



JAL/21-00175

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Dear Sir/Madam

Re: Town and Country Planning Act 1990 – Appeal Under Section 106B – London Borough of Harrow – John Lyon School (Local Authority Reference: P/2504/19) – Modification Appeal

I act on behalf of John Lyon School, and have been instructed to submit an appeal under s.106B of the Town and Country Planning Act 1990 (as amended). The appeal follows the refusal by Harrow Council, on 25 May 2021, to amend a planning obligation within an agreement first entered into in 1995 (and is referred to as the “Principal s106 Obligation”) which was subsequently modified (see details below, and decision notice attached to this appeal). This letter sets out the position of the school, the interrelationships between this appeal and others made by the School, and sets out the appellants’ case on submission.

This s106B appeal is in relation to a planning application currently subject to a s78 appeal, also made by John Lyon School, for the redevelopment of the Oldfield House site on the School’s campus, submitted on 17 May 2021 under appeal reference: APP/M5450/W/21/3275231 (the “s78 Redevelopment Planning Appeal”).

This s106B appeal, to modify the s106 agreement (and referred to as the “s106B Modification Appeal”), is submitted in parallel and as a ‘fall back’ to another s106B appeal (LA Ref: P/2092/21- the “s106B Discharge Appeal), also in relation to the above s78 Redevelopment Planning Appeal. The s106B Discharge Appeal is against the local authority’s non-determination of the application to discharge the agreement in its entirety, albeit it is proposed that one of the obligations, limiting the school roll to 600 pupils, is migrated to a planning condition attached to the Oldfield House planning permission, should the Inspector/Secretary of State, be minded allow the s78 Redevelopment Planning Appeal.

The summary below and the structure diagram attached to this appeal set out the relationship between the three applications/appeals. The appellant requests that consideration of the appeals be conjoined, as the planning issues arising are inextricably linked.

Background

The obligation subject to this appeal was first entered into by the school in 1995, and has been amended three times since then, with milestones as below:

- On 26 June 1995, planning permission was granted for a part single, two, three and four storey building to provide a sports hall, a swimming pool, a library and ancillary areas, and alterations to external buildings and parking (LA Ref: WEST/695/94/FUL).

- The first obligation was dated 23 June 1995 (the “Principal s106 Obligation”) and was associated with permission WEST/695/94/FUL. It, inter alia, prevented any extensions or other development from taking place outside building envelopes within the school estate (except in three minor areas).
- On 24 September 2007, a s106A application was granted in isolation to increase a school roll cap within the Principal s106 Obligation, and it was modified outside any association with a planning application (no local authority reference).
- On 16 October 2007, planning permission was granted for a three storey side/rear extension to provide additional classrooms (LA Ref: P/3420/06), with a deed of variation (modification) agreed in association with this to amend the Principal s106 Obligation to allow implementation of the development.
- On 22 February 2011, a further variation (modification) of the Principal s106 Obligation was agreed to allow implementation of an extension to the Main Building, which was granted planning permission subsequently in March 2011 (LA Ref: P/2160/10).
- 20 February 2016, a s106A application (Ref P/1020/16) was made to increase School pupil numbers from 600 to 710 and was refused by notice dated 1 July 2016 and appealed to the Secretary of State [Note – two other similar s106A applications were made and refused at the same time but not appealed].
- 16 January 2018 – a Decision Letter was issued dismissing appeal to increase School pupil numbers (Ref APP/M5450/Q/16/316072) – copy attached to this appeal.

The grounds for dismissal of the 2018 appeal decision were that the increased pupil numbers would result in increased traffic generation which would cause an unacceptable risk to highway safety (paragraph 77). By contrast, this s.106B appeal and the current planning application (subject to appeal reference: APP/M5450/W/21/3275231) does not seek an increase in pupil numbers and there would be no change in the current traffic, transport or highway effects due to the proposal.

The s78 Redevelopment Planning Appeal was the subject of the planning application for the redevelopment of the Oldfield House building (the “Redevelopment Planning Application”) to provide a four-storey teaching block with basement, hard and soft landscaping and parking was submitted in April 2019 (LA Ref: P/1813/19). The planning application was refused on 24 November 2020, and an appeal was submitted under s78 of the Town and Country Planning Act (as amended) on 17 May 2021, in advance of the six month deadline for submitting an appeal (24 November 2021). The s78 Redevelopment Planning Appeal has been validated by PINS, and given the reference: APP/M5450/W/21/3275231.

Shortly after submission of the Redevelopment Planning Application, in May 2019, s106A Modification Application, the subject of this s106B Modification Appeal, was made to Harrow Council and given reference P/2504/19. The application sought to amend the Principal s106 Obligation (as modified) to allow for the redevelopment of Oldfield House, as the new building was proposed outside the building envelope permitted by the 1995 Principal s106 Obligation (as modified). Notwithstanding that the Redevelopment Planning Application and this s106A Modification Application are inextricably linked, the local authority did not refuse the s106A Modification Application in November 2020 when it refused the Redevelopment Planning Application. Rather, the s106A Modification Application was refused on 25 May 2021, and this refusal is subject to this s106B Modification Appeal.

