



Department for
Communities and
Local Government

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Our ref: APP/U5360/W/16/3164952
APP/U5360/Y/16/3164946

19 December 2017

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78

**APPEAL A: MADE BY TAUHEEDUL EDUCATION TRUST
LAND AT FORMER HACKNEY POLICE STATION, 2 LOWER CLAPTON ROAD AND 32
ST JOHN'S CHURCH ROAD, LONDON E5 0PA
APPLICATION REF: 2015/3306**

**PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS ACT 1990 – SECTION
20**

**APPEAL B: MADE BY TAUHEEDUL EDUCATION TRUST
LAND AT FORMER HACKNEY POLICE STATION, 2 LOWER CLAPTON ROAD AND 32
ST JOHN'S CHURCH ROAD, LONDON E5 0PA
APPLICATION REF: 2015/3316**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Prentis BA BPI MRTPI, who held a public local inquiry opening on 11 July 2017 and which sat for 6 days into your client's appeal against the decision of the Council of the London Borough of Hackney to refuse your client's application for planning permission for Appeal A and listed building consent for Appeal B:
 - **Appeal A:** change of use and refurbishment of listed building, demolition of rear buildings and three storey new build to provide a new primary school with associated playspace, access, bus layby, servicing and cycle parking in accordance with application ref: 2015/3306, dated 10 September 2015;
 - **Appeal B:** demolition of rear buildings and structures and various internal and external alterations associated with conversion of the building to a primary school, provision of bus layby upon adjacent land within St John's Churchyard, in accordance with application ref: 2015/3316, dated 10 September 2015.

2. On 10 January 2017, these appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990; and paragraph 3 of Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that both appeals be allowed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State notes that the appellant's case at the Inquiry was advanced on the basis of a revised approach, where no works are proposed in the Churchyard Gardens. Instead, it is proposed that the school opens in a phased way, starting with 90 reception children in the first year of operation. Thereafter, the school roll would increase by one year group each year until the full capacity of 630 was reached. For the reasons given at IR9 and IR198-200, the Secretary of State agrees with the Inspector that determining the appeals on the basis of the alternative proposal would not offend the principles in the Wheatcroft case. He has therefore determined these appeals on the basis of the alternative proposal.
5. The Secretary of State notes at IR10 and IR202 that the local residents raised a further procedural objection to the validity of the appeal, to the effect that the Council should not have accepted the amendment of the applications to include the bus layby at the Churchyard Gardens. He notes that this has not been legally challenged and he is satisfied that the appeal is valid.

Matters arising since the close of the inquiry

6. The Secretary of State has had regard to correspondence submitted to him after the close of the Inquiry. He is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the London Plan, consolidated with changes since 2011 (LP), the Hackney Core Strategy 2010 (CS), the Hackney Development Management Local Plan 2015 (DMLP) and the Hackney Site Allocations Local Plan 2016 (SALP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR17-23.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning

guidance ('the Guidance'), as well as the policy statement "Planning for schools development" published jointly by the Secretary of State for Communities and Local Government and the Secretary of State for Education in August 2011.

10. In accordance with section 16 and section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
11. In accordance with section 72(1) of the LBCA Act, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR195-196.

Effect on the historic environment

13. The Secretary of State has carefully considered the Inspector's analysis at IR207-242. With regard to **Appeal A**, for the reasons given at IR209-238, he agrees with the Inspector at IR239-240 that, in relation to the police station, there would be some limited loss of features which contribute to the special interest of the building. However, there would also be positive effects, including securing a suitable new use for a vacant listed building, securing the refurbishment of important elements of the external fabric and restoring the proportions of some of the main rooms. He agrees that, looked at in the round, the proposal would preserve the special interest of the listed building. He further agrees that in relation to the other listed buildings, the effects on setting would be neutral; that the settings of the other listed buildings would be preserved; and that the character and appearance of the conservation area would also be preserved.
14. Like the Inspector at IR240, the Secretary of State concludes that that the design has been informed by the surrounding historic environment and would enable the police station to continue to make its important contribution to the character of the area. He considers that the proposal would represent high quality design and would value, conserve, re-use and incorporate heritage assets. It would accord with LP Policies 7.4, 7.6 and 7.8 and with DMLP Policy DM1. It would also avoid substantial harm to the significance of listed buildings, contribute to a sense of place and local distinctiveness and make some positive contributions to the historic environment, in accordance with CS Policies 24 and 25 and DMLP Policy 28. The Secretary of State concludes that there would be no conflict with the policies of the Framework in relation to the historic environment.
15. With regard to **Appeal B**, for the reasons given at IR209-238 and IR241, the Secretary of State agrees with the Inspector that there would be some limited loss of features which contribute to the special interest of the building. Nevertheless, looked at in the round, the proposal would preserve the special interest and the setting of the listed building.
16. In relation to Appeal A and Appeal B, the Secretary of State concludes that overall, in the terms of the Framework, the harm to heritage assets would be towards the lower end of the spectrum of '*less than substantial harm*'. He gives this harm considerable importance

and weight and has weighed it against the public benefits of the scheme, as set out in the planning balance below.

Effect on the highway network, including pedestrians, cyclists and transport

17. The Secretary of State has carefully considered the Inspector's analysis at IR243-269. He notes at IR243-244 and IR267 that the appeal site is in a highly accessible location, which is defined as "excellent" by Transport for London, and which in principle, is suitable for use as a primary school which generates a large number of trips. For the reasons given at IR245-254, and IR267 he notes that the proposal does not make provision for on-site parking or dropping off and seeks to maximise the use of sustainable modes of transport. He agrees with the Inspector that in these respects the proposal is in accordance with LP Policies 6.1 and 6.13, CS Policies 6 and 33 and DMLP Policy DM47. He concludes that there would be no conflict with Policy DM44 which prioritises pedestrians, cyclists and users of public transport.
18. For the reasons given by at IR255-264, the Secretary of State agrees with the Inspector at IR268-269 that there is no evidence of any significant harm in terms of network performance. He notes a potential safety issue relating to dropping off at St John's Church Road, however he agrees with the Inspector that the proposal includes satisfactory mitigation measures, including deploying traffic marshals and operating staggered departure times. The proposal would therefore accord with LP Policy 6.3 and DMLP Policies DM45 and DM46. These policies seek to avoid any adverse effects on the safety of the transport network, to maximise safe and convenient movement and to take account of walking and cycling safety. He further agrees with the Inspector that there would be no conflict with LP Policy 6.7, which relates to improvements to the quality of bus services, with Policies 6.9 and 6.10 which state that the Mayor will work to bring about significant increases in cycling and walking, or with Policy 6.11 which sets out the Mayor's wish to see a co-ordinated approach to tackling congestion.

Benefits of the proposal

19. The Secretary of State has carefully considered the Inspector's analysis at IR270-278. He notes that the Framework states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities and that local planning authorities should give great weight to the need to create, expand or alter schools. The Secretary of State considers that the policy statement "Planning for schools development" sets out the Government view that the creation and development of state-funded schools is strongly in the national interest and is relevant to this case. The Secretary of State agrees with the Inspector at IR272 that the provision of purpose built facilities for an existing 3 Form Entry primary school which is currently operating from temporary premises would clearly be an important social benefit. He further agrees that the proposal would bring economic benefits by generating employment during construction and operation. He agrees with the Inspector at IR275 that the proposal would contribute to the objective of improving educational choice; and at IR277 that it would advance equality of opportunity.

Other matters

20. For the reasons given by the Inspector at IR279-281, the Secretary of State acknowledges the challenges that operating a school on this site would bring. However he agrees that the evidence indicates that those challenges could be managed in a satisfactory way.

21. For the reasons given by the Inspector at IR282, the Secretary of State considers that the proposed measures would mitigate and manage congestion and would serve to protect the living conditions of residents.
22. The Secretary of State notes at IR283 that following the submission of additional evidence, the Council decided not to pursue the reasons for refusal relating to the impact of noise on neighbouring residents. For the reasons given at IR283-285, he agrees with the Inspector that the proposal would accord with DMLP Policy DM2 which seeks to avoid significant adverse effects on the amenity of neighbours.
23. The Secretary of State has carefully considered the Inspector's analysis at IR286-292 and for the reasons given by the Inspector he agrees that it would be incorrect to say that there has been no consideration of alternatives. Given the Secretary of State's finding that the appeal proposal would secure a suitable use which would support the long term conservation of the police station, he considers that this would be a significant public benefit, whether or not the proposal represents optimum viable use. The Secretary of State therefore considers that the appellant's approach to the consideration of alternatives is not a matter which weighs against the appeals.
24. For the reasons given at IR293, the Secretary of State agrees with the Inspector that there would be no adverse impact on the trees in the Churchyard Gardens.

Planning conditions

25. The Secretary of State has given consideration to the Inspector's analysis at IR183-193, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning balance and overall conclusion

26. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the following policies of the development plan: LP policies 6.1, 6.3, 6.7, 6.9, 6.10, 6.11, 6.13, 7.4, 7.6 and 7.8; DMLP policies DM1, DM2, DM28, DM44, DM45, DM46 and DM47; CS policies 6, 24, 25 and 33, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
27. As set out above, the Secretary of State considers that there would be less than substantial harm to heritage assets. He gives this harm considerable weight against the proposal.
28. The Secretary of State gives significant weight to the public benefit of securing a suitable new use in support of the long term conservation of the listed building. He also gives significant weight to the provision of purpose built facilities for an existing school currently operating in temporary premises. The scheme would generate employment during construction and operation and the Secretary of State gives this moderate weight. He considers that the scheme would advance equality of opportunity and improve educational choice. He gives this significant weight.

29. In accordance with paragraph 134 of the Framework the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of heritage assets is outweighed by the public benefits of the proposal. Overall the Secretary of State considers that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of heritage assets. He considers that the balancing exercise under paragraph 134 of the Framework is therefore favourable to the proposal.
30. Overall the Secretary of State does not consider that there are any material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that both appeals should be allowed.

Public Sector Equality Duty

31. In accordance with section 149 of the Equality Act 2010, due regard has been given to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Secretary of State has considered the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
32. For the reasons given at IR277, the Secretary of State considers that the proposal would advance equality of opportunity between those who share a protected characteristic and those who do not share it. Like the Inspector, he accepts that the school would be able to manage the use of teaching spaces to ensure that any disabled pupils or staff members were not disadvantaged. Overall, he considers that the equalities impacts of the proposal would be positive.

Formal decision

33. Accordingly, for the reasons given above, the Secretary of State:
- **Appeal A:** agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for change of use and refurbishment of listed building, demolition of rear buildings and three storey new build to provide a new primary school with associated playspace, access, servicing and cycle parking
 - **Appeal B:** agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants listed building consent subject to the conditions set out in Annex B of this decision letter for the demolition of rear buildings and structures and various internal and external alterations associated with conversion of the building to a primary school.
34. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
36. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
37. A copy of this letter has been sent to the Council of the London Borough of Hackney, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Merita Lumley

Authorised by the Secretary of State to sign in that behalf

Annex A: Schedule of post inquiry representations

Party	Date
Sally Prothero	18 July 2017
William B Fraser	7 August 2017
Irene Stratton	28 August 2017
Meg Hillier MP	31 October 2017
Meg Hillier MP	7 November 2017

Annex B: List of conditions

Conditions for Appeal A – the planning appeal

- 1) The development hereby permitted must be begun not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out and completed in accordance with the plans listed in the attached Annex C and any subsequent approval of details.
- 3) Notwithstanding the approved drawings, details of the following matters shall be submitted to and approved in writing by the local planning authority before any work in relation to these matters takes place. Development shall be carried out in accordance with the approved details.
 - air handling plant and louvres on roofs, including 1:20 scale plans, sections and elevations showing the relationship of the new elements to the historic fabric
 - the new entrance through the western boundary wall, including 1:20 scale plans, sections and elevations showing the relationship of the new elements with the historic fabric
 - new and replacement windows, including 1:20 scale elevations showing glazing patterns and 1:10 scale sections showing glazing and joinery details
- 4) Notwithstanding the approved drawings, details of the materials to be used for the external surfaces of the proposed buildings shall be submitted to and approved in writing by the local planning authority before any work on the external elements of the buildings takes place. The details shall include samples of facing bricks and roofing materials. Development shall be carried out in accordance with the approved details.
- 5) Prior to occupation of the development hereby approved, a school management plan shall be submitted to and approved in writing by the local planning authority. The approved management plan shall be adhered to for so long as the premises are operated as a school. The plan shall include details of the following matters.
 - management of external play areas including details of staggered play times and pupil numbers
 - management of rooftop study area
 - management of extra-curricular and physical education including travel to off-site locations
 - management of children arriving and leaving school including the use of entrances and provision of traffic marshals
 - use of school outside teaching hours
- 6) Prior to occupation of the development hereby approved, details of planting to be incorporated on the rooftop study area and semi-permeable screening to circulation areas shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to the occupation of the development and shall be permanently retained as such thereafter.

- 7) Notwithstanding the approved drawings, a full post construction BRE certification confirming that the refurbished element of the development has achieved a BREEAM rating of Very Good with a minimum score of 62 points and that the new construction element has achieved a BREEAM rating of Excellent shall be submitted to and approved in writing by the local planning authority within 6 weeks of the first occupation of the development hereby approved.
- 8) Prior to occupation of the development hereby approved, specification and layout details of the proposed photo voltaic panels shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to the occupation of the development and shall be permanently retained as such thereafter.
- 9) Notwithstanding the approved drawings, details of the following shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development. Development shall be carried out in accordance with the approved details and permanently retained as such thereafter.
 - low NOx emitting combined heat and power and emergency generator plant (referred to hereafter as plant)
 - performance data including emissions standards and technical data for each piece of plant. The data shall demonstrate that the plant is low NOx in relation to air quality standards and other similar plant available on the market. The plant installed shall meet or improve upon the approved emissions standards and technical data
 - details of the plant installed (including measured emissions) and details of any emissions mitigation equipment installed
- 10) No new plumbing, pipes, soil stacks, flues, vents, grilles, security alarms or ductwork shall be fixed on the external faces of the buildings unless as otherwise shown on the drawings hereby approved.
- 11) Prior to occupation of the development hereby approved, a refuse strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include the use of a commercial waste management company. Thereafter, refuse collection shall only be carried out in accordance with the approved strategy.
- 12) Prior to occupation of the development hereby approved, a school travel plan shall be submitted to and approved in writing by the local planning authority. The school travel plan shall include measures to discourage the use of private cars and to encourage the use of sustainable modes of transport. Baseline travel surveys of staff and pupils will be undertaken within 3 months of the school opening and the full travel plan will be operational within 6 months of the school opening. The school travel plan shall seek to achieve TfL Mode STARS Gold Accreditation in the 4th year of operation. The site shall be operated in accordance with the approved school travel plan at all times.
- 13) Prior to occupation of the development hereby approved, details of the means of mechanical ventilation and the extraction and dispersal of cooking smells/fumes shall be submitted to and approved in writing by the local planning authority. The details shall include the method of construction and odour and noise control. The details shall be implemented as approved prior to the occupation of the development and shall be permanently retained as such thereafter.

- 14) No roof plant, including any external enclosures, machinery or other installations, shall be placed on or attached to the roof of the development unless shown on the drawings hereby approved or otherwise approved pursuant to the conditions imposed on this permission.
- 15) No development shall take place until a site specific Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting and shall include:
- a demolition and construction method statement to include details of noise control measures and measures to preserve air quality, including a risk assessment of the demolition and construction phase
 - a plan setting out how resources will be managed and waste will be controlled at all stages during the construction phase, including details of dust mitigation measures during site clearance and construction works (including any works of demolition of existing buildings or breaking out or crushing of concrete) and the location of any mobile plant or machinery
 - details of the locations where deliveries will be undertaken, the size and number of lorries expected to access the site daily, the access arrangements (including turning provision if applicable), construction traffic routing, details of parking suspensions (if required) and the duration of construction
 - mitigation measures (as defined in BS 5228: Parts 1 and 2: 2009 Annex F *Noise and Vibration Control on Construction and Open Sites*) which shall be used to estimate LAeq levels and minimise noise disturbance from demolition and construction works
 - procedures for maintaining good public relations including complaint management, public consultation and liaison
 - arrangements for liaison with the Council's Community Safety Team
 - any works or ancillary operations which are audible at the site boundary shall be carried out only between 08.00 and 18.00 on Mondays to Fridays, 08.00 and 13.00 on Saturdays and at no time on Sundays and Bank Holidays
 - deliveries and/or removal of materials, plant, equipment, machinery and waste from the site shall only take place within the permitted hours detailed above
 - procedures for emergency deviation from the agreed working hours

The approved Construction Environmental Management Plan shall be adhered to throughout the construction period.

- 16) No development above ground shall take place until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- planting plans showing the location, species, type of stock, numbers of trees/plants, tree pits and areas to be seeded or turfed
 - external lighting including location and types of light fitting

- play areas and play equipment

The hard landscaping shall be carried out as approved prior to the occupation of the development. The soft landscaping shall be carried out as approved within 12 months of the commencement of the development or in the first planting season following completion of the development. Any plants forming part of the approved scheme which die or are seriously damaged or diseased or are removed within a period of 5 years of being planted shall be replaced with others of the same size and species unless otherwise agreed in writing by the local planning authority.

- 17) The development hereby approved shall not be occupied until a detailed Delivery and Servicing Management Plan has been submitted to and approved in writing by the local planning authority. Delivery and servicing to the site shall only be carried out in accordance with the approved Delivery and Servicing Management Plan.
- 18) The rating level of any noise generated by any plant and equipment forming part of the development shall be at least 5 dB below the pre-existing background level as determined by BS4142 *Method of rating industrial noise affecting mixed residential and industrial areas*.
- 19) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. The assessment shall be carried out by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: *Investigation of potentially contaminated sites* and the Environment Agency's *Model Procedures for the Management of Land Contamination* (CLR 11) (or equivalent British Standard and/or Model Procedures if replaced) and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include a survey of the extent, scale and nature of contamination and the potential risks to human health and property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes, adjoining land, ground waters, surface waters, ecological systems, archaeological sites and ancient monuments.
- 20) No development shall commence where (following a risk assessment) land affected by contamination is found which poses unacceptable risks until a remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of the remediation objectives and remediation criteria and a description and programme of the works to be undertaken, including a verification plan. The scheme shall ensure that, upon completion, the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
- 21) The development shall not be occupied until the remediation scheme approved pursuant to condition 20 has been carried out and a verification report by a suitably qualified contaminated land practitioner has been submitted to and approved in writing by the local planning authority.
- 22) In the event that, when carrying out the development hereby approved, contamination is found that was not previously identified it must be reported in writing to the local planning authority within 7 days and development on the affected part of the site shall cease. A risk assessment in accordance with condition 19 shall be carried out and submitted to and approved in writing by the local planning authority. If unacceptable risks are found a remediation

scheme in accordance with condition 20 shall be submitted to and approved in writing by the local planning authority before development resumes. The development shall not be occupied until the approved remediation scheme has been carried out and a verification report has been submitted to and approved in writing by the local planning authority.

