

John Lyon School, Middle Road, Harrow, HA2 0HN

APP/M5450/Q/21/3281359, APP/M5450/Q/21/3281360 and
APP/M5450/W/21/3275231

Statement of Case of the Local Planning Authority

on behalf of London Borough of Harrow

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1.0 Introduction

1.1 This Statement of Case is provided on behalf of London Borough of Harrow (the Local Planning Authority, LPA) in response to appeals lodged by John Lyon School (JLS, The Appellant). The Statement relates to three appeals:

1. An appeal against the decision to refuse planning permission for the redevelopment of the site to provide a four storey teaching block with basement; hard and soft landscaping; and parking (after the demolition of the existing building) at John Lyon School (the Appeal Site);
2. An appeal against the non-determination of a S106A application to discharge planning obligations, and discharge a S106 agreement in its entirety; and
3. An appeal against the decision to refuse permission for a S106A application to modify a planning obligation secured in a S106 agreement.

1.2 In respect of Appeal 1 ('the S78 appeal') the appeal proposal relates to planning application reference P/1813/19). The case of the Local Planning Authority is that:

- The siting and design of the appeal proposal would cause harm to the local character and appearance, including harm to the Conservation Area, and the scheme fails to meet the relevant policy tests designed to ensure appropriately high standards of design and the protection of heritage assets;
- Great weight should be given to the conservation of the heritage asset and the purported public benefits do not outweigh the harms identified;
- The appeal proposal would conflict with the Development Plan when read as a whole and there are no material planning considerations that indicate that a decision should be made other than in accordance with the Plan.

1.3 The LPA's case is therefore, that the appeal should be dismissed and planning permission refused for the Appeal Scheme.

- 1.4 In respect of Appeal 2 of the appeal ('the S106B discharge appeal'), which relates to the non-determination of an application to discharge planning obligations (LPA ref: P/2092/21), the LPA's case is that the obligations continue to serve a useful purpose and that they should not be discharged. This Statement of Case sets out the Local Planning Authority's position with regard to the application and sets out the reasons for which the application would have been refused if the Local Planning Authority had issued a decision.
- 1.5 The LPA's case is therefore, that the appeal should be dismissed and permission should be refused to discharge the planning obligations.
- 1.6 In respect of Appeal 3 ('the S106B modification appeal'), which relates to the refusal of an application to modify a planning obligation (LPA ref: P/2504/19), the LPA's case is that, if the planning appeal (Appeal 1) is dismissed, the obligation continues to serve a useful purpose and Appeal 3 should also be dismissed. (However, should the Inspector find the Appeal scheme proposal acceptable, then the LPA accepts that the S106 obligation can be amended to alter the boundary within which development is restricted and thus permit development to be implemented). This Statement of Case sets out the Local Planning Authority's position with regard to the obligation sought to be modified.

2.0 The appeal site and planning history

The Appeal Site

- 2.1 The Appeal Site forms part of the John Lyon School; an independent day school which provides secondary level education for girls and boys between 11 and 18 years old.
- 2.2 The Appeal Site is located on the northern side of Middle Road and Crown Street, at the junction between these two roads. The site forms part of the wider John Lyon School campus, and is located to the east of the main school building. It contains a two storey building known as Oldfield House which accommodates classrooms. Surrounding the building are areas of hardstanding which includes car parking, access routes, refuse area and a games/play area and soft landscaping.
- 2.3 The site slopes from east to west, and is relatively steep, being located on the western slope of Harrow Hill.

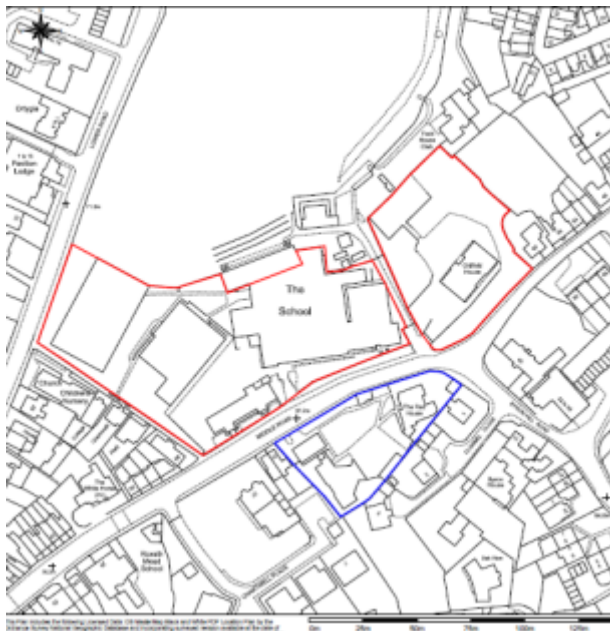


Figure 1: Location of the site

- 2.4 The Appeal Site is located in a predominantly residential area with residential properties located to the east, south and west and by Metropolitan Open Land to the North.

- 2.5 Vehicular access is from Middle Road at the south west corner of the Site, shared with the main access to the main school building. Car parking is located to the south west of the building.
- 2.6 The site is located within The Harrow on the Hill Village Conservation Area and adjacent to and within the setting of the Roxeth Hill Conservation Area. There are no further designated heritage assets within the Site but the main John Lyon School building is locally listed, as is the Field House Club immediately to the north east of the site. To the south of the site on the opposite side of Middle Road lies The Red House and its front boundary wall which are Grade II listed.
- 2.7 The Site is also subject to a Tree Preservation Order (TPO) no. 217 which covers three tree groups and three individual trees.
- 2.8 The Site is located in Flood Zone 1 (i.e. the lowest flood risk category).
- 2.9 The Site has a Public Transport Accessibility Level (PTAL) of 2 (poor).

Planning history

- 2.10 The school Site has an extensive planning history, as shown on the Council's website; the table below details the most relevant planning history for the Appeal Site and Appeal.

Application Reference	Proposal	Decision
WEST/695/94/FUL	Part single storey, 2, 3 and 4 storey building to provide sports hall, swimming pool and library and ancillary areas alterations to existing building and parking.	Granted 26/06/1995 subject to planning obligations set out in a S106 legal deed
P/3420/06	Three storey side/rear extension to provide additional classrooms	Granted 16/10/2007
P/2160/10	Two storey extension to provide dining room, alterations to form sixth form centre	Granted 02/03/2011
P/3995/13	(Land Rear of 76 West Street, Harrow, Middlesex HA1 3HB) Use of vacant land at rear as car park (sui generis); new railings to front car park	Granted 31/07/2014
P/4247/14	Modification to section 106 planning obligation relating to planning permission WEST/695/94/FUL dated 23 rd June 1995 (principal agreement) to increase the number of pupils on roll from 525 to 710 (previously modified by deed of variation dated 24.09.2007 to 600 pupils) and to put in place a enhanced school	Refused 24/02/2015
P/1020/16	Modification to section 106 planning obligation relating to planning permission WEST/695/94/FUL dated 23 rd June 1995 (principal agreement) to increase the number of pupils on roll from 525 to 710 (previously modified by deed of variation dated 24.09.2007 to 600 pupils); to put in place a enhanced school travel plan enforcement mechanism and stars performance measurement for travel plan	Refused 25/05/2016 Appeal dismissed 16/01/2018

Figure 2: schedule of planning history at the site

3.0 The appeal proposal, the applications and the reasons for refusal

Appeal 1 – the S78 Appeal

The appeal proposal

3.1 This appeal relates to a development proposal for:

[The] Redevelopment to provide four storey teaching block with basement; hard and soft landscaping; parking (demolition of existing building).

