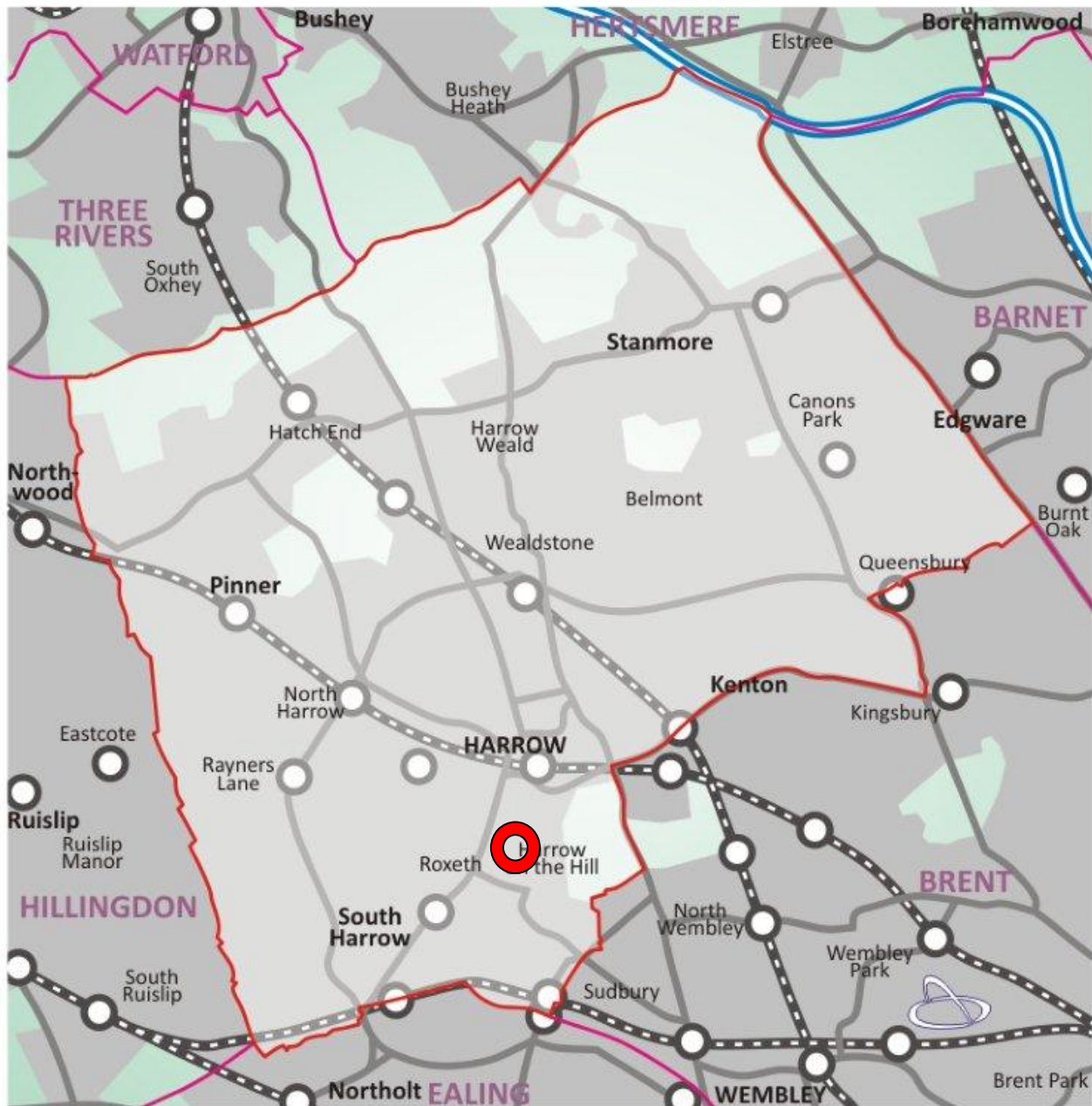


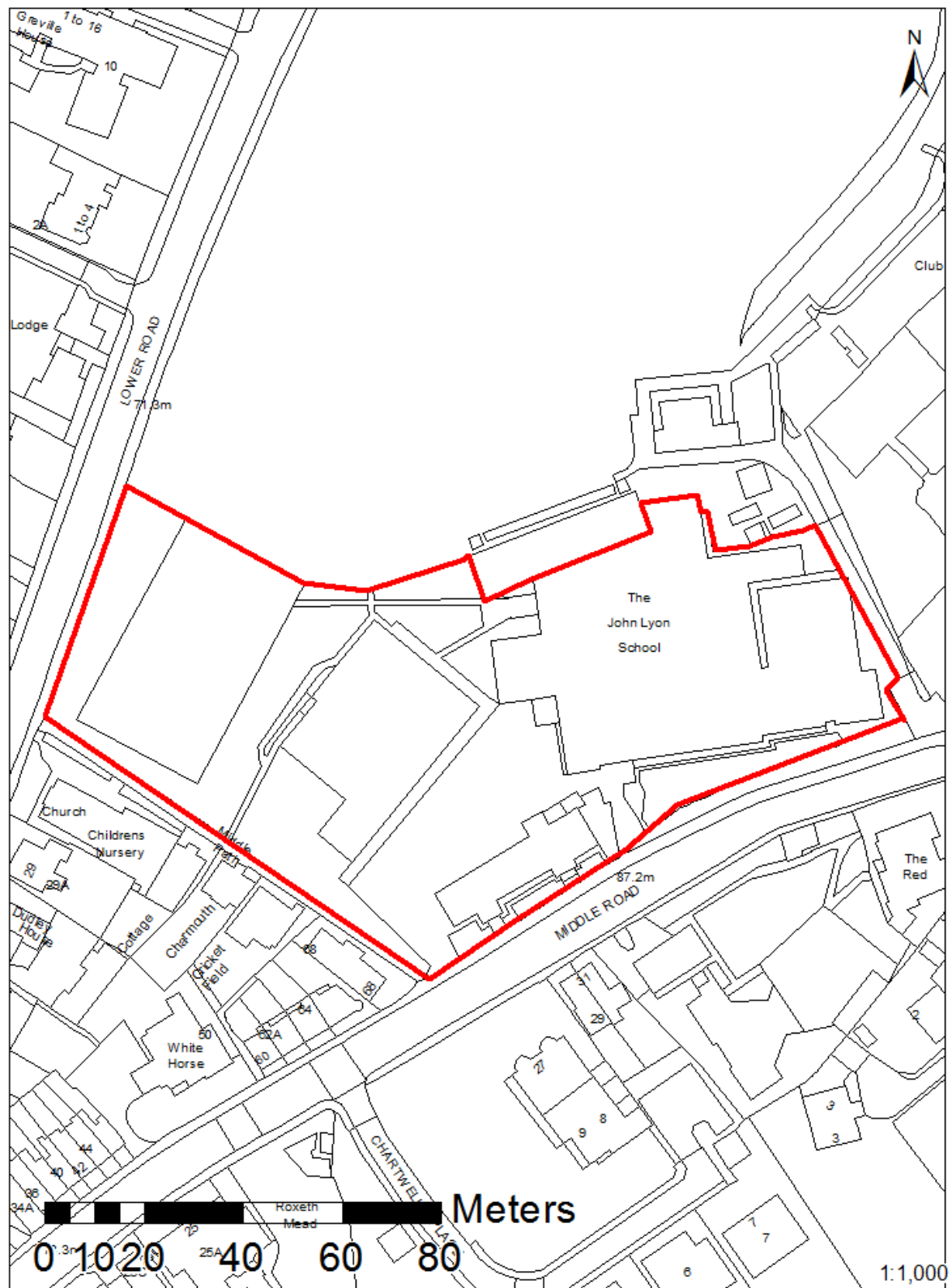
**Agenda Item: 3/01**

 = application site

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

**P/2092/21**

## John Lyon School, Middle Road



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# LONDON BOROUGH OF HARROW

## PLANNING COMMITTEE

**29<sup>th</sup> September 2021**

**APPLICATION NUMBER:** P/2092/21  
**VALID DATE:** 2<sup>nd</sup> July 2021  
**LOCATION:** JOHN LYON SCHOOL,  
MIDDLE ROAD  
**WARD:** HARROW ON THE HILL  
**POSTCODE:** HA2 0HN  
**APPLICANT:** THE KEEPERS AND GOVERNORS OF THE  
POSSESSIONS REVENUES AND GOODS OF THE  
GREE GRAMMAR SCHOOL OF JOHN LYON  
**AGENT:** RAPPLEYS  
**CASE OFFICER:** CATRIONA COOKE  
**EXPIRY DATE:** 7<sup>TH</sup> July 2021

### PROPOSAL

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

The application proposes to fully discharge the obligations within the S.106 which restricts future development to within a building envelope, 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.

### RECOMMENDATION A

The Planning Committee is asked to:

- 1) Agree the reasons for refusal as set out in this report,

Had the applicant not appealed the application 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 23<sup>rd</sup> June 1995 (The Principal Agreement) as varied by deed of variation dated 24<sup>th</sup> September 2007 (First Amendment), application P/3420/06 dated 16 October 2007 (Second Amendment) and P/2160/10 dated 11<sup>th</sup> 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).

## **INFORMATION**

This application is reported to the planning committee due to being called in by a nominated member due to concerned neighbours and public interest.

Statutory Return Type:	Discharge Section 106 Obligation
Council Interest:	None

GLA Community Infrastructure Levy (CIL) Contribution (provisional):	N/A
Local CIL requirement:	N/A

## **HUMAN RIGHTS ACT**

The provisions of the Human Rights Act 1998 have been taken into account in the processing of the application and the preparation of this report.

## **EQUALITIES**

In determining this planning application, the Council has regard to its equalities obligations including its obligations under section 149 of the Equality Act 2010.

For the purposes of this application there are no adverse equalities issues.

## **S17 CRIME & DISORDER ACT**

Policy D11 of the London Plan (2021) and Policy DM1 of the Development Management Policies Local Plan require all new developments to have regard to safety and the measures to reduce crime in the design of development proposal. As the proposal primarily relates to matters pertaining to section 106 Obligations, it is considered that the obligations sought to be discharged do not adversely affect crime risk.

## 1.0 **SITE DESCRIPTION**

- 1.1 The application site comprises several School buildings located on the top end of Middle Road (both sides).
- 1.2 The School provides secondary level education for boys between 11 to 18 years of age. The School will be accepting girls from September 2021.
- 1.3 The site is bounded by residential development to the east, south and west and by Metropolitan Open Land to the North.
- 1.4 The site is located within Roxeth Hill Conservation Area and Harrow on the Hill Area of Special Character.

## 2.0 **PROPOSAL**

- 2.1 The application proposes to fully discharge the obligations within the S.106 which restricts future development to within a building envelope, 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.

## 3.0 **RELEVANT PLANNING HISTORY**

- 3.1 The site has an extensive planning history. However, the following applications are most relevant to this current application:

Ref no.	Description	Status and date of 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 26/06/95
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-JUL-2014
P/4247/14	Modification to section 106 planning obligation relating to planning permission WEST/695/94/FUL dated 23rd June 1995 (principal	Refused 24/02/2015

	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	
Reason for Refusal		
1. The proposed modification to the principal Section 106 Agreement dated 23rd June 1995, as varied by the deed of variation dated 24th September 2007, relating to the limitations of students numbers, would result in an unacceptable level of noise, disturbance and traffic movements, to the detriment of the residential amenities in Middle Road, Lower Road, Byron Hill Road, Crown Street, Chartwell Place, Clonmel Close and surrounding areas, contrary to policy 7.15 of The London Plan (2011) and policy DM1 of the Harrow Development Management Policies Local Plan (2013).		
P/1020/16	Modification to section 106 planning obligation relating to planning permission WEST/695/94/FUL dated 23rd 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	Refuse 25/05/2016  Appeal Dismissed
Reason for refusal:		
1. The proposed modification to the principal Section 106 Agreement dated 23rd June 1995, as varied by the deed of variation dated 24th September 2007, relating to the limitations of students numbers, would result in an unacceptable level of noise, disturbance and traffic movements, to the detriment of the residential amenities in Middle Road, Lower Road, Byron Hill Road, Crown Street, Chartwell Place, Clonmel Close and surrounding areas, contrary to policy 7.15 of The London Plan (2016) and policy DM1 of the Harrow Development Management Policies Local Plan (2013).		