- 23) The development shall not be occupied until a post-development verification report has been submitted to and approved in writing by the local planning authority. The report shall set out any restrictions on the use of the development and demonstrate that arrangements have been made to inform future site users of the restrictions.
- 24) Notwithstanding the approved plans, lockable space shall be made available within the site for the secure parking of 34 cycles before the first occupation of the development. Use of the cycle parking shall be monitored by the travel plan coordinator each term and should the cycle parking be more than 95% occupied for more than one month then additional parking shall be provided in accordance with details which shall be submitted to and approved in writing by the local planning authority up to a maximum of 106 cycle stands.
- 25) No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
- 26) The proposed ecological enhancements, including bird and bat boxes, shall be delivered in accordance with the details contained within the submitted Phase 1 Habitat Survey prior to the occupation of the development hereby approved.
- 27) No development other than demolition to existing ground level shall take place until the applicant (or their heirs and successors in title) has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority and a report on the results has been submitted to the local planning authority.
- 28) The development hereby permitted shall not be occupied until an agreement under section 278 of the Highways Act 1980 has been entered into between the applicant and the Council in order to upgrade the crossing adjacent to the site on Lower Clapton Road to a toucan crossing.
- 29) Notwithstanding the approved drawings, no development shall take place until an arboricultural method statement has been submitted to and approved in writing by the local planning authority. The method statement shall include details of tree protection measures for all trees within and adjoining the site and shall be adhered to throughout the construction period.
- 30) The school shall admit no more than 90 pupils in its first year of operation. Thereafter, the school roll shall increase by no more than 90 pupils per year until the full capacity of 630 pupils is reached. At no time shall the school admit more than 630 pupils.

- 31) No works on the southern elevation of the classroom block hereby permitted shall be commenced until details of that elevation have been submitted to and approved in writing by the local planning authority.

Conditions for Appeal B – the listed building appeal

- 1) The works hereby permitted must be begun not later than the expiration of three years beginning with the date of this consent.
- 2) The works hereby permitted shall be carried out and completed in accordance with the plans listed in the attached Annex E and any subsequent approval of details.
- 3) Notwithstanding the approved drawings, details of the materials to be used for the external surfaces of the proposed buildings shall be submitted to and approved in writing by the local planning authority before any work on the external elements of the buildings takes place. The details shall include samples of facing bricks and roofing materials, together with one metre sample panels of brickwork showing pointing and face bond. The works shall be carried out in accordance with the approved details.
- 4) All existing historic features including chimney pieces, plasterwork, internal joinery, panelling, doors, staircases and floors shall remain undisturbed in their existing position and shall be fully protected during the course of works on site, unless specifically authorised otherwise on the drawings hereby approved.
- 5) No demolition or works shall take place until the applicant or their agents or their successors in title has secured the implementation of a programme of building recording work in accordance with a written scheme which has been submitted to and approved in writing by the local planning authority. The scheme should be at Level 2 as described in paragraph 5.3 of the Historic England document *Understanding Historic Buildings: A Guide to Good Recording Practice* (English Heritage 2006). The record shall be preserved as described in paragraphs 7.1 to 7.3 of that document. The completed record shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development and shall then be submitted to the Greater London Historic Environmental Record.
- 6) All new works and works of making good to retained fabric, whether internal or external, shall be finished to match the original work with regard to the methods used and to material, colour, texture, profile and (in the case of brickwork) face bond and pointing.
- 7) Notwithstanding the approved drawings, details of the following matters shall be submitted to and approved in writing by the local planning authority before any work in relation to these matters takes place. The works shall be carried out in accordance with the approved details.
 - air handling plant and louvres on roofs, including 1:20 scale plans, sections and elevations showing the relationship of the new elements to the historic fabric
 - the new entrance through the western boundary wall, including 1:20 scale plans, sections and elevations showing the relationship of the new elements with the historic fabric

- new and replacement windows and external doors, including 1:20 scale elevations showing glazing patterns and 1:10 scale sections showing glazing and joinery details
- 8) Details of rainwater goods including guttering, hoppers, junctions and downpipes shall be submitted to and approved in writing by the local planning authority before the relevant part of the works is commenced. The details shall include elevations and manufacturers specifications and images. The works shall be carried out in accordance with the approved details.
- 9) No new plumbing, pipes, soil stacks, flues, vents, grilles, security alarms or ductwork shall be fixed on the external faces of the buildings unless as otherwise shown on the drawings hereby approved.

End of conditions

Annex C: Schedule of plans to be approved

Note – numbers in left hand column refer to tabs in Agreed Plans folder

1	AHR-AR-B01-10-001 Rev 4	Existing Location Plan (alternative proposal)
2	AHR-AR-B01-10-010 Rev 3	Existing Site Plan (alternative proposal)
3	AHR-AR-B01-10-340 Rev 3	Existing Elevation – West
4	AHR-AR-B01-10-330 Rev 4	Existing Elevation – South
5	AHR-AR-B01-10-320 Rev 4	Existing Elevation – East
6	AHR-AR-B01-10-310 Rev 3	Existing Elevation – North
7	AHR-AR-B01-10-302 Rev 4	Existing Site Elevation – West
8	AHR-AR-B01-10-301 Rev 4	Existing Site Elevations – South
9	AHR-AR-B01-10-300 Rev 3	Existing Site Elevations – North
10	AHR-AR-B01-10-099 Rev 4	Existing Plan – Basement Floor
11	AHR-AR-B01-10-100 Rev 5	Existing Plan – Ground Floor
12	AHR-AR-B01-10-101 Rev 5	Existing Plan – First Floor
13	AHR-AR-B01-10-102 Rev 5	Existing Plan – Second Floor
14	AHR-AR-B01-10-103 Rev 5	Existing Plan – Third Floor
15	AHR-AR-B01-10-105 Rev 4	Existing Plan – Roof from Above
16	AHR-AR-B01-10-220 Rev 3	Existing Section EE
17	AHR-AR-B01-10-210 Rev 3	Existing Section DD
18	AHR-AR-B01-10-202 Rev 2	Existing Site Section CC
19	AHR-AR-B01-10-201 Rev 3	Existing Site Section BB
20	AHR-AR-B01-10-200 Rev 2	Existing Site Section AA
21	AHR-AR-B01-11-099 Rev 6	Demolition & Strip Out Plan – Basement Floor
22	AHR-AR-B01-11-100 Rev 7	Demolition & Strip Out Plan – Ground Floor
23	AHR-AR-B01-11-101 Rev 7	Demolition & Strip Out Plan – First Floor
24	AHR-AR-B01-11-102 Rev 7	Demolition & Strip Out Plan – Second Floor
25	AHR-AR-B01-11-103 Rev 7	Demolition & Strip Out Plan – Third Floor

26	AHR-AR-B01-11-105 Rev 4	Demolition & Strip Out Plan – Roof from Above
27	AHR-AR-B01-20-010 Rev 4	Proposed Site Plan (alternative proposal)
28	AHR-AR-B01-20-099 Rev 13	Proposed Plan – Basement Floor
29	AHR-AR-B01-20-100 Rev 20	Proposed Plan – Ground Floor
30	AHR-AR-B01-20-101 Rev 13	Proposed Plan – First Floor
31	AHR-AR-B01-20-102 Rev 13	Proposed Plan – Second Floor
32	AHR-AR-B01-20-103 Rev 13	Proposed Plan – Third Floor
33	AHR-AR-B01-20-105 Rev 5	Proposed Plan – Roof from Above
34	AHR-AR-B01-20-200 Rev 4	Proposed Site Section AA
35	AHR-AR-B01-20-201 Rev 4	Proposed Site Section BB
36	AHR-AR-B01-20-202 Rev 4	Proposed Site Section CC
37	AHR-AR-B01-20-210 Rev 4	Proposed Site Section DD
38	AHR-AR-B01-20-230 Rev 4	Proposed Site Section FF
39	AHR-AR-B01-20-300 Rev 4	Proposed Site Elevation – North
40	AHR-AR-B01-20-301 Rev 6	Proposed Site Elevations – South
41	AHR-AR-B01-20-303 Rev 4	Proposed Site Elevation – West
42	AHR-AR-B01-20-310 Rev 4	Proposed Elevation – North
43	AHR-AR-B01-20-320 Rev 5	Proposed Elevation – East
44	AHR-AR-B01-20-330 Rev 9	Proposed Elevation – South
45	AHR-AR-B01-20-340 Rev 4	Proposed Elevation – West
46	AHR-AR-B01-20-201 Rev 4	Proposed Site Section BB
47	L-1392-PPP-01 Rev 01	Planting Strategy
48	L-1392-PPP-02 Rev 01	Planting Palette
49	L-1392-GAP-01 Rev 01	Ground Level General Arrangement Plan
50	L-1392-GAP-02 Rev 02	Landscape Concept



The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by David Prentis BA BPI MRTPI

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

Date 14 September 2017

TOWN AND COUNTRY PLANNING ACT 1990
THE COUNCIL OF THE LONDON BOROUGH OF HACKNEY
APPEAL MADE BY
TAUHEEDUL EDUCATION TRUST

Inquiry opened on 11 July 2017

Former Hackney Police Station, 2 Lower Clapton Road and 32 St John's Church Road, London E5 0PA

File Ref(s): APP/U5360/W/16/3164952; APP/U5360/Y/16/3164946

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

Appeal A Ref: APP/U5360/W/16/3164952

Former Hackney Police Station, 2 Lower Clapton Road and 32 St John's Church Road, London E5 OPA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tauheedul Education Trust against the decision of the Council of the London Borough of Hackney.
- The application Ref 2015/3306, dated 10 September 2015, was refused by notice dated 10 June 2016.
- The development proposed is change of use and refurbishment of listed building, demolition of rear buildings and three storey new build to provide a new primary school with associated playspace, access, bus layby, servicing and cycle parking.

Summary of Recommendation: that the appeal be allowed

Appeal B Ref: APP/U5360/Y/16/3164946

Former Hackney Police Station, 2 Lower Clapton Road and 32 St John's Church Road, London E5 OPA

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Tauheedul Education Trust against the decision of the Council of the London Borough of Hackney.
- The application Ref 2015/3316, dated 10 September 2015, was refused by notice dated 10 June 2016.
- The works proposed are demolition of rear buildings and structures and various internal and external alterations associated with conversion of the building to a primary school, provision of bus layby upon adjacent land within St John's Churchyard.

Summary of Recommendation: that the appeal be allowed

PRELIMINARY MATTERS

1. The Inquiry sat for 6 days on 11 to 14, 18 and 19 July 2017. Accompanied site visits were carried out on 18 and 19 July and I made unaccompanied visits to the site and surroundings before and during the course of the Inquiry.
2. The appeals were recovered by the Secretary of State by letter dated 10 January 2017 for the reason that they involve proposals for development of major importance having more than local significance.
3. In respect of Appeal A, the Council refused planning permission for reasons which may be summarised as follows:
 - 1) the design and scale of the proposal and its effect on the special interest and setting of the listed Police Station, the settings of other heritage assets and the character and appearance of the conservation area
 - 2) the effects of the proposal on the safe and efficient use of highways, footways and a cycle route
 - 3) the proposal would provide substandard educational accommodation, facilities and outdoor space and would have a detrimental impact on the amenities of neighbouring residents by reason of noise

- 4) the proposal would have a harmful effect on trees in the Churchyard Gardens
4. Prior to the Inquiry the Council confirmed that it would not be pursuing reasons for refusal 3 and 4 following the submission of further information by the appellant. Insofar as reason for refusal 2 related to servicing and waste strategies, those matters were not pursued following the submission of further information. Insofar as reason for refusal 2 related to the use of the Churchyard Gardens for school buses, that matter would be resolved by a suggested amendment which is discussed further below. Other elements of the second reason for refusal were maintained.
5. In respect of Appeal B, the Council refused listed building consent on the basis that the proposal would be harmful to the special interest of the listed building and that works to provide a bus layby in the Churchyard Gardens and the use of this area for pick up/drop off would be harmful to the setting of the listed church, nearby listed buildings and the conservation area.
6. The applications were amended whilst they were being considered by the Council to include provision of a bus layby in the Churchyard Gardens, which is adjacent to the appeal site. This is reflected in the descriptions of the development/works set out in the headings above. The intention at that time was to transfer pupils by bus from an existing school site during the initial years of the operation of the proposed school. Subsequently, the owner of the Churchyard Gardens indicated that it would not agree to this aspect of the proposal. The appellant's case at the Inquiry was advanced on the basis of a revised approach. Under this approach no works are proposed in the Churchyard Gardens. Instead, it is proposed that the school would open in a phased way, with 90 reception children in the first year of operation. Thereafter, the school roll would increase by one year group each year until the full capacity of 630 was reached.
7. The statement of common ground (SoCG)¹ uses the term '*original proposal*' for the scheme as determined by the Council and '*alternative proposal*' for the scheme promoted by the appellant at the Inquiry. For consistency, I have adopted those terms for my report. My views were sought in advance of the Inquiry on the appropriateness of considering the alternative proposal. Whilst I made some preliminary observations², I did not think it appropriate to make any formal ruling until all parties had made submissions at the Inquiry. At the Inquiry the Council and the appellant addressed the issue in the context of the relevant case law³. The Council did not object to the appeals being determined on the basis of the alternative proposal.
8. Action on Clapton's Environment (ACE) did object to consideration of the alternative proposal. This was on the basis that it would be a substantially different scheme, particularly in relation to the changed transport strategy. Legal submissions on behalf of ACE argued that this change would materially alter the balance of planning considerations and would cause substantial prejudice to the interests of third parties⁴.

¹ ID1

² ID1, appendix 5

³ The appellant's submissions are at APP2 and the Council's submissions are at LBH1

⁴ The legal submissions for ACE are at ACE1

9. It will be for the Secretary of State to decide whether or not to determine the appeal on the basis of the alternative proposal. Nevertheless, I thought it appropriate to indicate my view on this matter at the outset of the Inquiry. For reasons which I expand on in my conclusions, I consider that determining the appeals on the basis of the alternative proposal would not offend the principles set out in *Wheatcroft*⁵. I have therefore made my report and recommendations on this basis. However, I shall also include comments on the proposals relating to the Churchyard Gardens so that the Secretary of State has the information he would need if he were minded to determine the appeals on the basis of the original proposal.
10. ACE and some local residents raised a further procedural objection to the validity of the appeal. It was argued that the Council should not have accepted the amendment of the applications (whilst they were before the Council) to include the bus layby at the Churchyard Gardens. Instead, there should have been a fresh planning application at that stage. This, it was suggested, invalidated the Council's decision and hence made the appeal invalid. Whilst this will be a matter for the Secretary of State to consider, I shall return to it briefly in my conclusions.
11. The original proposal and the amended proposal included a pedestrian access on the western side of the school, which would have formed part of the means of escape from the premises in case of emergency. The adjoining landowner subsequently indicated that this would not be agreed to. This caused the appellant to carry out a means of escape review which resulted in a change to the proposed ground floor plan⁶. The appellant asked for the appeals to be determined on the basis of the revised plan. This was not a controversial matter at the Inquiry. For reasons expanded on in my conclusions, I see no reason not to accept this revision.

THE SITE AND SURROUNDINGS

12. The site is described in the evidence and in the SoCG. It extends to around 0.19ha and includes the former Hackney Police Station, fronting Lower Clapton Road, and 32 St John's Church Road. The site was in operational use as a police station until 2013. Hackney Police Station is a Grade II listed building dating from 1904 constructed of red brick with Portland stone dressings. It was designed by John Dixon-Butler for the Metropolitan Police and comprises a lower ground floor, ground, first and second floors and attic rooms above. To the rear there is a single storey parade room which forms part of the original complex together with some modern outbuildings. The central part of the site is a former exercise and drill yard which is now a large tarmac car park. There are access points from Rowe Lane to the east and St John's Church Road to the south. No 32 is a 3 storey Victorian terraced house, last used by the police for administration. It is identified as a Building of Townscape Merit in the Clapton Square Conservation Area Appraisal.
13. The western side of the site is bounded by a high brick wall, beyond which is a combined footpath and cycle path known as Churchwell Path. The cycle path

⁵ *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [1992]

⁶ The means of escape review is at APP3 and the revised plan (AHR-AR-B01-20-100 revision 20) is at APP5

forms part of a designated cycle route known as Quietway 2. It marks the eastern boundary of the St John at Hackney Churchyard and Gardens (referred to in this report as the Churchyard Gardens) which include the Grade II* listed Church of St John at Hackney, a Grade II listed war memorial and several historic tombs (3 of which are Grade II listed). There are also two K2 telephone boxes (Grade II listed) at Churchwell Path. There are many mature trees within the Churchyard Gardens, including a line of 4 horse chestnuts adjacent to the boundary of the appeal site.

14. The original proposal includes part of the Churchyard Gardens within the application site. The area in question is part of a one-way loop leading from Lower Clapton Road to the entrance of the church and back to Lower Clapton Road. Historically this was a carriage drive. It is now a tarmac road with pay and display parking bays along one side.
15. To the south, St John's Church Road is a residential road of Victorian terraced housing. There are mixed commercial and residential uses to the east of the appeal site. Nos 6 and 8 Lower Clapton Road are Grade II listed. To the north of the appeal site, on the opposite side of Lower Clapton Road, there are numerous listed buildings around Clapton Square and the Grade II listed Kings Hall Leisure Centre. The leisure centre includes a swimming pool and sports hall. All of the above features are within the Clapton Square Conservation Area⁷. The site has a Public Transport Accessibility Level (PTAL) rating of 6B, which is defined as 'excellent' by Transport for London (TfL). It is within around 500m of Hackney Central and 650m of Hackney Downs railway stations and is served by several bus routes.

PLANNING POLICY

16. The development plan includes the London Plan, consolidated with changes since 2011 (LP), the Hackney Core Strategy 2010 (CS), the Hackney Development Management Local Plan 2015 (DMLP) and the Hackney Site Allocations Local Plan 2016 (SALP).
17. LP Policy 3.16 identifies that London requires additional social infrastructure provision to meet the needs of its growing and diverse population. Facilities should be located within easy reach by walking, cycling and public transport. LP Policy 3.18 states that the Mayor will support the provision of primary school facilities (amongst other forms of educational provision) to meet the demands of a growing and changing population and to enable greater educational choice.
18. LP Policy 6.1 seeks to encourage patterns of development that reduce the need to travel, especially by car, and to support development that generates a high level of trips at locations with high levels of public transport accessibility. LP Policy 6.3 states that development should not adversely affect safety on the transport network. Policy 6.7 states that the Mayor will implement improvements to the quality of bus services and Policies 6.9 and 6.10 state that he will work to bring about significant increases in cycling and walking. Policy 6.11 sets out the Mayor's wish to see a co-ordinated approach to tackling congestion. Policy 6.13 states that he wishes to see an appropriate balance being struck between

⁷ The Clapton Square Conservation Area Appraisal is at tab 2 of the Council's documents

- promoting new development and preventing excessive car parking that can undermine cycling, walking and public transport use.
19. LP Policies 7.4 and 7.6 promote high quality architecture and design which, amongst other matters, is informed by the surrounding historic environment and allows existing buildings that make a positive contribution to influence the future character of the area. LP policy 7.8 states that development should identify, value, conserve, re-use and incorporate heritage assets where appropriate.
 20. CS Policy 1 states that the Council will encourage significant economic and housing growth to locate in Dalston Major Centre and Hackney Central District Centre. The site is within the Hackney Central District Centre where the CS aims to develop a civic, cultural and administrative hub, supported by new homes and a network of retail and leisure services. CS Policy 6 seeks to encourage patterns of development that reduce the need to travel, particularly by car. The policy aims to maximise accessibility for pedestrians, cyclists and public transport users and to achieve reduced or preferably no on-site parking in areas of good accessibility.
 21. CS Policy 8 seeks to deliver new and enhanced social infrastructure, particularly where there is evidence of need and in growth areas such as Hackney Central. CS Policy 9 states that the Council will work with education providers to meet the needs of Hackney's growing population of children through favourably considering appropriate proposals for new educational facilities. CS Policy 24 seeks to ensure that development enriches the built environment and creates a sense of place and local distinctiveness. CS Policy 25 states that development should make a positive contribution to the character of the historic and built environment. This includes conserving the significance of designated heritage assets and their settings. CS Policy 33 seeks to prioritise sustainable transport and to locate significant trip generating development in highly accessible locations.
 22. DMLP Policy DM1 states that all development should be of high quality design. Policy DM2 seeks to avoid significant adverse effects on the amenity of neighbours. Policy DM5 supports the provision of community facilities. Policy DM28 seeks to preserve and enhance the character and appearance of conservation areas and to avoid substantial harm to the significance of listed buildings. DMLP Policy DM44 defines a movement hierarchy which prioritises transport users, with pedestrians, cyclists and users of public transport (in that order) having the highest priority. Policy DM45 seeks to maximise safe, convenient and inclusive movement and accessibility for pedestrians, cyclists and public transport users. Policy DM46 requires all development proposals to take full account of the needs of pedestrians, cyclists and other users and to promote walking and cycling safety. Policy DM47 states that the Council will expect to see car free and car capped development in most locations, particularly those with a high PTAL rating.
 23. The SALP allocates the appeal site for community use or mixed use comprising employment, community, retail and residential use.