3.2 The planning application was submitted to the Local Planning Authority and received on 15th April 2019. The Council's officers considered the planning application and recommended the approval of planning permission. The Council's Planning Committee heard the application on 18th November 2020 and resolved to refuse planning permission, with the decision issued on 24th November 2020.

The reasons for refusal

3.3 Planning permission was refused for the following reason:

- 1. The proposal, by reason of excessive scale and inappropriate siting, would do harm to the local character of the area and would not preserve or enhance the character and appearance of the Conservation Area, contrary to policies DM1, DM6, DM7 and DM46 of the local plan, CS18, CS10 and CS3A of the Core Strategy and 7.4, 7.6 and 7.8 of the London Plan (2016) and D1, D2 and HC1 of the Draft London Plan (2019).*

3.4 The LPA maintains the reason for refusal and contends that permission should be refused for the reasons set out in this Statement of Case.

Appeal 2 – the S106B discharge appeal

The appeal proposal

3.5 This appeal relates to an application under S106A of the Town and Country Planning Act 1990 (as amended) to discharge planning obligations attached to a planning permission.



- 3.6 An application was submitted to the Local Planning Authority and received on 10th May 2021. The description of the proposal was:

'Discharge of section 106 obligations attached to planning permission WEST/695/94/FUL dated 23rd June 1995 (The Principal Agreement) as varied by deed of variation dated 24th September 2007 (First Amendment), application P/3420/06 dated 16 October 2007 (Second Amendment) and P/2160/10 dated 11 February 2011 (Third Amendment).'

- 3.7 The application proposed to fully discharge the obligations within the S.106 which restricts future development to within a building envelope, the number of pupils enrolled for the full time education to 525 (subsequently increased to 600 by variation to the original agreement), and not to permit use of any part of the development outside the normal school hours other than recreational use without prior written permission of the Local Planning Authority.
- 3.8 The application that is the subject of this appeal was not determined by the Local Planning Authority, however it was resolved at Planning Committee on 29th September 2021 that had the Local Planning Authority determined the application, permission would have been refused.
- 3.9 A copy of the report to Planning Committee on 29th September 2021, which sets out the Council's position on the proposal, is included at APP/1, minutes of the meeting are included at APP/2.

The reasons for refusal

- 3.10 As set out above, the Council's Planning Committee resolved that had the Local Planning Authority determined the application, permission would have been refused for the following reason:

In the absence of an approved alternative mechanism to protect the Conservation Area by controlling development and to control pupil numbers there is no justification for the discharge of the S,106 agreement (as amended) attached to planning permission WEST/695/94/FUL dated 23rd June 1995 (The Principal Agreement) as varied by deed of variation dated 24th September 2007 (First Amendment), application P/3420/06 dated 16 October 2007 (Second Amendment) and P/2160/10 dated 11th February 2011 (Third Amendment). The section 106 continues to serves the purpose of restricting the building envelope, hours of use and pupil numbers which is considered necessary to protect the character of the Conservation Area and the residential amenities of neighbouring residents with regard to noise, disturbance and traffic movements. In the absence of any alternative

mechanism the removal of these obligations would have the potential to give rise to circumstances prejudicial to the character and appearance of the Conservation Area, the residential amenities of nearby residents and highway safety, contrary to the National Planning Policy Framework (2021), policies D14, HC1 and T4 of The London Plan (2021) and policies DM1 and DM42 of the Harrow Development Management Policies Local Plan (2013). The proposed discharge of Section 106 obligations associated with Planning Permission Ref: WEST/695/04/FUL and subsequent variations is therefore considered to be unacceptable under the Town and Country Planning Act 1990 (Section 106A).

- 3.11 The Council therefore contends that the application should be refused based on the reason for refusal set out above.

Appeal 3 – the S106B Modification appeal

The appeal proposal

- 3.12 This appeal relates to an application under S106A of the Town and Country Planning Act 1990 (as amended) to modify a planning obligation attached to a planning permission.

- 3.13 An application was submitted to the Local Planning Authority and received on 30th May 2019. The description of the proposal was:

'Modification to section 106 planning obligation relating to planning permission WEST/695/94/FUL dated 23rd June 1995 (principal agreement) to amend the building envelope to reflect extensions permitted under application references P/2160/10 and P/3420/06 and that sought under P/1813/19 for the demolition of Oldfield House and the construction of a replacement teaching block (previously modified by deed of variation dated 24.09.2007 and 22.11.2011)'

- 3.14 The application proposed to modify a planning obligation within the Principal Agreement which restricts future development to within a building envelope, without prior written permission of the Local Planning Authority.

- 3.15 The Council's officers considered the application and refused permission on 25th May 2021.

- 3.16 A copy of the Officer's report is included at APP/3.

The reasons for refusal

3.17 Permission was refused for the following reason:

In the absence of an approved development there is no justification for the amendment to the building envelope edged red on plan No. 977/31/B. The proposal is therefore considered to be unacceptable as a modification to the Section 106 Agreement associated with Planning Permission Ref: WEST/695/04/FUL under the Town and Country Planning Act 1990 (Section 106A).

3.18 As noted above, the Local Planning Authority considers that if the planning appeal (Appeal 1) is dismissed, the obligation continues to serve a useful purpose and Appeal 3 should also be dismissed. However the LPA accepts that if Appeal 1 is allowed, Appeal 3 should also be allowed.

4.0 The Development Plan and other relevant policy and guidance

5.1 This section of this Statement of Case provides an overview of the key planning policies and other material considerations relevant to the Appeals.

The Development Plan

5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004, read together with section 70(2) of the Town and Country Planning Act 1990, provides that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The relevant Development Plan against which the appeal proposals are to be considered comprises:

- The London Plan 2021;
- The Harrow Core Strategy 2012;
- The Development Management Policies Local Plan 2013;
- The Harrow and Wealdstone Area Action Plan 2013; and
- The Site Allocations Local Plan 2013.

5.3 The Development Plan is consistent with the National Planning Policy Framework and is otherwise up to date. It attracts full weight in the determination of this appeal.

The Harrow Core Strategy 2012

5.4 The Harrow Core Strategy (2012) sets out the Borough's long term vision and strategy. The following policies have been identified as relevant to the appeal proposal.

