DATED **2019**

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW**

AND

(2) **THE KEEPERS AND GOVERNORS OF THE POSSESSIONS REVENUES AND GOODS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON**

DEED OF AGREEMENT AND VARIATION

pursuant to

SECTIONS 106 AND 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to land at

The John Lyon School, Middle Road, Harrow on the Hill, in the London Borough of Harrow

Planning Application Ref No P/1813/19

THIS DEED OF AGREEMENT AND VARIATION is dated the day of 2019

BETWEEN

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW** of PO box 2 Civic Centre Station Road Harrow Middlesex HA1 2US ("**the Council**") of the first part and

(2) **THE KEEPERS AND GOVERNORS OF THE POSSESSIONS REVENUES AND GOODS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON** of Middle Road Harrow on the Hill Middlesex HA2 0HN ("**the Developer**")

RECITALS

A. The Council is the local planning authority for the area within which the Land is situated and may enforce the obligations in this Deed and the Principal Agreement.

B. The Council by its planning committee meeting on [ ] 2019 resolved to grant Planning Permission for the Development subject to the prior completion of this Deed.

C. The Developer is the registered proprietor with freehold title of the Land under title numbers [ ].

D. The parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms.

E. An agreement pursuant to section 106 of the Town and Country Planning Act 1990 dated 23 June 1995 made between (1) the Council (2) the Developer and (3) National Westminster Bank PLC as varied by agreements pursuant to Section 106 Town and Country Planning Act 1990 dated 24 September 2007, 16 October 2007 and 22 February 2011 made between (1) the Council and (2) the Developer contains planning obligations relating to planning permission reference WEST/695/696/94/FUL ("the Principal Agreement").

F. Paragraph 1 of the Second Schedule to the Principal Agreement contains an obligation that no development shall take place outside a building envelope shown

edged red on drawing No. 977/31/B annexed to the Principal Agreement save that future development within areas edged blue on that drawing may be granted planning permission upon application to the Council.

G. The Development is located outside the building envelope edged in red on the drawing referred to at recital F.

H. The Council and the Developer have agreed to vary the Principal Agreement in relation to the Land.

IT IS AGREED as follows

SCHEDULE 1 DEFINITIONS AND INTERPRETATION

Part 1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings

"the Act"	means the Town and Country Planning Act 1990 (as amended)
"Application"	means the application for planning permission to carry out the Development and allocated reference number P/1813/19
"Commencement of Development"	means the date on which the first material operation as defined in Section 56(4) of the Act forming part of the Development is carried out and **"Commence Development"** shall be construed accordingly
"Development"	means the redevelopment to provide four storey teaching block with basement hard and soft landscaping and parking (demolition of existing building)
"the Land"	means the land shown edged in red on Plan 1 for identification only
"Occupy"	means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by

personnel engaged in construction initial fitting out finishing or decoration of that building nor occupation in relation to site and building security and "**Occupation**" "**Occupier**" "**Occupied**" or "**Occupancy**" shall be construed accordingly

"Oldfield House" means the building on the part of the Land shown for identification purposes only edged red on Plan 3

"Parties" means the Developer and the Council as the context so requires and **"Party"** means any one of them and includes any successor in title of any of them

"Plan 1" means the plan titled "Location Plan" attached to this Deed at Appendix 1

"Plan 2" means the plan titled "Building Envelope" attached to this Deed at Appendix 1

"Plan 3" means the plan titled "Oldfield House" attached to this Deed at Appendix 1

"Planning Permission" means planning permission for the Development to be granted by the Council

"Principal Agreement" means the agreement referred to at recital E

"Working Day" means any day which is not a Saturday Sunday or a bank holiday in England

Part 2 A reference to any clause plan paragraph schedule annex or recital is a reference to a clause plan paragraph schedule annex or recital in (or in the case of plans attached to) this Deed.

Part 3 Words importing the singular shall be construed as importing the plural and vice versa.

Part 4 Words of the masculine gender include the feminine and neuter genders and vice versa.