#### 4.0 **CONSULTATION**

- 4.1 A total of 177 consultation letters were sent to neighbouring properties regarding this application and site notices were put on lamp posts in the vicinity of the site and adverts were placed in local papers.
- 4.2 The overall public consultation period expired on 06/08/2021. 23 letters of objection for the application were received.
- 4.3 A summary of the responses received are set out below:

<b>Summary of Comments</b>	<b>Officer Comments</b>
Shows a total disregard to the needs and concerns of local residents	See section 6 below
The School argue that there is no longer a useful purpose served by the S.106. This argument is at odds with the fact that they have repeatedly sought to amend the S.106. As the school now wish to develop outside of the agreed envelope with its associated impacts on the conservation areas, is further and conclusive evidence that the Agreement continues to serve a useful purpose.	See Section 6 below
The Section 106 obligation was a restriction agreed by, not imposed on the school. The School is also officially recorded as agreeing to the usefulness of the S.106 Agreement in an Inspectors report in 2018	See Section 6 below
The Section 106 obligation does not preclude the recreational use of school facilities for the benefit of the wider community in the way outlined in the application.	See Section 6 below

#### 4.4 **Statutory and Non Statutory Consultation**

- 4.5 The following consultations have been undertaken:

LBH Conservation Officer

Harrow Hill Trust  
 Historic England (ancient Monument)  
 Historic England  
 Pebwatch  
 Natural England  
 Campaign for a Better Harrow Environment

- 4.6 A summary of the consultation responses received along with the Officer comments are set out below:

Consultee and Summary of Comments	
<u>LBH Conservation Officer</u>	Object
<u>Harrow Hill Trust:</u>	It is clear that the s106 has a useful purpose and that the application to dismiss it should be refused. The full response is attached at Appendix 1
<u>Historic England</u>	<u>No comments received</u>
<u>Pebwatch</u>	<u>No comments received</u>
<u>Campaign for a Better Harrow Environment</u>	<u>No comments received</u>

## 5.0 **POLICIES**

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that:
- ‘If regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.’
- 5.2 The Government has issued the National Planning Policy Framework [NPPF 2021] sets out the Government’s planning policies for England and how these should be applied and is a material consideration in the determination of this application.
- 5.3 In this instance, the Development Plan comprises The London Plan 2021 [LP] and the Local Development Framework [LDF]. The LDF comprises The Harrow Core Strategy 2012 [CS], Harrow and Wealdstone Area Action Plan 2013 [AAP], the Development Management Policies Local Plan 2013 [DMP], the Site Allocations Local Plan [SALP] 2013 and Harrow Local Area Map 2013 [LAP].
- 5.4 A full list of all the policies used in the consideration of this application is provided as Informative 1 in Appendix 1.



## 6.0 **ASSESSMENT**

6.1 The main issues are:

- Planning Obligation

### **Information**

6.1.1 This application was submitted with a S.73 application to add a condition to WEST/694/94/FUL to restrict pupil numbers. Following legal advice, the application was not accepted by the Local Planning Authority as there is no provision under S.73 to add conditions only to vary or remove. The applicants have subsequently withdrawn that application.

## 6.2 **Planning Obligation**

6.2.1 This application seeks to discharge obligations of S.106 attached to planning permission WEST/695/94/FUL dated 23<sup>rd</sup> June 1995 (the principal agreement) as varied by deed of variation dated 24<sup>th</sup> September 2007 (first amendment) application P/3420/06 dated 16<sup>th</sup> October 2007 (Second Amendment) and P/2160/10 dated 11<sup>th</sup> February 2011 (Third Amendment). The discharge is being sought under section 106A of the Town and Country Planning Act 1990 (as amended).

6.2.2 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.*

*(2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.*

*(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to [the local planning authority by whom the obligation is enforceable] [the appropriate authority] for the obligation—  
 (a) to have effect subject to such modifications as may be specified in the application; or  
 (b) to be discharged.*

*(4) In subsection (3) “ the relevant period ” means—  
 (a) such period as may be prescribed; or  
 (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.*

*(5) An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.*

*(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.*

*(7) The authority shall give notice of their determination to the applicant within such period as may be prescribed.*

*(8) Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.*

*(9) Regulations may make provision with respect to—*

- (a) the form and content of applications under subsection (3);*
- (b) the publication of notices of such applications;*
- (c) the procedures for considering any representations made with respect to such applications; and*
- (d) the notices to be given to applicants of determinations under subsection (6).*

6.2.3 The original section 106 Agreement is dated 23<sup>rd</sup> June 2015, and there is no prescribed period set out in the original deed into which a modification can be sought and therefore the default position would be what is set out under subsection 4(b) above – i.e. the period of five years beginning with the date on which the obligation is entered into, in which case, the test in determining a request for a modification shall be assessed against the requirements set out under subsection 6 (as noted above). If an applicant meets the criteria set out under subsections 3, 4 and 6 and the LPA (or other appropriate authority) refuses a request for modification of an obligation(s), there is a right to appeal to the Secretary of State under section 106B of The Act.

6.2.4 The Obligations of the original S.106 agreement are set out in the Second schedule and state:

- 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.
- 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 deed of variation dated 24<sup>th</sup> September 2007).

- 3) Not to use or 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.

6.2.5 The applicant has submitted a covering letter stating the following:

The obligations on the Principal Agreement (as amended) should be discharged without delay, as they no longer serve a useful purpose, not least as they:

- Unreasonably constrain development, unjustifiably extending existing policy constraints in the area (which themselves are considerable);
- Unjustifiably prevent development that is in accordance with planning policy, even if found to be so by the Secretary of State on appeal;
- Unreasonably restrict the use of school facilities, including dual or community use, even if such a use would create a substantial public benefit;
- Are unnecessary as any which are justified should be properly and preferably addressed by way of planning condition, in accordance with government policy, in the manner sought by the associated s.73 application.
- Have long since been discharged in any event (in two instances);
- Do not meet the statutory tests in relation 122 (as amended) of the Community Infrastructure Level Regulations 2010 and policy tests in NNP paras 54-56 required to impose planning obligations, and generally;
- Preclude 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 limited statutory grounds, severely restricting the ability of the School to develop and improve in accordance with government planning and education policy objectives.

6.2.6 With regards to points 1 and 2, WEST/695/94/FUL resulted in an undertaking by the landowners to commit to a building envelope onsite which would restrict the location of future building works. This was shown within drawing 977/31/B as part of the original Section 106 agreement. This agreement has subsequently been amended in 2007 under planning application P/3420/06 dated and P/2160/10 dated 11 February 2011 (Third Amendment) to allow building outside of the agreed envelope. Therefore, it is considered that the applicant's assertion that the S.106 Agreement unreasonably constrains development is unfounded as should an acceptable development be proposed a further amendment of the built envelope could be agreed. It is considered that the S.106 still serves a useful purpose in this regard.

- 6.2.7 With regard to point 3, this obligation relating to the use of the school premises outside of normal hours 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. In the absence of any other mechanism to ensure the residential amenities of neighbouring properties this obligation still serves a useful purpose.
- 6.2.8 With regards to point 4, as stated within this report it is considered that in the absence of any alternative mechanism to control the built envelope, pupil numbers and use of the School buildings outside of normal hours the S.106 agreement still serves a useful purpose.
- 6.2.9 With regard to point 5, it is agreed that clauses 4 and 5 have been discharged.
- 6.2.10 With regards to point 6 and 7. The merits of the S,106 have recently been assessed at appeal. In dismissing the appeal (P/1020/16/5049 dated 16<sup>th</sup> January 2018) relating to the modification of the S.106 agreement to increase pupil numbers the Inspector stated at paragraph 13 that “It is accepted by both the Council and the Appellant that the obligation continues to serve a useful purpose”. The Inspector goes on to state at paragraph 74 “The current section 106 agreement serves a useful purpose, restricting traffic generation to reasonable level” The removal of these obligations and in the absence of any alternative mechanism the removal of these obligations could 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.

## 7.0 Conclusion

- 7.1 The main issue is whether the S.106 as amended still serves a useful purpose. John Lyon School is sited within a Conservation Area and Harrow on the Hill Area of Special Character. It is considered that in the absence of a suitable alternative mechanism the S.106 continues to serve a useful purpose in protecting the Heritage assets and residential amenities of local residents by restricting the building envelope and pupil numbers.

Interim Chief Planning Officer	Beverley Kuchar 16/09/21
Corporate Director	Dipti Patel 16/09/21

## APPENDIX 1 – The Harrow Hill Trust Objection



Planning Department  
Harrow Council  
Civic Centre, Station Road  
Harrow  
HA1 2UY

Holm Oak  
Mount Park Avenue  
Harrow on the Hill  
HA1 3JN  
[REDACTED]

Via email to: [planning.applications@harrow.gov.uk](mailto:planning.applications@harrow.gov.uk)

24th July 2021

cc Ward councillors

RE: P/2092/21 John Lyon School, Middle Road, Harrow, HA2 0HN

The applicant has applied to dismiss the current S106 legal agreement on the basis that it does not serve any useful purpose. As you know the Trust has extensive knowledge of this agreement and of its application. In this application they record their support the continuation of one of the clauses, thereby confirming the useful purpose of that clause to the S106 agreement. Hence, the decision before you is easily made to refuse its dismissal as there is clearly a continued useful purpose. Further detailed evidence to support its useful purpose is provided below.

On 16<sup>th</sup> January 2018 Karen L Ridge LLB (Hons) MTPL Solicitor an Inspector appointed by the Secretary of State for Communities and Local Government having looked extensively at one specific important obligation of the S106 agreement provided a ruling and her report included the following statements.

- 1) *"It is accepted by both the Council and Appellant that the obligation continues to serve a useful purpose."*
- 2) *"Both parties are agreed that the useful purpose is broadly to ensure that traffic generation is restricted to reasonable levels."*
- 3) *"Further, the approved travel plan which fulfilled this obligation was clear in its intent and purpose. It specifically required annual review and monitoring. It seems clear to me that the school itself saw this as an ongoing responsibility..."* So it was not just a snap shot at the time of her report. As the Inspector said, it is an ongoing responsibility. As such it is a living breathing document which has relevance to the Conservation Areas and resident's lives today.
- 4) In paragraph 74 of the Inspector's report her conclusion is also that *"The current section 106 agreement serves a useful purpose, restricting traffic generation to reasonable levels"*.
- 5) The Inspector links the useful purpose agreed by the applicant, the Council and ruled on by herself

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Charity registration number 286709

to risks to driver and pedestrian safety in the vicinity. We consider that this is of paramount relevance today.

- 6) It should be noted that, in the opinion of the Inspector, the applicant's own attempts to vary the agreement fell short of what was required, and further shows the importance of the s106 agreement format which allowed such scrutiny to have taken place and for continued annual scrutiny of the travel plan and restriction of pupil numbers.
- 7) Following on from point 6 above, it is not just the scrutiny from the Local Authority which is important for this location, a substantial input to the overall scrutiny came from local residents and ourselves. This shows the importance of local knowledge in the process and not to leave matters to planning conditions determined by the Council's planning department, which has to cover the whole borough, does not reside in the area, and would be unable to produce the same in-depth scrutiny in the normal planning process without a S106 agreement.
- 8) The s106 agreement has served an extremely useful purpose and continues to do so. A further useful purpose is to preserve the unbuilt Conservation Area which is still valid today. The building of a four-storey block designed for the wrong conservation area which is 'back land' or garden development, would not be allowed to be undertaken by any resident in that Conservation Area for the same planning reasons as should be maintained here. However, the section 106 agreement goes beyond normal residential assessment and covers important and ongoing constraints which are relevant to the impact on living conditions as highlighted in the Inspector's report.