	Overarching Policy Objective 10
	Overarching Policy Objective 18
CS3A	Core policy CS 3

- 5.5 The reason for refusal includes reference to policies CS10 (which relates to Kenton & Belmont) and CS18 in error, the LPA clarifies that the reference should be to the Overarching Policy Objectives No.'s 10 and 18 of the Core Strategy and thus it is these Policy Objectives listed in the table above.
- 5.6 Overarching Policy Objective 10 seeks to safeguard identified views and viewpoints from inappropriate development.
- 5.7 Overarching Policy Objective 18 seeks to conserve and enhance Harrow's heritage assets, such as its conservation areas.
- 5.8 Core Policy CS3 relates to Harrow on the Hill and Sudbury Hill, the area in which the Appeal Site lies and Part A of the policy states:

"Development will be managed to maintain the special character of Harrow on the Hill and its setting. Sensitive uses and alterations which secure investment and safeguard the future of statutory and locally listed buildings will be supported. The character or appearance of Harrow Hill's Conservation Areas will be preserved or enhanced in accordance with the management strategies for the area. The Development Management Policies DPD will set out criteria for the assessment of impacts on other heritage assets".

The Harrow Development Management Policies 2013

- 5.9 The Harrow Development Management Policies Local plan sets out the Borough's planning policies. The following policies have been identified as relevant to the appeals.

DM1	Achieving a High Standard of Development
DM6	Areas of Special Character
DM7	Heritage assets
DM46	New community and Educations Facility
DM 50	Planning Obligations

The Site Allocations Local Plan 2013

- 5.10 The Site Allocations plan allocates sites to accommodate the borough's development needs, however the Appeal Site is not identified as a Site allocation within this Plan and there are no Site Allocations which are relevant to the proposed development.

The Harrow and Wealdstone Area Action Plan 2013

- 5.11 The Appeal Site is not located in the Area of the borough covered by the Harrow and Wealdstone Area Action Plan 2013.

London Plan (2021)

- 5.12 The Decision Notice refers to policies contained within the 2016 version of the London Plan, which was in place at the time of the decision, however that Plan has been superseded.
- 5.13 The Decision Notice also refers to policies in the Draft London Plan (2019), these are also not relevant.
- 5.14 Since the decision was issued on the planning application for the proposed development the New London Plan has been adopted, therefore it is The London Plan (2021) which is relevant to the consideration of the appeal. The Local Authority has reviewed the policies which were referred to in the decision notice, and refers to the equivalent current adopted London Plan policy.
- 5.15 The following planning policies are considered of particular relevance to the Appeal.

D1	London's form, character and capacity for growth
D4	Delivering good design
HC1	Heritage conservation and growth

Other Material Considerations

- 5.16 The following documents are considered to be material planning considerations to this application.

National Planning Policy Framework (2021)

- 5.17 The National Planning Policy Framework (“NPPF”) came into force on 27 March 2012, and the current revised version was published in July 2021. The NPPF is an important material consideration. The National Planning Practice Guidance (NPPG) in the form of an online guidance resource to support the NPPF came into effect in April 2014, and also provides important planning guidance.
- 5.18 In addition to the Development Plan and the National Planning Policy Framework, the LPA considers the following to represent Material Considerations in the determination of these appeals:

National Planning Practice Guidance (NPPG)
The National Design Guide 2019
The Harrow on the Hill Conservation Areas Supplementary Planning Document (SPD) (2008)
Harrow On The Hill Village Conservation Area Appraisal (2008)
Roxeth Hill Conservation Area Appraisal (2008)
The Harrow Planning Obligations and Affordable Housing Supplementary Planning Document 2013

6.0 The Main Issues in the Planning Appeal (Appeal 1)

Matters not in dispute between the parties

6.1 The following matters are not in dispute between the parties (subject to planning conditions, where appropriate):

- Additional floorspace is required by the school;
- The development does not generate concerns relating to Impact on the Metropolitan Open Land;
- No harm would be caused to living conditions at existing neighbouring properties through a loss of privacy, noise or other impact on amenity;
- There would be no additional highway impact from the development, and the construction traffic could be adequately controlled, subject to conditions;
- The drainage and flood risk strategy for the site would be acceptable, subject to conditions;
- The energy and sustainability strategy for the site would be acceptable, subject to conditions;
- Adequate archaeology mitigation is proposed, subject to conditions; and
- That there would be no other environmental harms caused by the development that could not otherwise be mitigated.

6.2 The Local Planning Authority will seek to agree the above with the Appellant through a Statement of Common Ground.

Matters in dispute

6.3 The Local Planning Authority considers the following to be the main issues relating to the appeal against refusal of planning permission for the proposed school development on the site:

1. The effect of the development on the character and appearance of the local area;

2. Whether the proposal preserves or enhances the character and appearance of the Conservation Area;
3. The weight that should be attached to public benefits associated with the appeal development, and whether these would outweigh the harm to heritage assets;
4. Whether there are any material planning considerations that should outweigh the conflicts with the Development Plan that the Local Planning Authority has identified.

6.4 Accordingly, the Council has taken these to be the four Main Issues in the determination of this appeal and the following sections of this Statement of Case explain how the proposal conflicts with relevant policies of the Development Plan, and thus why planning permission should be refused.

6.5 In relation to the appeals against non-determination of the application to discharge planning obligations and the refusal of permission to modify a planning obligation, the Local Planning Authority considers the following to be the main issues:

5. Whether the planning obligations continue to serve a useful purpose; and
6. Whether the obligation restricting development to within a defined boundary continues to have a useful purpose but would serve that purpose equally well if it had effect subject to modifications specified in the application.

The effect of the development on the character and appearance of the local area

6.6 Planning policy at all levels is deliberately robust in requiring high quality design of new development. Delivering well designed places is an essential ingredient of sustainable development.

6.7 Paragraph 126 of the National Planning Policy Framework states that:

The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities..'

6.8 Paragraph 134 states that:

Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.

- 6.9 A fundamental component of high quality design is an understanding of the context of a site and its surroundings, and an appropriate response to that context. The character of this site, and its surroundings is special – particularly given its location within the London Borough of Harrow and the Harrow on the Hill Village Conservation Area.
- 6.10 The appeal site itself comprises a low rise, discrete building, surface level car parking and a tarmac playground to the north of the building. There is tree planting around the edges of the site and the character of the area to the north west of the site is green and open. To the east of the site the area is residential in character, with the main school buildings located to the west within the adjacent Roxeth Hill Conservation Area.
- 6.11 Policy at all levels requires an understanding of, and appropriate response to the character of a site and its context in arriving at the right amount, scale and arrangement of development on it.
- 6.12 The National Planning Policy Framework, at Paragraph 130 states that:

Planning policies and decisions should ensure that developments:

- a. will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b. are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c. are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
- d. establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*

- e. *optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
- f. *create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

6.13 London Plan policy D4 (Delivering good design), and Local Plan policy DM1 (Achieving a High Standard of Development) all require high-quality design in new developments. Local policy DM1 expressly states that proposals which are detrimental to local character and appearance will be resisted.