Part 5 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their

obligations can be enforced against all of them jointly and against each of them severally.

Part 6 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.

Part 7 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time.

Part 8 In the event of any conflict between the terms conditions and provisions of this Deed and any document attached hereto or referred to herein the terms conditions and provisions of this Deed shall prevail.

Part 9 Reference to any Party to this Deed includes the successors in title to that Party and to any person deriving title through or under that Party and in the case of the Council includes any successor to its functions.

Part 10 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed.

Part 11 Any reference to a person shall be constructed as a reference to any person or firm, company, corporate or other body corporate wherever and however incorporated or established or government state or agency of a state or any association or partnership (whether or not having a separate legal personality) or one or more of the foregoing.

SCHEDULE 2 LEGAL BASIS

Part 1 This Deed is made pursuant to section 106 and section 106A of the Act, section 1 of the Localism Act 2011 and all other enabling powers.

Part 2 The covenants obligations restrictions and requirements imposed upon the parties by this Deed:

2.2.1 are entered into pursuant to the provisions of sections 106 and 106A of the 1990 Act

2.2.2 are planning obligations for the purposes of sections 106 and 106A of the 1990 Act

2.2.3 relate to the Land

2.2.4 are entered into with intent to bind the Developer's interest in the Land and each and every part thereof into whosoever's hands the same may come

2.2.5 are executed by the Parties as a Deed

2.2.6 are enforceable by the Council.

Part 3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into by the Council pursuant to the powers contained in section 1 of the Localism Act 2011 and all other powers so enabling.

Part 4 Where the agreement approval consent or an expression of satisfaction is required by the Developer under the terms of this Deed from the Council that agreement approval consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

Part 5 The Principal Agreement shall be modified in the manner set out in clause AGREED CHANGES TO PRINCIPAL AGREEMENT of this Deed.

Part 6 The definitions, clauses, obligations and provisions of the Principal Agreement shall remain in full force and effect except as modified or added to by this Deed.

Part 7 Save where the context otherwise requires the expressions used in this Deed shall have the same meaning or meanings as those stated in the Principal Agreement.

SCHEDULE 3 CONDITIONALITY

With the exception of clauses 1 to 3 and clauses 5 to 15 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional upon:

Part 1 the grant and issue of the Planning Permission; AND

Part 2 Commencement of Development

SCHEDULE 4 DEVELOPER'S COVENANTS

The Developer covenants with the Council to perform the obligations and observe the relevant restrictions contained in Schedule 1.

SCHEDULE 5 COUNCIL'S LEGAL COSTS

The Developer covenants to pay before completion of this Deed the Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed.

SCHEDULE 6 EXCEPTIONS AND RELEASE

No person shall be liable for any breach of any planning obligations or other provisions of this Deed after they have irrevocably parted with all their interest in the Land or that part of it in respect of which a breach arises but not so as to release any person from liability for any antecedent breach non-performance or non-observance of their obligations or other provision of this Deed arising prior to parting with such interest.

SCHEDULE 7 DETERMINATION OF THE PLANNING PERMISSION

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall expire prior to Commencement of Development or be quashed revoked or otherwise withdrawn without the consent of the Developer.

SCHEDULE 8 DISPUTES AND EXPERT DETERMINATION

"Expert" means for the purposes of this clause 8 an independent person holding appropriate professional qualifications with at least 15 years relevant experience in the subject area agreed by the parties to the dispute but in default of

agreement appointed at the request of the President of the Law Society of England and Wales

Part 1 Any dispute arising under this Deed shall be referred at the instance of any party for determination by an Expert whose decision shall (save in the case of manifest error or fraud) be final and binding on the parties.

Part 2 The Expert shall be required to give notice of his appointment to each of the parties.

Part 3 The persons calling for the determination shall make written submissions together with any supporting material to the Expert and the other parties within ten (10) Working Days of the date of notification of the Expert's appointment.

Part 4 The other parties shall have ten (10) Working Days from the receipt of such written submission to make written counter submissions together with any supporting material.