We think this makes the decision to refuse the application to dismiss the s106 agreement on the grounds that it does not serve a useful purpose a very easy and clear cut one. It clearly does serve a useful purpose. However, for the sake of completeness and in support of open consultation, we will now also address the points which the applicant makes.

Addressing their fourth bullet point first, as it flows from the points made above. The applicant contends that the provision for restricting school numbers could be attached to a one-off planning application using s73. Firstly, this clearly shows that they continue to believe that this condition of the S106 agreement still serves a useful purpose. Hence, it stands to defeat the grounds on which they are applying for its dismissal. The application is not to alter the s106 agreement such that this is the only condition to be maintained, which would at least have more logic, as opposed to providing evidence which is self-defeating to the application.

We have also shown above how the continuing obligations are important and that the s106 agreement has proved useful and its use and relevance was supported by the Inspector in the face of alternative arrangements suggested by the applicant. Without the s106 there is a risk that the applicant would make continuous applications and appeals, costing the Local Authority considerable time and expense. Such applications would create considerable uncertainty and unnecessary anxiety for the residents. Despite us being told by successive headteachers that their plans are 21st century and 'future proof', the next headteacher changes the plans and claims the same. It is the s106 agreement's ability to last longer in place than a headteacher that provides more social cohesion desired under the current planning code.

The first bullet point in the Planning Statement argues that the obligations unreasonably constrain development, unjustifiably extending existing policy constraints in the area. There was nothing unreasonable in the process and decision process, as it was signed up to willingly by the applicant to justify a major development in the Conservation Area and residential area, including the ongoing restrictions which are just as relevant today. The site is bespoke, with bespoke uses and is placed within narrow and restricted streets.

The second bullet point is that the obligations unjustifiably restrict development, even if a planning

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Charity registration number 288709



application is in accordance with planning policy. What is relevant here is that the obligations are by their nature additional considerations to planning policy and serve to help guide the application of planning policy as applied to this particular site. Planning policy in itself is therefore not sufficient to overcome this and it is somewhat strange to argue otherwise. Any different interpretation or evolution of any specific National policy can always be addressed at the time as always happens, but the S106 is still relevant today.

We take particular issue with the third bullet point which states that the obligations unreasonably restrict the use of the school facilities, including dual or community use, even if such as use would create a substantial benefit. The S106 agreement has served a vital role with regard to the breach of the agreement by the applicant and the failure to implement an important requirement, namely an effective travel plan. The school opened the sports centre to the paying public, in breach of a clause in the S106 agreement. The S106 agreement allows the applicant to apply for a change in the definition of permitted registered user. Our Executive Committee minutes of 11 July 2013 recorded the following.

"Closure of the John Lyon Sports Centre – Apparently, the Council had not closed the Sports Centre down, for a breach of the School's 106 agreement. It had been the School's decision and was proving to be very unpopular with swimming clubs and local users as evidenced by 1300 signatures on petition for its re-opening."

The Council minutes (23/7/13 (Item 421.) & Overview and Scrutiny Committee Special Cabinet meeting 6/6/13) , clearly show that it was the applicant's refusal to propose an amendment to the definition of permitted registered user which closed the sports facilities to the public and that it was against the wishes of the Council as it affected 19 local sports clubs with approximately 1,000 children swimming each week. The closure was also against the Harrow Local Plan core policy CS3 I. So, to claim it is unreasonable implying that it is not within their powers is out of context with the reality of the process. What is of particular importance is that by having the s106 agreement it means that there is an element of discussion and control outside of that of the applicant to ensure that any such application would have proper constraints attached such as opening hours, etc. and perhaps be trialled and potentially be reversed should the trial not be as expected, hereby showing another useful function of the s106 agreement now and in the future.

We covered the fourth point already and the fifth point that the obligations have long since been discharged is not of relevance as key clauses clearly have not and hence that claim cannot form a basis for the dismissal of the entire agreement.

The sixth point regarding S122 and the NPPF was addressed by the applicant and the Local Authority upon signing the agreement and by their agreement to the subsequent amendments in 2007 and 2011 and by the Inspector at the recent Planning Inquiry report of 16 January 2018.

The final point seems to miss the point that the S106's purpose is that of restriction and stability as opposed to endless application and appeals by the applicant. Also contrary to the claim to the opposite, it does not stop the School redeveloping the site, such as changing the layouts of existing buildings, upgrading facilities, incorporating new energy and green design features, and even demolishing and replacing buildings.

It is clear that the s106 has a useful purpose and that the application to dismiss it should be refused.

Yours sincerely

*Paul Catherall*

Paul Catherall

Chair, Harrow Hill Trust Planning Committee

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Charity registration number 266709

APPENDIX 2 – Principal S,106 Agreement

LONDON BOROUGH OF HARROW (1)

-and-

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

-and-

NATIONAL WESTMINSTER BANK PLC (3)

---

DEED OF AGREEMENT

Relating to land at The John Lyon School  
Middle Road Harrow on the Hill  
in the London Borough of Harrow

---

LB Harrow Legal Services  
PO Box 2  
Civic Centre  
Harrow  
Middlesex  
HA1 2UH

DX 30450 HARROW 3

TEL: 0181 863 5611 Ext.2864 (Elaine McEachron)

FAX 0181 424 1557

Ref: LP/EM/11437

Doc: 0388j



THIS DEED OF AGREEMENT is made the twenty third day of June One thousand nine hundred and ninety five BETWEEN (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW of PO Box 2 Civic Centre Station Road Harrow Middlesex HA1 2UH ("the Council") (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 ("the Developer") and (3) NATIONAL WESTMINSTER BANK PLC of 315 Station Road Harrow HA1 2AD ("the Mortgagee")

#### INTERPRETATION

(1) In this Agreement the following words and expressions shall unless the context otherwise requires have the following meanings:-

#### WORDS AND EXPRESSIONS

#### MEANINGS

"the Planning Application"	the application for planning permission statutorily acknowledged by the Council on the Seventeenth day of November 1994 under the Council's reference WEST/695/696/94/FUL (as amended prior to the completion hereof)
"the Development"	the development referred to in the Planning Application and described in the First Schedule
"the Application Plans"	the plans and drawings forming part of the Planning Application bearing the following reference:-  WEST/695/696/94/FUL
"the Site Plan"	the plan marked JL1
"the Plan"	the Drawing No. 977/20 annexed hereto
"the Land"	the land at The John Lyon School Middle Road Harrow on the Hill shown for identification purposes edged red on the Site Plan

"the Model Planning Notice"	the form of notice of grant of planning permission annexed hereto
"the Planning Permission"	the planning permission to be granted pursuant to the Planning Application in the precise form of the Model Planning Notice
"the Operative Acts"	Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972
"the 1990 Act"	the Town and Country Planning Act 1990 as amended
"the School"	the John Lyon School
"Permitted Recreational Uses"	the use of the sports hall and swimming pool premises for purposes connected with the provision of physical education of pupils of the school or for sporting recreation for parents and immediate families of pupils attending the school members of staff and their families and sports teams of the Old Lyonian Association and such other categories of people as shall be approved in writing by the Council (such approval not to be unreasonably withheld taking account of all material planning considerations prevailing at the time)

(2) Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice-versa

(3) Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa

(4) References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force

(5) Covenants made hereunder

- (i) if made by more than one person are made jointly and severally and
- (ii) are to the intent that the same shall bind whomsoever shall become a successor or successors in title to the Land and
- (iii) are to the intent that the same shall operate as a charge on the Land and shall be registered in the Register of Local Land Charges
- (iv) are to the intent that each of the same shall be a planning obligation for the purposes of S.106 of the 1990 Act

#### RECITALS

- (1) The Council is the Local Planning Authority for the purposes of this Agreement
- (2) The Developers Clerk Andrew John Francis Stebbings has made Statutory Declarations on behalf of the Developer dated 12th day of January 1989 and 3th March 1995 that the Developer has been in undisputed possession and enjoyment of the part of the Land situate at Middle Road (shown for identification purposes only edged green and blue on the Site Plan) for over one hundred years and by a Legal Charge dated 25 July 1989 registered by way of a caution at HM Land Registry under Title Number NGL543067 charged the Green Land to the Mortgagee
- (3) The Developer is registered at HM Land Registry with freehold Title Absolute under Title Nos. MX451197 and MX443085 in respect of the Part of the Land at 62-64 Crown Street (shown on the Plan as "Oldfield House")

- (4) The Developer is registered at HM Land Registry with freehold Title Absolute under Title No. MX70845 in respect of the Part of the Land at The Red House
- (5) The Developer proposes to extend the educational facilities upon the Land to provide sports hall swimming pool library and ancillary facilities
- (6) In contemplation of being granted planning permission the Developer has agreed to restrict future development outside the defined building envelope and to enhance the landscaping on land immediately adjoining the Land
- (7) The Council decided at a meeting of its Development Control Committee on the Twelfth day of January One thousand nine hundred and ninety five to grant planning permission for the Development in the form of the Model Planning Notice subject to the completion of an agreement under the Operative Acts for the purpose of making acceptable arrangements in conjunction with the carrying out of the Development pursuant to the Planning Permission
- (8) The parties hereto have accordingly agreed to enter into this Agreement pursuant to the provisions of the Operative Acts upon the terms and conditions hereinafter appearing with the intent that it should be binding not only upon the said parties but also upon their successors in title and any persons claiming through under or in trust for them

NOW THIS DEED WITNESSETH as follows:-

- 1. This Agreement is completed pursuant to the Operative Acts and the covenants by the Developer hereinafter contained shall be ones to which the provisions of Section 106 of the 1990 Act shall apply and shall be binding and enforceable against the Developer and his successors in title to the Land
- 2. Each of the obligations created by this Agreement constitutes a planning obligation for the purpose of Section 106 of the 1990 Act and shall be enforceable by the Council as such

3. This Agreement is a conditional agreement and shall become binding upon both of the following two conditions being satisfied

- (a) the granting of the Planning Permission
- (b) the Development having been begun pursuant to the Planning Permission by the carrying out of any of the material operations referred to in Section 56 of the 1990 Act

4. Subject as hereinafter provided the Developer hereby for himself and his successors in title to the Land undertakes agrees declares and covenants with the Council that the Land shall be subject to the terms conditions restrictions and obligations as to the manner of carrying out the Development and otherwise contained in the Second Schedule

5. The Mortgagee hereby consents to the giving of the covenants on the part of the Developer herein contained and the Mortgagee hereby agrees to be bound by the said covenants

6. IT IS HEREBY AGREED that:-

- (a) Nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their functions as Local Planning Authority and their rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement
- (b) If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

7. No waiver (whether express or implied) by the Council of any breach or default by the Developer in performing or observing any of the terms or conditions of this Agreement shall constitute a

continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Developer

8. The Developer shall on the execution hereof pay the Council's costs and disbursements incurred in the preparation and settlement of this Agreement in the sum of EIGHT HUNDRED AND SEVENTY POUNDS (£870)

9. Notwithstanding the terms contained herein the parties hereto agree that the Mortgagee shall not be held liable or continue to be bound for any breaches of the covenants restrictions or obligations after it has ceased to be a Mortgagee in possession of the Property and/or has disposed of all its interests in the Property or the part(s) in respect of which such breaches occur

#### THE FIRST SCHEDULE

##### The Development

Construction of a Part Single 2, 3 and 4 storey building to provide sports hall, swimming pool and library and ancillary areas alterations to existing building and parking