Given the timelines, it was not possible for the appellant to submit this s106B Modification Appeal at the same time as the s78 Redevelopment Planning Appeal, as the local authority refused the s106A Modification Application one day after the six month deadline for submitting the s78 Redevelopment Planning Appeal, notwithstanding that a number of requests were made by the appellant for the local authority to determine the application earlier. However, as the two appeals are evidently inextricably linked (see below), and as previously confirmed, the appellant requests that the s106B Modification Appeal and the s78 Redevelopment Planning Appeal (along with the parallel s106B Discharge Appeal) be conjoined, and considered in parallel.

The proposal

The first obligation within the Principal s106 Obligation (at paragraph 1 of the second schedule) states that:

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. ("Clause 1")

The copy Plan attached to this appeal [drawing ref: 977-31-B] is the only copy in the School's possession. It is understood that the local authority does not have a plan which differs from that attached. The Principal s106 Obligation in this respect is arguably unenforceable in respect of preventing extensions to the buildings, notwithstanding this appeal.

In light of the deeds of variation, however, the effect of this obligation also does not prevent the development granted planning permission by planning application references P/3420/06 and P/2160/10 from taking place (and these permissions have been implemented).

A draft deed of amendment was submitted with the s106A Modification Application, and this is attached to this appeal. It is accepted that this will need to be reviewed, in discussion with the local authority, to reflect changing circumstances in light of the local authority's refusal of the s106A Modification Application. It is proposed that this takes place post submission of the appeal, in the context of the Statement of Common/Uncommon Ground (a first draft of which is attached to this appeal).

However, essentially the modifications within the draft deed seek to extend the built envelope within the Principal s106 Obligation to permit the implementation of the Oldfield House redevelopment proposals, should the s78 Redevelopment Planning Appeal be allowed by the Inspector, but the s106 Discharge Appeal be dismissed.

For the avoidance of any doubt, this s106B Modification Appeal does not seek the amendment or discharge of any of the other obligation within the Principal s106 Obligation (as modified). Rather, this is sought by the School under the s106B Discharge Appeal.

Information required in support of the s106B Modification Appeal

As required by Regulation 7 (2) of The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, the following information is provided in support of the s106B Modification Appeal:

- The appeal forms have been completed, and are attached to this appeal.
- The s106A Modification Application, the subject of this appeal, consisted of a letter by JTS Planning (John Lyon School's previous planning consultants), and a draft agreement - they are attached to this appeal.
- There is no record that a Regulation 4(5) certificate accompanied the application, however, the appellant confirms that on the day 21 days before the s106A Modification Application was made the planning obligation to which the application relates was enforceable against nobody other than the applicant/appellant. A certificate to this effect is attached to this appeal.
- The instrument by which the relevant obligation was entered into is:

Section 106 Agreement dated 23 June 1995 between (1) London Borough of Harrow (2) The Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon and (3) National Westminster Bank Plc.

This agreement was subsequently modified by the following instruments:

Deed of Variation dated 24 September 2007 between (1) London Borough of Harrow and (2) The Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon;

Deed of Variation dated 16 October 2007 between (1) London Borough of Harrow and (2) The Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon; and

Deed of Variation dated 11 February 2011 between (1) London Borough of Harrow and (2) The Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon.

- Correspondence with the local authority relating to the application is attached to this appeal.
- The notice of decision is also attached to this appeal.

Also attached to this appeal is a first draft Statement of Common/Uncommon Ground for further discussion with the local authority. It is proposed that an agreed draft s106 agreement be attached to the statement, which will be based on the draft attached to the original application, albeit subject to amendments to reflect changes in circumstance since the submission and any comments received from the local authority during the course of the appeal process.

For ease, the above attachments are listed in a standalone covering document.

Planning Policy and Guidance

The following planning policy and guidance is particularly relevant to this appeal:

Policy Relating to Planning Obligations

At a national level, the July 2021 National Planning Policy Framework (NPPF) addresses planning obligations in Section 4: Decision-making, and confirms the following principles:

- Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition (Paragraph 55).
- Planning obligations must only be sought where they meet all of the following tests - a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development (Paragraph 57), reiterating the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations.

In terms of the Development Plan, Policy DM50 indicates that planning obligations will be sought on a scheme-by-scheme basis to, inter alia, ensure that development proposals provide or fund improvements to mitigate site specific impacts made necessary by the proposal.

There is no policy support or precedent for an area-wide planning obligation to control development and use of all the buildings and land within the ownership or occupation of a single body, such as John Lyon School. Area control is the subject of Article 4 Directions, and this has been the case in respect of a part of Harrow on

the Hill Conservation Area. No Article 4 Direction sought or made has included the land occupied by John Lyon School.