6.14 Local Plan Policy DM6 relates to Areas of Special Character and seeks to preserve and enhance the features that contribute to the area of special character. Policy DM7 concerns heritage assets and the effect of development.

6.15 The National Design Guide and the National Model Design Code illustrate how well-designed places can be achieved in practice. The National Design Guide states that long-standing, fundamental principles for good design are that it is; fit for purpose, durable, and brings delight. The guide outlines that a well-designed place will have ten characteristics which are: context; identity; built form; movement; nature; public spaces; uses; homes and buildings; resources; and lifespan. The characteristics of good design include understanding and relating well to the site and its local and wider context and responding to existing local character and identity. It explains (at paragraph 15) that the statements within the Guide provide a series of tests for assessing whether a place is well designed or not, in the context of paragraph 130 of the NPPF which directs the refusal of permission for schemes which are not well designed.

6.16 The Harrow Core Strategy 2012 sets out a Spatial Vision and Core Strategy Objectives (page 17 of the document) for the Borough, the first of which is to

Protect the historical and environmental features that contribute to Harrow's character and distinctiveness as a place to live, work and visit by

...Safeguarding important local views and the setting of Harrow Hill;

Conserving or enhancing the significance of heritage assets for their intrinsic and economic values;

6.17 It goes on to set out 18 Overarching Policy Objectives (page 24), including the following:

10. Safeguard identified views and viewpoints from inappropriate development.

18. Conserve and enhance Harrow's heritage assets, such as its conservation areas.

6.18 The Council's reason for refusal referenced CS18 and CS10 of the Core Strategy in error. It should have referenced the above Overarching Policy Objectives.

6.19 The proposal would demolish the existing building 'Oldfield House' which is an unobtrusive building within the site, and replace it with a new taller building set further into the Site.

6.20 As set out in the Committee report, Oldfield House is an example of a 20th century building that has an altogether recessive character in the conservation area given its design, siting, scale and plentiful surrounding greenery. Along Crown Street the site is set behind a historic wall and gate pier to the original Oldfield House. This forms the key part of views from Crown Street and Middle Road with the ridge of the existing Oldfield House only just being visible behind it. The existing view is shown in the photographs below:



Figure 3: photograph from the footpath on corner of Middle Road, at junction with Crown Street



Figure 4: photograph from the footpath on South side of Crown Street

- 6.21 Furthermore the long-distance views can be achieved over the site towards the open playing fields and, it remains a prominent and sensitive plot within the Conservation Area.
- 6.22 From the North and North West the site is visible from Lower Road and West Street, however the existing building is only glimpsed through gaps in vegetation due to its scale and siting. In these views the site would be described as being set in open surroundings, and the site forms a visible break between the main school building, the Field House Club building to the east and the residential properties beyond.
- 6.23 Policy DM1 (Achieving a High Standard of Development) of the Harrow Development Management Policies states that:
- A. *All development and change of use proposals must achieve a high standard of design and layout. Proposals which fail to achieve a high standard of design and layout, or which are detrimental to local character and appearance, will be resisted;*
 - B. *The assessment of the design and layout of proposals will have regard to:*

- a. *the massing, bulk, scale and height of proposed buildings in relation to the location, the surroundings and any impact on neighbouring occupiers;*
- b. *the appearance of proposed buildings, including but not limited to architectural inspiration, detailing, roof form, materials and colour, entrances, windows and the discreet accommodation of external services;*
- c. *the context provided by neighbouring buildings and the local character and pattern of development;*
- d. *the provision of appropriate space around buildings for setting and landscaping, as a resource for occupiers and to secure privacy and amenity;*
- e. *the need to retain or enhance existing landscaping, trees, biodiversity or other natural features of merit;*
- f. *the functionality of the development including but not limited to the convenience and safety of internal circulation, parking and servicing (without dominating the appearance of the development) and the appearance, capacity, convenience, logistics and potential nuisance of arrangements for waste, recycling and composting; and*
- g. *the arrangements for safe, sustainable and inclusive access and movement to and within the site.*

6.24 London Plan policy D1 is predominantly directed to plan-making. It encourages the preparation of development plans which follow the design-led approach. The supporting text to Policy D1 (London's form, character and capacity for growth) of the London Plan states that:

Understanding the existing character and context of individual areas is essential in determining how different places may best develop in the future. An evaluation of the current characteristics of a place, how its past social, cultural, physical and environmental influences have shaped it and what the potential opportunities are for it to change will help inform an understanding of an area's capacity for growth and is crucial for ensuring that growth and development is inclusive (paragraph 3.1.2); and that

It is important to understand how places are perceived, experienced and valued (paragraph 3.1.3).

- 6.25 Therefore, the policy and its explanatory text, whilst it does not prescribe requirements for individual planning applications, clearly emphasise and underpin the importance of good design, informed by context. It is in this respect that the Council identifies Policy D1 of the London Plan in its reason for refusal.
- 6.26 The policy context, and the requirements therein all demonstrate that a well-designed development will understand, respect, and preserve the importance of local character. In this case, that should mean recognising and responding to the special character and open surroundings of the site and the scale of built development.
- 6.27 In terms of scale, the proposal would be taller than the existing building, and whilst set further back into the site would be highly visible from outside the Appeal Site and much more prominent than the existing Oldfield House. From the junction between Middle Road, Crown Street and Byron Hill Road the new building would be highly prominent presenting a three storey building of which the first and second floors would be widely visible above the boundary wall, this is in stark contrast to the existing situation whereby it is only the roof of the existing building which is visible beyond the wall.
- 6.28 The proposal therefore represents a significant increase in scale and visibility and would appear as an excessive and dominant form of the development given the very sensitive context. The proposed roof form and the expanse of brickwork between the first floor windows and the eaves also exacerbates the scale of the building.
- 6.29 The height of the proposed building would be inappropriate; it will loom over the existing Crown Street wall and provide a much more dominant bulk to be seen from Byron Hill and Crown Street. The Appellant argues, in the Architectural Statement, that the scheme has been designed to reduce its visual impacts, however the Local Planning Authority consider this has not been successful.
- 6.30 The Appellant accepts that it is the roof of the existing building which is visible along Crown Street and that it forms a distinct break with the rest of the Harrow on the Hill Village Conservation Area. The proposal would remove this break and replace it with a prominent and bulky new building which would draw much more attention and infill the existing gap.

- 6.31 The building would be three-storeys tall in the view below and when taken together with the length of the elevation, would represent a visually oppressive feature, at odds with the character and appearance of the existing building in the local area. This effect is reflected in the visualisation below:



Figure 5: proposed view from Middle Road, as shown in Appellant's Architectural statement.