#### THE SECOND SCHEDULE

##### Obligations Affecting the Development

The Developer for itself and its successors in title to the Land hereby covenants with the Council

- 1) The Developer agrees that no development (whether requiring express planning permission 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 development may be granted planning permission in the areas edged blue on the drawing upon application being made to the Council
- 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 ~~(such approval not to be unreasonably withheld or delayed)~~



- 3) Not to use or 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 the 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 the planting of trees and shrubs on land outside but immediately adjoining the site which is in the ownership of the Developer
- 6) To implement and complete the said landscaping scheme in accordance with the approved scheme

IN WITNESS whereof the Council the Developer and the Mortgagee have caused their respective Common Seals to be hereunto affixed to this Deed 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:-

Mayor

*Stefan Clark*

Authorised Officer

*R. Hey*



137672

Appendix 3 – Deed of Variation 24<sup>th</sup> September 2007

Dated 24 SEPTEMBER 2007

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

- and -

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

---

**DEED OF VARIATION**

Relating to land at **The John Lyon School**  
**Middle Road, Harrow on the Hill**  
in the London Borough of Harrow

---

LB Harrow Legal Services  
PO Box 2  
Civic Centre  
Station Road  
Harrow  
Middlesex  
HA1 2UH

DX 30450 HARROW 3

Tel: 020 8424 1248  
Fax: 020 8424 1557

Ref: LP/ND/PAG13393

PLANNING/C) 08 Deed of Variation.doc



THIS DEED OF AGREEMENT is made the 24 day of September Two Thousand and ~~two~~<sup>and</sup> ~~the~~ BE T W E E N (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW of PO Box 2 Civic Centre Station Road Harrow Middlesex HA1 2UH (hereinafter called "the Council") of the one part and THE KEEPERS AND GOVERNORS OF THE POSSESSIONS REVENUES AND GOODS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON Middle Road Harrow on the Hill Middlesex (hereinafter called "the Developer") of the other part

#### WHEREAS

- (1) By a Deed dated 23 June 1995 (hereinafter called "the Principal Deed") made between the Council of the first part the Developer of the second part and NATIONAL WESTMINSTER BANK PLC of the third part the Developer agreed inter alia that the number of pupils enrolled for full time education at the School should not exceed 525 or such increase as should be first approved in writing by the Council
- (2) In this Deed where the context so admits or requires words and expressions and phrases shall have like meanings as in the Principal Deed and in particular the expressions "the Land" and "the School" used herein have the same meaning as is given to those expressions in the Principal Deed
- (3) Upon completion of the Principal Deed the Council as local planning authority granted planning permission for the Development on the Land under its reference number WEST/695/94/FUL (hereinafter called "the Planning Permission")
- (4) The Developer has submitted to the Council a written request dated 10 October 2003 to allow the School roll to be increased from 525 to 600
- (5) The Council decided at its meeting of its Development Control Committee on 18<sup>th</sup> May 2004 to allow the School roll to be increased from 525 to 600 subject to the prior submission and implementation by the Developer of a travel plan which has first been agreed by the Council

(6) The parties hereto propose that the Principal Deed be supplemented as hereinafter provided and have accordingly agreed to enter into this Deed upon the terms and conditions hereinafter appearing with the intent that it should be binding not only upon the said parties but also upon any person deriving title from them as provided by Section 106 of the Town and Country Planning Act 1990 as amended (hereinafter called "the 1990 Act") and any persons claiming through under or in trust for them

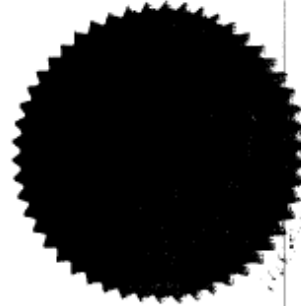
**NOW THIS DEED WITNESSETH** as follows:-

1. THE PARTIES HERETO AGREE that the School roll be increased from 525 to 600 subject to the prior submission and implementation by the Developer of a travel plan which has first been agreed in writing by the Council
2. THIS Deed is entered into and completed pursuant to the 1990 Act and the obligations entered into by the Developer and hereinafter contained shall be ones to which the provisions of Section 106 of the 1990 Act shall apply
3. EACH of the obligations created by this Deed constitutes a planning obligation for the purposes of Section 106 of the 1990 Act and are enforceable by the Council as such
4. THE provisions of this Deed shall become binding upon the parties hereto upon the completion hereof
5. THE covenants conditions and other provisions contained in the Principal Deed are supplemented by this Deed and in addition are hereby ratified and confirmed and shall continue in full force and effect
6. THE Developer shall on the execution hereof pay the Council's costs incurred in the preparation and settlement of this Deed

A memorandum of this Deed shall be immediately endorsed upon the Principal Deed

EXECUTED AS A DEED but not delivered until the day and year first before written

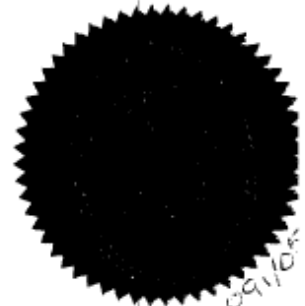
THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON )  
BOROUGH OF HARROW was hereunto )  
affixed to this Deed in the presence of: )



~~Mayor~~

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

Appendix 4 – Deed of Variation 16<sup>th</sup> October 2007

Dated 16 OCTOBER 2007

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

- and -

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

---

**DEED OF VARIATION**

Relating to land at The John Lyon School  
Middle Road Harrow on the Hill  
in the London Borough of Harrow

---

Legal & Governance Services  
London Borough of Harrow  
PO Box 2  
Civic Centre  
Station Road  
Harrow  
Middlesex  
HA1 2UH

DX 30450 HARROW 3

Tel: 020 8863 5611  
Fax: 020 8424 1557

Ref: AMC/EC-002818

**THIS DEED OF AGREEMENT** is made the 16 day of October Two thousand and Seven **BETWEEN**

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW of PO Box 2 Civic Centre Station Road Harrow Middlesex HA1 2UH (hereinafter called "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 (hereinafter called "the Developer") of the second part

#### **RECITALS**

1. On 23 June 1995 a Deed of Agreement ("the Principal Agreement") under section 106 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") was entered into by the Council, the Developer and National Westminster Bank PLC ("the Mortgagee") relating to land at the John Lyon School, Middle Road, Harrow on the Hill, HA2 0HN ("the Land")
2. By way of a Deed of Release dated 5 November 2004, the Mortgagee released its legal charge over the Land
3. Clause 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 Plan No.977/31/B ("the Plan") annexed to this Agreement save that future development within areas edged blue on the Plan may be granted planning permission upon application to the Council
4. This Agreement is supplemental to the Principal Agreement and the obligations in this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act
5. The Council is the Local Planning Authority for the area within which the Land is situated and by whom the obligations in this Agreement and the Principal Agreement are enforceable
6. The Developer is the owner of the Land as set out in Recitals (2) to (4) in the Principal Agreement

7. On 30 November 2006 the Developer submitted a planning application (ref: P/3420/06/CFU) to the Council for planning permission for a three-storey side/rear extension to the existing science block, to provide three new classrooms together with various internal alterations ("the Scheme")
8. The Scheme is located outside the building envelope edged in red on the Plan
9. The Council resolved at a meeting of its Strategic Planning Committee on 18 April 2007 to grant planning permission for the Scheme subject to variation of the Principal Agreement in the manner set out in this Agreement
10. The parties to this Agreement have agreed to the variation of the Principal Agreement in the manner set out below with the intent that the same should be binding not only upon the said parties but also upon their successors in title and any person claiming title through under or in trust for them

**NOW THIS DEED WITNESSES** as follows:-

1. On and from the date of this Agreement the Principal Agreement shall be read and construed as if:
  - a. The following definition is inserted in Clause (1) (Interpretation) of the Principal Agreement:
 

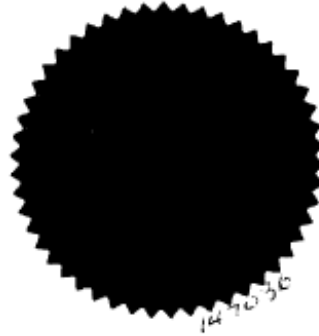
"the Scheme" means the three-storey side/rear extension to the existing science block to provide three new classrooms together with various internal alterations approved by the Council under planning application reference P/3420/06/CFU
  - b. A new Clause 1.1 is inserted immediately after Clause 1 of the Second Schedule (Obligations Affecting the Development) of the Principal Agreement as follows:
 

1.1 Nothing in Clause 1 of this Schedule shall prohibit or limit the development of the Scheme outside the building envelope edged red on Drawing No. 977/31/B
2. Save as varied by this Agreement the Principal Agreement shall remain in full force and effect in relation to other matters contained therein

3. The Developer shall on the execution hereof pay the Council's reasonable costs properly incurred in the preparation and settlement of this Agreement

**EXECUTED AS A DEED** but not delivered until the day and year first before written

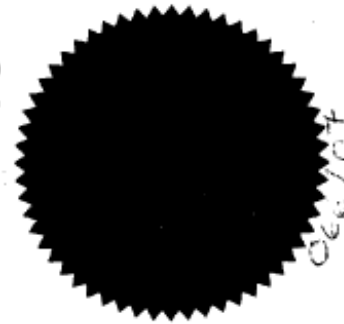
THE COMMON SEAL OF THE MAYOR AND )  
BURGESSES OF THE LONDON BOROUGH )  
OF HARROW was hereunto affixed to this )  
Deed in the presence of: )



Authorised Officer

*Smclark*

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:- )



*Wesley*  
*J.W. Hearn*

Two of the said Keepers and Governors

*[Signature]*  
The Clerk

Appendix 5 – Deed of Variation 11<sup>th</sup> February 2011

Dated 22<sup>nd</sup> February 2011

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

- and -

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

---

**DEED OF VARIATION**

Relating to John Lyon School Middle Road  
Harrow on the Hill  
in the London Borough of Harrow

---

Legal & Governance Services  
London Borough of Harrow  
PO Box 2  
Civic Centre  
Station Road  
Harrow  
Middlesex  
HA1 2UH

DX 30450 HARROW 3

Tel: 020 8424 1168  
Fax: 020 8424 1557

Ref: ABK /EC-006003



**THIS DEED OF VARIATION** is made the 22<sup>nd</sup> day of February Two Thousand and Eleven

**B E T W E E N:**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW** of PO Box 2 Civic Centre Station Road Harrow Middlesex HA1 2UH (hereinafter called "the Council")
- (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 (hereinafter called "the Developer")

**RECITALS**

1. On 23 June 1995, the Council, the Developer and National Westminster Bank PLC ("the Mortgagee") entered into an agreement ("the Principal Agreement") under section 106 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") relating to land at John Lyon School Harrow on the Hill HA2 0HN ("the Land")
2. The Mortgagee released its legal charge over the Land by way of a Deed of Release dated 5 November 2004
3. The obligations in the Principal Agreement were modified by deeds of variation dated 24 September 2007 ("the First Deed of Variation") and 16 October 2007 ("the Second Deed of Variation") made between the Council and the Developer
4. Clause 1 of the Second Schedule of the Principal Agreement contains an obligation which restricts development on the Land outside a building envelope shown edged red on the plan (Drawing No 977/31/B) annexed to the Principal Agreement save that future development within the areas edged blue on the plan annexed to the Principal Agreement may be granted planning permission upon application to the Council
5. This Deed is supplemental to the Principal Agreement, the First Deed of Variation and the Second Deed of Variation