24. The above policies are those which are considered to be of most relevance to the appeals. Other relevant policies of the LP, CS and DMLP, together with sources of supplementary planning guidance, are listed in the SoCG⁸.
25. The National Planning Policy Framework (the Framework) states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities and that local planning authorities should give great weight to the need to create, expand or alter schools. In August 2011 the Secretary of State for Communities and Local Government and the Secretary of State for Education published *Policy statement – planning for schools development*. That document sets out the Government's view that the creation and development of state-funded schools is strongly in the national interest and that there should be a presumption in favour of the development of state-funded schools.

THE PROPOSAL

26. The appeals are made by the Tauheedul Education Trust, which runs a network of primary and secondary schools with clusters in Lancashire, West Yorkshire, Greater Manchester, the West Midlands and East London. The proposal is intended to provide new premises for the Olive School, Hackney. The Olive School is a Muslim faith school. It is open to children of all faiths and none although it is understood that at present all of the pupils are of Muslim faith. The school currently operates from temporary premises in Cazenove Road, Stoke Newington. In addition, a second site at the former Hackney University Technical College is used for the reception and year 1 pupils.
27. The proposal, which is for a 3 form entry (3FE) primary school, is described in the application documents⁹. There would be 3 forms of 30 pupils in each year group. Under the alternative proposal, the school would open with 90 reception pupils. In the second year those pupils would move on to year 1 and 90 new reception pupils would be admitted. Thereafter, the school roll would grow at 90 pupils per year until all 7 year groups were operational, resulting in a school roll of 630. The pupils currently attending the temporary sites would not be transferred to the new site. Consequently there would be no need for the school buses which had been proposed in connection with the original proposal. The proposed accommodation would include 21 classrooms, a main hall, a small hall and spaces for music teaching, food/science, special educational needs, library, staff and administration.
28. Accommodation would be provided in the refurbished police station, the refurbished No 32 St John's Church Road, a new 3 storey classroom block and a new main hall. The refurbishment of the police station would involve the removal of alterations made in the latter part of the 20th century. It would also require the removal of some original fabric, such as some internal walls, the female cells and an external metal fire escape staircase. In order to make way for the new buildings the parade room and some modern single storey structures would be

⁸ ID1, section 4

⁹ These are contained in folders 1 to 3 for Appeal A and folders 1 and 2 for Appeal B. All plans and documents sent to the local planning authority as part of the Appeal A Application are included at section 5 of folders 1 – 3. An agreed set of the plans is contained in a separate folder marked 'Agreed plans and conditions'.

demolished. The buildings would be set around a central courtyard space and there would be a multi-use games area at the southern end of the site.

29. The application was supported by a number of statements and reports, including a design and access statement, a heritage statement, a transport assessment, a noise survey, habitat and arboricultural surveys and a school operational plan.
30. The original proposal included the formation of a bus layby within the Churchyard Gardens. This would have been achieved by removing 8 pay and display parking bays and widening the paved area to accommodate buses and a relocated footway¹⁰.

AGREED MATTERS

31. The following is a summary of the key points of agreement between the Council and the appellant:
 - The element of reason for refusal 2 referring to servicing and waste has been resolved by the proposal to secure a commercial waste operator and by the proposed school operational plan.
 - The alternative proposal may be acceptable in transport terms subject to the provision of sufficient information to substantiate the approach and subject to conditions that would secure its successful implementation.
 - Reason for refusal 3 can be withdrawn entirely on the basis of additional noise information and further justification for any shortfalls in relation to the relevant standards for educational accommodation.
 - Reason for refusal 4 can be withdrawn entirely following the submission of additional information regarding the roots of affected trees near the site.
 - In land use terms the site is suitable for use as a school.
 - Use of the site as a school would be a public benefit in that it would secure an appropriate use for the listed police station.
 - The proposal would not have any unacceptable impact on sunlight and daylight in relation to neighbouring properties.
 - The proposal would not have any unacceptable impacts on air quality.
 - The designated heritage assets which are relevant to the determination of the appeals are the former Hackney Police Station, Nos 6 and 8 Lower Clapton Road, the Church of St John at Hackney, the war memorial and listed tombs within the Churchyard Gardens, the listed telephone boxes and the Clapton Square Conservation Area.
 - The listing of the police station includes buildings within the curtilage. The elements of interest are the drill and exercise yard, the parade room and the boundary wall.

¹⁰ See plan C2042-205 revision A, last item in Agreed Plans folder

- The demolition of the parade room, the removal of an original steel fire escape and alterations to the boundary wall would be acceptable in the context of an otherwise acceptable scheme.
- Two of the listed tombs, the Hunter and the Beaufort tombs, are at some distance from the appeal site and would not be affected by the proposals.
- The telephone kiosks are mass-produced structures, located where they are needed. Their setting does not contribute to their significance.
- The omission from the alternative proposal of the works to form a bus layby in the Churchyard Gardens would reduce the harm to the setting of heritage assets and the character and appearance of the conservation area.
- The level of harm to designated heritage assets would be less than substantial harm, as that term is used in the Framework.

THE CASE FOR THE APPELLANT – TAUHEEDUL EDUCATION TRUST

Introduction

32. The appellant initially intended that existing pupils at the temporary site currently occupied by the Olive School at Cazenove Road would be transferred to and from the appeal site by bus, dropped off and picked up at a layby located in the Churchyard Gardens. Following the refusal of St John at Hackney to permit this arrangement, the appellant has put forward an alternative (*the alternative proposal*). In the alternative proposal, the operational development on the site of the former police station would remain the same as originally proposed but the school would open in 2019 with just 90 reception pupils in Year 1. It would grow by 90 pupils each year until it reached its full capacity of 630 pupils in 2025.
33. The Council's transport proof of evidence maintained that the alternative proposal represented a fundamental change to the transport strategy such that a new planning application should have been submitted. In the event the Council did not object to the appeals being determined on the basis of the alternative proposal. However ACE did maintain an objection on these grounds.
34. The appellant submits that the alternative proposal does not offend the principles established in *Wheatcroft* for the reasons given in Trowers and Hamlin's letter to the Planning Inspectorate dated 14 March 2017¹¹. The alternative proposal is not substantially different from the original proposal and no party has been deprived of the opportunity to make representations with respect to it. The alternative proposal is entirely consistent with *Wheatcroft* and other relevant cases¹². For the avoidance of any doubt, it is the alternative proposal, and only the alternative proposal, which is being pursued at this Inquiry.

¹¹ Appendix 2 to the proof of evidence of Karen Jones

¹² *Wessex Regional Health Authority v SSE* [1984], *Wadehurst Properties v SSE* and *Wychavon DC and Breckland DC v SSE* [1992] 65 P&CR 34, *Kent CC v SSE* [1976] 33 P&CR 70 and *Johnson v SSCLG* [2007] EWHC 1839 (Admin)

The policy position

35. The provision of state-funded school facilities, including free schools and academies, is support by policy at every level. The appellant draws attention to the following:

- Paragraph 72 of the Framework states that the Government '*attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities*' and that local planning authorities '*should take a proactive, positive and collaborative approach to meeting this requirement, and to development which will widen choice in education*'.
- The Mayor of London has expressed his support for the provision of school facilities to meet the demands of a growing and changing population and to enable greater educational choice in Policy 3.18 of the LP. This policy also confirms the Mayor's support for the establishment of new schools, including free schools.
- Paragraphs 5.19 to 5.24 of the CS address investing in education and include the Council's commitment to working with education providers, while CS Policy 9 states that the Council will meet the needs of Hackney's growing population of children by, inter alia, '*favourably considering appropriate proposals for new educational facilities especially in areas in Hackney, where the evidence demonstrates, are in the greatest need, including Hackney's growth areas*'. The same policy also promotes the identification of appropriate sites for new, or for the expansion of existing, educational infrastructure in Hackney to ensure an additional 4.5 forms of entry for primary schools to provide for the growth of the pupil population identified in the Council's infrastructure assessment.
- Policy DM5 of the DMLP supports the provision of new and extended social and community facilities, including educational facilities, particularly in growth areas such as Hackney Central District Centre. The supporting text highlights the conclusions of the updated 2014 Hackney Infrastructure Assessment, which in turn identifies a shortage of primary education places in 2014/15.
- Finally, *Policy statement – planning for schools development* issued in August 2011 encapsulates the Government's commitment to ensuring that there is sufficient provision to meet growing demand for state-funded school places, increasing choice and opportunity in state-funded education and raising education standards. According to this statement:
 - There should be a presumption in favour of the development of state-funded schools, as expressed in the Framework.
 - Local planning authorities should give full and thorough consideration to the importance of enabling the development of state-funded schools in their planning decisions. The Secretary of State will attach significant weight to the need to establish and develop state-funded schools when determining applications and appeals that come before him for decision.

- A refusal of an application for a state-funded school will have to be clearly justified by the local planning authority. Given the strong policy support for improving state education, the Secretary of State will be minded to consider such a refusal to be unreasonable conduct, unless it is supported by clear and cogent evidence.

36. In the appellant's submission, the refusal of the application for a new school in this case is not supported by clear and cogent evidence.

The starting point

37. As noted above, national, London-wide and local policy is firmly supportive of new and expanded state-funded schools to meet both quantitative and qualitative needs. The appeal site is identified as a strategic site in the SALP, the allocation for which is '*community use or mixed use comprising employment, community, retail and residential*'. Use of the site for a school would clearly be a community use. The Council accepts that the appeal site is an appropriate location for a school and agrees that such a use would be a public benefit in that it would secure an appropriate use for the listed building.
38. There is a need for a 3FE school at this location. This is confirmed by CS Policy 9, quoted above. The same policy promotes the identification of appropriate sites for new educational infrastructure in Hackney to ensure an additional 4.5FE of primary school places to provide for the growth of the pupil population identified in the Council's infrastructure assessment. More specifically, the Council's Planning Service Pre-Application Report of the meeting which took place on 23 February 2015¹³ states '*further information has been provided regarding the need for a 3FE school. The need for a 3FE school is acknowledged as are the consequences of not securing a 3FE*'. Similarly, the officers' report concludes that the need for a 3FE school had been '*satisfactorily demonstrated*'¹⁴. The Council accepts that there is a high level of parental demand for places at the Olive School. The school has an '*outstanding*' Ofsted rating and is consistently oversubscribed, notwithstanding the limitations of its temporary accommodation.
39. At the Inquiry the Council produced data relating to primary school capacity in the locality of the appeal site¹⁵. These figures do not reduce the force of the above points. Whilst the table sets out the capacity at each of the schools listed across year groups, there are no details concerning the capacity at each school in the reception year. There are no details as to each school's Ofsted ranking. Nor are there any details as to whether each school is a free school, academy or LEA maintained school or whether it is a faith school. These points matter because the provision of parental choice forms an important part of the policy position described above.
40. These points are also pertinent to the duties placed on planning decision-makers by s149(1) of the Equality Act 2010. Decision-makers should have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations

¹³ LBH4, note that the original document was wrongly dated 23 February 2014

¹⁴ Core Document 1, paragraph 6.1.6

¹⁵ Rebuttal proof of evidence of Barry Coughlan, table 2.1

between persons who share a protected characteristic and those who do not share it.

41. In this context religion or belief is a protected characteristic. It follows that there is a duty to have regard to the desirability and importance of making sufficient educational provision to meet the needs of and/or demand from the Muslim faith community in the borough. At present, the appeal scheme is the pre-eminent, if not the only, means of achieving that objective. The Olive School would be one of only two Muslim faith primary schools in the borough and the sole state-funded Muslim faith school.
42. The Council has expressed a preference for a smaller 2FE school on the site. However, it has accepted the need for a 3FE school in this area. The appellant's evidence has explained the extensive site searches that have been undertaken and the difficulties encountered in identifying a suitable site for the school¹⁶. Moreover, the appeal site is ideal in terms of sustainability, with a PTAL rating of 6B. This compares with a PTAL rating of 4 at the Cazenove Road site. No suitable location for an additional 1FE has been identified. In any event, the appellant is not promoting a 2FE school. In the appellant's view, a 2FE school is neither a realistic nor a desirable alternative to the 3FE proposal which is in issue in these appeals.
43. The Council contended that the appellant discounted the possibility of a 2FE school on the appeal site because of matters connected with the funding of the site acquisition by the Education and Skills Funding Agency (ESFA)¹⁷. This contention was based on a misunderstanding of the true position. The appellant has consistently pursued a 3FE school because there is a demonstrable need and demand for such a school. The funding was assessed by the ESFA on the basis that the appellant had made out that case¹⁸. Accordingly, provided that the proposed school is satisfactory in planning terms, the appellant had no reason to capitulate to the Council's suggestion that it should pursue a 2FE school instead.
44. In summary, the starting point for the assessment of the appeals is that the appeal site is in principle suitable for a school, that the provision of a new school at the site is supported by policy at all levels and that there is a need and a demand for a 3FE school at this location. Each of these points is agreed between the Council and the appellant.

The pre-application process

45. The Council refers to alleged defects in the pre-application process, culminating in an assertion that the '*pre-application discussions in this case failed*'. This assertion is not borne out by the evidence. The Council's own evidence identifies proposed works to the listed building which are said to have been '*successfully resisted by the Council*'. This shows that the appellant listened and responded to the Council's concerns. The proposal was subject to a lengthy pre-application process which included numerous meetings, the issuing of two formal written responses and a number of further emails. It is fanciful to suggest that nothing happened as a result of these communications.

¹⁶ Proof of evidence of Karen Jones, paragraphs 6.91 to 6.96

¹⁷ Proof of evidence of Barry Coughlan, paragraph 2.6

¹⁸ Proof of evidence of Karen Jones, paragraph 6.88

46. The Council's written response following a meeting on 27 November 2014¹⁹ refers, under the heading '*Layout, Form and Massing*', to two possible options for the design of the proposed development. Option 1 is described as '*a three storey teaching block adjoining the western boundary*'. The document states that '*it is considered that this should be relocated away from the perimeter wall*'. The second Pre-Application Report of the meeting of 23 February 2015²⁰ records:

'One strong characteristic of all post-war development around the boundary of St John's churchyard is that it is set back away from the existing boundary wall, including recent development approved last year. Pulling the proposed three storey building away from the boundary to align with the rear of the former police station (approx. 1 metre) is a small but important adjustment but the gap between the proposed building and the existing boundary wall will be nearly doubled. The main rear block would be more comfortable if in line with the existing building, although we acknowledge the need to make most efficient use of the site.'

47. The Council's witness sought to interpret this as indicating that the one metre set-back had yet to be implemented and that the above passage amounted to a request, on the Council's part, that this should be done. However, the passage is not susceptible to any such reading. Rather, it is an acknowledgment that the suggestion which had previously been made in connection with '*Option 1*' had been implemented. This is a clear example of an instance in which the appellant made a '*small but important*' adjustment to the design of the proposed building.
48. This document shows that the pre-application process was an iterative one, involving meaningful and responsive engagement between the Council and the appellant. Moreover, it shows that that process culminated in a position in which the Council was content with the '*emerging architectural direction*' of the proposed building generally, and, in particular, was '*broadly comfortable with the height and massing of the new blocks*'. Overall, the pre-application process was both productive and successful. Self-evidently, there were outstanding differences between the appellant and the Council at the time the applications were submitted. This is a normal part of the planning process and should not be taken as a sign that the pre-application process failed.

Built heritage and design

49. The Council and the appellant have only a narrow (although significant) area of disagreement on built heritage issues. Extensive areas of agreement are described in the SoCG. It is agreed that, where harm is identified, it falls within the spectrum of '*less than substantial harm*' and so engages paragraph 134 of the Framework. The main area of disagreement is where the harm caused by the alternative proposal would lie within the spectrum of less than substantial harm. The appellant's evidence is that the harm would be minor. By contrast, the Council takes the view that both the original proposal and the alternative proposal are '*very harmful*' and that they both cause a '*quantum of harm ... so high as to come close to substantial harm*'²¹.

¹⁹ LBH3, page 2

²⁰ LBH4, page 2

²¹ Proof of evidence of Tim Walder, paragraph 9.13

50. The Secretary of State will no doubt have regard to the views expressed by Historic England, the Hackney Society, the Hackney Design Review Panel (DRP) and the Victorian Society²². In particular:

- Historic England, in its responses of October 2015 and May 2016 with respect to the original proposal, expressed the view that the impact on the setting of the Grade II* St John's Church would be harmful. However, the consultation response dated 3 March 2017 on the alternative proposal states that *'the new buildings proposed for construction within the rear yard of the former police station are unlikely to have such a significant impact on the setting of St John's that Historic England should provide comments. The physical presence of these buildings will be screened by the site's perimeter wall and by the tree-lined boundary of the churchyard and as such they are likely to blend with the boundary of buildings currently found around the churchyard'*. The appellant agrees with this assessment.
- Historic England's concerns relate only to potential harm caused by the bus layby proposed in the original proposal. It is therefore reasonable to conclude that, within its remit as statutory consultee, it has no concerns regarding the alternative proposal.
- The Hackney Society's response to the original proposal concluded that *'in architectural and design terms the scheme proposed is sound. Indeed it makes good use of the space and proposes restoration of features of the extant police station previously harmed by the Crown's immunity from the planning system. The new additions are well articulated and respect the listed building satisfactorily, being appropriately set back from the site boundary'*. These observations apply equally to the alternative proposal.
- The DRP's response of March 2015 to the original proposal made reference to heritage issues. However, the main concern related to traffic generation in the Churchyard Gardens. The DRP concluded that the scale of the development was *'acceptable'*, albeit that a two-storey development would appear *'more subservient'* than the three-storey building proposed. It is reasonable to infer that the DRP considered that the three-storey building retained a degree of subservience. Since the bus layby is no longer proposed, it is reasonable to conclude that the DRP would not have any significant concerns regarding the alternative proposal.
- Whilst the Victorian Society raised various concerns, its response is somewhat confused and appears to apply the wrong statutory and policy tests. Moreover, the response wrongly asserts that the rear elevation of the police station is as architecturally impressive as the side flank and that the yard has always been predominantly open.

51. In view of these responses, the Council's suggestion that the harm to heritage assets would be such that it would come close to substantial harm seems implausible. The suggestion is especially difficult to understand given the Council's acceptance that the harm to the settings of listed buildings and the

²² Proof of evidence of Jonathan Smith, paragraphs 1.17 to 1.26

character and appearance of the conservation area would be less under the alternative proposal.