Part 5 If exceptionally a party considers that further submissions should be taken into account the Expert may accept late submissions at his sole discretion and in accordance with the criteria he sets for himself.

Part 6 Allowing for the nature and complexity of the dispute if the Expert is of the opinion that he is likely to need to test the submissions by questioning or to clarify matters arising out of the submissions the Expert may call for the dispute to be heard in an informal round table discussion led by the Expert who shall identify the issues for discussion based on the submissions received.

Part 7 The Expert shall be subject to the express requirement that a decision be reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days after (as the case may be) the conclusion of any hearing that takes place or the expert has received all relevant representations from the parties.

Part 8 The Expert's decision shall be in writing and give reasons for his decision.

Part 9 The Expert's fees shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

SCHEDULE 9 SUCCESSORS IN TITLE

SCHEDULE 10 The Developer enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Council to the intent that the obligations in this Deed shall be enforceable not only against the Developer but also against the successors in title of the Developer and any person claiming through or under the Developer a freehold or leasehold interest or estate in the Land or any part thereof.

SCHEDULE 11 POWERS OF THE COUNCIL

SCHEDULE 12 Save as legally or equitably permitted nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Council under all and any legislation.

SCHEDULE 13 SEVERABILITY

Each clause sub-clause paragraph schedule or plan shall be separate distinct and severable from each other to the extent only that if any clause sub-clause paragraph schedule or plan becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause sub-clause paragraph schedule or plan shall be held by the courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause paragraph schedule or plan be valid shall apply without prejudice to any other clause sub-clause paragraph schedule or plan contained therein.

SCHEDULE 14 RIGHTS OF THIRD PARTIES

SCHEDULE 15 The Parties intend that no terms of this Deed may be enforced pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for the successors in title to the Parties and in the case of the Council the successor to its functions.

SCHEDULE 16 JURISDICTION

Part 1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

Part 2 It is hereby agreed that the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 17 DELIVERY

SCHEDULE 18 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

SCHEDULE 19 AGREED CHANGES TO PRINCIPAL AGREEMENT

Part 1 The Developer and the Council agree that on the Commencement of Development (as defined in this Deed) the Principal Agreement shall be varied as set out below:

19.1.1 In the Second Schedule paragraph 1 of the Principal Agreement the words “drawing titled “Building Envelope”” shall be substituted for the words “drawing No. 977/31/B” and Plan 2 of this Deed shall be substituted for drawing No. 977/31/B annexed to the Principal Agreement

19.1.2 In clause (1) (Interpretation) of the Principal Agreement the definition of “the Scheme” (inserted by the deed of variation

dated 16 October 2007 referred to at recital E of this Deed) shall be deleted.

19.1.3 Clause 1.1 of the Principal Agreement (inserted by the deed of variation dated 16 October 2007 referred to at recital E of this Deed) shall be deleted.

Part 2 In all other respects the Principal Agreement (as varied by this Deed) shall remain in full force and effect.

In witness whereof the Parties hereto have executed this Deed on the day and year first before written

THE COMMON SEAL OF THE)
MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF)
HARROW was hereunto affixed)
to this Deed in the presence of:)

Authorised Officer

THE COMMON SEAL OF THE KEEPERS AND GOVERNORS OF THE POSSESSIONS REVENUES AND GOODS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON was hereunto affixed to this Deed in the presence of)