6. The Council is the Local Planning Authority for the purposes of the 1990 Act and for the area in which the Land is situated.
7. The Developer is the freehold owner of the Land registered at HM Land Registry under title numbers MX70845 and NGL889975
8. The Developer has applied (ref: P/2160/10) to the Council for planning permission to carry out development on the Land
9. Part of the proposed development will be located outside the building envelope shown edged red on the plan annexed to the Principal Agreement and the Second Deed of Variation
10. The Council resolved at a meeting of its Planning Committee on 8<sup>th</sup> December 2010 to grant planning permission for the proposed development subject to variation of the Principal Agreement in the manner set out in this Deed
11. The parties to this Deed have agreed to the variation of the Principal Agreement with the intent that the obligations hereinafter contained should be binding not only upon the said parties but also upon their successors in title and any person claiming title through under or in trust for them

**NOW THIS DEED WITNESSES** as follows:-

## **1. LEGAL EFFECT**

- 1.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act
- 1.2 The obligations in the Principal Agreement (read along with the First Deed of Variation and the Second Deed of Variation) as modified by this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council as such
- 1.3 It is hereby agreed by the parties that the provisions of this Deed shall take effect on the date set out above

## **2. MODIFICATIONS TO THE PRINCIPAL AGREEMENT**

6. The Council is the Local Planning Authority for the purposes of the 1990 Act and for the area in which the Land is situated.
7. The Developer is the freehold owner of the Land registered at HM Land Registry under title numbers MX70845 and NGL889975
8. The Developer has applied (ref: P/2160/10) to the Council for planning permission to carry out development on the Land
9. Part of the proposed development will be located outside the building envelope shown edged red on the plan annexed to the Principal Agreement and the Second Deed of Variation
10. The Council resolved at a meeting of its Planning Committee on 8<sup>th</sup> December 2010 to grant planning permission for the proposed development subject to variation of the Principal Agreement in the manner set out in this Deed
11. The parties to this Deed have agreed to the variation of the Principal Agreement with the intent that the obligations hereinafter contained should be binding not only upon the said parties but also upon their successors in title and any person claiming title through under or in trust for them

**NOW THIS DEED WITNESSES** as follows:-

## **1. LEGAL EFFECT**

- 1.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act
- 1.2 The obligations in the Principal Agreement (read along with the First Deed of Variation and the Second Deed of Variation) as modified by this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council as such
- 1.3 It is hereby agreed by the parties that the provisions of this Deed shall take effect on the date set out above

## **2. MODIFICATIONS TO THE PRINCIPAL AGREEMENT**

2.1 On and from the date of this Deed, the Principal Agreement shall be modified as follows:

2.1.1 The following definitions shall be inserted into Clause 1 (Interpretation) of the Principal Agreement:

**"Scheme 2"** means the two storey extension to existing main building to provide catering facilities and dining room; alterations to existing old building to facilitate its use as a sixth form centre together with associated landscaping approved by the Council on 8<sup>th</sup> December 2010 pursuant to planning application reference P/2160/10

2.1.2 Clause 1.2 shall be inserted into the Second Schedule of the Principal Agreement immediately after Clause 1.1 (inserted by the Second Deed of Variation) as follows:

**"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"**

2.1.3 Save as modified by this Deed the covenants and restrictions in the Principal Agreement (as modified by the First Deed of Variation and the Second Deed of Variation) shall remain in full force and effect

### 3. LEGAL COSTS

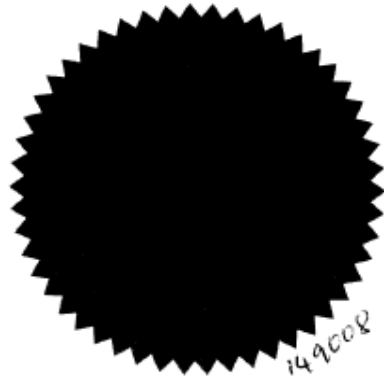
3.1 The Developer shall pay to the Council on completion of this Deed the Council's legal costs incurred in the negotiation preparation and settlement of this Deed in the sum of £1,000 (One Thousand Pounds)

**EXECUTED AS A DEED** but not delivered until the day and year first before written

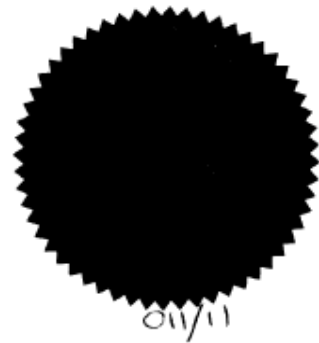
THE COMMON SEAL OF THE LONDON )  
 BOROUGH OF HARROW was hereunto )  
 affixed to this Deed in the presence of: )



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:



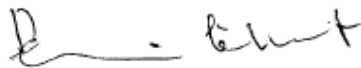
Two of the said Keepers and Governors

Signature



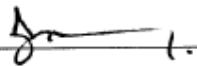
Name

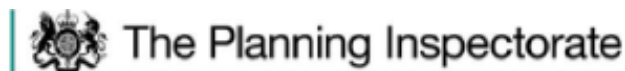
Signature



Name

The Clerk



Appendix 6 – Appeal decision – P/1020/16 dated 16<sup>th</sup> January 2018

## Appeal Decision

Inquiry Held on 19 April and 5, 6 & 7 September 2017

Site visits made on 20 April and 26 & 27 September 2017

**by Karen L Ridge LLB (Hons) MTPL Solicitor**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2018

**Appeal Ref: APP/M5450/Q/16/3160672**

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

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
- The appeal is made by The Keepers and Governors of the Free Grammar School of John Lyon against the decision of Harrow Council.
- The development to which the planning obligation relates is '*Construction of a part single 2, 3 and 4-storey building to provide sports hall, swimming pool and library and ancillary areas, alterations to existing building and parking*'.
- The planning obligation, dated 23 June 1995, was made between the Council of the London Borough of Harrow (1) and The Keepers and Governors of the Possessions, Revenues and Goods of The Free Grammar School of John Lyons (2) and National Westminster Bank PLC (3).
- The application Ref. P/1020/16, dated 20 February 2016, was refused by notice dated 1 July 2016.
- The application sought to have the planning obligation modified as follows: to allow an increase in the number of pupils on the roll from 525 to 710 and to put in place an enhanced school travel plan enforcement mechanism and stars performance measurement for travel plan.

### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the Inquiry two applications for costs were made. The first application was made by Harrow Council against The Keepers and Governors of the Free Grammar School of John Lyon. The second application was made by The Keepers and Governors of the Free Grammar School of John Lyon against Harrow Council. These applications are the subject of separate Decisions.

### Procedural Matters

3. The principal agreement which forms the subject of this dispute was entered into by The Keepers and Governors of the Free Grammar School of John Lyon and they are the Appellant in this appeal. Whilst this name was used on the application form for modification, all other Inquiry documentation has used the abbreviated form 'The John Lyon School'. In this appeal decision I shall also use the term 'the Appellant' to refer to The Keepers and Governors of the Free Grammar School of John Lyon and 'the school' to refer to The John Lyon School.

<https://www.gov.uk/planning-inspectorate>

4. The Harrow Hill Trust (HHT) is the main conservation society for Harrow. It has charitable status and comprises approximately 500 households who contribute by annual subscription. The HHT has been granted Rule 6 party status<sup>1</sup> in this appeal and played an active part in the Inquiry process.
5. A Statement of Common Ground (SCG) was entered into between the Council and Appellant and sets out the matters of agreement between these two principal parties.

### Main Issues

6. This is an appeal under section 106A of The Town and Country Planning Act 1990 against the Council's refusal to modify a section 106 agreement. Before setting out the main issues it is useful to record a chronology of events and the legal context in which the appeal is to be decided.

#### *Background*

7. The John Lyon School is an independent day school for boys founded in 1876. In 1994 the school sought planning permission for an additional building, to house extra facilities, as well as alterations to an existing building and parking. Planning permission<sup>2</sup> was duly granted subject to execution of a section 106 agreement ('the s106 agreement'). The s106 agreement<sup>3</sup> is the subject matter of this appeal. It contained a covenant by the school to the effect that the number of pupils on the school roll should not exceed 525 '*or such increase as shall be first approved in writing by the Council*'.
8. In 2007 a subsequent Deed of Variation<sup>4</sup> gave effect to a previous Council resolution to allow pupil numbers to increase to 600 '*subject to the prior submission and implementation by the Developer of a travel plan which has first been agreed by the Council*'<sup>5</sup>. Whilst there were two subsequent further deeds of variation these documents did not touch upon pupil number limits or travel plan provisions and I need not trouble myself with them here.

#### *The modifications sought*

9. The Appellant is now seeking modifications to the s106 agreement, as varied, to enable an increase in pupil numbers from 600 to 710. The suggested modifications would also contain provisions in relation to a travel plan and enforcement and monitoring mechanisms.
10. The application for modification was refused by the Council on the basis that the increase in pupil numbers would result in increased traffic movements and noise and disturbance which in turn would cause harm to the living conditions of residents in the immediate streets<sup>6</sup> and surrounding areas. The HHT take the position that any increase in pupil numbers over and above the existing 600 would cause material harm to highway safety as a result of increased congestion, obstruction and chronic parking pressure.

<sup>1</sup> Rule 6(6) The Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000.

<sup>2</sup> WEST/695/94/FUL

<sup>3</sup> Dated 23 June 1995

<sup>4</sup> Dated 24 September 2007

<sup>5</sup> Recitals clause (5)

<sup>6</sup> The streets particularly identified include Middle Road, Lower Road, Byron Hill Road, Crown Street, Chartwell Place, Clonmel Close and 'surrounding area'.



11. Finally I record that various other applications for modification were made to the Council but these were either deferred or refused for similar reasons to those set out above. These are not material to this appeal which is concerned with the refusal of application reference P/1020/16 only.

*The statutory basis for appeal*

12. A planning obligation may not be modified except by agreement between the appropriate authority and the person against whom the obligation is enforceable OR in accordance with the rights of appeal in section 106B of the Act. Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under section 106B. Section 106(6) sets out three options for any decision making authority. This case is concerned with the third option *'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.'*

*'A useful purpose'*

13. It is accepted by both the Council and Appellant that the obligation continues to serve a useful purpose. Both parties are agreed that the useful purpose is broadly to ensure that traffic generation is restricted to reasonable levels. This was recorded in a committee report in relation to the proposed variation in 2007. I pause here to record that my interpretation of 'reasonable levels' of traffic cannot be assumed to be some arbitrary limit on vehicle movements but must instead relate to the point at which traffic levels are increased to such a level as to cause material harm to an identified interest, such as the living conditions of surrounding residents.
14. I do not accept the Appellant's further contention that one of the purposes of the original deed was to essentially facilitate pupil number increases (provided this did not cause material harm). 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. I agree that no absolute or final limit was imposed in either of the agreements. However, this is a sensible drafting device used to reflect the fact that circumstances in the future could change and an increase may or may not be justified. There can be no inference taken that an increase in pupil numbers was in any way assumed or automatic. At the date of each agreement the pupil numbers were maxima, set having regard to the need to control traffic generation. The ability to increase pupil numbers is not a 'purpose' of the agreement in the sense that it does not go to the heart of the reason for imposition of the obligation. The purpose was simply to control numbers so as to control traffic generation.
15. I therefore conclude that the main issue to be addressed is whether or not the aforementioned purpose would be served equally well if the pupil numbers increased to 710 with the additional provisions in place. In examining these matters all parties agreed that it is appropriate to look at the effects on both living conditions and highway safety as raised by both the Council and HHT.
16. Finally I record my endorsement of Mr Fooke's proposition<sup>7</sup> that the statutory test can be passed in either of two ways. Firstly by demonstrating that the increased pupil numbers, with additional measures, would not result in any

<sup>7</sup> Paragraph 10.11 Appellants Closings.



material increase in traffic over and above that which is generated by 600 pupils under the current s106 obligation. The second means is a demonstration that any additional traffic over and above that which currently exists would not have a materially harmful effect. Following his closing submissions I again clarified the position with Mr Fookes and it was accepted that, in examining materially harmful effects, I was entitled to look at both living conditions effects advanced by the Council and the effects on highway safety advanced by the HHT.

