but also from the careful planning within those divisions.[80] The utilitarian nature of the building is one of the aspects of the interior which aids the understanding of the hierarchy of spaces within the building and also reflects its function as a police station, thereby forming part of its significance. While the architectural detailing of the building's interior may be relatively understated, it nevertheless comprises a good example of the oeuvre of the architect considered the most accomplished of the Metropolitan Police Surveyors.

41. With regard to the level of weight, HCRD maintains that the test of substantial harm is met as several of the reasons for designation of the building would be significantly weakened or removed should the proposals be implemented. While a significant level of demolition is proposed in this case, importantly the test for substantial harm does not require near-total destruction of the asset before it can be established, but rather

[78] Appellant Opening para.80; Crisp (Heritage Roundtable).
[79] Crisp Proof para.6.15.
[80] Watt Proof para.4.2.2.

only that the "significance is very much reduced" (*Bedford Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin) at para.25). Even minor works can cause substantial harm in certain circumstances.[81] The Appellant has not provided any evidence to suggest that there are exceptional circumstances justifying the grant of listed building consent or refuted HCRD's position that the factors in para.195 NPPF are not made out. If the Inspector agrees with HCRD that substantial harm to significance will be caused, listed building consent should therefore be refused.

42. If the Inspector finds that less than substantial harm has been caused, for the reasons already given the level of such harm has been significantly underestimated by the Appellant. Very weighty public benefits are necessary to outweigh this harm. The heritage benefits relied on by the Appellant are minimal and insufficient to do so.

    a. First, the claim that the original divisions in the building will be reinstated[82] is highly misleading. These divisions still exist: they will be removed and new divisions will be inserted in the same general area but in different alignment. This does not better reveal the significance of the building as originally planned. Divisions will be further undermined and muddied by removing and relocating the entrance screen to the Magistrates Court in another part of the building.
    b. Second, public accessibility to the interior will not better reveal significance if it has been effectively gutted – there will be almost nothing left for visitors to appreciate of the original interior.

[81] PPG on the Historic Environment, para.18.
[82] Crisp Proof para.6.17

c. Third, this is not the optimum viable use of the building. No evidence has been provided by the Appellant that other uses are not economically viable and there is no reason in principle to think that an office, community-led or mixed-use scheme might not be. There was no real response to this in the Appellant's evidence.[83] While the evidence of Ms Watt and Mr Baxter was that the building could readily be adapted to office use without significant works, Mr Crisp had to accept that a school use required the creation of large halls which inevitably involves destruction of plan form.[84] In such a scheme, the fixtures and fittings of the Magistrates Court could also be retained in a café or break out room use. Furthermore, the creation of a third stair also involves harm to plan form and would not be necessary in a different scheme where lift and stair access would be possible through the addition of a lightweight glazed atrium at the rear of the building; this is a common solution to access issues in listed buildings and would retain the circulation approach planned by John Dixon Butler as evident in the original plans.[85]

43. In relation to the Appellant's access strategy for the building more generally, its limited exploration of options as demonstrated only in some stick figure diagrams[86] is wholly inadequate and fails to have regard to guidance at para.7.61 of the Camden Local Plan 2017 that expects "*design approaches to be fully informed by an audit of conservation constraints and access needs and to have considered all available options*".

[83] Crisp Proof para.6.8 only refers to residential use being harmful, but no evidence has been provided that other uses are unviable.
[84] Heritage Roundtable.
[85] Neale (Heritage Roundtable); Neale Proof Appendix 2 Item 5 pp.59-62; ID-22.
[86] CD 10/07.

44. For these reasons it is submitted that the Proposed Development would give rise to a high degree of harm to significance. The public benefits of the scheme, explained both above in relation to heritage and below in relation to planning, are not sufficient to outweigh this harm. Therefore the Proposed Development conflicts with the NPPF and Policies D2 of the Camden Local Plan 2017 and DH2 of the Hampstead Neighbourhood Plan 2018. The grant of planning permission and/or listed building consent would also be contrary to the statutory duty ss.16 and 66 Planning (Listed Buildings and Conservation Area) Act 1990.

Alternatives

45. HCRD 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. However, it is submitted that the existence of such sites is a relevant factor in the weight to be given to the benefits of the scheme relied on by the Appellant. Indeed, the Appellant's planning witness himself relies on an argument along these lines, in claiming that it is relevant "*that the benefits of relocating the school to a site near the catchment are highly unlikely to be realised if the appeal is dismissed because there are no suitable, viable and available alternative sites*".[87] It follows that if there *are* suitable, viable and alternative sites, this is also of relevance for the present appeal.

46. In cases involving harm to heritage assets, as in the present case, the existence of potential alternative sites is plainly a relevant material consideration. Pursuant to the decision of the High Court in *R (Forge Field Society) v Sevenoaks District Council*

[87] Byrne Proof para 3.7.

[2014] EWHC 1895 (Admin), a case which post-dates all the authorities relied on by the Appellant in Opening, the duties in ss.16 and 66 of the Planning (Listed Buildings and Conservation Areas) require a "suitably rigorous" approach to the assessment of alternatives. The possibility of development taking place on a site which avoids harm to heritage assets altogether will also add force to the statutory presumption against the grant of planning permission (at para.61).