Two of the said Keepers and Governors

The Clerk

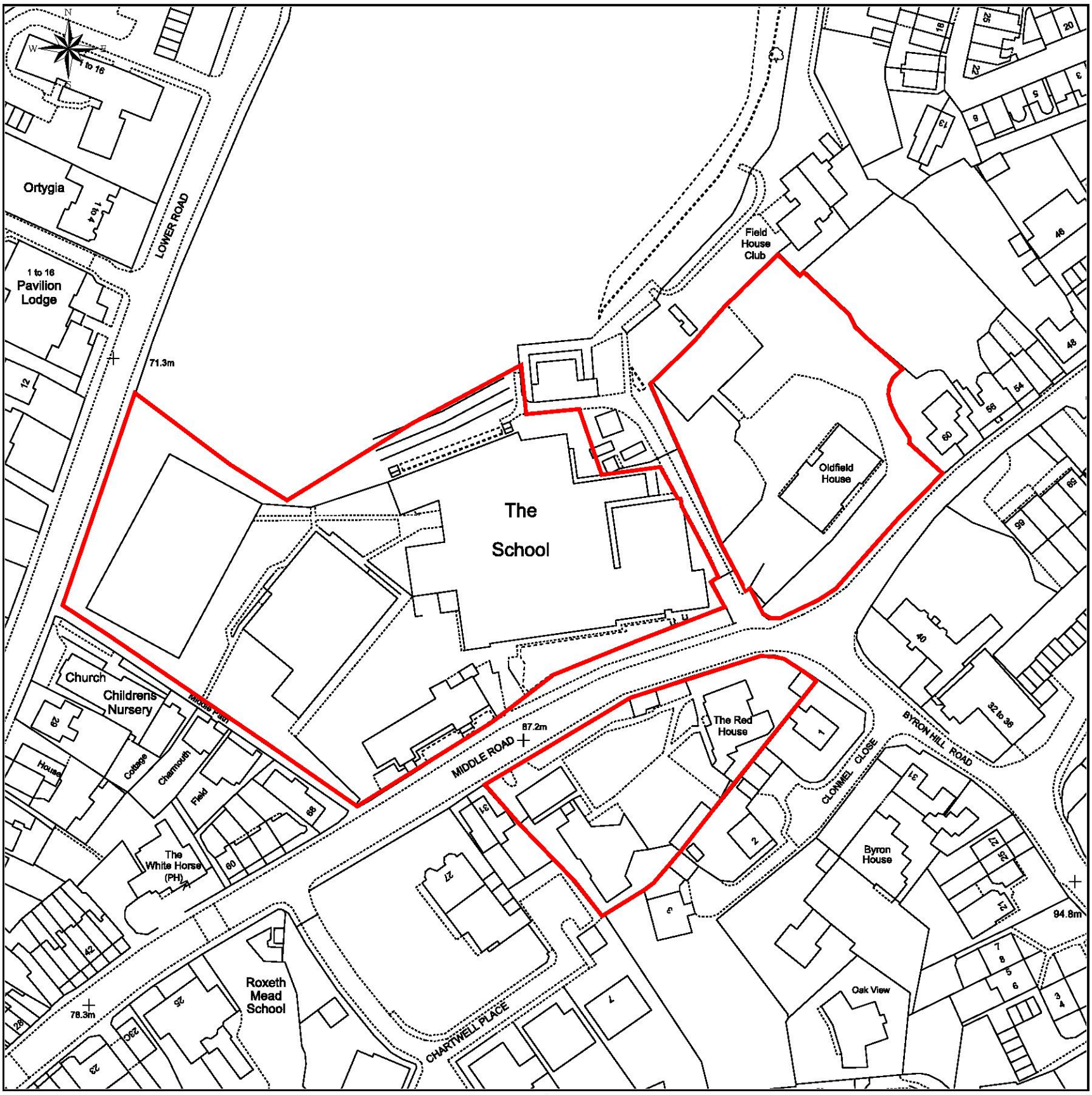
SCHEDULE 20

The Developer covenants to the Council not to Occupy the Development (as defined in this Deed) until Oldfield House has been demolished.