52. The appellant's approach to the design of the scheme took account of all of the buildings around the Churchyard Gardens, not just those on the appeal site. This included the characteristics of the buildings to the south of the appeal site in St John's Church Road and Sutton Square. The scale of the classroom block has had regard to the scale of the listed building as a whole, not just the part closest to the new build element. As seen from Lower Clapton Road, the scale would step down to the rear²³. The height of the classroom block would be as close to the eaves line of the police station as possible. The line of the western elevation of the police station is determined by the gable end facing the Churchyard Gardens and the boundary wall. The classroom block would be seen as being within the grounds. The elevations seek to mirror the simple facades of nearby terraced housing rather than competing with the clear architectural identity of the police station itself²⁴.
53. This approach was sound and fully consistent with advice in *Historic England Advice Note 2: Making Changes to Heritage Assets*²⁵. So far as the question of height is concerned, the design reflects the indication set out in the fourth bullet-point of that advice. This suggests that the height of the new work should be assessed in relation to the highest point on the host building, for example the ridge height, and/or in relation to a relevant nearby point such as the eaves and gutter line. The advice does not suggest that the assessment should be made exclusively by reference to the adjoining elevation.
54. As noted above, as of February 2015 the Council was content with the height of the proposed development and expressed no concerns about subservience in relation to the former police station. The DRP was equivocal on the issue of subservience. Its response, as recorded in the officers' report²⁶, was that '*the scale of development is considered acceptable*', but that a two-storey development would appear '*more subservient*' to the listed building. Historic England and the Hackney Society expressed no concerns as regards the impacts of the proposed development other than in relation to the bus layby in the original proposal.
55. The appellant accepts that the assessment of the impacts in design and built heritage terms will require the exercise of planning judgement by the decision maker. Nevertheless, the appellant invites the Secretary of State to prefer the evidence of its witnesses to that of the Council. In making that request, the appellant highlights the following key points.
56. First, the evidence of the Council's heritage witness was flawed by his persistent attempts to evade recognition of the only reasonable interpretation which could be given to views previously expressed by consultees and the Council itself. This was particularly so in relation to his interpretation of the Pre-Application Report of February 2015. He sought to attribute a meaning which the comments in

²³ Proof of evidence of Michael Walters, image 4.11.3

²⁴ Inspector's note – the comments in this paragraph were made orally by Mr Walters during his evidence in chief

²⁵ Extract reproduced in the proof of evidence of Tim Walder, paragraph 6.4

²⁶ Core Document 1, paragraph 4.10.8

question simply could not bear. This calls his own judgement into question, undermining the weight that can be placed upon his evidence generally.

57. Second, the Council's heritage witness exhibited questionable judgement in seeking to rely upon three so-called '*illustrative options*'²⁷. These options were not illustrative of anything which could sensibly inform the judgements which will have to be made in the assessment of this aspect of the case. The witness accepted that Options A and B are based on rough '*back of the envelope*' sketches which he made in front of the appellant's team during the pre-application process. None of the options amount to anything more than rectangular figures on a piece of paper. It is impossible to make any meaningful assessment of their impacts in design, built heritage or conservation terms as the appellant's witnesses agreed in their written and oral evidence before the Inquiry.
58. It is not possible to assess whether Options A and B represent viable alternatives for a 3FE or 2FE primary school respectively. Option C presents a proposal for a mixed use development. Given that the appeals are proceeding on the basis that there is a need and demand for a 3FE school at this location, its relevance is questionable. Moreover, all of the options are plainly distinguishable from the alternative scheme addressed by the Inspector in the Fulham Town Hall case²⁸. The alternative promoted in that case consisted of a '*carefully developed illustrative scheme*'. The Inspector in that case also had the advantage of having seen a comparable scheme at the former Bethnal Green Town Hall. None of the options put forward in this case are anywhere near being a carefully developed illustrative scheme.
59. The third key point is the Council's assessment of where on the spectrum of less than substantial harm the appeal proposal would fall. As noted above, the appellant assessed the harm as minor, whereas the Council took the view that the harm would come close to substantial harm. That submission amounts to a *reductio ad absurdum* of the Council's case. The Council has agreed that the harm to the settings of listed buildings and the character and appearance of the conservation area would be reduced by the removal of the proposed works to form a bus layby in the Churchyard Gardens²⁹.
60. The Council's case entirely overlooks this concession and treats the harm arising from the original proposal and that arising from the alternative proposal as identical. This stance is taken notwithstanding that, with the exception of the Victorian Society, the concerns of the statutory consultees focussed squarely on the harm resulting from the bus layby within the Churchyard Gardens. This formed part of the original proposal but is not part of the alternative proposal. The Council's approach to the alternative proposal, and its assessment of the harm liable to be generated by it, is simply unreasonable. Moreover, if the Council's assessment were correct, the consequence would be that the harm caused to the listed police station would come close to being so serious as to cause its significance to be vitiated or very much reduced, leading to its de-

²⁷ Proof of evidence of Tim Walder, paragraphs 5.14 to 5.26

²⁸ APP/H5390/W/15/3140593, attached to proof of evidence of Barry Coughlan, tab 1.4

²⁹ ID1, paragraph 5.5

designation. No reasonable assessment of the potential harm caused by the alternative proposal could lead to such a conclusion.

61. For all the above reasons, the appellant argues that the evidence of the Council, and the representations of the Victorian Society, should be rejected in favour of the evidence provided by the appellant's witnesses. The design of the appeal proposal is well thought-out and entirely acceptable in planning terms. The alterations to the listed building would minimise the loss of historic fabric. Moreover, they would secure the refurbishment of the exterior and would restore the original proportions of some of the main rooms. Any harm caused to the heritage assets identified in the SoCG³⁰, while a matter of great weight, is nonetheless sufficiently minor as to be outweighed by the benefits which the proposal will undoubtedly bring.

Transport

62. The starting point for the appellant's transport case is the fact that the appeal site is located in an area which has a PTAL rating of 6B (excellent). This is a location which is highly accessible and highly sustainable in transport terms. It is eminently suitable for the development of social infrastructure such as a school. It may be seen from the addendum transport assessment (addendum TA) that the accessible location of the site was a factor underlying the assessment of the projected mode share of pupils and staff at the new school³¹. Other relevant factors were the Hackney primary schools' average mode share and the average mode share of faith schools. The Council did not question the methodology used or the relevance of the various inputs. This assessment was sound and cannot reasonably be faulted.
63. The appellant highlights a number of other points derived from the addendum TA:
- The mode share for the Cazenove Road site does not provide a guide to the mode share of the proposed school at Lower Clapton Road, since the two locations are very different in terms of their accessibility.
 - This is relevant to staff mode share as well as that of pupils. Some staff are required to travel between the Cazenove Road site and the former University Technical College site, thereby compounding their dependence on the car. Consultation with staff showed that most would use the bus or walk to the proposed school.
 - It is expected that the pupils starting at the new school would, in the main, live within 2 km of the site. One of the oversubscription criteria is that pupils living closest to the school would be offered a place. Moreover, the majority of current pupils also live within 2 km of Lower Clapton Road. It is anticipated that the catchment will concentrate around the new site once it is operational.
 - While the Olive School, Hackney, is open to children of all faiths and none, currently most pupils are of Muslim faith. It follows that most pupils will travel to and from residential areas where there is a dense Muslim faith

³⁰ ID1, paragraph 5.19 (g), (h) and (i)

³¹ Appellant's proofs of evidence, folder 2, tab D, paragraph 4.2.1

population. Figure 2.28 in the addendum TA shows 14 areas with the highest density of Muslim faith residents. The supporting text explains how travel from those areas to the proposed school could be achieved by sustainable modes.

- Under the alternative proposal, pupils from the temporary sites would not be transferred to the new school. The proposed school would only admit new pupils into the reception class. This strategy would avoid the sudden impact of 630 pupils travelling to and from the school from the day of opening. It would also allow time for the school travel plan to take effect.
 - The oversubscription criteria set out in the admissions policy include a preference for children living closest to the school. The 2017/2018 school year was oversubscribed with 166 applications for 90 reception places. This level of oversubscription is likely to continue. Consequently, pupils living closest to the proposed site will be given priority, after other standard admissions criteria such as special educational needs, children in care, siblings and children of staff have been applied.
64. The appellant's evidence describes the steps which the Olive School has taken to reduce car travel and manage congestion in the vicinity of the Cazenove Road site. These include staggering departure times, marshalling drop off points and active encouragement of pupils and parents to walk to and from school. Similar measures would be put in place at the new school where four marshals are proposed³².
65. The school has also registered with TfL's Sustainable Travel, Active, Responsible, Safe (STARS) accreditation scheme with a view to attaining the bronze standard in transport at the outset. There is a commitment in the outline school travel plan to achieving the STARS gold standard in the fourth year of opening. In summary, these measures have been working at the Cazenove Road site and there is every reason to be confident that they will also work at the proposed site with its superior accessibility.
66. The Council has acknowledged that, if the school behaves as other Hackney primary schools do in terms of catchments and travel patterns, then the impact of the school upon the transport network '*may be acceptable*'³³. This acceptance was subject to the provision of further evidence. At the close of the Inquiry it is impossible to see what more information could be required. The missing information referred to in the Council's proof of evidence has now all been supplied. This includes evidence concerning the admissions policy, the projected mode share, Quietway 2, the proposed toucan crossing and details of marshalling arrangements. In his oral evidence the Council's transport witness did not point to anything that was outstanding.
67. The adequacy of the information provided was not challenged in the course of the Inquiry. Instead, the thrust of the Council's cross-examination was predicated on the proposition that the nature of a school's catchment area necessarily dictates its modal share. Even if that were right, the evidence in this case is that for 2016/2017 the majority of pupils attending the current site live within 2 km of

³² Rebuttal proof of evidence of Abigail Evans, paragraph 1.9 (v)

³³ Proof of evidence of Peter Foley, paragraph 5.7

- the appeal site³⁴. The appellant considers that the catchment area is likely to become more focussed upon the appeal site as the school becomes established. The Council did not adduce any evidence to show that this judgement is unfounded or unreliable.
68. The Council's transport witness sought to argue that faith schools tend to have a wider catchment than non-faith schools and, as a consequence, typically have less sustainable travel patterns. This hypothesis is undermined by the fact that the car mode share for faith schools in Hackney, (11% in 2015/16), is only one percentage point higher than that of the seven schools currently located on Lower Clapton Road³⁵.
69. In any event, when assessing the projected modal share of a development proposal, the pertinent question is where people are going to, rather than where they are coming from. The significance of a site's PTAL rating must not be downplayed. PTAL ratings are widely used by local planning authorities when assessing where different kinds of development should go, both in local plans and in individual planning decisions. They are pivotal in the assessment of the suitability of any given site for a particular development.
70. The Council's transport witness argued that the addendum TA understates the likely level of car use at the new school. However, he accepted that his view was informed by the existing travel patterns at Cazenove Road³⁶. That approach is misconceived. The PTAL rating for the appeal site is 6B whereas that for Cazenove Road is only 4. It is not appropriate to look to the mode share at the existing school in order to arrive at a judgement as to the likely mode share at the appeal site.
71. The Council did not question the conclusion of the addendum TA that the car mode share would decrease over the years between 2019 and 2025. The appellant has adopted a cautious and realistic approach to the issue of mode share, arriving at a relatively high 16% car use for the year of opening in 2019. The assessment that this figure would fall towards the borough average over time, and that the borough average itself would decrease over the years to 2025, was equally reasonable and realistic.
72. Although the Council made much of the admissions policy and oversubscription criteria, these are in fact the same as those generally operated by primary schools in England. As confirmed by the oral evidence of the Executive Head Teacher, the policy whereby a school which is not oversubscribed will accept pupils from anywhere in the country operates in schools up and down the land. The Olive School's oversubscription criteria, which include a criterion giving priority to the siblings of children already attending the school, are consistent with the normal criteria operated by primary schools generally.

³⁴ Appellant's proofs of evidence, folder 2, tab E, post-code plots at appendix B to the outline school travel plan

³⁵ Appellant's proofs of evidence, folder 2, tab D, table 4.1 in the addendum TA

³⁶ Inspector's note – in answer to my questions, Mr Foley said that he believed that travel patterns at the proposed school would be different to those at other schools because of the existing mode share at Cazenove Road and because the proposed school would have a wider catchment

73. There is evidence to suggest that the Olive School, Hackney, may well exceed the performance of other Hackney schools so far as its transport arrangements are concerned. It has already achieved TfL STARS bronze standard accreditation at the Cazenove Road site. It has committed to achieving the gold standard within four years in the outline school travel plan. The school has indicated that parents and carers will be committed to using sustainable modes of transport in a contractual code of conduct. Moreover, the school is in an advantageous position in that it has experience of operating a travel plan at the Cazenove Road site. There are extremely good relations between the school and parents/carers. This was demonstrated by the evidence of the Executive Head Teacher and by the contributions of the parents who spoke at the Inquiry. It can be confidently expected that parents/carers will continue to co-operate with the school.
74. The appellant has proposed measures to address picking up/dropping off in the vicinity of the school by way of a marshalling strategy. The Executive Head Teacher was unequivocal that the school will not permit picking up/dropping off from the Churchyard Gardens (other than from the publicly accessible pay-and-display bays) or from St John's Church Road. Parents/carers would be required to comply with the terms of the code of conduct in this respect. Given her extensive experience, there is no reason to doubt her evidence on this matter. In general, it is clear from the written and oral evidence that strategies regarding school transport, including regulating parking around a school and encouraging the use of sustainable modes of transport, can and do work. The Council's concerns on these points were not supported by evidence.
75. The outline school travel plan sets out the arrangements for managing the arrival and departure of pupils³⁷. Up to 25% of the children would arrive between 07.30 and 08.00 for the breakfast club. Most of the remainder would arrive between 08.15 and 08.30. These would be split between the front and rear entrances. At the end of the school day departure times would be staggered. The issue of congestion in Churchwell Path has been addressed in the addendum TA which undertook a pedestrian comfort level assessment for the Friday afternoon departure period. This showed that there would be some crowding although this would only be for a limited duration and would affect only a short section of the path³⁸. Some limited disturbance to cyclists is inevitable but that does not amount to a reason for refusing planning permission.
76. Returning to the Council's case on transport, the appellant considers that, when the evidence is viewed in the round, there is nothing to suggest that the proposed school would operate differently to other primary schools in Hackney. The school is committed to upgrading the existing crossing at Lower Clapton Road to a toucan. This could be secured by a condition. TfL is no longer objecting and no unacceptable network or safety impacts have been identified. The appellant submits that there are no outstanding transport considerations which would warrant dismissing the appeals.

The standard of educational accommodation to be provided

77. The Council has withdrawn reason for refusal 3 which dealt with this issue. Nevertheless, at the Inquiry concerns about the standard of educational

³⁷ Appellant's proofs of evidence, folder 2, tab E, pages 10 to 13

³⁸ Appellant's proofs of evidence, folder 2, tab D, table 6.1

accommodation to be provided were maintained by ACE. The appellant acknowledges that the witness for ACE is a qualified architect with experience in the primary education sector. The appellant notes that this was a matter which the Inspector himself explored in some detail in his questioning of the appellant's architect.

78. The appellant's architect explained that it was necessary to take a balanced view when seeking to provide school accommodation within the confines of a listed building. It was accepted that the areas of some classrooms would be below the relevant guidance figures. With regard to the two halls, use of these spaces would be staggered in accordance with the school's operational plan. Similarly, the external areas would be constrained and would be below the relevant area guidelines. However, the area guidelines do not take account of the sequencing and management of the use of such spaces which is necessary in the context of a tight urban site. The design process had included modelling of people movements at key times such as break times. It was accepted that 3 classrooms on the top floor of the listed building would not be fully accessible to disabled persons³⁹.
79. The appellant also relies on the written and oral evidence of the Executive Head Teacher of the Olive Schools. She has been involved in the evolution of the design of the Olive School, Hackney from its inception. She is highly experienced in the running and operation of primary schools, including schools coping with constrained sites such as the temporary accommodation at Cazenove Road. Her concern for the safety and well-being of the children at the schools for which she is responsible is beyond doubt. The Executive Head Teacher is satisfied that the school could operate safely, conveniently and effectively at the proposed site. Considerable weight should be given to that view because she is the person who is best placed to make such an assessment.

The original and the alternative proposals

80. The appellant's overriding aim is to see the school in operation as soon as possible. Those parents who spoke at the Inquiry described the urgency of the matter for them. It is apparent that they value the school highly and are very conscious of the outstanding job that it is doing in educating their children. The evidence of the Executive Head Teacher demonstrates that the school also maintains a positive role in the broader community, fostering good relations between children of different faiths and participating regularly in charitable and other activities in the area.
81. In the event that the Secretary of State is minded to allow the appeals, the question for the appellant is which of the two alternative schemes is most likely to enable it to achieve the above aim. It is of course possible that the Parochial Church Council would change its stance and agree to the use of its land as a bus layby, in accordance with the original proposal. However, at present that does not appear likely. Consequently the original proposal seems unlikely to proceed. The alternative proposal, by contrast, could be implemented with a starting date for the opening of the school in September 2019.

³⁹ Inspector's note – the comments in this paragraph were made by Mr Walters in answer to my questions

82. The alternative proposal clearly satisfies the *Wheatcroft* test. No-one has been prejudiced as a result of the appellant's decision to pursue the alternative proposal in these proceedings. Its impacts, in both built heritage/conservation and transport terms, are less than those of the original proposal. For those reasons and in all of the circumstances, the appellant respectfully submits that there is no good reason why the appeal should not be allowed, on the basis of the alternative proposal.
83. In the alternative, the appellant submits that the original proposal is nonetheless acceptable, for the reasons set out in its Statement of Case.

Conclusion

84. For all of the above reasons, the appeals should be allowed.

THE CASE FOR THE COUNCIL OF THE LONDON BOROUGH OF HACKNEY

Introduction

85. The Council's closing submissions are directed to the alternative proposal which was the focus of discussion at the Inquiry. The common theme that runs throughout the Council's case is that, whilst school use is accepted in principle, the scale of development proposed is objectionable. This is reflected in the first reason for refusal, both for both planning permission and listed building consent. Moreover, a consistent message can be seen in the pre-application discussions, the officers' report, the discussion at Committee on 8 June 2016 and the evidence of the Council's witnesses at the Inquiry.
86. It was decided at the outset that a three 3FE school should be built at the site, seemingly as a result of requirements imposed by the Department for Education (DfE). The basic design to accommodate a 3FE school had been established before the pre-application process began and was not altered meaningfully thereafter. Alternative design approaches suggested by the Council, which would have had a less harmful impact, were not developed. The heritage consequences of the decision to pursue a 3FE school were very much secondary. This has resulted in the harms identified in the Council's heritage evidence, many of which stem from a failure to address subsidiarity.
87. The transport strategy has changed considerably during the course of the application, with the introduction and now withdrawal of the use of part of the Churchyard Gardens to accommodate buses bringing pupils from Cazenove Road. This strategy is, at the very least, confused. Information to support the latest strategy remains unconvincing.

The pre-application process

88. The appeal site was purchased in February 2014. This seems to have been based on the site being used to accommodate a 3FE school. The appellant's planning witness confirmed that the EFSA would not countenance a 2FE school. The brief for the architects was for a 3FE school, meaning 21 classrooms had to be provided. It appears that the architects (AHR) were appointed by the building contractors (Wates) who had already been appointed to design and build the

school by the EFSA⁴⁰. It can be inferred from this that the architects were not able to suggest anything other than 21 classrooms.