## Reasons

17. In examining the main issue it is necessary to undertake a comparative exercise. The proposed modifications would result in an increase in pupils which, all other things being equal, would potentially increase car borne traffic. However the proposal must be examined in light of the additional covenants designed to change pupil and parental behaviour in terms of travel choices. This proposed modification must be looked at following an assessment of the current traffic levels and consideration of the effects of the original s106 agreement and the 'baseline' scenario. The baseline is a contentious matter.

### *Context*

18. It is agreed<sup>8</sup> that the original s106 placed no restrictions on staff numbers, opening hours and the number of days open and no restriction on the number of vehicles travelling to school. I shall proceed on this basis.
19. A travel plan was submitted and approved in 2007 in accordance with the 2007 Deed of Variation. The school has continued to submit travel plans on an annual basis since 2007. Such travel plans are designed to optimise the use of non-car modes of travel and their effectiveness is assessed having regard to the gold/silver/bronze accreditation provisions of the Sustainable Travel: Active Responsible Safe (STARS) system administered by Transport for London (TfL). The school has achieved and maintained bronze status since 2009/10.
20. The Appellant now seeks to increase pupil numbers to 710 together with payment of a Travel Management Contribution of £20,000 to be paid to the Council and held by it; appointment of a Travel Plan Co-ordinator and full implementation of an approved School Travel Plan which shall be updated annually; a commitment to undertake a travel survey within 6 months of the start of the academic year and further monitoring surveys. The modifications provide for an updating of the School Travel Plan in light of the monitoring in accordance with the set targets for achieving improvement in performance and Gold STARS status no later than 4 years from the start date.

### *Assessing the baseline*

21. The Appellant submitted a Transport Assessment with the application which records the results of traffic flows and on-street car parking surveys during two survey periods when the school was open and when it was closed. I agree that assessing the current baseline is not simply a matter of undertaking a traffic count. The comparative exercise needs to be done having regard to the current traffic levels, adjusted if necessary and appropriate, having regard to the legal responsibilities and duties of the school and other material factors including the operation and effectiveness of the s106 agreement as varied.

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<sup>8</sup> SCG

22. The pupil numbers are restricted to 600. Since the approved 2007 travel plan, travel plans have been submitted and approved annually. The Appellant contends that the Deed of Variation only required the submission of a single travel plan in 2007 to satisfy the terms of that obligation and that, should it so wish, all of the specific initiatives which have enabled its Travel Plan to achieve bronze status could be abandoned. On the Appellant's analysis it follows that the baseline is to assess the traffic generation of the school on the basis that the travel plan initiatives had not been implemented.

23. The proposition that the 2007 Deed of Variation only required the submission of one travel plan and its implementation for one year came as something of a surprise to local residents and the HHT. This proposition is important to the assessment of the baseline. Paragraph (5) of the recitals in the 2007 Deed simply states as follows:

*'The Council decided at its meeting of its Development Control Committee on 18<sup>th</sup> May 2004 to allow the School roll to be increased from 525 to 600 subject to the prior submission and implementation by the Developer of a travel plan which has first been agreed by the Council'.*

24. It is reinforced in clause 1 of the covenants which states:

*'THE PARTIES HERETO AGREE that the School roll be increased from 525 to 600 subject to the prior submission and implementation by the Developer of a travel plan which has first been agreed in writing by the Council'.*

25. The 2007 Travel Plan was submitted into evidence. It records that the school had its own private bus service in 2007 and, amongst other things, it sets out objectives and targets for 2007/08 together with an action plan. The travel plan had a monitoring and reviewing section which sets out that an annual progress review would be completed in March 2008 and a full review of the Travel Plan completed in March 2010. The plan contains the following endorsement prior to its execution by a series of signatories. The endorsement reads:

*'The following signatures confirm the school management have read and approved the contents of this document. By signing this document the school is committing itself to make every effort to resolve problems identified within the enclosed document and implement the actions identified. The school further acknowledges that they have committed to achieving all targets highlighted in their action plan and to the annual review and monitoring of the plan'.* [Inspector underlining]

26. On behalf of the school the plan was signed by the Headteacher, The Chair of Governors, a School Representative and a School Council Representative. The Appellant sought to cast some doubt on the submitted document given that it does not contain a specific date and they say it may not have been the first travel plan approved after completion of the Deed of Variation. The travel plan does not make reference to 'review in October 2007' as alleged by the Appellant, in fact it records that as the date of the next round of data collection. It is signed by seven signatories and dated 2007. In the absence of any other evidence I am satisfied that this is the travel plan designed to meet the obligations in the Deed of Variation.

27. Whilst the Deed of Variation simply required the submission of a travel plan, it is clear that the travel plan, which was subsequently approved and signed off, envisaged ongoing responsibilities in terms of the review and monitoring of



that travel plan. I must come to a view as to the implications and construction of the Deed of Variation as it is pivotal to the question of the school's current responsibilities.

28. The Deed of Variation is silent as to the length of time the travel plan should be in operation. It could be argued that the arrangements in a single travel plan were to be binding upon the school indefinitely. The Deed of Variation does not state that the travel plan should only last for one year. Further, the approved travel plan which fulfilled this obligation was clear in its intent and purpose. It specifically required annual review and monitoring. It seems clear to me that the school itself saw this as an ongoing responsibility as evidenced by the annual submission of travel plans ever since. This is the interpretation which I place upon the Deed of Variation as fulfilled by the arrangements set out in the Travel Plan. I do not accept that the travel plans since 2008 were entered into upon a voluntary basis and the school could resile from the commitments and actions set out in the various documents if it so chooses.

*Enforceability and effectiveness of current obligation*

29. There is a second argument relating to the effectiveness of the current obligations and the ability to enforce travel plan provisions. I note that the SCG records the comments of the Council's Head of Building and Control to the effect that there are '*no teeth in the current agreement*' on the basis that the obligation simply requires the school to implement a travel plan. The Appellant points out that there is no requirement to do any of the things which may be necessary to render a travel plan effective. This is contrasted with the proposed modifications which essentially set out the consequences of any breach and an enforcement mechanism.
30. The Appellant points out that the existing 1995 obligation, as varied by the 2007 Deed, does not contain any legally enforceable covenants but merely acknowledges a commitment by the school to review matters. I have set out above my construction of the Deed of Variation read together with the Travel Plan. My view is that there is an ongoing obligation to submit annual Travel Plans but no apparent legal mechanism which bites in the event of a failure to secure measures or some agreed level of performance.
31. However that does not mean that the 2007 Travel Plan and those which have been submitted annually are of no useful effect. As I indicated at the Inquiry, the s106 obligation as currently constituted does not operate in a vacuum. To some unquantifiable degree it may be that the travel plans submitted over the last 10 years have had some limited success at changing behaviours in terms of travel choices. If the obligation remains unmodified, there is every reason to believe that the travel plans will continue to be submitted and continue to exert some influence over travel modes even in the absence of an enforcement mechanism. It is therefore somewhat artificial to attempt an exercise to discount any of the effects of the current travel plan and its predecessors in looking at the baseline. I conclude that it would be inappropriate to do so.

*The school bus service*

32. The school currently has a dedicated bus service and one of the Appellant's arguments was that this could be removed if the travel plan was ineffective<sup>9</sup>.

<sup>9</sup> Mr Roberts proof of evidence § 2.25

The school survey revealed that some 12% of pupils currently utilise this service and the Appellant further contends that adjustments should be made on the assumption that if the bus service was removed those pupils would then travel by car. However two points are noteworthy. Firstly the 2007 Travel Plan revealed that the school already had its own bus service in 2007, operated by Brent Community Transport. So, even before the first travel plan a school bus service was in operation which picked up pupils from individual addresses. This service is financially subsidised by the school. Secondly there was the evidence of the school's Bursar, Mr Michael Gibson. He confirmed that the school is *'always looking to introduce new bus services if viable'* and that a dedicated bus service is a service which parents of independent school pupils expect and rely upon.

33. The above evidence is strongly indicative of a desire on the part of the school to provide a bus service in any event and not as a result of any expectations or requirements of the travel plan. It is a service relied upon and expected by parents. The school is run by a foundation and must presumably ensure that control is exercised over income and expenditure. The mere fact that the school chooses to subsidise current bus routes is illustrative of the school's view that the bus is an attractive and beneficial service to parents. For all of these reasons I conclude that the bus service is highly likely to be operated in the absence of any travel plan incentives or requirements. It follows that I conclude that the bus service is part of the baseline and that there should be no adjustment for the 12% of pupils currently using the service transferring to car modes.

*Possible baseline scenarios*

34. The Council put forward their view that the 'legal baseline' was essentially what the Appellant could lawfully do under the current arrangements which would be all 600 pupils travelling to school by car. I have difficulties with this suggestion on the basis that the Council's witness acknowledged that in reality this would never happen.
35. The existing s106 agreement is currently operating and has operated since 2007. During that time travel plans have been submitted annually and the school bus service has operated. The current obligation places a numerical limit on pupils which in and of itself limits traffic generation. The obligation does not operate in a vacuum but in a world where the school, for commercial reasons and irrespective of any legal obligation, runs a school bus service. It also has an annual travel plan albeit without any enforcement measures. I have already indicated that it would be inappropriate to make artificial adjustments to the traffic generation figures to discount the effects of the school bus service and any effects of the travel plan.
36. On behalf of the Appellant, Mr Waite, explored a number of baselines and as a matter of principle indicated that an element of realism should be applied. He posited four scenarios, the first two of which are predicated upon all pupils travelling to school by car. I have already discounted this approach. His third and fourth suggestions are based upon the level of Travel Plan performance dropping away to a minimal level and the bus service being withdrawn. Again I have already set out my views on adjustments in relation to these matters.



When questioned Mr Waite advocated the baseline of 360 traffic movements as being the most appropriate<sup>10</sup>.

37. Taking into account all of the afore-going I conclude that the most appropriate baseline for the assessment is the current level of traffic without any adjustments. I appreciate that this is different to the approach taken by the Council in the Orley Farm case, and that advocated by the Council in this appeal, but I consider the above approach to be the most appropriate on the facts of this case and one that is grounded in common sense for all the reasons I have set out.

*Current traffic generation*

38. Having set out the basis for my assessment I now come to examine the actual figures. The Transport Assessment relied upon data from an online survey ('Survey Monkey') and an in person 'hands-up' survey to obtain information about the methods of travel of pupils to and from school. The hands-up survey was taken by form tutors posing questions to their students on a particular day and feeding the information into a central repository. I accept that this model is subject to errors in that it canvasses only those pupils in attendance on a given day. The Council pointed to discrepancies in the data and I agree that the method could lead to variations but consider that as long as it is consistently applied there should be the ability to make comparisons between years.
39. The Survey Monkey recorded 46% of pupils travelling to school in the morning and 32% being collected by car in the afternoon. Some of these pupils were in a car share arrangement<sup>11</sup> so the percentage of pupils does not equate to a percentage of cars. After adjustments the final figures are recorded in Mr Roberts' revised tables and further amended.<sup>12</sup> They record 252 vehicles dropping pupils off in the surrounding roads in the morning and 180 vehicles collecting in the afternoons. These figures are the baseline against which I shall assess the proposed modifications.
40. In terms of an appropriate baseline for the STARS assessment I am aware that the Council agreed that the figure of 37% or 38% was suggested by the Council<sup>13</sup>. However that represented only single pupil car journeys and failed to take account of car journeys involving two or more pupils. Given that my assessment is concerned with the total number of cars on the road I conclude that the figures in the preceding paragraph are the most appropriate.
41. The Travel Assessment also contained a series of traffic flow surveys designed to provide a picture as to the distribution of school traffic on the local highway network. However Crown Street was closed to through traffic on the two survey days when the school was in session and would inevitably have affected the way in which traffic was distributed. The distribution figures therefore need to be treated with a degree of caution. I further note the Council's concern that flows were taken over a 24 hour period rather than 7 days. However

<sup>10</sup> That is the highest level of car use over the years when the travel plans were in existence and adding back in the 11% or 12% of pupils using the school bus service.