APPENDIX 1

Plans

John Lyon School, Middle Road, Harrow-on-the-Hill
Location Plan



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0m 25m 50m 75m 100m 125m

Scale: 1:1250, paper size: A3

Drawing Number: Plan 1

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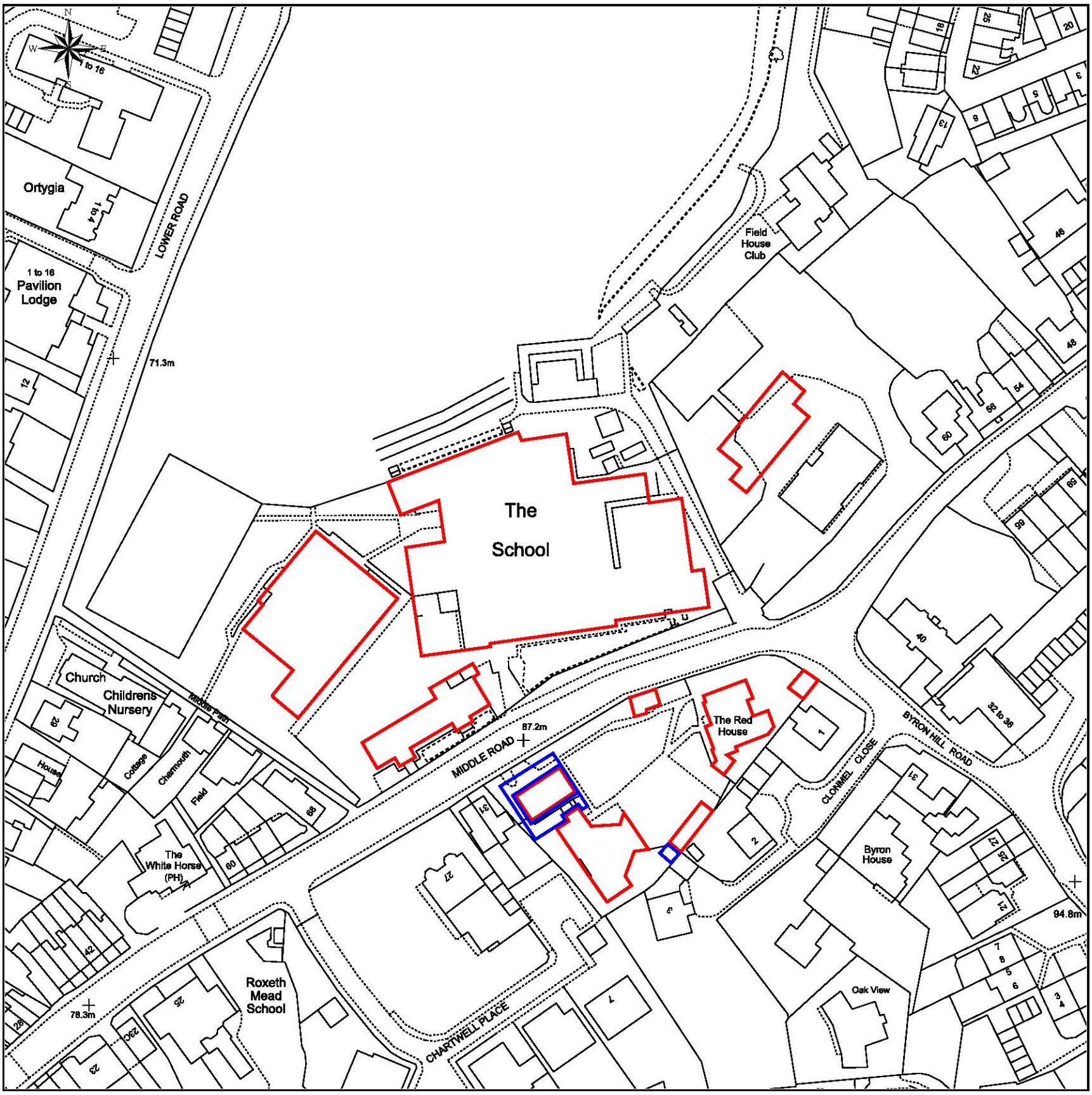
John Lyon School, Middle Road, Harrow-on-the-Hill
Building Envelope