89. Although there appear not to have been elevations or sections available at the first pre-application meeting (27 November 2014), both Options 1 and 2 proposed the bulk of the development on the western boundary of the site. At this point it had not yet been agreed that the parade room could be demolished. The notes of this meeting record the Council's concern that:

*'it is considered that the number of school places proposed appears high for the area and constraints of the site and could place undue development pressure upon the listed buildings'*⁴¹

These are the same options as presented in the design and access statement, both of which involve 3 storey blocks. There are no options in existence that do not have 3 storeys. The appellant's architect confirmed that a 3 storey block is necessary to accommodate 21 classrooms on this site.

90. More detail was provided by the appellant in a series of drawings produced on 13 January 2015. What is clear from these drawings⁴² is that the essential elements of the scheme had been settled by January 2015 without any meaningful amendment in the face of the Council's repeated expression of concern about the scale. As the appellant's architect accepted in cross examination, the basic layout, location, area, scale and massing of the proposed buildings had been established in January 2015 and were not significantly changed thereafter.

91. The second pre-application meeting took place on 23 February 2015 and the notes from this meeting record the Council's continuing concerns about the intensity of use of the site⁴³. It is correct to observe that these notes also state that the Council is *'broadly comfortable with the height and massing of the new blocks'*⁴⁴. It is striking how often the appellant's evidence falls back on this paragraph as justifying the approach taken. Taken as a whole, the notes from this meeting are a mixed bag containing both positive and negative comments. They state that the height of the rear block should be kept as close as possible to the gutter line of the rear of the existing police station and refer to the relocation of the classroom block as a *'small but important adjustment'*.

92. The DRP's comments were also a mixed bag. The positive remarks were that the scale of development was thought to be acceptable and, architecturally, no major concerns were expressed. The negative comments were that the height of the extension along Churchwell Path was of concern and that the proposal represented over-development. In the equivocal category may be placed the DRP's observation that a two-storey development would be more appropriate and

⁴⁰ Inspector's note – Mr Walters confirmed that the brief was for a 3FE scheme and that AHR had been appointed by Shepherd Construction (now part of Wates) in answer to questions from Mr Atkinson

⁴¹ LBH3, 2nd paragraph on page 3

⁴² Image 16 in Part 2 of the proof of evidence of Tim Walder

⁴³ LBH4, the concerns are articulated in the sections *Land use* and *Amenity* as well as in the *Conclusions*

⁴⁴ LBH4, 2nd paragraph on page 2

more subservient⁴⁵. The appellant's interpretation of these comments emphasises the absence of a clear statement that 3 storeys would be unacceptable. The observations do not, they suggest, amount to an objection to 3 storey development. In fact, as noted above, the brief was for a 3FE school and this necessitated a 3 storey block. The appellants were never going to accept these comments in any event.

93. The Council's concerns about the quantum of development having been determined by the 3FE requirement were articulated at a meeting held on 3 July 2015 and again at a follow up meeting on 20 August 2015⁴⁶. No meaningful alterations occurred and the pre-application process was brought to a close by the making of the applications on 10 September 2015. Nevertheless, in an effort to seek to resolve the outstanding concerns a high level meeting was convened on 22 March 2016, attended by a representative from the ESFA. Although there is no note of this meeting, there are accounts of it in the Council's evidence⁴⁷. The appellant was asked directly to reduce the number of pupils proposed, perhaps to a 2FE school, so as to relieve pressure on the listed buildings. This request was declined. The Council's understanding, from that meeting, is that the ESFA's purchase of the site was dependent upon it being used for a 3FE school⁴⁸.
94. It should be no surprise that the DfE insisted on a 3FE school on the appeal site because the Olive School had already been established as 3FE before the appeal site was bought in February 2014. The Executive Head Teacher gave evidence about the keen eye kept by the DfE on free schools to make sure that, amongst other things, school rolls do not drop.
95. What emerges from the pre-application process is a strong impression that the scheme had already been designed to meet the brief for a 3FE school, almost regardless of the site constraints. This was not a heritage led scheme, which could have achieved greater subsidiarity. There was no meaningful response to the Council's concerns. Consequently the fundamental issues identified in the Council's evidence⁴⁹ were not resolved and remain as part of the reasons for refusal. These issues include the location of the classroom block in relation to the police station and the boundary wall and the height of the classroom block.
96. No consideration was given to other options for delivering a 3FE or a 2FE school. At the meeting of 3 July 2015 the Council's heritage witness sketched out some alternative layouts which would have been less harmful. The sketches made at that meeting are represented by images 17 and 18 of the Council's evidence which also sets out the advantages of these alternatives⁵⁰. Surprisingly, the appellants' architect was not aware of these sketches until he began to prepare for this Inquiry.
97. The issue now is not whether the alternative layouts were sufficiently detailed to allow an assessment of their impact on heritage assets. The key point is that they

⁴⁵ The DRP's comments are in the officers' report, Core Document 1, paragraphs 4.10.8 to 4.10.12

⁴⁶ Proof of evidence of Tim Walder, paragraph 5.10, and LBH6, Para 3.3

⁴⁷ Proof of evidence of Tim Walder, (who attended the meeting), paragraph 5.13

⁴⁸ Proof of evidence of Mr Coughlan, (who attended the meeting), paragraph 4.9

⁴⁹ Proof of evidence of Tim Walder, paragraph 5.9

⁵⁰ Proof of evidence of Tim Walder, paragraphs 5.18 and 5.21 and images 17 and 18 in part 2

were not worked up at all. These options were never explored because the scheme had already been settled to accommodate a 3FE school. The alternative layout for a 2FE school is particularly notable given the doubt that now exists about the need for a 3FE school at the appeal site.

98. The Council has also expressed concerns about transport throughout the pre-application process, notably pick up and drop off arrangements and the catchment for the proposed school. These concerns have not been properly responded to notwithstanding the appellant's enforced *volte face* about the use of the Churchyard Gardens.

The significance of the heritage assets

99. There is broad agreement between the Council and the appellant about the main guidance to be followed⁵¹ in assessing the significance of heritage assets and considering effects on setting. There is also agreement on the assets that need to be considered in this case⁵² and the parties are not far apart on the significance of the assets in question.
100. The listed former police station is given high evidential, historic (illustrative) and aesthetic value, moderate communal value and some historic (associative) value by the Council. The exercise and drill yard to the south forms part of the listed building, being within its curtilage, rather than merely forming part of the setting as the appellant suggested. The yard has previously been divided, perhaps to allow use both for prisoners' exercise and police drilling. There have also been some structures built after 1904 such as the modest stables block to the south. These were probably demolished in 1976 along with Nos 34 and 36 St John's Church Road to allow the yard to be used as a car park⁵³. Nevertheless, the rear yard has been a predominantly open space used for drill/exercise from around 1905 until the 1970s. It is a feature which adds to the significance of the listed building.
101. The appellant's heritage witness argues that the open yard has typically comprised around one third of the total site area⁵⁴. That is slightly misleading in so far as a single storey building along the western boundary wall appears not to have been visible above the wall and would not therefore have impinged on views from the south or south west. Only the stables block would have been discernible from St John's Church Road, not the parade room or lecture room. The generally open character of the yard was a design feature intended to ensure that the police station did not dominate views from the Churchyard Gardens. It was also a reference to the domestic gardens formerly on the site. The Council considers that the yard has evidential, illustrative, historical and aesthetic value⁵⁵.
102. The appellant attributes distinct architectural value to the police station, primarily arising from the quality of its northern façade, with some interest in the

⁵¹ *Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment* English Heritage 2008 and *Historic Environment Good Practice Advice in Planning Note 3 (GPA3): the Setting of Heritage Assets* English Heritage 2015

⁵² ID1, paragraph 5.19

⁵³ There is a sequence of OS maps at tab 2 of the Council's documents

⁵⁴ Proof of evidence of Jonathan Smith, paragraph 1.43

⁵⁵ Proof of evidence of Tim Walder, paragraph 4.38

- western flank. The police station is also given communal, social and historic value and a secondary contribution from what is described as the immediate setting.
103. The Council's heritage witness assesses nearby listed buildings and structures including the listed Church of St John at Hackney, Nos 6 and 8 Lower Clapton Road, the war memorial and the tombs, whose setting may be affected by the proposals together with the impact on the conservation area. Whilst these are legally separate matters they can conveniently be dealt with together. He then assesses the contribution the settings of the heritage assets make to their significance through the creation and analysis of three zones - historical character, tranquillity and visibility⁵⁶.
104. The settings of these assets are found to have high evidential, historical, aesthetic and communal value. They make a high contribution to the significance of the assets. This is because the assets and the settings are contemporaneous and the relationships between them have been consciously designed. There are also important visual and functional links. Similarly, the conservation area has high evidential, historical, aesthetic and communal value and is of high significance.
105. The zone of historical character comprises a series of linked spaces for quiet contemplation and reflection which have been present at the heart of Hackney for over 220 years. The character of these spaces is closely related to the experiential qualities of the zone of tranquillity, a smaller area drawn around the green area used for burial and memorial. This is still a place of rest and recreation for any toil worn Hackney people. Analysis of views A, B and C within the zone of visibility shows how important the wider setting and the conservation area are to the significance of the assets within this zone. Any harm visible from viewpoint A would have a particularly high impact because it would affect the setting of the listed church.
106. The appellant's heritage witness finds the church to have social, communal and historical significance of a moderate-high level and architectural and aesthetic value at an aggregate moderate level⁵⁷. He identifies two elements of the setting of the church, immediate and extended. The immediate setting, which is similar to the Council's zone of visibility, is given evidential value, a relatively high aesthetic value and a strong collective communal value. This setting is found to make a strong contribution to the significance of the church.
107. The extended setting includes views from Clapton Square and historical associations with St Augustine's tower to the south west. It coincides to some extent with the Council's zone of historical character. The extended setting is found to contribute to significance mainly through views from the north and inter-visibility with Clapton Square. This is thought to be a less important contribution than that made by the immediate setting.
108. Central to the appellant's analysis is an assertion that the immediate setting of the church has a high degree of enclosure. This is said to result from the urban form to the east, including development on the appeal site and along Rowe Lane and St John's Church Road. The mature trees around the gardens are also said to

⁵⁶ Proof of evidence of Tim Walder, images 13 to 15 in part 2

⁵⁷ Proof of evidence of Jonathan Smith, paragraph 6.29

contribute to the degree of enclosure, such that the immediate setting is generally separated from the wider setting. The exception is the visual links to the north which are referred to above. The Council disagrees about the extent of current enclosure.

Assessment of the impacts on heritage assets

109. The Council's heritage witness has carried out an extremely thorough analysis. The main themes to emerge are that harm to the police station, the setting of heritage assets and the conservation area would arise:

- as a consequence of the scheme being led by the need to accommodate 3FE and the circulation requirements of that number of pupils, rather than being heritage led
- failure to achieve subsidiarity
- excessive development within the formerly open yard, building over the parts formerly left open and leaving open the parts formerly built over

110. The appellant's architect acknowledges that circulation requirements are central to the design approach⁵⁸ and that this has resulted in continuous north/south corridors linking the existing building to the new block at a uniform level. This has dictated the height of the classroom block which is 450mm higher than the eaves and gutter line of the rear of the listed building⁵⁹. The north/south corridors have also dictated the length of the classroom block and appear to have been the reason why this block does not align with the rear of the existing listed building. This point appears to be acknowledged in the appellant's evidence which acknowledges the desire for the façade to align with the police station but says that this has to be balanced with the functionality of the resulting spaces⁶⁰.

111. Any assessment of subsidiarity requires an element of subjectivity. Even so it is important to remember that the appellant's witnesses did not question the summary of the concept of subsidiarity set out in the Council's evidence⁶¹. In this case it would be very obvious to an observer from the north that the new block would sit forward of the listed building. This would detract from the appearance of its principal façade⁶². Similarly, its excessive length and height will appear obvious from the west.

112. The appellant's heritage witness assesses subsidiarity by reference to the main northern elevation of the listed building and the terraced housing on the south side of St John's Church Road⁶³. This is a convoluted way of avoiding the obvious. The classroom block would not be subsidiary when assessed in its main context, the point at which it would adjoin the listed building along the western boundary of the site. This would be the most important context in which to assess the subsidiarity of the proposal. The appellant's heritage witness got into a tangle seeking to explain how the proposal can be both a '*landmark*' building and

⁵⁸ Proof of evidence of Michael Walters, paragraph 3.3.8

⁵⁹ Proof of evidence of Michael Walters, paragraphs 4.1.5 and 5.3.10

⁶⁰ Proof of evidence of Michael Walters, paragraph 5.3.9

⁶¹ Proof of evidence of Tim Walder, paragraph 6.4

⁶² Proof of evidence of Tim Walder, image 22 in part 2

⁶³ Proof of evidence of Jonathan Smith, paragraph 7.2.17

subservient. This was the least persuasive part of his evidence, in which he unconvincingly sought to conflate being a landmark building with high quality design.

113. The design intention in the 1790s seems to have been to create wide views from the church to create the sense of a more open setting⁶⁴. Subsequent building created a degree of enclosure, orientating the focus of the Church to the north. However, the views across the rear of the appeal site at a high level remained. They were protected by Dixon-Butler's design through his leaving the drill/exercise yard open. The new classroom block would dominate this view, particularly as seen from the portico of the church. It would be incongruous with the zone of visibility.
114. Questioned on this point, the appellant's heritage witness refused to accept that it can be inferred that Dixon-Butler was consciously acknowledging the intentions of the 1790s designed landscape by allowing views across the police station yard from the church. He did not say that he disagreed with the Council's analysis, rather that there was an absence of evidence. The Council considers that there is both evidence and analysis in its proofs of evidence.
115. There is disagreement between the Council and the appellant regarding the degree of enclosure of the Churchyard Gardens. This is essentially a matter for the Inspector's site visit. The visit will show that the built enclosure of the Churchyard Gardens is formed by buildings set back behind relatively low boundary walls, creating a sense of enclosure only at a low and localised level, not at a high level. The effect of the deciduous trees will obviously be much reduced in the winter months⁶⁵.
116. A drill yard is one of the 4 main features of a police station which Historic England looks for when considering potential for listing. The OS map of 1913 shows the layout of the buildings when the yard was at its most built-up, with buildings accounting for approximately half of the open space. The appellant's heritage witness accepted that reversing the pattern of built development and open space here would cause a degree of harm, as would severing the last link with this aspect of the history of the listed building.
117. The appellant argues that, at times in the site's history, there has been development in the rear yard with a greater footprint than is now proposed. This ignores the fact that the modest height of many of the buildings formerly within this area was such that they were barely visible from outside the site. The proposal would reverse the historical arrangement of space by building on what was previously open and leaving open what was previously built up (Nos 34 to 36 St John's Church Road, the stables block and the parade room). The proposed infilling would amount to some 40% of the area which is open today. If the proposed development was compared with the smaller open area which was historically used for drilling, that figure would be higher.

⁶⁴ Proof of evidence of Tim Walder, paragraphs 4.53 to 4.57

⁶⁵ Image 24, part 2 of proof of evidence of Tim Walder

118. Applying the seven step approach to managing change⁶⁶ it is fair to say that the Council has undertaken Steps 1 and 2 (establishing whether there is sufficient information and considering the effects on authenticity and integrity) far more thoroughly than the appellant. The appellant's heritage witness came close to accepting this, describing the Council's work as 'well enumerated' and admitting that the appellant's consultants had done the minimum required by paragraph 128 of the Framework. Most significantly, the Council has addressed Step 5 (comparing options) by considering alternative layouts which the appellant has ignored.
119. This exercise is conspicuously absent from the appellant's case because the decision to promote a 3FE school has determined the design approach from the outset. The 'options' presented in the design and access statement⁶⁷ do not address the fundamentals of alternative location, scale, height or massing. They merely move the same scale blocks around the site.
120. The appeal scheme would remove the ability to appreciate the way the police station functioned through excessive infilling of the rear yard. It would also sever the link with its original setting by blocking views from the 18th century designed landscape of the Churchyard Gardens. All of the harm identified in the Council's evidence would, together with the harmful alterations made by the Police, have a significant cumulative impact on the significance of the designated heritage asset. The harm identified would be aggravated by the following factors:
- the significance of the heritage assets was not correctly understood
 - the assessments of the impacts of the proposal was inaccurate
 - the proposed works would not be reversible
 - there was no real attempt to explore options
 - the amount of mitigation proposed is small
 - there would be cumulative impact
121. For all of the above reasons the Council submits that the overall harm would be at the upper end of the spectrum of '*less than substantial harm*'.

Transport

122. The central uncertainty bearing on the transport issue is the catchment area for the proposed school. It is not disputed that the catchment area is one of the factors affecting the number of parents driving their children to school. Other factors include the PTAL rating and local constraints on parking. If parents are coming from further afield it follows that there is a greater chance that they will undertake the journey by car. The Council's position is clearly stated in the evidence. If the proposed school were to behave like other primary schools in the borough (with a tightly drawn catchment area) then it may be acceptable in

⁶⁶ Set out in *Conservation Principles* and referred to in paragraph 9.4 of the proof of evidence of Tim Walder

⁶⁷ Design and access statement, tab 6 of Appeal A folder 3, pages 34 to 36

transport terms⁶⁸. However, the appellant has not produced evidence to show that this would be the case.

123. The catchment areas for faith schools are generally wider than those for schools in general. This is true for the Olive School, as may be seen from the plotting of the homes of the Olive School's pupils for 2016/17 in the June 2017 draft travel plan. Moreover, the proportion of children travelling to school by car (19%, recently reduced from 57%) is considerably higher than the borough average for primary schools (9%)⁶⁹.

124. The Olive School is designated as a faith school and currently all of its pupils are of Muslim faith⁷⁰. The addendum TA shows how relatively few Muslim faith residents there are within 2km of the appeal site. The main concentrations of people of Muslim faith are beyond a 2km radius, to the north, east and south⁷¹, a point accepted by the appellant's transport witness. Moreover, the transport witness accepted that around 20% of the pupils enrolled for reception in September 2017 live outside the borough of Hackney⁷². A condition was suggested which sought to secure a catchment area centred more locally on the proposed school site:

Prior to occupation of the development hereby approved, a school admissions strategy shall be submitted to and approved by the local planning authority detailing the admissions criteria including a catchment limited to a 2km radius around the site

It is now agreed that this condition would not meet the enforceability test for the use of conditions in planning permissions. The effect of this is that, in reality, pupils will continue to come from much further than 2km with the consequence that they are more likely to travel by car. The Council's concerns on this point have not been resolved.

125. Analysis of the Olive School's admissions policy shows that, when (as now) the school is oversubscribed, proximity is the 6th criterion to be applied when determining which pupils should be admitted. The second criterion is having a sibling at the school already. Thus siblings, regardless of where they live, will get priority over other children who may live nearer the site. At the very least, the sibling criterion will prolong the unsustainable travel patterns resulting from families living further away from the school. A key question, therefore, is the number of current pupils who have a younger sibling who may be expected to follow them to the school. Anecdotally this is understood to be a high number but no figures have been produced.

126. It should be noted that these criteria only apply in times of oversubscription. At times when there is not oversubscription, there appears not to be any control over where pupils might live. Nor should such control be expected or even

⁶⁸ Proof of evidence of Peter Foley, paragraph 5.7

⁶⁹ Proof of evidence of Peter Foley, tables at pages 17 and 18

⁷⁰ Inspector's note - in answer to questions from Mr Atkinson, Mrs Bradley stated that currently nearly 100% of the school population is of Muslim faith

⁷¹ Appellant's proofs of evidence, folder 2, tab D, addendum TA, figure 2.28

⁷² Inspector's note - in answer to questions from Mr Atkinson, Ms Evans accepted that 19 of the 90 pupils enrolled for Reception in September 2017 live outside the borough

allowed, that is the point of a free school. The fundamental difficulty of the appellant's transport case is that the catchment of the Olive School is far wider than other primary schools. The appellant seeks to address this by focusing the school's catchment on the appeal site⁷³. However, the above analysis shows that the catchment is not in fact capable of being controlled in this way by the admissions policy and oversubscription criteria.