47. Furthermore, in cases involving planning harms other than heritage impacts, the degree of harm may be such that it is decided "*that the benefits which the proposal would bring must await a new scheme with an improved design. The decision-maker may properly and lawfully reach that conclusion in appropriate cases*" (*MR Dean & sons v First Secretary of State* [2007] EWCA Civ 1083 para.37). While there may not be a legal obligation to have regard to alternatives in these situations, the existence of alternative sites is a consideration which the Inspector is entitled to take into account as part of his planning judgement.

48. In the present case HCRD submits that it is appropriate to have regard to the Appellant's approach to alternative sites, in the light of the significant amount of harm to a listed building which will result if the Proposed Development is delivered and the other conflicts with planning policy identified above, as well as the site constraints identified by Mr Sheehy in the Planning Roundtable. The Appellant has, through the efforts of HCRD, been given the opportunity of investigating and acquiring numerous suitable sites but these have been prematurely rejected without detailed consideration. For example, following a freedom of information request in relation to the Appellant's assessment of the suitability of Belsize Fire Station, it became clear that only a summary desktop assessment had been carried out, with no site visit,

consultation with the local authority or informed professionals or full study ever undertaken.[88] The majority of the reasons given by the Appellant's property arm for rejecting the site as unsuitable would indicate that in the view of the experts in school site selection[89] the Appeal Site was also an unsuitable site for a school.[90] No response has ever been given to the concerns raised by HCRD in relation to the summary nature of this assessment. Further alternative sites have been rejected without conducting any written assessment at all, seemingly on the basis that the Appellant already owns the Appeal Site.[91] The two line assessment of alternatives given in the Planning Statement does not provide sufficient comfort, in the context of a manifestly unsuitable site for a school, that alternative options have been subject to "suitably rigorous" assessment.

49. 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. For example, one of the sites put forward by HCRD, Gloucester House, is in public ownership and benefits from an existing D1 use class as well as a historic planning consent for an additional 800sqm. It is within the catchment area and away from main roads, and is provisionally planned for disposal in 2021.[92]

[88] Neale Appendix 1 p.23.
[89] Byrne (Planning Roundtable).
[90] Neale Appendix 2 pp.42-53; Appendix 1 pp.24-25.
[91] Neale Appendix 1 pp 34-36.
[92] Neale (Planning Roundtable).

The planning balance

50. In addition to the planning harms identified above and explored during the topic sessions of the inquiry, there are two further disbenefits which must be weighed in the planning balance.

51. First, the lack of a proper fire safety strategy for the development. HCRD's concerns as raised at the Planning Committee meeting[93] have not been addressed in any meaningful way by the Appellant. The means of escape from the second floor and the lack of any wheelchair exit strategy or planned refuges for wheelchair users are of particular concern. For example, it is unacceptable to disapply the recommendation of BB100 that occupants should always be able to escape away from a fire as a result of the constraints of a listed building. The ability to provide wheelchair refuges and an adequate wheelchair exit strategy is an equalities issue in the same way as access into the building is, particularly in a building where internal alterations require listed building consent. In the wake of the tragedy at Grenfell, and in the light of the particularly vulnerable nature of users of the Proposed Development, these are matters which should be dealt with before planning permission is granted and not left to building control. Such an approach is also urged by the supporting text to Policy D12 of the Intend to Publish London Plan, paras.3.12.1-3.12.3.

52. Second, the constraints placed on the school in relation to playground use due to its proximity to neighbouring properties prevent the school from delivering outdoor PE lessons and its outdoor learning philosophy on the school site. The Appellant has

[93] Neale Proof Appendix 2 pp.63-64.

given no proper response to the concerns HCRD has raised regarding the ability of the Appellant to use Hampstead Heath to deliver its curriculum requirements for physical education. No documentary evidence has been provided of any correspondence with the relevant officials or any indication given that the necessary licences will been granted. In a context where City of London corporation officials have raised concerns with HCRD regarding the overuse by schools of the Heath, noting the fact that licences may not be granted as a matter of course, and where as Ms Briody indicates the school would ideally like to use the Heath for six 1 hour PE lessons each week, the Appellant's response – which it has had over a month to provide – is simply insufficient.

53. In relation to the benefits of the Proposed Development, no evidence has been provided to the inquiry to change HCRD's position as set out in Opening that these are of limited weight due to the fact that the school can remain in its present site until at least 2024 and that many of the benefits will be delivered by any redevelopment of the Site. As indicated by the Appellant, only limited weight should be given to any delay in finding a permanent home for the school resulting from the refusal of planning permission in the present appeal.[94] With regard to the provision of community space at evenings and weekends for clubs and meetings, as indicated in Mr Neale's Rebuttal Proof the area around the Appeal Site is already well-served by such facilities. With regard to the benefit of bringing a listed building back into use, this must be viewed in the context of the level of harm to the significance of the building which demonstrates that it is not the optimum viable use and the lack of any ability of members of the public to appreciate internal heritage features as most of these will have been removed.

[94] Byrne Proof p.33.

Conclusion

54. For all these reasons HCRD submits that the harm to a Grade II listed heritage asset is not outweighed by the public benefits, including limited heritage benefits, of the development, and as such is contrary to ss.16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. It is also in conflict with a number of policies in the adopted development plan and the locational strategy of the plan. There are no material considerations which outweigh those conflicts pursuant to section 38(6) of the 2004 Act. HCRD therefore respectfully that planning permission and listed building consent be refused.

ESTHER DRABKIN-REITER
FRANCIS TAYLOR BUILDING

29 OCTOBER 2020