- 6.32 In terms of siting, the proposed building would be located 7m to the rear of the existing building (which is to be demolished) and in this location the area is characterised by buildings which address the street; the siting of the proposal which is set further back into the site than the existing building would not address the street and is at odds with the building line of the properties along Crown Street; therefore it would appear incongruous with the existing pattern of development and character in the immediate vicinity.
- 6.33 In addition the proposed building would be much more prominent in views up the Hill given the significant level change from Lower Road to Crown Street. When viewed from Lower Road, across the cricket pitches it would appear as a four storey building and present a large façade in contrast to the existing building, which is much smaller in scale and unobtrusive in the glimpsed views in which it is seen. The proposed building would intrude on what is currently read as a gap between the main school building to the west and the residential properties to the east. The existing view from Lower Road is shown in the photograph below, demonstrating the open character of the site surroundings:



Figure 6: photograph from the footpath on South side of Lower Road.

- 6.34 The new building would be much more visible and prominent given the increase in scale and that it would be sited closer to Lower Road. Due to this scale and prominence the proposed building would infill what is currently read as a gap between the main school building and the residential properties, detracting from the current openness surrounding the existing building and the existing pattern of development. The building would be four-storeys tall and when taken together with the length of the elevation, would represent a visually oppressive feature, at odds with the open character of the land around the site. The scheme would be visually harmful in those views as a large, bulky and prominent building.
- 6.35 The appellant argues within the Townscape and Visual appraisal that the proposed building would appear recessive in views, however the LPA dispute this as the building would be much more visible as detailed above and within the TVA it is noted that "...the building reads as a similar height to the adjacent Field House Club and John Lyon School Main Building" (para 5.10). This demonstrates that the proposed building is much larger than the existing building, which is not read alongside these.

Heritage

- 6.36 As set out above the appeal site is located within a Conservation Area and therefore the proposal would have a direct impact on this designated Heritage Asset. In addition the Appeal Site is located within the setting of another Conservation Area, as well as in close proximity to a number of statutory and locally listed buildings, and this range of heritage assets might potentially be/have been affected

by the development, through change to their setting. There is a statutory duty under section s66(1) of the Planning (Listed Buildings & Conservation Areas) Act 1990, which requires that decision makers pay "special regard to the desirability of preserving" listed buildings or their settings.

6.37 Part 16 of the NPPF details policies for the conservation and enhancement of the historic environment. It states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed by future generations.

6.38 Paragraph 197 says that in determining applications, local authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality;
- c) the desirability of new development making a positive contribution to local character and distinctiveness; and

6.39 Paragraph 199 says:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

6.40 Paragraph 200 says that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification

6.41 Paragraph 202 says where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.

6.42 Paragraph 203 says the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or

indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

6.43 'Significance' in the context of heritage policy is defined as

The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site's Statement of Universal Value forms part of its significance.

6.44 Paragraph 206 says opportunities for new development within Conservation Areas, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably

6.45 Paragraph 207 notes that not all elements of a Conservation Area or a WHS will necessarily contribute to its significance.

6.46 'Setting' in the context of heritage policy defined as:

The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

6.47 London plan policy HC1 relates to heritage Conservation and Growth, with parts C and D focused on development proposals and states:

C. Development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. The cumulative impacts of incremental change from development on heritage assets and their settings should also be actively managed. Development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process.

D Development proposals should identify assets of archaeological significance and use this information to avoid harm or minimise it through design and appropriate mitigation. Where applicable, development should make provision for the protection of significant archaeological assets and landscapes. The protection of undesignated heritage assets of archaeological interest equivalent to a scheduled monument should be given equivalent weight to designated heritage assets

- 6.48 Local Plan Policy DM6 relates to Areas of Special character and seeks to preserve and enhance the features that contribute to the area of special character.
- 6.49 Local Plan Policy DM7 focuses on Heritage Assets. Part A of the policy makes it clear that priority is afforded to the conservation of the assets affected and their settings, over other policies. Therefore whilst the need for educational space is recognised, this does not take precedence over the need to conserve the Heritage Assets affected by the proposal.
- 6.50 Part B of the policy states that the impact of proposals affecting Heritage Assets will be assessed as having regard to:
- b. relevant issues of design, appearance and character including proportion, scale, height, massing, bulk, alignment, materials, historic fabric, use, features, location, relationship with adjacent assets, setting, layout, plan form and landscaping*
- 6.51 Within the Harrow on the Hill Village Conservation Area development is focused on the upper reaches of the hill in a close knit, ribbon-like form (principally Victorian and earlier buildings) facing the roads with open green space and established trees surrounding this development and sloping downwards. Thus there are good open views out from both Crown Street and Middle Road and up the hill from the cricket pitches/playing fields. There is limited screening in places provided by the Harrow School pavilion and established trees from Lower Road.
- 6.52 Whilst the existing building is of no particular architectural interest, it is 'low-key' and subservient to its neighbours and thus described as a neutral contribution to the townscape and Conservation Area. The Appellant suggests that the existing building has a negative impact on its surroundings, however the LPA disagrees with this view and it is noted that the existing building is described as neutral in the Conservation Area appraisal.

- 6.53 This statement of case is accompanied by a Heritage Impact Assessment prepared by independent Hamilton Grey Heritage. A copy of that report is attached to this Statement of Case at APP/4.
- 6.54 The report provides a detailed commentary of all of the relevant heritage issues in terms of overarching policy as well as careful evaluation of the applicant's proposals and their unique context.
- 6.55 A full assessment of the site environs has been undertaken to assess, in detail, the significance and history of the village of Harrow-on-the Hill, its designated conservation areas and their relationship to the appeal site as well as the specific context of the nearby designated and non-designated heritage assets.
- 6.56 The detailed character appraisal has highlighted the unique special values of Harrow on the Hill Village, an unusually ancient settlement which is celebrated for many reasons, not just relating to its picturesque townscape and café culture but also its wider importance on archaeological, architectural, social and cultural terms.
- 6.57 Two critical views have been selected to demonstrate the magnitude and the reach of the perceived harm and in turn, explain the impact upon the relevant buildings and affected areas.
- 6.58 It is concluded that the proposals will cause harm to the following heritage assets (listed from most significantly affected to least significantly):
- Harrow on the Hill Conservation Area's unique setting, character and streetscape
 - The adjacent Roxeth Hill Conservation Area character and views
 - The setting of some of the listed buildings within the vicinity of the site.
 - Other less significant considerations including the settings of locally listed buildings and structures and other non-designated heritage assets and views (in themselves) across and into the site which is protected by Conservation Area Policy.
- 6.59 It is concluded that the proposed development would result in harmful impacts to the significance of a number of sensitive heritage assets through effects on setting, and this harm is categorised as 'less than substantial' in the terms of the Framework. Consequently the proposal as a result of its scale,

mass and siting would not preserve or enhance the character and appearance of the Conservation Area and conflict with London Plan Policy HC1 and Local Plan Policies DM6 and DM7.

- 6.60 As further set out below, in relation to the third and fourth main issues set out in para. 6.3 above, the Local Planning Authority's case is that the public benefits associated with the appeal development would not outweigh the harm to heritage assets set out above and that there are no material planning considerations that would outweigh the conflicts with the Development Plan that the Local Planning Authority has identified.