127. The appellant has failed to provide sufficient or conclusive evidence that the Council's transport concerns have been met⁷⁴. With regard to catchment and school entry, the plots of the 2016/17 catchment show that the majority of the pupils live to the north of the appeal site. The addendum TA confirms that approximately 70% live to the north of the site⁷⁵. This remains a problem because the school is proposed to move further away, to the south. These families will therefore find themselves further from the school. Without any mechanism for controlling the catchment area it is likely that this will continue to be focused further than 2km from the appeal site. In reality, pupils are likely to continue to be driven to school to a greater extent than is projected by the appellants.
128. Closely related to the above is the very low (7%) projected share of pupils coming to school by car by 2025. This is lower than the figures for primary schools generally in Hackney (9%), for primary schools in the vicinity of Lower Clapton Road (10%) and for faith schools in Hackney (11%). Without any ability on the part of the appellants to restrict the catchment of the proposed school, these figures are unrealistic and unlikely to be attained.
129. The reduction in car use observed at Cazenove Road (from 57% in May 2014 to 19% in May 2017) is based on a 'hands up' survey of the children. This shows that, while travel to school by car has been falling, there have been corresponding increases in both car share and 'park and walk'. This means that 55% of pupils arriving at Cazenove Road have travelled by car, at least for part of the journey. The appellant's transport witness accepted that this is an unsustainable mode of transport and acknowledged that there has been a large displacement into these partially car-based modes since 2014⁷⁶. There do not appear to be any proposals to tackle this issue. The appellant relies on a draft travel plan, drawing attention to the work done at Cazenove Road to address problems caused by parents parking, dropping off and picking up pupils there. However, the school appears not to have engaged with the Council's sustainable transport initiatives until November 2016, after the refusal of planning permissions⁷⁷.
130. For the reasons set out above, it is likely that the actual numbers of cars arriving (07.30 to 08.30) and departing (14.30-15.30) by the year 2025 will be more than the 60/67 suggested by the appellant. These figures are considerably lower than those estimated in the equivalent paragraph of the original transport

⁷³ Proof of evidence of Abigail Evans, paragraph 4.2.2

⁷⁴ Proof of evidence of Peter Foley, paragraph 8.2

⁷⁵ Appellant's proofs of evidence, folder 2, tab D, addendum TA, paragraph 2.8.1

⁷⁶ Inspector's note – in answer to questions from Mr Atkinson, Ms Evans accepted that the overall reliance on car use was still unsustainable whilst maintaining that the school's travel management measures had nevertheless brought about beneficial change

⁷⁷ Proof of evidence of Peter Foley, appendix 2.6

assessment (September 2015) where it was expected that there would be 145 vehicle arrivals in the AM peak.

131. In the original TA it was estimated that, on the basis of the existing mode share, 289 vehicles would turn into the Churchyard Gardens in the AM peak. This was reduced to 145 in line with the target mode share (which was then 22% of pupils arriving by car)⁷⁸. In the May 2016 TA the estimate for current movements into the Churchyard Gardens had inexplicably fallen to 12. This was estimated to increase to 71 by 2024 on the basis of the estimated mode share which was (at that time) 7% of pupils arriving by car⁷⁹. In the addendum TA of June 2017 it is still estimated that there are currently 12 vehicles turning into the Churchyard Gardens in the AM peak but the estimate for 2025 has fallen to just 13, although the projected mode share remains at 7% of pupils arriving by car⁸⁰.
132. The addendum TA assumes the success of the strategy of encouraging parents to park elsewhere in the locality. This additional filter was applied to the methodology so as to greatly reduce the estimated number of vehicles turning into the Churchyard Gardens. This approach fails to acknowledge that people would turn into the Churchyard Gardens first, in order to ascertain if there were any free spaces. In reality, they would be very unlikely to continue their search elsewhere without stopping to drop off their child even if there were no free spaces.
133. The Council does not dispute the appellant's survey of the availability of parking spaces in the wider area. However, many of these spaces are at a considerable distance from the appeal site⁸¹. Furthermore, spaces to the north of Lower Clapton Road may not be desirable because they would require pupils to cross the busy main road. Clearly the spaces in the Churchyard Gardens are, by a long way, the most convenient and attractive to parents wishing to drop off or pick up their children. Despite what is now being said, it has previously been a part of the appellant's case to encourage the use of the pay and display spaces within the Churchyard Gardens⁸². In any event, the appellant does not dispute that it cannot control or prevent the use of the existing pay and display bays in the Churchyard Gardens by parents. The Parochial Church Council is not reassured by the school's plans and remains concerned about the likely use of its land for parking and pick up/drop off⁸³. A review of the current pay and display arrangements, which are operated through an agreement with the Council, appears to be underway.
134. There is agreement that the increased use of the zebra crossing immediately outside the school on Lower Clapton Road, which incorporates a cycle crossing to carry Quietway 2 across the main road, would warrant upgrade to a toucan crossing. The provision of a toucan has now been agreed in principle by TfL and is to be made the subject of a condition⁸⁴. The appellant acknowledges that congestion will occur on the Quietway 2 for a short time at the end of the school

⁷⁸ Appellant's proofs of evidence, folder 1, tab A, table 4.2 and figures 4.3 and 4.5

⁷⁹ Appellant's proofs of evidence, folder 1, tab B, figure 2.13 and table 4.3

⁸⁰ Appellant's proofs of evidence, folder 2, tab D, figures 2.14, 4.2 and 4.5

⁸¹ Proof of evidence of Peter Foley, page 22

⁸² Appellant's proofs of evidence, folder 1, tab A, diagram at the bottom of page 27

⁸³ Letter of 12 June 2017 at appendix 2.7 of proof of evidence of James Foley

⁸⁴ LBH7

day, when part of the route is predicted to have a pedestrian comfort level rating of F. It remains unclear what the effect on cyclists would be. Would they be forced to dismount or divert to an alternative route?

135. The traffic management plan suggests that 4 traffic marshals would be provided. This would be welcomed by the Council and would need to be secured through a condition. Overall, there is potential for the Council's transport concerns to be overcome but this is dependent on the appellant being able to show that the proposed development would behave like any other primary school in Hackney, with a small local catchment. However, the appellant has been unable to address this fundamental point. The consequence is that targets for greatly reducing the use of the car by parents bringing their children to school cannot be relied on.

Planning

136. The appeal scheme appears to have been designed to accommodate a 3FE school from the very beginning. There has been little concession to the listed police station and no serious response to the Council's concerns about the scale of the proposals or the harm to the significance of the heritage asset. In the Council's view this would be at the top end of the '*less than substantial*' category. The harm, which should be given considerable importance and weight, must be weighed against the public benefits of the scheme.
137. The provision of a permanent home for an existing school is a public benefit which cannot be denied. There is clearly need for a faith school and for a free school as articulated through parental demand. However, the position on the wider need for a school has changed since the application was refused. This is because the Council has been increasing the capacity of primary schools, both generally and in the vicinity of the appeal site. It cannot be said that, if permission is refused, there will be a deficit of primary school places locally. In fact there would continue to be a surplus⁸⁵. The appellant accepted that approximately half of the 19 schools identified in the Council's evidence have spaces available for the reception class in September 2017.
138. This is relevant to consideration of optimum viable use (OVU), which was not addressed at all by the appellant until rebuttals. One of the persistent concerns of the Council has been that the 3FE proposal is simply too big for the site. In light of the doubt now surrounding the need for a school at this site it may be that the 2FE alternative⁸⁶ (option B) is indeed the OVU. Certainly option B would cause less harm than the appeal scheme. Although it would provide a smaller school, it would nonetheless meet the need as now understood.
139. The discussion of viability is somewhat unusual in the circumstances of this case. The site has already been bought by the ESFA and a state school would operate on grants from central government. It can be assumed that any state sponsored school (including a 2FE school) would be viable. What stands in the way of a 2FE school appears to be the requirement for 3FE, as discussed at the high level meeting on 22 March 2016. The concept of viability referred to in paragraph 173 of the Framework is based on conventional commercial viability,

⁸⁵ Rebuttal statement of Barry Coughlan, Table 2.1

⁸⁶ Proof of evidence of Tim Walder, paragraphs 5.20 to 5.23

with reference being made to the costs of planning obligations and of the need for competitive returns to the land owner. Contrary to what was said by the appellant's planning witness, viability is not concerned with the need for the school or the sustainability of the location.

140. The only evidence about the conservation and other benefits flowing from a 2FE school was provided by the Council. This evidence was not challenged by the appellants, except to say that there was insufficient information to make a proper assessment. However, there is enough detail to conclude that there would be less harm to the heritage assets if a 2FE school were built. The Council considers that the proposed 3FE school does not amount to the OVU for the appeal site. The harm to the significance of the heritage assets in this case would not be outweighed by the public benefits.
141. In addition, the appellants have failed to provide convincing evidence that the proposals would not have a detrimental impact on the safe and efficient operation of the surrounding highways, cycle lane and footways in the vicinity of the site. The appellant's case is particularly unconvincing in relation to the catchment of the Olive School. For the reasons given above, the catchment is likely to remain larger than that of a typical primary school resulting in greater use of cars for bringing pupils to school. The appellant's projection that the mode share will fall to 7% is unlikely to be achieved. This increases the chances of the Council's concerns about detrimental impacts on the surrounding highways, cycle lane and pedestrian safety becoming apparent.
142. The proposed development is contrary to the relevant policies in the development plan and there are not material circumstances which suggest that permission should be granted.

Other matters

143. There are a number of points in this case which are relevant only if the application is treated as being personal to the Olive School. Planning Practice Guidance states that personal conditions should be considered only exceptionally and there is specific prohibition on conditions limiting the benefit of a planning permission to a company⁸⁷. It would not appear to be possible to impose a condition limiting the benefit of any planning permission to the Olive School or to the Tauheedul Education Trust. In any event, the appellant has not suggested a personal permission.
144. The fact that the Olive School has been assessed by Ofsted to be outstanding is therefore irrelevant to the determination of these appeals. Similarly, the steps taken by the Olive School to control traffic in Cazenove Road are irrelevant. The appellants operate a Muslim faith school. If it is considered appropriate to impose a condition limiting the benefit of the proposals to those of Muslim faith then the evidence about the catchment area of the school is relevant as are Public Sector Equality Duty considerations. If such a condition is not considered appropriate then these factors are not relevant.
145. The position in respect of the original proposal is more straightforward. The appellants have not provided any evidence at the Inquiry in support of the

⁸⁷ ID: 21a-015-20140306

original proposal. One of the main additional issues it raises is the effect of the bus layby on the setting of the heritage assets (including the police station) and on the conservation area. These impacts are addressed in the Council's evidence which was not challenged. The Council's evidence about the transport impact of the original proposal may be taken from the officers' report and the Council's statement of case. In the Council's submission the determined application is unacceptable and the Inspector is urged to recommend that permission is not granted for it.

146. During the discussion about conditions a suggestion was made that the school might open with 630 pupils on day one without the bus layby in the Churchyard Gardens. The Inquiry heard no evidence about this option which had not been in the contemplation of either main party when the evidence was being given. There is no evidential basis for the Inspector to make any recommendation about this suggestion⁸⁸.

Conclusions

147. The proposed development is too large for the site. Moreover, there is an inability to control the catchment area of the proposed school. The alternative proposal fails the test set out in paragraph 134 of the Framework and is contrary to the development plan. There are no material considerations which nonetheless point to approval. The same applies to the original proposal. The Inspector is therefore respectfully requested to recommend refusal of both schemes in his report to the Secretary of State.

THE CASE FOR ACTION ON CLAPTON'S ENVIRONMENT

Overview

148. The case for ACE is set out in its statements and other documents⁸⁹ and may be summarised as follows. The proposed school is far too large for the site and the site itself will present insoluble difficulties. The response of the school to these realities has been inflexible. The Council's suggestion for a smaller school has been rejected out of hand and the alternative proposal would only defer the impacts, not resolve them. The proposed student numbers are a pre-condition of the funding arrangements with the ESFA. ACE supports the Council's concerns regarding the future catchment area of the school and the implications for car use.
149. Plans to manage parking around the school are inadequate. Parents would not take a 10 minute walk from streets that are remote from the school. Instead, they would use the Churchyard Gardens, St John's Church Road and Clapton Square, thereby degrading the amenity value of these streets. There is no space around the school for parents and children to congregate at drop off or pick up times. Hundreds of people would be forced onto narrow pavements or a busy cycle path. This would result in a real risk of serious injury or worse.

⁸⁸ Inspector's note – although this suggestion was touched on during the discussion on conditions, Ms Busch made clear in her closing submissions that it was not an option that was being promoted by the appellant

⁸⁹ ACE1 to ACE11

150. The interior configuration of the school would be detrimental to the health and welfare of the pupils and teachers, requiring a complex exercise of crowd management to get pupils into and around the building. The school's representatives have emphasised how their expertise has made a success of operating in sub-standard buildings in the past. However, there is no guarantee that this skill set will be around in the future. With an average staff, the organisational effort of managing staggered arrivals and meal times, street marshals, supervising crocodiles of children in the corridors and walking buses to off-site activities would start to fray. This would leave a difficult and dangerous site. The proposal fails to deliver a future-proof solution to the needs of pupils, staff and local people.

Legal submissions

151. The legal submissions were provided in writing⁹⁰. In summary, the alternative proposal is substantially different to the original proposal. It may be that the revised transport strategy results in reduced transport impacts. However, new and altered considerations are likely to be thrown up. The Council's reasons for refusal would have been different. The change to a staggered entry school affects the entire transport strategy and the balance of heritage considerations. These are not mere details. They alter the substance of the proposals and require publicity and consultation.

152. Permitting yet another amendment to the proposal would alter the proposal to such a degree that:

- the balance of material considerations would be different to those originally applied for, considered and consulted upon
- interested third parties are likely to be prejudiced

153. The amended proposal is not severable from the means by which the school would be populated or from the transport and other impacts which may result. Granting planning permission would not be a partial permission. Rather, the appellant is seeking to use the appeal process to evolve the scheme. This would be contrary to Government guidance. Accepting the changes proposed would risk causing substantial prejudice and should not be allowed. The appeal is now invalid and should be dismissed.

154. Although not included in the legal submissions, ACE had previously made another procedural objection which was reiterated in its final written submission to the Inquiry⁹¹. This was to the effect that the Council should not have accepted the amendment of the applications to include the bus layby at the Churchyard Gardens before the applications were determined by the Council. Instead, there should have been a fresh planning application at that stage. ACE considers that this invalidated the Council's decision and hence made the appeal invalid.

Design

155. The proposed buildings and site are far too small to accommodate the size of school proposed. The 630 pupils, together with parents, staff and deliveries,

⁹⁰ ACE1

⁹¹ ACE11

would create daily crowd management issues. The operational plans fail to demonstrate how overcrowding at entrances/exits would be avoided. The shortfall against the relevant space standards is such that there would be harm to the welfare and educational needs of the children.

156. The proposals lack waiting or queuing areas and the drawings do not give an accurate picture of the congestion that would occur around entrances. The entrance on Lower Clapton Road would face a busy red route where the pavement narrows to 3m in width. This is often congested with cyclists and pedestrians. Even with a staggered departure time, the area outside the main entrance in St John's Church Road would become congested as parents wait for children to leave the school. The playground would not be large enough for the hand-over to parents to take place there. Congestion around the entrances would become dangerous at moments of crisis and enforced evacuation.
157. The overall amount of internal space falls short of the relevant requirements and the arrangement of the spaces would create very low quality school accommodation. The linear shape of the site means that year 4 pupils would need to proceed in a walking bus along a confined external passage to get to their classrooms. The pupils would spend a significant amount of time being closely supervised when trying to move around the buildings. The circulation in the listed building would be particularly tight and constrained. The arrangements for evacuation in case of fire have not been demonstrated.
158. The classrooms in the listed building would all be undersized and disconnected. Unmanageable room shapes would impede teaching. The dining hall in the listed building would be subterranean and very small. It is probable that long queues would form when lunch is dispensed. The larger hall would also be subterranean and would be remote, accessed through long stairs. The amount of external space would be completely inadequate, less than one third of the relevant standard. The external space to the south of the site would be used for waiting carers and deliveries for part of the day. It could only accommodate one class at a time, allowing each class only around a quarter of an hour to use it. The courtyard spaces at ground floor level would be in permanent shadow and too small for either play or sports.

Transport

159. By 2025 there would be an increase of around 1,000 pedestrians using the crossing at Lower Clapton Road. Introducing a toucan crossing would cause delays for passengers using the 9 bus routes which pass the site, as well as delaying traffic generally in peak periods.
160. The appellant identifies various locations which could be used for parking by parents conveying children to and from the school. The Parochial Church Council has made clear that it does not want its grounds to be turned into a car park. As Clapton Square is now a cul-de-sac there would be significant access difficulties in using the Leisure Centre car park. Similar access difficulties affect other streets suggested. Additional cars searching for parking places would cause gridlock and add to air pollution. Additional congestion would affect the response times for ambulances and fire appliances.
161. Children in reception and years 1 to 4 would use the southern entrance, from St John's Church Road. This would result in over 500 pedestrians, together with

cycles and pushchairs, using this entrance. As most pupils would live to the north of the school, Churchwell Path would effectively be blocked to cyclists between 08.00 and 08.30. Although the school proposes staggered departure times, no such arrangement is proposed in the morning. In fact the morning would be more problematic as the start of the school day would coincide with the rush hour.

162. Cycling is increasingly popular in Hackney and is given a high priority by the Mayor of London. Quietway 2, which runs from Walthamstow to Bloomsbury, is an important part of the TfL cycle network and use of this route is increasing rapidly. Congestion on Churchwell Path would result in safety issues with cyclists passing through groups of young children. In reality most cyclists would look for alternative routes. The most obvious is via Narrow Way and Mare Street, resulting in cyclists being exposed to increased exposure to multiple dangers, delays and inconvenience⁹². Narrow Way would become a rat-run, negating the benefits of the Council's improvement works there. Quietways are intended to encourage cycling, targeting cyclists who want quieter, low traffic routes. Some of the users of Quietway 2 would be discouraged from cycling at all.
163. The appellant has underestimated the current level of cycle traffic along Churchwell Path. The plans do not show sufficient space for cycle parking at the school. There are concerns about access and turning for fire appliances.

Amenity and Heritage

164. Noise, dust and disruption during the construction phase would affect users of the Churchyard Gardens and local residents. The elevation of the classroom block facing the Churchyard Gardens would be a modern, utilitarian structure of undistinguished appearance. It would loom over the boundary wall and would be very visible in the winter months. The Churchyard Gardens have a remarkable sense of tranquillity and are the main green space for many residents who do not have gardens of their own. The new classroom block would increase the sense of enclosure, reduce privacy and there would be noise from the proposed rooftop study areas. The use of staggered break times would increase the length of time at which outdoor spaces are used for play. This would add to noise impacts. Noise from the play areas would reverberate between the terraced buildings to the east of the site, adversely affecting local residents. The appellant's noise survey has not fully considered the effect of noise from vehicles and associated activity in the Churchyard Gardens.
165. The Churchyard Gardens are the oldest space in Hackney, containing its oldest building and listed tombs of local notables. It is a rare survival of a Georgian landscape in the inner city. The path layout follows the carriage drive laid out in 1790. The gardens are to be viewed together with Clapton Square Gardens and are of very high significance. They contain many fine trees and are of ecological value.
166. The police station is a historic building. Conversion to use as a school would be a radical change, likely to result in the loss of significant features. The addition of new buildings in a different style would detract from its commanding presence as a local landmark. The appellant is wrong to downplay the value of the rear elevation. It continues the use of red brick, giving a sense of continuity of design.