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0m 25m 50m 75m 100m 125m

Scale: 1:1250, paper size: A3

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Drawing Number: Plan 2

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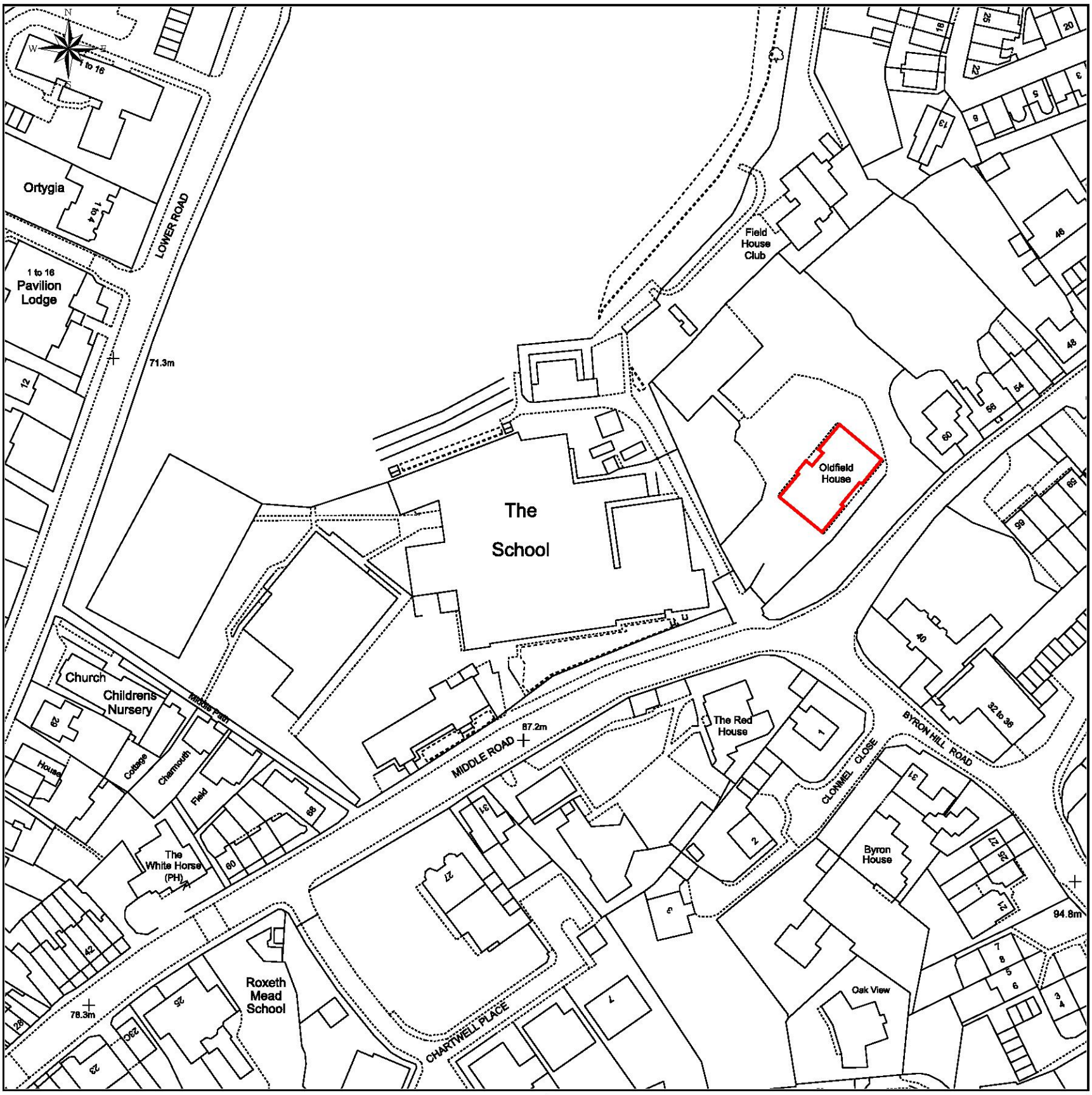
John Lyon School, Middle Road, Harrow-on the-Hill
Oldfield House



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Drawing Number: Plan 3

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John Lyon Sports Hall Development Plan

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