National Planning Practice Guidance in Respect of Planning Obligations

Current Planning Practice Guidance relative to the use of planning obligations and process for changing obligations was first published by the Government in May 2016, and was most recently updated in September 2019.

This guidance reiterates the statutory and policy tests for the imposition of planning obligations (as reviewed above). It also reiterates the circumstances under which planning obligations can be altered after their agreement.

Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. (Paragraph: 001 Reference ID: 23b-001-20190315)

Planning obligations, in the form of section 106 agreements and section 278 agreements, should only be used where it is not possible to address unacceptable impacts through a planning condition. (Paragraph: 003 Reference ID: 23b-003-20190901)

Can planning obligations be required for permitted development? By its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. (Paragraph: 009 Reference ID: 23b-009-20190315)

Can an agreed planning obligation be changed? Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see section 106A of the Town and Country Planning Act 1990). (Paragraph: 020 Reference ID: 23b-020-20190315)

The Case for the Appellant relative to the s106B Modification Appeal

The decision notice and local authority officers’ delegated report relative to the s106A Modification Application confirms that the only grounds for refusing the application was the absence of an approved development.

As previously confirmed, the development in question is the redevelopment of Oldfield House, for which planning permission was refused by the local authority on 24 November 2020. However, also as confirmed above, this decision is subject to the s78 Redevelopment Planning Appeal (Ref: APP/M5450/W/21/3275231). The s78 Redevelopment Planning Appeal is supported by the following documents:

1. A planning appeal statement, by Rapleys;
2. An educational rationale statement, by John Lyon School;
3. An architectural statement, by CTLH Architects;
4. A heritage statement, by Conservation Planning;
5. A townscape and visual appraisal, by Neaves Urbanism, and
6. An arboricultural impact assessment, by Euro Arbol.

These documents can be reviewed by the Inspector when considering the s78 Redevelopment Planning Appeal (as well as this s106B Modification Appeal), but collectively they confirm that:

- The development is appropriate in terms of scale and siting, and will not only preserve the character and appearance of the Conservation Area within which it sits (and the adjacent Conservation Area), but it will also enhance it;
- The proposal will bring a range of substantial planning benefits that would in any event tell in favour of the development, and
- The proposal complies, in its entirety, with the Development Plan and national planning policy.

On this basis, it is concluded that planning permission should be granted for the Oldfield House development proposals.

If the Inspector agrees with the appellant relative to the s78 Development Planning Appeal, then by extension any objection by the local authority to the s106B Modification Appeal would fall away, as the absence of an approved development was the only reason for refusing the s106A Modification Application. Further, it would evidently be inappropriate if an extant historic planning obligation prevented development found, by a planning inspector, to be in accordance with planning policy and granted planning permission accordingly. In this context, clearly if the Inspector considers that the Principal s106 Obligation continues to serve a useful purpose, it would serve that purpose (more than) equally well if it is modified in the terms sought by this s106B Modification Appeal.

Cojoining of Appeals

On this basis, the two appeals (this s106B Modification Appeal, and the s106B Discharge Appeal, and the s78 Redevelopment Planning Appeal (ref: APP/M5450/W/21/3275231) should be conjoined to allow an Inspector to consider them all in parallel as they concern the same school and subject matter, interlinked arguments and policy, and the same factual base.

Response to comments made by neighbouring residents

In response to the s106A Modification Application:

- 10 households directly objected to the proposal (albeit some addresses wrote more than once), and other objections were received in the context of a petition and letters from the local MP and Harrow on the Hill Trust, and
- 9 households wrote in support of the application.

The matters raised in the objections can be summarised as follows:

- There is no justification or rationale behind the Oldfield House redevelopment proposals, and
- The Oldfield House redevelopment proposals are unacceptable in terms of design and visual impact.

As confirmed above, these matters are comprehensively reviewed in the information submitted as part of the s78 Redevelopment Planning Appeal, and it is concluded that the proposals are in accordance with the Development Plan and are therefore supportable.

Route of Appeal – Hearing Procedure Sought

The appellant requests that this appeal be dealt with through the hearing procedure, as it has already requested that the aforementioned s78 Redevelopment Planning Appeal be dealt with through this procedure. In the context of Annexe K of the Appeal Procedural Guide, the reasons for this were:

- The Inspector is likely to need to test the evidence presented by all parties by questioning or to clarify matters such as the character of the area, and the impact of the proposals on it, as well as on identified heritage assets (not least the affected Conservation Areas).

- It is not considered that there is need for evidence to be tested through formal questioning by an advocate, or given on oath.
- The case has generated a level of local interest such as to warrant a hearing.
- It can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required).

In this context, if the appeals are to be conjoined, they should be dealt with through the same procedure.

Conclusion

I trust that the above is self-explanatory, but if further information/clarification would be appreciated on any matter, please contact me using the details below. Alternatively, I look forward to confirmation of receipt of the appeal and, in due course, a start date.

Yours faithfully

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List of all documents attached to the appeal