⁹² A plan of Quietway 2 and the alternative route is appended to ACE8

The proposal would be harmful to the conservation area, eroding the village-like quality noted in the Conservation Area Appraisal. The report prepared by the appellant's arboricultural consultant is agreed with in most respects. All of the significant trees should be given the greatest consideration and care.

Impacts on residents and the community

167. The residents welcome change and diversity and do not want the police station to stand empty. It should be used in a way that adds value to the community. However, a school of this size would create significant problems and risks. The proposals are based on unrealistic assumptions. The assumption regarding the catchment area is unrealistic given that this would be the only Muslim faith school in the borough⁹³. Similarly, the assumptions regarding car use and the effectiveness of traffic marshals are not realistic. In practice there would be many additional cars on unsuitable residential roads, which would put the safety of local children, and those attending the school, at risk.
168. St John's Church Road is a cul-de-sac with limited space to turn. It cannot safely be used for deliveries and servicing. The use of the road by hundreds of children and parents during a 15 minute window in the morning would cause chaos and have a negative impact on the lives of the residents. Consultation has not been meaningful and the appellant has shown a complete disregard for the impact of the proposal on the community. It would be reckless to approve a school of this size in this location.

Further written statements

169. At the Inquiry ACE submitted further written submissions in support of the above comments⁹⁴. The Churchwarden of St John at Hackney confirmed that no new side access from Churchwell Path has been approved by the church. Nor has there been any permission to use the church access road. The Council has a licence from the church to operate a pay and display car park in the Churchyard Gardens. Parking outside the marked bays already causes problems. The future of the current parking arrangement is under review and the current public access format is likely to cease within 2 years.
170. The London Parks and Gardens Trust describes the importance of the Churchyard Gardens. They retain most of their original Georgian layout and are on the Trust's Inventory of London Historic Gardens. Any increased building mass adjacent to the boundaries of this historic landscape would be to its detriment. The Hackney Historic Buildings Trust notes that the Churchyard Gardens are important as a setting to listed buildings, including St Augustine's Tower (Grade I listed) and the Church of St John at Hackney, and as a heritage asset in their own right. The Trust provided further information on the history of the Churchyard Gardens.

⁹³ Inspector's note – the Inquiry was told that the Olive School is currently the only state-funded school in the borough which is designated as a Muslim faith school

⁹⁴ ACE11, Appendices 1 to 4

OTHER PARTIES WHO APPEARED AT THE INQUIRY

Opposed to the appeals

171. **Jane Straker**⁹⁵ explained her long involvement with conservation matters in Hackney. In this case she considered that the Council's officers have expressed what the local residents feel in a clear and coherent manner.
172. **Conrad Romer**⁹⁶ was concerned that the new classroom block would harm the setting of the police station by blocking views from the south and from St John's Church Road. The effect on the drill yard and the listed Church of St John would also be harmful.
173. **Beryl Jones** has lived opposite the proposed southern entrance to the school all her life. She is concerned that there would be a large number of people congregating outside before the school opens. This would have a huge effect on her quality of life. There are other more suitable sites where the school could be located.

In support of the appeals

174. **Irfan Mehter** is a Governor of the Olive School. He considers that the police station would be an ideal location, due to the availability of public transport and the proximity of leisure facilities which could be used by pupils. He has seen the progress made by pupils at the existing sites where, despite the limitations of the temporary accommodation, the academic results have been above national and borough averages. In addition to its academic achievements, the school has a good record of charitable work and service to the community.
175. **Nuha Benalia** (parent) described the high educational standards achieved at the current locations, notwithstanding the challenges of working on split sites. She commented on the school's commitment to environmental education and its involvement in the community.
176. **Nashrin Master** (parent) commented on the high scores obtained by pupils for writing and maths. Hackney needs more schools of this quality. However, if children are attending schools at different locations this causes difficulties for parents.
177. **Shukri Adan** (parent) stated that the concerns of the local residents are understood. However, the proposed site has excellent public transport which parents will make good use of. The lack of external play space at the current location means that children are missing out on opportunities to learn through play. The Olive School is the only state school in the borough which is a Muslim faith school. However it is open to children of all faiths and none. There are many reasons why parents choose faith schools, including the quality of the learning environment. It is very important to bring this school together under one roof.
178. **Himayat Ali Ughradar** (parent) is proud of what the school has achieved in its current temporary accommodation and considers it could achieve much more if it had a single site. Bus transport from the current location to the proposed site

⁹⁵ OD1

⁹⁶ OD2

is very good. Parents would use the buses. The area around the new school is well covered with traffic cameras and parking enforcement is very effective. Parents would not take the risk of ignoring the parking controls which are in place.

179. **Ms Rujie** (parent) said that there are not many outstanding schools in Hackney and the Olive School is oversubscribed. The school contributes to the Three Faith Forum and has been active in arranging inter-faith community events.
180. **Dr Mufti Abdurrahman Mangera** (parent) explained that, having been born in Hackney himself, he appreciates the role of his primary school in giving him a sense of affinity with the area. He would like the same for his son. The school needs a permanent building. The current location is very poor for public transport. The new location would be very accessible by bus. Moreover it would be difficult to use cars due to the lack of parking.

WRITTEN REPRESENTATIONS

181. A number of written representations were received in response to consultation on the appeals. These included letters of support and objection. In the main, those supporting the appeals were from parents of children attending the Olive School. There were also letters from other family members and members of staff at the school. These letters emphasised the quality of education currently being provided, the efforts made by the school to manage traffic impacts and the contribution the school makes to community cohesion through its support for inter-faith activities. The letters of objection raised a range of issues which were in essence those raised by the objectors who spoke at the Inquiry. These issues have been referred to above.

CONDITIONS

182. A list of suggested conditions was agreed between the Council and the appellant⁹⁷. Some of the suggested conditions have been merged to avoid duplication and I have made some adjustments to detailed wording to reflect Planning Practice Guidance on the use of conditions. However, the substance of the attached conditions reflects the discussion at the Inquiry. Suggested conditions for Appeal A are at Annex C and suggested conditions for Appeal B are at Annex D.

Conditions for Appeal A (application for planning permission)

183. Condition 1 is the standard commencement condition. Condition 2 requires development to be in accordance with the plans, consistent with the advice in Planning Practice Guidance. The plans schedule is at Appendix E. The final form of this schedule would need to reflect the view taken by the Secretary of State on the alternative proposal and on the amendment to the ground floor plan referred to above⁹⁸.

⁹⁷ The initial schedule is included within ID1 and the amended schedule discussed at the Inquiry is ID3

⁹⁸ Annex E is annotated accordingly

184. Conditions 3 and 4 require submission of details of elements of the conversion scheme and facing materials. Conditions 10 and 14 seek to preclude external pipework and roof plant, other than as shown on the plans. These conditions are needed in the interests of protecting the special interest of the listed building and the appearance of the conservation area.
185. Condition 5 requires submission of a school management plan which, amongst other matters, would deal with arrangements for the arrival and departure of pupils and traffic marshals. Conditions 11 and 17 refer respectively to a refuse strategy and a delivery and servicing strategy. Condition 28 would secure the upgrading of the Lower Clapton Road pedestrian/cycle crossing to a toucan. Together, these conditions would mitigate the transport impacts of the school in the interests of avoiding congestion in the public realm, highway safety and the living conditions of nearby residents.
186. Condition 6 requires submission of details of the rooftop study areas and the screening of the external circulation areas, in the interests of preventing overlooking of neighbouring properties and protecting the appearance of the conservation area. Conditions 7 and 8 refer to BREEAM certification and details of photo-voltaic cells, in the interests of sustainable development. Condition 9 requires details of emissions from fixed plant in the interests of air quality.
187. Condition 12 requires approval of a school travel plan and condition 24 requires provision of cycle parking. These conditions are needed in the interests of promoting sustainable modes of transport and mitigating the transport impacts of the scheme. Condition 13 requires details of kitchen extract ventilation and condition 18 seeks to control the noise from fixed plant in the interests of protecting the living conditions of nearby residents.
188. Condition 15 requires approval of a construction environment management plan in the interests of highway safety and protecting the living conditions of nearby residents. Condition 16 requires submission of a landscaping scheme, to protect the setting of the listed building and the appearance of the conservation area. Conditions 19 to 23 deal with the potential for contamination. This is necessary to manage risks to human health and the environment. Condition 25 requires submission of a piling method statement in the interests of protecting essential underground utility services. Condition 26 requires implementation of proposed ecological enhancements in the interests of biodiversity. Condition 27 would secure archaeological investigations in order to protect the archaeological potential of the site. Condition 29 requires submission of an arboricultural method statement in the interests of protecting trees which contribute to the character and appearance of the conservation area.
189. Condition 30 would limit the school roll to 90 in the first year, increasing by 90 each year thereafter until full capacity was reached. This condition would only be needed if the Secretary of State were minded to accept my recommendation to determine the appeal on the basis of the alternative proposal. This is the basis on which the scheme was put forward by the appellant at the Inquiry. In my view the condition would be necessary to ensure that the development as implemented was consistent with the scheme which was assessed (particularly in respect of transport implications) during the course of the Inquiry.
190. If the Secretary of State were minded to determine the appeal on the basis of the original proposal then consideration would need to be given to a condition

requiring the delivery of the bus layby which formed part of the transport proposals for the scheme at that time. At present the prospects for delivery of such a layby do not seem to be good, given the stance of the land owner. Nevertheless, the land owner might review its position so it cannot be said that there is no prospect whatsoever of such a condition being fulfilled. In my view condition 31 would be needed in the interests of ensuring that the transport measures proposed in the application were delivered.

191. A further condition would be needed if the Secretary of State were minded to accept my recommendation that the amended ground floor plan be accepted. The proposed changes to the floor plan would result in a small consequential change to the southern elevation of the classroom block. Condition 32 requires this detail to be submitted for approval in the interests of protecting the appearance of the conservation area.

Conditions for Appeal B (application for listed building consent)

192. Conditions 1 and 2 deal with commencement and compliance with the approved plans. They reflect similar conditions for Appeal A and are needed for the same reasons. Conditions 3 (materials), 4 (retention of historic fabric), 6 (works of making good), 7 (details of specified items), 8 (rainwater goods) and 9 (external pipework) are all needed to protect the special interest of the listed building. Condition 5 seeks to secure a programme of recording. This is needed to preserve any evidential value within the listed building which might otherwise be lost due to the works of conversion.

Pre-commencement conditions

193. Appeal A conditions 15 (construction environmental management plan), 19 and 20 (contamination) and 29 (arboricultural method statement) and Appeal B condition 5 (recording listed building) require matters to be agreed before development commences. This is necessary because these conditions relate to impacts arising during construction.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets [n] refer back to earlier paragraphs in this report

194. The appeals were recovered by the Secretary of State for the reason that they involve proposals for development of major importance having more than local significance. [2]
195. Taking account of the Secretary of State's reasons for recovering the appeals, the written and oral evidence and my observations on site I conclude that the main considerations for Appeal A are:
- the effect of the proposal on the historic environment
 - the effect of the proposal on the highway network, including any effects on pedestrians, cyclists and public transport
 - the nature and extent of any social, economic and/or environmental benefits of the proposal
196. The main consideration for Appeal B is the effect of the proposal on the special interest of the listed building and its setting.

Preliminary matters

197. At the time the applications were determined by the Council the proposals included a bus layby in the Churchyard Gardens, which are adjacent to the police station (the original proposal). The appellant intended to transfer pupils by bus from an existing school site during the initial years of the operation of the proposed school. However, the land owner concerned did not agree to this. The appellant's case at the Inquiry was advanced on the basis of a revised approach whereby there would be no works in the Churchyard Gardens and no pupil transfer by school buses (the alternative proposal). Instead, the school would open in a phased way, starting with one year group of 90 pupils. [6]
198. The Council raised no objection to the appeals being determined on the basis of the alternative proposal. However, Action on Clapton's Environment (ACE) did object. ACE argued that this would be a substantially different scheme, particularly in relation to the changed transport strategy. Having considered the submissions made at the Inquiry, I indicated that it would ultimately be a matter for the Secretary of State to determine the basis on which the appeals should be considered. Nevertheless, I felt it was appropriate for me to give my own view. The following factors appeared to me to be pertinent:
- both the original proposal and the alternative proposal are for a 630 place primary school
 - the physical differences between the two proposals are limited in scale and minor in relation to the overall development
 - there would be a reduction in the scope of the operational development - no new elements would be added
 - there would be a change in the transport strategy which, it was suggested, could be secured by a condition

- any such condition would be restrictive – that is to say it would limit the way the proposed use would operate rather than changing the nature of the use
- in general terms, restrictive conditions intended to mitigate impacts of one sort or another are commonplace and often emerge during the course of the planning process
- the appellant's approach had been well publicised and had been addressed in the evidence and submissions of the Council and other parties

199. At the start of the Inquiry I gave my personal view that determining the appeals on the basis of the alternative proposal would not offend the principles established in the *Wheatcroft* case. Having now heard all the evidence, I see no reason to alter that view. I would add that no party at the Inquiry identified any additional impacts that would result from omitting the bus layby. The impacts of the scheme, particularly in relation to the historic environment, would only be reduced. [34, 85, 145, 151 to 153]

200. I shall therefore make my report and recommendations on the basis of the alternative proposal. Nevertheless, as the Secretary of State may reach a different view, I shall include comments relating to the bus layby in the relevant sections of my report. This report, read together with the evidence before the Inquiry, would enable the Secretary of State to determine the appeals on the basis of the original proposal should he be minded to do so.

201. If the appeals were to be determined on the basis of the alternative proposal it would be necessary to amend the descriptions of the works/development set out above to omit reference to the bus layby. It would also be necessary to amend the schedule of approved plans to include existing and proposed site plans with a reduced red line area and to omit the plan showing the proposed bus layby. I have annotated the plans list at Annex E accordingly.

202. ACE and some local residents raised a further procedural objection to the validity of the appeal, to the effect that the Council should not have accepted the amendment of the applications to include the bus layby at the Churchyard Gardens in the first place. It was suggested that this rendered both the Council's decisions and the subsequent appeals invalid. (This point was not referred to by Counsel for ACE in his legal submissions). I am not a lawyer and this will be a matter for the Secretary of State to consider. I would merely observe that this appears to be, in essence, a challenge to the validity of the Council's decisions. There was no evidence that any legal challenge had been made to those decisions at the relevant time. [10, 154]

203. The plans considered by the Council included a pedestrian access from Churchwell Path, on the western boundary of the site. Subsequently the land owner indicated that permission for this access would not be forthcoming. This caused the appellant to carry out a review of means of escape in case of an emergency. The review recommended an amendment to the ground floor plan, creating a new corridor between the classroom block and the main hall. At the Inquiry the appellant asked that the appeal be determined on the basis of a revised plan which shows this amendment (AHR-AR-B01-20-100 revision 20). This would be a minor change which would not materially affect the planning merits of the proposals. Although it was not publicised before the Inquiry, no

party at the Inquiry raised any objection to the revision, nor did anyone identify any adverse consequences of accepting it. I consider that this minor amendment should be accepted. I have annotated the plans list at Annex E to enable the Secretary of State to include the amendment, or not, as he sees fit.

Policy context

204. The development plan includes the London Plan, consolidated with changes since 2011 (LP), the Hackney Core Strategy 2010 (CS), the Hackney Development Management Local Plan 2015 (DMLP) and the Hackney Site Allocations Local Plan 2016 (SALP). The SALP allocates the appeal site for community use or mixed use comprising employment, community, retail and residential use. The Council and the appellant agree that, in land use terms, the site is suitable for a school. ACE considers that the police station should be used in a way that adds value to the community. At the Inquiry, there was no dispute that use as a primary school would, in principle, accord with the SALP. [16, 23, 31, 167]
205. The LP, CS and DMLP contain relevant policies relating to economic and housing growth, the provision of social infrastructure, the historic environment and transport. These policies have been identified above and I return to them in the appropriate sections of my report. [17 to 22].
206. The National Planning Policy Framework (the Framework) states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities and that local planning authorities should give great weight to the need to create, expand or alter schools. The Secretary of State for Communities and Local Government and the Secretary of State for Education have together published *Policy statement – planning for schools development*. That document sets out the Government's view that the creation and development of state-funded schools is strongly in the national interest and that there should be a presumption in favour of the development of state-funded schools. [25, 35]

Effect on the historic environment

207. There are numerous designated and non-designated heritage assets in the vicinity of the appeal site. The Council and the appellant agree that it is the effects on the following designated heritage assets which are most relevant for the purposes of Appeal A. I share that assessment. They are:
- the former Hackney Police Station, including the parade room and boundary walls which are within its curtilage (Grade II listed)
 - the Church of St John at Hackney (Grade II* listed)
 - war memorial within the Churchyard and Gardens (Grade II listed)
 - tomb monuments within the Churchyard and Gardens (Grade II listed)
 - K2 telephone kiosks at Churchwell Path (Grade II listed)
 - Nos 6 and 8 Lower Clapton Road
 - the Clapton Square Conservation Area

208. Of the listed buildings, only the police station would be directly affected. It is the effect on setting which falls to be considered for the other listed buildings. The St John at Hackney Churchyard and Gardens (referred to in this report as the Churchyard Gardens) are included on an Inventory of London Historic Gardens which is kept by the London Parks and Gardens Trust. This does not make them a designated heritage asset as that term is used in the Framework because they are not on the Register of Parks and Gardens. However, little turns on that distinction. The Churchyard Gardens are a key public space within the Conservation Area and form the immediate setting for the Church of St John. Any effects on the Churchyard Gardens will therefore be an important component of the overall assessment of effects on the historic environment. [31, 170]

Significance and the contribution of setting

209. Hackney Police Station, which dates from 1904, is constructed of red brick with Portland stone dressings. It was designed by John Dixon-Butler for the Metropolitan Police. It is a good example of the civic architecture of the period and has high evidential, historic and aesthetic value. Internally, there are parts of the building, such as the former dormitories, where little of the original layout remains. Some of the original spaces, such as the Inspector's office on the ground floor, have been subdivided with modern partitions. The male and female cells are amongst the least altered features of the building. Much of the original fabric is hidden by modern suspended ceilings and floor coverings. Nevertheless, a significant proportion of the modernisation carried out by the police appears to be reversible. Re-use of the building provides an opportunity for original fabric to be revealed and elements of the layout to be restored. [12]

210. Behind the main building there is a single storey parade room. This is a simple and unremarkable building. Nevertheless, it forms part of the original complex and has some evidential value in that it contributes to an understanding of how the police station functioned. I consider that it makes a modest contribution to the overall significance of the listed building.