Whether the planning obligations continue to serve a useful purpose

Background

- 6.61 Both S106B appeals relate to section 106 planning obligations attached to planning permission WEST/695/94/FUL and contained within a legal deed dated 23rd June 1995 ('The Principal Agreement').
- 6.62 The Principal Agreement was subsequently varied by deeds of variation dated 24th September 2007 ('First Amendment'), 16 October 2007 ('Second Amendment') and P/2160/10 dated 11 February 2011 ('Third Amendment').
- 6.63 The obligations which form The Principal Agreement (as modified) are as follows:
1. The developer agrees that no development (whether requiring express planning or permitted by virtue of a Development Order or any statutory successor shall take place outside the building envelope hereby agreed and shown edged red on drawing No.977/31/B save that future may be granted planning permission in the areas edged blue on the drawing upon application being made to the Council.

- 1.1 The Principal Agreement was subsequently amended by deed of variation dated 16th October 2007 ('Second Amendment') to insert a definition of 'The Scheme' and clause 1.1 "Nothing in Clause 1 of this Schedule shall prohibit or limit the development of the Scheme (three-storey side/rear extension permitted under P/3420/06) outside the building envelope edged red on Drawing No. 977/31/B"

1.2 The Third Amendment subsequently amended the Principal Agreement to insert a definition of 'Scheme 2' (two storey extension to main building permitted under planning application reference P/2160/10) and clause 1.2 "Nothing in Clause 1 of this Second Schedule shall prevent or limit the development of Scheme 2 outside the building envelope edged red on Drawing No. 977/31/B"

2. That the number of pupils enrolled for full time education at the school shall not exceed 525 or such increase as shall be first approved in writing by the Council (subsequently amended to 600 by The First Amendment).
3. Not to use of permit the use of any part of the Development outside the school's normal hours of operation for any purpose other than for Permitted Recreational Uses without the written consent of the Council such consent not to be unreasonably withheld taking account of all material planning considerations prevailing at that time
4. To submit to the Council for approval in writing a Landscaping scheme to be carried out by the Developer on the Land which shall include a scheme for planting of trees and shrubs on land outside but immediately adjoining the site which is in the ownership of the Developer.
5. To implement and complete the said landscaping scheme in accordance with the approved scheme.

6.64 Section 106A of the Town and Country Planning Act 1990 (as amended) states:

(1)A planning obligation may not be modified or discharged except -

(a) by agreement between [the authority by whom the obligation is enforceable] the appropriate authority (see subsection (11))] and the person or persons against whom the obligation is enforceable; or

(b)in accordance with this section and section 106B.

...



(6) Where an application is made to an authority under subsection (3), the authority may determine—

(a) that the planning obligation shall continue to have effect without modification;

(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or

(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications

6.65 Section 106B of the Town and Country Planning Act 1990 (as amended) states:

(1) Where an authority (other than the Secretary of State)

(a) fail to give notice as mentioned in S106A(7); or

(b) determine under S106A that a planning obligation shall continue to have effect without modification, the applicant may appeal to the Secretary of State

(2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.

The S106B Discharge Appeal

6.66 The Appeal has been made under Section 106B(1)(a) and the Appellant contends that the obligations no longer serve a useful purpose.

6.67 The Appellant also contends that the obligations within Principal Agreement (as modified):

- unreasonably constrains development, unjustifiably extending existing policy constraints in the area (which themselves are considerable);
- unjustifiably prevents development that is in accordance with planning policy, even if found to be so by the Secretary of State on appeal;

- unreasonably restricts the use of school facilities, including dual or community use, even if such a use would create a substantial public benefit;
- is unnecessary as any obligation which is justified should be properly and preferably addressed by way of planning condition, in accordance with government policy (NPPF 2021 §55);
- has long since been discharged in any event (in two instances relating to landscaping);
- does not meet the statutory tests in regulation 122 (as amended) of the Community Infrastructure Levy Regulations 2010 and policy tests in NPPF 2021 para 57 required to impose planning obligations, and generally, and
- precludes the merits of any restriction imposed being tested on appeal to the Secretary of State before at least 5 years has elapsed since the most recent obligation or variation was imposed, and then only on limited statutory grounds, severely restricting the ability of the School to develop and improve its facilities in accordance with government planning and education policy objectives.

6.68 The LPA disagrees with this view, and contends that not all of the Obligations can be discharged; certain Obligations continue to serve a useful purpose. Each obligation is discussed in turn below.

Obligation 1

6.69 As noted elsewhere in this Statement of case, John Lyon School is sited within a Conservation Area and Harrow on the Hill Area of Special Character. The original purpose of Obligation 1 was to protect the Heritage assets and residential amenities of local residents by restricting the building envelope and the location of future building works.

6.70 If the planning appeal (Appeal 1) is dismissed, the obligation continues to serve a useful purpose and should remain in place without modification, Appeal 2 should also be dismissed.

6.71 However, should the Inspector find the Appeal scheme proposal acceptable, the Council's position is that this obligation can be amended to alter the boundary which restricts development to within the defined building envelope and thus permit development to be implemented. The obligation could be modified to allow the implementation of future planning permissions with development outside

the building envelope, as has previously been the case with the Second and Third Amendments described above.

Obligation 2

- 6.72 Obligation 2 implements a cap on the number of pupils enrolled for full time education at the school, this restriction is clearly relevant and continues to provide a useful purpose in limiting the number of pupils at the school. Without such a restriction and defined cap there would be no limit on pupil numbers and there would be no mechanism to assess the impacts of any change/increase.
- 6.73 As set out at paragraph 13 of the Inspector's decision in relation to appeal reference APP/M5450/Q/16/316072 (a copy of which forms part of the Appellant's appeal documents) in relation to a s106A application made in 2016 (LPA Ref: P/1020/16) both parties (the LPA and the School) accepted that the obligation continues to serve a useful purpose, and that the purpose is broadly to ensure that traffic generation is restricted to reasonable levels. It is therefore clear that the Appellant has previously agreed that the obligation serves a useful purpose.
- 6.74 The Inspector, at paragraph 14, further states that "The purpose of imposing a numerical limitation was to exercise control on pupil numbers and to limit the effects of traffic generation associated with pupils attending the school. ... The purpose was simply to control numbers so as to control traffic generation".
- 6.75 The Inspector goes on to state at paragraph 74 "The current section 106 agreement serves a useful purpose, restricting traffic generation to reasonable level".
- 6.76 The Appellant refers to changed circumstances which include the imposition of parking restrictions, which they claim has reduced traffic flows and in turn reduced traffic congestion in the area, and that the school has become co-educational which they claim will reduce traffic volume on the Hill further as educating boys and girls from the same families results in fewer families overall (and therefore generates fewer trips).
- 6.77 The Appellant has not provided any evidence to support these statements that traffic congestion and volume has reduced, and in any case it does not follow that these circumstances in and of themselves would make the obligation limiting the number of pupils useless. It has not been demonstrated that having no restriction on pupil numbers would not have an impact on traffic generation.