<sup>11</sup> 8% car sharing in the AM peak and 4% in the PM peak.

<sup>12</sup> Assuming the car sharers only have two pupils in each car, the mathematical adjustments mean that car journeys are equivalent to 42% of pupils in the morning and 30% in the evening

<sup>13</sup> Appendix 8.2 to Mr Waite's proof of evidence.

when assessing school traffic it is only the week days which are relevant for the purposes of this assessment.

42. I note Mr Gibson's evidence that on any given school day pupil attendance is about 94% of the school roll. Therefore traffic generation in the baseline and modification scenarios should really be reduced by 6%. This exercise was not done because, as acknowledged by Mr Waite, it was left out of both sides of the equation so it is unlikely to make any material difference. I also record that the traffic generation calculations have only examined school traffic generated by pupil attendance and does not include traffic associated with staff members.

*Likely effects on traffic generation*

43. All things being equal, it is a reasonable assumption that an additional 110 pupils would travel by car in the same proportions as existing pupils. Applying exactly the same assumptions (including car share journeys) the total number of car journeys in the case of 710 pupils would be 298 in the morning and 213 in the afternoon. This contrasts with 252 AM car journeys and 180 PM car journeys currently<sup>14</sup>. Finally I bear in mind that the additional pupils would require further staff provision estimated at some 13 additional members of staff<sup>15</sup> working part or full time which would result in additional traffic. In addition there is the question of sixth formers driving themselves to school. The school confirmed that currently 10 sixth formers have notified it of their intention to drive to school.
44. The aforementioned additional traffic is not the end of the matter given that the Appellant's case is that the modifications would result in an improvement on the proportions of pupils travelling by car.

*Effectiveness and enforceability of modifications package*

45. The modifications also comprise a package of measures aimed at securing an annual Travel Plan and the monitoring and review of such plans. Firstly there is an obligation to have a travel plan submitted on an annual basis. Given my findings in relation to the 2007 Deed of Variation I conclude that this is nothing new. The commitment to fully implement the Travel Plan and use reasonable endeavours to ensure that it is complied with, and targets are met, is a new obligation. This includes a series of monitoring and reporting measures to inform assessment of performance.
46. Two of the key obligations are: a commitment to use 'reasonable endeavours' to seek to achieved TfL gold STARS status within a period of 4 years; and the payment of £20,000 to a travel improvement fund for the Council to draw upon if there was a substantial failure to meet the targets and objectives set out. The obligations are in essence a promise by the school to use 'reasonable' endeavours to seek to achieve a 6% modal shift away from car use<sup>16</sup> within 4 years.
47. There is a dispute as to whether or not gold STAR accreditation is likely or achievable. Given the wide catchment area of this particular school population<sup>17</sup> I share the concerns of local residents and the Council about the

<sup>14</sup> Figures taken from handwritten amendments to the revised tables, submitted as document 14 to the Inquiry.

<sup>15</sup> Equivalent to 7 full time members.

<sup>16</sup> The key requirement for Gold STARS status.

<sup>17</sup> As pointed out by Ms Johanna Nixon the Transport Assessment revealed that 85% of those who drive live more than 2 kilometres away from the school.



ability of the school to effect a significant change in the travel choices of pupils. On behalf of the Council, Mr Singh Ubhi, confirmed that it was difficult to reduce/eradicate car movements and that travel plans have a limited bearing on choices. He said that one of the key indicators of success was the catchment area of the school population. It is only logical that schools with a population in close proximity to the school site are best placed to encourage moves away from the private motor car. However I also bear in mind that the school is in a location which affords reasonable access to public transport modes and this will be a factor in parental decision making.

48. Past trends may be useful in evaluating the relative success of previous school travel plans at achieving a 6% shift away from car use. Some time was spent at the Inquiry looking at the modal shift figures derived from the most recent available plans in 2015 and 2016<sup>18</sup>. Examination of the percentage of single car journeys between 2007 and 2016 inclusive reveals no discernible trend. For the first four years the numbers of single car journeys were between 22% and 26%. In 2011 there was an increase to 42%. In the last three years the journeys have been at 37%, 37% and 30%. I do not accept that the recent fall to 30% is anything other than part and parcel of the figures fluctuating over the period. If there is any discernible trend it is reflective of a greater inclination towards single car use from that evidenced in the first four years.
49. In her cross-examination Ms Daly put it to Mr Gibson that the past efforts of the school in achieving a modal shift had been to little effect given the above figures. Mr Gibson pointed out that things could be worse if the school had not implemented the marshalling, one-way system and other measures and agreed that with regard to trip generation the school was 'managing to hold that at constant'. Based on the above I consider this to be a most apposite assessment of the effects of the school's endeavours to date. It is indicative of the difficulties in influencing parental travel choices away from the car.
50. Therefore on past analysis it appears that the travel plans have had limited success in effecting any sustained move away from the private motor car. I further note the evidence of the hands-up survey that for some 38% of pupils the car remained the preferred mode of travel. Again this provides some indication as to how resistant parents and pupils may be to attempts to persuade them to use other modes.
51. I now turn to look at the suggested measures focused on assisting the school in meeting its aims. The Sudbury Hill site was suggested for parking and drop off. Having walked from that site to the school I consider that the majority of staff and parents/pupils would choose to take their chances and look to park/drop off closer to the school. The distance and nature of the route between the two sites would make this suggestion inconvenient and an unattractive proposition for most. Additional parking at Le Beau House may assist with relieving the pressure on on-street parking but would not reduce the numbers of vehicles travelling to the school.
52. A park and stride scheme from Whitmore Road and Waitrose car park was also suggested. This is likely to be more effective in relation to removing the mini-buses off Lower Road. I am less convinced about the chances of persuading parents to park elsewhere to await their children. This is especially so in the case of Whitmore Road parking given that pupils would have to cross the busy

<sup>18</sup> School Travel Plan 2015, Core documents volume 1, 6.5 and School Travel plan 2016 Inquiry Document 10.

Lower Road to get to their parents. The ease and accessibility of on-street parking on Lower Road adjacent to the school site, in my view, would act as a strong disincentive to parking on Whitmore Road.

53. In terms of the one-way system along Middle Road, I have two comments. Firstly any driver arriving from the south along the A312, Lower Road, would access Middle Road at its southern end where access is only one way in any event. These cars are funnelled up Middle Road and then are directed onwards up Crown Street and Byron Hill Road. Parents arriving from the north and north-east coming in along the High Street are unlikely to take the more circuitous route to enter the one-way system. This is evidenced by the traffic flow data. It was also evident on my site visit when I observed a number of vehicles with pupils inside travelling down Crown Street and Byron Hill Road in the direction of the school. I have some doubts about the effectiveness of this as an initiative. As with some of the other initiatives, it is dependent upon influencing and changing parental behaviour. In any event the school has operated the one-way system for some time since it is in the school's interests as well as parents and pupils and local residents to assist with the free flow of traffic. This is not a measure which I consider additional, it is a measure which, in my view, the school would continue to operate in any event.
54. A reference was made to the school influencing travel behaviours by private contractual agreements but again I have significant doubts that such agreements would be effective. A contract requiring a pupil to use public modes of transport could be viewed as draconian and unenforceable.
55. The sanctions outlined would be of limited effect for a number of reasons. Firstly the requirement is a commitment on behalf of the school to use reasonable endeavours to achieve a 6% modal shift, not to actually achieve a modal shift. The sanction would only be brought into effect if the Council could prove that the school had not used reasonable endeavours. Even if that could be proved the Council confirms that it would not be able to utilise the monies in any meaningful way to seek to exercise control over traffic generation from the school.
56. Finally, in the scheme of things the sum of £20,000 is small compared to the financial benefits of increasing the school population by 110 pupils, many or most of whom, would pay annual fees of just under this amount. In other words payment of £20,000 would not be a significant incentive for compliance with the obligation and even if the penalty was triggered, it would be unlikely to result in any effective remediation of the breach, namely a failure to achieve a 6% shift. This is because even if the Council attempted specific performance of the obligation by for example, appointing a travel plan co-ordinator and providing marshalling, I accept Mr Healey's evidence that this could prove prohibitively expensive and would not necessarily have any effects.

*The current operation of the highway network*

57. The local highway network is referred to in the Transport Assessment and all parties are familiar with it. The school is sandwiched between a main arterial road (Lower Road) and a narrower residential street, Middle Road. The local highway network can really be considered in two separate sections: the main arterial route on Lower Road and the more residential/local roads centred on Middle Road.



58. Lower Road is part of the strategic road network and carries significant levels of traffic. Bus stops are located on both sides of the road a short distance from Middle Path. The carriageway on Lower Road narrows as one travels from the junction with West Street to the junction with Roxeth Hill. The road is busy during both the morning and afternoon collection periods. Parents are encouraged to collect and drop off pupils on Lower Road<sup>19</sup>. In addition the school buses wait along Lower Road in the afternoon periods for pupils to be released from school.
59. Accident data has been provided for the most recent 5 year period and reveals seven personal injury accidents on Lower Road spread along its length. Six of these were slight and one was categorised as serious. Nine further accidents were recorded at the Lower End/ Roxeth Hill junction. All accidents were attributed to driver error. In addition Ms Robertson, a local resident, gave oral testimony about a serious accident involving a school pupil crossing Lower Road. Whilst no further details were available, I found her evidence to be credible.
60. I observed the operation of Lower Road during both the morning and afternoon periods. The road was particularly busy during the afternoon period when mini-buses and cars were parked all the way along Lower Road on the school frontage. I shall therefore focus my assessment on the afternoon period. On my afternoon site visit the volume of traffic travelling south through the traffic lights at the Roxeth Hill junction was such that traffic was queuing back up towards the H10 public bus stop and Middle Path. During this period I observed that a significant number of cars were illegally parked along Lower Road on single yellow lines which indicated no parking between 8am and 6.30pm.
61. During the period 3.35pm to 4.20pm the traffic was very busy. Pupils began to appear and were attempting to cross the busy road in between parked cars notwithstanding the presence of a marshal. The parked cars meant that traffic flow was impeded at times given that there was only sufficient space for two cars to pass at any one time along the narrower parts of Lower Road. The vehicles generally travelled at slow speeds due to the large volumes of traffic, parked cars and constrained carriageway width. At one point a truck attempting to pass the parked mini-buses caused a car on the opposite side of the road to reverse back quite a distance along the carriageway. I also witnessed cars parked on Lower Road seeking to pull out in front of southbound traffic and execute a turn to join northbound traffic. Other examples of inappropriate and hazardous manoeuvres along Lower Road were exhibited in the videotape evidence presented by local residents.
62. Whilst I appreciate that I have only witnessed the operation of school traffic on Lower Road on a couple of occasions, it is evident that the road is extremely busy and already a cause for some concern in terms of driver behaviour. The illegal parking of vehicles is ultimately a matter for enforcement, however the pressures on the highway network are evident at this busy period. I have already noted that the travel plan and suggested measures could result in the mini-buses being removed from Lower Road. I have cast some doubt about the effectiveness of the enforcement mechanism. Leaving that aside, even if the mini-buses were removed, the road still carries a large number of public

<sup>19</sup> The school's 'Voluntary One-Way System' leaflet.

buses and other large vehicles which have to negotiate the parked cars as the carriageway narrows.

63. When the school was in session the recorded two-way afternoon flows along Lower Road were in the order of 1000 vehicles over the one hour period 3.30pm to 4.30pm<sup>20</sup>. Currently some 23% of parents chose to collect their offspring from Lower Road during the afternoons. This equates to 42 vehicles<sup>21</sup>. The additional traffic generated by an increase in pupils would entail another 8 vehicles seeking to park along Lower Road awaiting their sons. I appreciate that 8 vehicles is a very small proportion of the traffic flow along Lower Road. However it would represent a 19% increase in the number of cars seeking to park on a heavily congested part of Lower Road awaiting collection of their children. During my observations generally most of the available legal parking spaces were taken and this resulted in the further illegal parking closer to Middle Path. Given the busy traffic situation, with boys crossing between parked vehicles into a two way traffic stream, I conclude that such an increase would further exacerbate an already difficult situation and cause material harm to highway and pedestrian safety.

*Middle Road, Crown Street and Byron Hill Road*

64. I now turn to consider the effects of the proposal on Middle Road and the local streets connecting into it. The nature of the roads between the school and the High Street is markedly different from Lower Road. These are much narrower residential roads twisting and turning up the hill to the High Street. There is a three-way junction at Middle Road, Crown Street and Byron Hill Road and a further junction between Crown Street and West Street. The school operates a marshalling system on Middle Road aimed at marshalling drop offs at the Bryon Hill and Crown Street junction.
65. The Council objected on the basis of increased noise and disturbance to local residents and concerns about harmful and obstructive on-street parking causing harm to residential amenity. The HHT point to *'congestion/chaos/gridlock/ obstruction/confrontation and incivility at school drop off and pick up times'*.<sup>22</sup>
66. Mr Roberts' revised tables 16 and 17 set out the drop-off and pick-up locations of pupils currently travelling to school by car. Some 40% of parents drop off outside the main school entrance on Middle Road with a further 14% dropping off at the junction of Byron Hill Road, Crown Street and Middle Road<sup>23</sup>. These figures should be looked at together given that anyone dropping off outside the school entrance will then proceed through the Bryon Hill junction in any event. The total numbers dropping off at these two locations are in the order of 136 cars<sup>24</sup>. With an increase to 710 pupils the numbers would increase by an additional 25 vehicles dropping off at these two locations.
67. Other information is obtained from the traffic flow surveys in the transport assessment although, as already noted, these were conducted when the school was in session and there were road closures. The difference in two-way flows

<sup>20</sup> Figure 4 Transport Assessment: September day 1: 465+602=1067, September day 2: 521 + 496 = 1017

<sup>21</sup> Mr Roberts manuscript amendments to revised table 17A.

<sup>22</sup> HHT closing submissions

<sup>23</sup> Survey monkey figures

<sup>24</sup> Mr Roberts revised table 16A: 101 + 35 = 136



between July<sup>25</sup> and September<sup>26</sup> was most marked, with an additional 90 vehicles (total 134) in the 8.00-8.30am half hour period travelling along Middle Road in September. This represents a threefold increase on the two-way flows of 44 vehicles in the July period when the school was not open. I do bear in mind that in the July period Crown Street was closed to through traffic and this may have deflated the July figures. Nonetheless these are significant increases in traffic on a constrained local highway network.

68. **Noise and Disturbance:** at the outset in terms of additional noise and disturbance I make two observations. The roads around the school are busy at school drop off and collection times in any event. Whilst there would be an increase in school traffic I am not persuaded that it would cause material harm to residential amenity by virtue of increased noise and disturbance. The evidence of Mr Turner explains that it is difficult to quantify the impact of pupils making their way to school on public footpaths. He provides unchallenged evidence that the increase in noise levels associated with increased traffic would not be significant and I accept that evidence. My second observation is that even if there was an increase in noise and disturbance, it would be restricted to one hour in the morning peak and one hour in the afternoon. Given the limited duration of any potential effects and the fact that they are in daytime hours I conclude that even if there was any additional noise and disturbance it would not cause material harm to the living conditions of nearby residents.
69. **Parking:** a parking survey was conducted to assess the extent of on-street parking during key periods and the potential effects of increased numbers. This assessment has two potential implications: firstly the availability of on-street parking per se and any resultant inconvenience and secondly the effects of pressures on on-street parking on the safe flow of traffic.
70. The Appellant's car parking survey was based on estimating the number of available on-street parking spaces and conducting beat surveys of parked cars. The estimations assumed that each parking space would require some 5 metre lengths. This was based on data used in another London Borough. However in this instance the residential roads around the school are narrow in width, dotted with entrances, on inclines and uneven surfaces. All of which makes parallel parking more difficult. Given these factors I prefer the evidence of Mr Singh Ubhi that a 6 metre length should be assumed for each parking space. It follows that the numbers of on-street spaces and available spaces in the Appellant's survey have been overestimated. This is supported by my observations on my site visits when only one or two spaces were generally available on Middle Road, Crown Street and Byron Hill Road in the key afternoon pick-up periods.
71. The local roads around Middle Road are not subject to parking restrictions, other than those around junctions and outside school entrances. It is evident that there are current pressures on on-street parking around Middle Road and into Crown Street and Byron Hill Road. During my site visits I witnessed inappropriate parking in restricted zones and particularly around the junctions. This is supported by the evidence of local residents who experience these matters on a daily basis. Any increase in pupil numbers would exacerbate

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<sup>25</sup> When the school was closed.

<sup>26</sup> When the school was open.

those pressures which are likely to result in increased parking around junctions and hazardous reversing manoeuvres.

72. **Highway safety:** Crown Street is a narrow street which links Middle Road into West Street. Its narrow width means that drivers must give way to each other to facilitate traffic flow. Some footways are on one side of the road only and narrow in width. The traffic surveys record 94 cars making north-east journeys along Crown Street between 8.00 and 9.00 hours in September, with 29 cars travelling along Crown Street in the opposite direction. This is problematic given the nature of the carriageway. Cars have to wait in small gaps to allow others to pass or, as I witnessed on my site visits, reverse back along the narrow carriageway.
73. The road network, particularly along Middle Road and its junction with Crown Street and Byron Hill Road is under stress at school drop off times in the morning. The restricted nature of the Crown Street carriageway means that it is very difficult to maintain two-way traffic flows. Any additional traffic over and above that which the school currently generates would create more delays and result in an increase in hazardous reversing manoeuvres. The problems were also evident on West Street between its junction with Crown Street and the High Street. This is a particularly constrained carriageway on a steep incline. Ms Robertson, a resident of West Street, gave evidence as to regular confrontations between drivers and cars being driven over narrow pavements during peak school times. On two separate occasions on my inspections I witnessed vehicles reversing back up the hill along West Street. I appreciate that these visits represent snapshots of the traffic situation but these manoeuvres were hazardous to pedestrians on the narrow pavement and to other road users. They illustrate a very busy and constrained road under traffic pressure at peak times.

### **Overall Conclusions**

74. I have set out the basis for my assessment and a series of findings. The current section 106 agreement serves a useful purpose, restricting traffic generation to reasonable levels. The question at the heart of this appeal is whether or not the purpose would be served equally well with the proposed modifications in place.
75. I have concluded that the current limit of 600 pupils operates as a limit on traffic generation. There was a requirement to submit a travel plan under the 2007 Deed of Variation and the approved travel plan contains provisions for the ongoing review and monitoring of that travel plan. There are no legal enforcement provisions in the current obligation. The degree to which the annual travel plans influence behaviour is largely unquantifiable. Notwithstanding the lack of an enforcement mechanism I am satisfied that any effects of the travel plan should still be taken into account as part of the baseline because of the ongoing annual review and monitoring of those plans. I have further concluded that there should be no deduction for the 12% of pupils currently utilising the school bus service for the reasons set out. It follows that the baseline is the current levels of traffic generation without any adjustments.
76. I have examined current levels of traffic generation and the current traffic situation. I have set out my concerns into the current operation of the local highway network and that part of the network along Lower Road. Then I have

looked at the likely traffic generation of the proposed increase and examined this in light of the proposed modifications relating in particular to the enforcement mechanism. I am highly doubtful that the enforcement mechanism proposed would have any meaningful effect for the reasons set out. I am also unconvinced that the 6% modal shift would be achievable.

77. Taking all of the above together I conclude that the proposed modifications would in all probability result in increased traffic generation associated with additional pupil numbers. That is without consideration of additional staff members or any increase in sixth formers driving to school. The current situation along Lower Road in the PM peak and along Middle Road, Byron Hill Road and Crown Street in the AM peak is already very busy. There are constraints along both sets of roads. There is already evidence of hazardous driving manoeuvres and inappropriate parking which could pose a risk to driver and pedestrian safety. Any further increase would only serve to exacerbate this situation and would represent an inappropriate and unacceptable risk to highway safety.
78. For all of the above reasons I conclude that the proposed agreement as modified would not serve the identified purpose as well as the current section 106 agreement. I shall dismiss the appeal.

*Karen L Ridge*

INSPECTOR

**APPEARANCES****FOR THE LOCAL PLANNING AUTHORITY:**

Miss Caroline Daly	Of Counsel
She called	
Mr Narinderjit Singh Ubhi BSc (Hons) MCIHT	Principal Partner, Savi Transport Consultants
Mr Troy Healy LLB MA MRTPI	Associate, Planning Insight

**FOR THE APPELLANT:**

Mr Robert Fookes	Of Counsel
He called	
Mr Michael Gibson	Bursar, The John Lyon School
Mr Robert Waite MA (Oxon) LARTP	Partner, Gateley PLC
Mr Ian T. Roberts Dip. Civ. Eng. MCIHT	Partner, Bellamy Roberts LLP
Mr Nicholas Pryor BSc, MRICS	Partner, JTS Partnership

**FOR THE HARROW HILL TRUST:**

Mr Ted Allett	
He called	
Mr Ashley Vickers	Local resident
Ms Johanna Nixon	Local resident
Mr Ted Allett	Local resident

**INTERESTED PERSONS:**

Mrs Campbell	Local resident
Mrs Denise Robertson	Local resident



## DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Opening statement on behalf of the Appellant.
- 2 Opening submissions on behalf of the Local Planning Authority.
- 3 Opening statement by the Harrow Hill Trust.
- 4 Extract Transport for London PTAL output for Middle Path, Harrow, submitted by the Council.
- 5 Indicative pupil numbers, submitted by the Appellant.
- 6 Amendments to Table 16 revised, submitted by the Appellant.
- 7 Revised Table 17, submitted by the Appellant.
- 8 The John Lyon School Travel Plan 2007, submitted by the Appellant.
- 9 The John Lyon School pupil numbers 2006/07 to 2017/18 (est), submitted by the Appellant.
- 10 Approved Travel Plan 2015-16, submitted by the Council.
- 11 'The Resident' newsletter volume 1, Wednesday 2 December 2015, submitted by the Harrow Hill Trust.
- 12 Statement of Ms Martina Campbell.
- 13 Revised Tables 16, 16A, 17 and 17A, submitted by the Appellant.
- 14 Revised Tables 17 and 17A Mr Roberts Supplementary Proof of Evidence, submitted by the Appellant.
- 15 Email Mr Gibson to Harrow Council, dated 24 February 2017, submitted by the Appellant.
- 16 Transport for London STARS accreditation information, submitted by the Council.
- 17 Closing submissions on behalf of the Local Planning Authority.
- 18 R(The Garden and Leisure Group Limited) v North Somerset Council [2003] EWHC 1605 (Admin), submitted by the Council.
- 19 Harrow Hill Trust Closing Submissions.
- 20 Closing Statement on Behalf of the Appellant.
- 21 Caselaw extracts submitted by the Appellant.
- 22 Suggested viewpoints for site visit, submitted by the Harrow Hill Trust.
- 23 Potential further paragraph for the Schedule of Modifications, submitted by the Appellant.

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