- 6.78 As set out by the Inspector in relation to the previous appeal relating to this Obligation “The proposed modifications would result in an increase in pupils which, all things being equal, would potentially increase car borne traffic” (paragraph 17). This makes the link between pupil numbers and potential traffic generation clear, and thus continuing to have an obligation limiting pupil numbers will continue to control traffic generation associated with the school. Whilst the current appeal does not seek an increase in pupils, the discharge of the obligation would result in there being no control over the number of pupils enrolled at the school, including through any future increase in pupils, and the link between the potential to increase the number of pupils and a potential increase in traffic generation is clear.
- 6.79 The impacts of the existing permitted number of pupils has been found to be acceptable with regard to traffic generation, however the traffic generation of any unspecified number of pupils cannot be known. The LPA contends that it is highly likely that having no limit on pupil numbers would allow an increase in pupils at any point in the future, which could impact traffic generation, and therefore the current obligation continues to serve its useful purpose.
- 6.80 The LPA reiterates that the purpose of the obligation was to limit the effects of traffic generation. If the obligation were to be discharged, there would be no control on the number of pupils enrolled, and thus a loss of control over limiting the traffic generation associated with pupils attending the School. Therefore the LPA contends that the obligation continues to serve a useful purpose in restricting pupil numbers, and thereby exercising control over and limiting traffic generation.
- 6.81 It is also acknowledged that the existence of the obligation provides a mechanism for the number of pupils to be adjusted if the circumstances change and the adjustment is justified. Whereas if the obligation were to be discharged, there would be no control on the number of pupils enrolled at the School and any impacts would not be assessed or justified.
- 6.82 It is not the purpose of this appeal to examine the merits of any change in pupil numbers (and it is noted that no change in numbers has been proposed in relation to the appeal) or the effects of any such change on traffic generation, it is simply whether the obligation continues to serve a useful purpose, and the LPA contends that it is clear this is the case.
- 6.83 It is also acknowledged by the Appellant that the School does not oppose a restriction on pupil numbers being placed on the school, and recommends a condition to such effect be attached to any

permission granted for the new development. This clearly demonstrates that they acknowledge that having such a restriction in place serves a useful purpose, and this is the key question for the appeal.

- 6.84 With regard to the Appellant's comments on the validity of the obligations meeting the statutory tests and that time period before any appeal against obligations, it is the LPA's view that the merits of the existence of the Principal Agreement have previously been tested and found to serve a useful purpose. The Inspector in dismissing the appeal (P/1020/16/5049 dated 16th January 2018) relating to the modification of the obligation to increase pupil numbers found that "It is accepted by both the Council and the Appellant that the obligation continues to serve a useful purpose" (paragraph 13) and goes on to state at paragraph 74 "The current section 106 agreement serves a useful purpose, restricting traffic generation to reasonable level". Therefore the removal of the obligation could have the potential to give rise to circumstances prejudicial to the residential amenities of nearby residents and highway safety.

Obligation 3

- 6.85 Obligation 3 relates to the use of the school premises outside of normal hours, and was agreed to ensure that there was no undue impact on the neighbouring residents due to traffic and parking issues when the school was not in operation. The useful purpose is therefore to protect the residential amenities of the neighbouring properties, and this continues to be relevant. Discharging the obligation would result in there being no restriction on the use of the facilities and thus no control over the impacts which such unrestricted use of facilities outside of school hours could have. The removal of the obligation could have the potential to give rise to circumstances prejudicial to the residential amenities of nearby residents.
- 6.86 It must also be acknowledged that the drafting of the obligation and the definition of 'Permitted Recreational Uses' allows for additional use to be agreed with the Council. This mechanism would allow any proposed change to the restrictions to be reviewed and assessed based on its merits and any impacts. In the absence of any other mechanism to ensure the residential amenities of neighbouring properties would be adequately protected this obligation still serves a useful purpose.
- 6.87 There is no alternative mechanism by which to restrict use of the facilities, or assess impacts of such use, and in the absence of any alternative mechanism to control the use of the School buildings outside of normal hours the obligation still serves a useful purpose.

6.88 With regard to the Appellant's comments on the validity of the obligations meeting the statutory tests and that time period before any appeal against obligations, it is the LPA's view that the merits of the existence of the Principal Agreement have previously been tested and found to serve a useful purpose. The Inspector in dismissing the appeal (P/1020/16/5049 dated 16th January 2018) relating to the modification of the obligation to increase pupil numbers found that "It is accepted by both the Council and the Appellant that the obligation continues to serve a useful purpose" (paragraph 13) and goes on to state at paragraph 74 "The current section 106 agreement serves a useful purpose, restricting traffic generation to reasonable level". Therefore the removal of the obligation could have the potential to give rise to circumstances prejudicial to the residential amenities of nearby residents and highway safety.

Obligations 4 and 5

6.89 With regards to Obligations 4 and 5 the LPA agrees that these have been discharged.

Whether the obligation restricting development within a boundary continues to have a useful purpose but would serve that purpose equally well if it had effect subject to modifications specified in the application

The S106B Modification Appeal

6.90 This appeal relates to the proposal to modify Obligation 1 (which restricts development to a specific building envelope), and specifically seeks to extend the built envelope within the Principal s106 Obligation to permit the implementation of the Oldfield House redevelopment proposals, should the s78 Redevelopment Planning Appeal be allowed by the Inspector.

6.91 As set out above the original purpose of Obligation 1 was to protect the Heritage Assets and residential amenities of local residents by restricting the building envelope and the location of future building works.

6.92 The reason for refusal of the modification application cited that there was no justification for the amendment to the envelope, this was the case given permission had been refused for a proposed development which fell outside of this area.

- 6.93 However if the Inspector takes a different view to the LPA on the S78 appeal for the development proposals, and granted permission, then the circumstances would have changed and there would be a justification.
- 6.94 In such circumstances the Council's position is that this obligation could be amended to alter the boundary which restricts development to within the defined building envelope and thus permit the development to be implemented, should the Inspector find the Appeal scheme proposal acceptable.
- 6.95 The purpose of the obligation is served by carrying out an assessment as to the impacts of proposed development on the Heritage Assets, as part of the consideration of the Appeal Scheme, against the relevant policies in place. Therefore if the development is considered acceptable, the purpose of the obligation would be served equally well by altering the boundary to include the area subject to the development proposal and allow implementation of the Appeal Scheme. A boundary would remain in place for any future development and thus continue to serve the original identified purpose.

Conclusions on the Main Issues

- 6.96 For the reasons set out above, the Local Planning Authority submits that it is plain that the proposals would have a harmful impact on the local character of the area and would not preserve or enhance the character or appearance of the Conservation and thus the scheme would not comply with the development plan policies that are referred to in the Council's reasons for refusal (as clarified in para. 5.5 above) and the Development Plan when read as a whole.
- 6.97 Planning Obligations within the Principal Agreement (as modified) continue to serve a useful purpose, and thus should continue to have effect. Therefore the discharge of all of the obligations and the Principal Agreement in its entirety is unacceptable.
- 6.98 Planning Obligation 1 relating to the restriction on building envelope continues to serve a useful purpose. However should the Inspector find the Appeal Scheme to be acceptable, the obligation can be modified to allow the construction of the development; in this way the obligation would continue to serve a useful purpose but that purpose would be served equally well by altering the boundary.

7.0 Other material planning considerations and the Planning Balance

7.1 For the reasons that set out in this Statement of Case, the LPA strongly contends that the appeal proposal would conflict with the Development Plan and so planning permission should be refused.

7.2 The Appellant contends that the proposal would bring forward substantial planning benefits and has put these forward in support of the scheme. The LPA nevertheless contends that these do not outweigh the identified conflict with the policies of the Development Plan.

Social

7.3 The LPA recognises that JLS is a notable local institution and contributes to Harrow's reputation to learning, and that the proposal would improve facilities for STEAM. However the Appellant has not demonstrated how that by itself and specifically the form and siting of the proposal would provide substantial social benefits to the Borough, any positive weight is also tempered by the siting and scale of the new building which would harm the local character and fail to preserve or enhance the character and appearance of the Conservation Area.

Economic

7.4 The Appellant refers to economic benefits brought forward through the improvement of education provision, whilst the national shortage in Science, Technology, Engineering and Maths (STEM) as a result of education is recognised and it is acknowledged that the proposal would improve these facilities for the school this can only be given low weight as the benefits are not shown to be direct, particularly to the Borough.

7.5 The jobs created in construction and the supply chain would be direct, indirect, and temporary, and the LPA considers that moderate positive weight can be attributed to these, however the weight is tempered by the fact that these jobs are temporary in nature.

Environmental

- 7.6 The LPA disagrees with the Appellant that the existing building has a negative impact on the surrounding townscape, as set out above the existing building is described as neutral in the Conservation Area appraisal.
- 7.7 The LPA also disagrees that positive weight should be applied to the design of the appeal development. That is because whilst some elements of the design of the scheme might be considered attractive and potentially appropriate in another setting, the building is entirely unsuitable for its siting within the site and the important and special context within which it is set.
- 7.8 As set out in the Statement of Case above, the scheme has not been developed in a way that respects the existing local character, including the Conservation Area and as a consequence, it cannot represent high-quality design. In fact, the scale and siting of the appeal development would cause significant harm to the character and appearance of the area, in conflict with the Development Plan policies.
- 7.9 It is recognised that the site is in a sustainable location and is previously developed land. These factors weigh in favour of the appeal development, particularly given paragraph 119 of the NPPF indicates that substantial weight should be given to the use of suitable brownfield land.
- 7.10 However that positive weight is tempered by the siting and scale of the new building which would harm the local character and fail to preserve or enhance the character and appearance of the Conservation Area, in conflict with the Development Plan policies.
- 7.11 The report by Hamilton-Grey Heritage is that the effects of the development on heritage, in particular the Harrow in the Hill Conservation Area and the setting of the Roxeth Conservation Area, are harmful and the impacts have not been demonstrated to be acceptable.
- 7.12 The harm that would be caused by these shortcomings is significant. The resulting conflicts with the Development Plan would not be outweighed by any material considerations or positive factors. There are no planning obligations or conditions that could mitigate the harmful impacts of the appeal scheme.

Conclusions on other material planning considerations

- 7.13 For the reasons set out above, it is the LPA's case that where there is a conflict with any Development Plan policy, which the LPA says there would be, the material planning considerations and asserted benefits purported by the Appellant would not be sufficient to outweigh the harm caused and planning permission should be refused.

8.0 Statement of Common Ground

- 8.1 The Local Planning Authority will work with the Appellant to seek to agree a Statement of Common Ground to assist the Inspector on the basis of the draft submitted with the appeal.

Planning conditions

- 8.2 The Local Planning Authority will seek to agree with the Appellant a schedule of planning conditions that should be imposed in the event that the appeal is allowed and planning permission granted for the development on the basis of App. 5 to the Appellant's draft Statement of Common Ground. In the event that the Local Planning Authority and the Appellant do not agree as to the appropriateness of one or more suggested planning conditions, the Local Planning Authority will clearly explain its position with reference to the tests set out at Paragraph 57 of the Framework.

Planning obligations

- 8.3 It is the Local Planning Authority's case that there are no planning obligations that could mitigate the harmful impacts of the appeal scheme, being the proposed new development subject to the S78 appeal.
- 8.4 The Local Planning Authority's position on the existing planning obligations on the Site and in relation to the S106B appeals is that these continue to serve a useful purpose and should not be discharged, however one obligation could be modified, set out in the Statement of Case above.

9.0 Conclusions

9.1 In summary, the Local Planning Authority's case is that:

- The siting and design of the proposal would cause harm to the character and appearance of the area and would therefore fail to preserve or enhance the Conservation Area and the scheme fails to meet the relevant policy tests designed to ensure appropriately high standards of design.
- The purported public benefits do not outweigh the heritage harms identified, and significant weight should be afforded to the heritage harm caused.
- The appeal scheme conflicts with the Development Plan when read as a whole and there are no material considerations that outweigh that conflict.
- The existing Planning Obligations within the Principal Agreement (as modified) relating to pupil numbers and community use continue to serve a useful purpose and should continue to take effect; the discharge of all of the obligations and the Principal Agreement in its entirety is unacceptable.
- Planning Obligation 1 relating to the restriction on building envelope continues to serve a useful purpose. However should the Inspector find the Appeal Scheme to be acceptable, the obligation can be modified to allow the construction of the development; in this way the obligation would continue to serve a useful purpose but that purpose would be served equally well by altering the boundary.

- 9.2 The S78 appeal scheme would conflict with the Development Plan when read as a whole and there are no material considerations of sufficient weight to indicate that planning permission should be granted. Accordingly, the LPA contend that this appeal should be dismissed, and planning permission refused.
- 9.3 The S106B appeal to discharge all the existing planning obligations should be dismissed as the obligations relating to the development envelope, pupil numbers and the use of school facilities continue to serve a useful purpose. If the planning appeal (Appeal 1) is dismissed, the obligation continues to serve a useful purpose without modification. In any case Appeal 2 should be dismissed; the obligations continue to serve a useful purpose.
- 9.4 The S106B appeal to modify the first obligation could be accepted should the Inspector find the Appeal Scheme to be acceptable, in this way the obligation would continue to serve a useful purpose but that purpose would be served equally well by altering the boundary. If the planning appeal (Appeal 1) is dismissed, the obligation continues to serve a useful purpose without modification and Appeal 3 should also be dismissed.
- 9.5 For these reasons, the Local Planning Authority submits that it made the correct decision in refusing planning permission for the appeal development, and that it was correct to refuse the discharge of the planning obligations. The Local Planning Authority therefore respectfully requests that the appeal is dismissed.

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