211. Guidance from Historic England identifies a drill yard as being one of the typical features of an historic police station such as this. The OS map of 1913 gives an impression of how the yard would have been soon after the police station was built. At that time the open yard was much smaller than it is now. In addition to the parade room there were other buildings including a lecture room, stables and Nos 34 and 36 St John's Church Road. The OS map of 1949 shows another building on the western side of the space, so the area was reduced still further. All of these buildings were demolished in the 1970s to create space for vehicle parking. The extensive tarmac car park which exists today bears little resemblance to the original drill yard. Even so, the open nature of the car park provides some continuity with the past in that historically there was always an open area to the rear of the police station. In my view it makes a relatively small contribution to the overall significance of the listed building. [100, 116]

212. The police station was an important public building, prominently located on a main thoroughfare at the corner of the Churchyard Gardens. This setting makes an important contribution to the significance of the listed building which was clearly designed to respond to this location. Whilst there is an imposing main façade to Lower Clapton Road, the architect also gave considerable attention to the western flank facing the Churchyard Gardens. [102]

213. The Church of St John at Hackney dates from the late 18th century. Listed at Grade II*, it is clearly of high significance. The setting includes the Churchyard Gardens which form part of a designed landscape contemporaneous with the church. The backdrop of buildings around the Churchyard Gardens, including those at the appeal site, provides a degree of enclosure and definition to the space. These buildings also form part of the setting. The setting of the church extends beyond the Churchyard Gardens, most notably to the north where the axial layout of the pathways emphasises the visual link to Clapton Square. Due to the large number of deciduous trees in both the Churchyard Gardens and Clapton Square, the degree of inter-visibility will be much greater in the winter months. The setting of the church makes an important contribution to its significance. [106, 107, 108, 113, 115]
214. The war memorial and the listed chest tombs have group value with each other and with the Church of St John. They form part of an ensemble of heritage assets which share the same setting within the Churchyard Gardens. This setting makes an important contribution to their significance, just as it does for the church. They can be considered together for the purposes of these appeals. Nos 6 and 8 Lower Clapton Road comprise an early 19th century pair. They are seen in the same street frontage as the police station and thus contribute to its setting. Similarly, their own setting within the street scene of Lower Clapton Road makes a positive contribution to their significance. The K2 telephone kiosks are mass-produced structures, located to meet a functional need. Their setting is not important to their significance and they need not be considered further in this report. [31, 103, 104]
215. The Conservation Area is centred on the two green spaces of the Churchyard Gardens and Clapton Square. The Conservation Area Appraisal states that the area is notable for its complex streetscape and many listed buildings and buildings of townscape merit. It also notes that high quality 20th century buildings, including the police station and Sutton Square (to the south of the appeal site), have added much to the townscape over the last century. Views across the Churchyard Gardens towards the Church of St John at Hackney and St Augustine's Tower are identified amongst the most positive features of the area. In my view all of these features contribute to the significance of the conservation area. [15]

The effect of the proposals on the police station

216. Various sections of the internal walls would be removed together with the modern suspended ceilings. Many of the walls which would be demolished date from the modernisation carried out in the second half of the 20th century. However, there would also be some loss of historic fabric. For example, at basement level existing rooms would be combined to create a small hall. Some parts of the original walls within the basement would be retained and, to my mind, this would be an effective way of accommodating the new use whilst ensuring that the original layout could still be appreciated. In general terms, the proposals have sought to minimise the loss of original structure. [61]
217. The proposed circulation arrangements would include a new corridor running from the front door on Lower Clapton Road to the new classroom block. This would require the removal of the female cells, a well preserved feature which has considerable evidential value. On the other hand the proposal would retain the

layout of the male cells and associated observation corridor so the evidential value provided by the cells would not be entirely lost from the building. The proposal would result in the demolition of the parade room and an external fire escape stair attached to the rear elevation of the building. These changes would result in the loss of some historic fabric and evidential value. The Council has agreed that these losses could be accepted in the context of an otherwise satisfactory scheme. In my view that is a reasonable assessment. [31, 110]

218. The works to the listed building would also have positive effects. They would secure the refurbishment of important elements of the external fabric, such as windows and stone dressings. Moreover, the removal of modern partitions and suspended ceilings would restore the proportions of some of the main rooms such as the Inspector's room on the ground floor and the clerks' room on the first floor. Both of these spaces, which have been subdivided over the years, would become single classrooms. [61]

219. I turn to the relationship between the classroom block and the listed building. This was the main focus of the Council's heritage case. The Council argued that the overall height of the classroom block and the line of its west elevation should be guided by the adjoining southern wing of the listed building. In fact the classroom block would rise about 450mm above the eaves line of the southern wing and the western elevation of the classroom block would be set around 1m closer to the boundary wall. There would be a north/south corridor linking the listed building to the classroom block at each level. The levels in the new and old sections would be aligned to avoid the need for steps or ramps in the main circulation areas. This design objective appears to have governed both the height and the siting of the new classroom block. [110, 111, 112]

220. The classroom block would be linked to the listed building by the corridors referred to above which would be on the eastern side of the building. As seen from the Churchyard Gardens, the corridor link would only be visible from points more or less directly to the west. In more oblique views, such as those from much of the Churchyard Gardens and from Clapton Square, the classroom block would appear as a free-standing structure, sited in close proximity to the listed building.

221. In my view the Council's assessment places too much emphasis on the southern wing of the listed building. The police station is a large, imposing and quite complex architectural form. Prominent elements of the western elevation, such as the twin chimneys and the projecting bay window, are set very close to Churchwell Path. The scale steps down to the rear and the southern wing is a more recessive element, set further away from the boundary wall. Seen in this context, neither the modest increase in height (relative to the eaves line of the southern wing) nor the step forward in the building line would appear excessive. When making this assessment it is too simplistic to compare the proposed block just with one or other part of the listed building. Rather, it is necessary to consider the resulting composition as a whole⁹⁹. Looked at in that way, I consider that the classroom block would have a satisfactory relationship with the listed building. [52 to 55, 112]

⁹⁹ The visualisations at image 20 of part 2 of the proof of evidence of Tim Walder and at 4.11.1 of the proof of evidence of Michael Walters illustrate this point.

222. The Council's written evidence was critical of the architectural expression of the classroom block, both in relation to the irregular rhythm of the fenestration and the choice of materials. In the event these criticisms were not pursued with any force at the Inquiry and it was agreed that the final choice of facing materials could be covered by a condition. However, ACE was critical of the design, referring to the proposed building as a utilitarian structure of undistinguished appearance. [164]
223. At the Inquiry the appellant's architect explained that the design approach did not seek to replicate the elaborate architectural style of the police station. Instead, the intention was to create a modern building with a separate identity, taking its cue from the simple facades of terraced houses which are characteristic of the conservation area. The western elevation, facing Churchyard Gardens, would be the prominent public face of the building. It would be slightly set back behind the boundary wall but the upper floors would be clearly visible, particularly in winter when the trees have shed their leaves. Whilst I note that the fenestration would not have the strict regularity found in a Victorian terrace, there would be a sense of order derived from the repetition of window proportions. The fenestration would create distinct vertical elements within the façade which would articulate the elevation. [52]
224. The Council pointed to an inconsistency within the appellant's evidence in that the heritage proof of evidence refers to an intention to create a '*landmark building*'. That was a fair criticism to make, given the evidence of the appellant's architect. That said, the inconsistency can be resolved by reference to the scheme drawings. To my mind these do not indicate an intention to create a building which would compete with or undermine the prominence of the listed police station. [112]
225. The north/south corridors would be seen on the eastern side of the classroom block. Extensive use of timber boarding is proposed on this elevation. This would give it a softer and less formal appearance which would not look out of keeping in the context of the rear elevations and garden spaces to the east of the site. Part of the classroom block would occupy an area which was formerly the drill yard. However, as noted above, the layout of the ancillary buildings has changed markedly over time and the current large open area bears little resemblance to the original layout. This would result in a relatively minor loss of evidential value. [117]
226. In summary, I consider that the proposals for the new classroom block represent a considered response to the sensitive context of the appeal site. The design approach has sought to achieve a restrained building style rather than trying to replicate the elaborate architecture of the listed building. That seems to me to be a valid approach. Having regard to the scale, siting and appearance of the proposed building I consider that it would be well related to the listed building. The former police station is a prominent landmark within the conservation area and would remain as such. The proposed building would be subsidiary to the listed building.
227. The alterations to the listed building would entail some loss of historic fabric, particularly in relation to the loss of the female cells, some internal walls, the parade room and the fire escape. Building over the currently open area behind the main building would result in a minor loss of evidential value. My overall

assessment is that the level of harm to significance would be minor. In the terms of the Framework, it would be towards the lower end of the spectrum of '*less than substantial harm*'.

228. On the other hand there would be heritage benefits, most notably that of securing a new use for the listed building. The police station has been vacant since 2013 and has been sold off for alternative use. It therefore seems unlikely that the previous use will resume. Although there is not yet any evidence of significant decline, it is clearly desirable for a suitable new use to be found. There is no dispute that a primary school would be a suitable use. Moreover, given that the premises have been acquired by the EFSA for the Olive School, there is a good prospect that the scheme would be implemented if approved. I therefore attach significant weight to the public benefit of securing a suitable new use in support of the long term conservation of the listed building.
229. I also attach significant weight to the more immediate benefits of securing the refurbishment of important elements of the external fabric and restoring the proportions of some of the main rooms. On balance, I find that the heritage benefits would outweigh the harm such that the scheme as a whole would accord with paragraph 134 of the Framework. (I return later in this report to the question of optimum viable use). I also note that, for the purposes of paragraph 134, public benefits are not limited to heritage benefits. The scheme would bring other public benefits which are discussed later in this report.

Effect on the setting of the Church of St John at Hackney and other designated assets within the Churchyard Gardens

230. The extent of the setting of the church varies seasonally, being more enclosed when the trees are in leaf. The classroom block would be largely screened by foliage in the summer months. This analysis considers the situation in winter when the buildings around the Churchyard Gardens are most visible. [115]
231. The setting of the church, and the associated designated assets, is important to their significance. The axial path leading north from the church, together with the two arms of the former carriage drive, focus views northwards from the portico of the church. The open space of the Churchyard and Gardens is visually contained by buildings but the nature of the built edge is variable. In some places, such as the police station itself and the end of the terrace on the south side of St John's Church Road, the built form is very close to the open space. Elsewhere, such as the end of the terrace on the north side of St John's Church Road and at Sutton Square, the built form is set back behind boundary walls. [108, 115]
232. The classroom block would be seen behind the boundary wall and its scale would be generally consistent with the scale of built development found in this part of the conservation area. For the reasons given above, it would not undermine the landmark status of the police station. Whilst not formally commenting on the alternative proposal, Heritage England's response included the following:

'The physical presence of these buildings will be screened by the site's perimeter wall and by the tree-lined boundary of the churchyard and as such they are likely to blend with the boundary of buildings currently found around the churchyard'

Whilst I do not adopt all of the reasoning in this letter, (which seems to conflate the summer and winter views), I agree with the comment that the new building would blend with the boundary of buildings currently found around the churchyard. [50, 52]

233. The Council argued that Dixon-Butler left the drill yard open to protect specific views which were an important part of the Georgian designed landscape. On the evidence before the Inquiry it cannot be said with any certainty whether or not that hypothesis is correct. What can be seen on site is that the view over the drill yard from the portico of the church is essentially a view of the backs of buildings and the roof of the parade room. The southern wing of the police station blocks any view of the rest of the rear elevation. The rear elevation of the southern wing is quite plain with a few small openings. This is in marked contrast to the western elevation which is given a much higher architectural status. The effects of the appeal scheme on views from the portico would be to bring part of the backdrop of built development closer to the viewer. There would also be a more formal front elevation at this point rather than an informal grouping of back elevations. Whilst this would be a change, it would not be harmful. [113, 114]

234. In summary, I consider that the proposal would have a neutral effect on the setting of the Church of St John at Hackney and the other designated heritage assets contained within the Churchyard Gardens.

Nos 6 – 8 Lower Clapton Road

235. The proposal would make very little change to the front elevation of the police station which is seen in the same street elevation as Nos 6 – 8. The proposal would have a neutral effect on the setting of these listed buildings.

Clapton Square Conservation Area

236. The proposals would be seen in important views within the conservation area, in particular in views from the Church of St John at Hackney, the Churchyard Gardens and Clapton Square. For the reasons given above, I consider that there would be a neutral impact on these views and on the character and appearance of the conservation area in general.

The original proposal

237. The original proposal would have the same effect as the alternative proposal in terms of works to the listed building and views of the new classroom block. It would have additional impacts in that a bus layby would be created within the Churchyard Gardens. It would also be necessary for school buses to travel around the carriageway loop to access the layby. The physical works would result in the extension of the paved area in close proximity to some chest tombs. These are not listed but they are characteristic of the churchyard and the erosion of their green setting would be harmful.

238. Historic England, in responding to the original proposal, expressed concern that the bus layby would not be in keeping with the historic quality of the Churchyard Gardens. Moreover, it was suggested that the bus traffic, together with additional car traffic, would have a harmful effect on the recreational quality of the gardens. This could leave the war memorial cut off from its context in the wider churchyard. I agree with that assessment. I consider that the proposed access arrangements would be harmful to the setting of the Church of St John at

Hackney and to the settings of the other designated heritage assets contained within the Churchyard Gardens. This would result in harm to their significance as designated heritage assets. There would also be harm to the character and appearance of the Clapton Square Conservation Area. In the terms of the Framework, the degree of harm would be '*less than substantial*'. If the Secretary of State is minded to determine Appeal A on the basis of the original proposal it would be necessary to balance this harm against the public benefits of the scheme in accordance with the Framework and to have regard to the relevant statutory duties¹⁰⁰. [50]

Conclusions – Appeal A

239. I turn to the relevant statutory duties in respect of the alternative proposal. In relation to the police station, I note that there would be some limited loss of features which contribute to the special interest of the building. However, there would also be positive effects, including enabling a suitable new use for a vacant listed building, securing the refurbishment of important elements of the external fabric and restoring the proportions of some of the main rooms. Looked at in the round this is a proposal which would preserve the special interest of the listed building. In relation to the other listed buildings identified above, the effects on setting would be neutral. The settings of the other listed buildings would be preserved. The character and appearance of the conservation area would also be preserved.

240. I conclude that the design has been informed by the surrounding historic environment and would enable the police station to continue to make its important contribution to the character of the area. This is a proposal which would represent high quality design and would value, conserve, re-use and incorporate heritage assets. It would accord with LP Policies 7.4, 7.6 and 7.8 and with DMLP Policy DM1. It would also avoid substantial harm to the significance of listed buildings, contribute to a sense of place and local distinctiveness and make some positive contributions to the historic environment, in accordance with CS Policies 24 and 25 and DMLP Policy 28. I find no conflict with the policies of the Framework in relation to the historic environment.

Conclusions – Appeal B

241. For the reasons given above, I consider that there would be some limited loss of features which contribute to the special interest of the building. Nevertheless, looked at in the round this is a proposal which would preserve the special interest of the listed building. The setting of the listed building would also be preserved.

242. The original proposal would have the same effect as the alternative proposal in terms of works to the listed building and views of the new classroom block. For Appeal B, the conclusions are the same in respect of the original proposal and the alternative proposal.

¹⁰⁰ Planning (Listed Buildings and Conservation Areas) Act 1990, Sections 66 and 72 in relation to Appeal A (see also section 16 in relation to Appeal B)

The effect of the proposal on the highway network, including any effects on pedestrians, cyclists and public transport

243. The appeal site is in a highly accessible location, as shown by its public transport accessibility level (PTAL) rating of 6B. This is defined as 'excellent' by Transport for London (TfL). Several bus routes pass the site and it is also within 500m of Hackney Central and 650m of Hackney Downs railway stations. Churchwell Path, which passes along the western site boundary, forms part of a designated cycle route known as Quietway 2. The route, which runs from Walthamstow to Bloomsbury, is part of the TfL cycle network. That said, it is important to bear in mind that Churchwell Path is not a dedicated cycle path. It is signposted as a shared pedestrian and cycle path and I saw that in practice it operates as such. No specific areas are reserved for either cyclists or pedestrians. All users of the path share the whole of the available width. [15, 162]
244. There is a new pedestrian/cycle crossing at the point where Quietway 2 crosses Lower Clapton Road, adjacent to the front of the appeal site. TfL has agreed that this could be upgraded to a toucan crossing and the Council and the appellant have agreed that the upgrade could be secured by a planning condition. [76, 134]

Opportunities for use of sustainable modes of transport

245. CS Policy 6 seeks to encourage patterns of development that reduce the need to travel, particularly by car. The policy aims to maximise accessibility for pedestrians, cyclists and public transport users. LP Policy 6.1 and CS Policy 33 seek to encourage patterns of development that reduce the need to travel and to support development that generates a high level of trips at locations with high levels of public transport accessibility. A primary school is a use which generates a high number of trips and the accessible location of the appeal site is consistent with these policies. [18, 20, 21]
246. DMLP Policy DM47 states that the Council will expect to see car free and car capped development in most locations, particularly those with a high PTAL rating. This is consistent with LP Policy 6.13 which states that the Mayor wishes to see an appropriate balance being struck between promoting new development and preventing excessive car parking that can undermine cycling, walking and public transport use. The school's transport proposals are directed towards maximising walking and use of public transport for both pupils and staff. No parking provision is proposed, nor would there be any designated vehicle dropping off point. The school intends to introduce management measures which would not allow parents to park in the Churchyard Gardens (other than in the marked pay and display bays) or in St John's Church Road. This approach is consistent with LP Policy 6.13 and DMLP Policy 47. [18, 22, 74]
247. The addendum transport assessment (addendum TA) relates to the alternative proposal. It indicates that the percentage of pupils travelling to school by car would be around 16% in the opening year of 2019. This is projected to reduce to 7% by 2025. The Council argued that these projections are over optimistic for two reasons. First, it was suggested that faith schools in general tend to have larger than average catchment areas, leading to higher than average car use. Second, it was argued that the nature of the catchment area for the Olive School indicates that higher car use would be likely. [71, 122 to 127]

248. There was no direct evidence before the Inquiry regarding the catchment area of any school other than the Olive School. There was however evidence of modal shares. This showed that in 2015/16 the average car mode share for faith primary schools in Hackney was 11%. The corresponding figure for the 7 primary schools in Lower Clapton Road was 10%. In my view this difference is too small to be significant. The Council's contention that faith schools in general (within Hackney) are likely to have a higher modal share for car use is not supported by the available evidence. [68]
249. The introduction of travel planning measures at the Cazenove Road site has contributed to a reduction in car mode share from 57% in 2014 to 19% in 2017. However, that reduction has largely been achieved by a switch to car sharing and '*park and walk*' whereby parents park at some distance from the school and walk the rest of the way. When these modes are included this still leaves over half of the pupils relying on travel by car for part of their journey. Clearly the current level of car use is well above that projected at the appeal site. [129]
250. In my view it is right to have some regard to the current situation. However the current travel patterns at Cazenove Road would not determine travel patterns at the proposed site because the opportunities for sustainable transport modes and the convenience of car use would be significantly different. The opportunities for using public transport would be much better at the appeal site, which has a PTAL rating of 6B compared with a PTAL rating of 4 at Cazenove Road. [70]
251. The school requires that pupils are handed over within the premises. This means that most parents and/or carers driving a child to school would need to park and leave their vehicle, at least for a few minutes. The opportunities for doing so close to the appeal site would be limited. Lower Clapton Road is a busy main route where parking is prohibited. Other roads are within a controlled parking zone. The most obvious options would be the pay and display bays within the Churchyard Gardens and St John's Church Road. Both appear to have limited capacity and the school is adamant that it would not allow parents to park in St John's Church Gardens. Other options described in the evidence would be at some distance from the site. I consider that the lack of opportunities for parking at or near to the appeal site would be a significant disincentive to car use. [74, 133, 178]
252. The Council pointed out that currently 70% of Olive School pupils live to the north of the appeal site. Nevertheless, the pupil postcode plots show that, for approximately half of the existing pupils, the new school site would be within 2km. In any event, it is relevant to bear in mind that, under the alternative proposal, pupils would not transfer to the proposed site. New pupils would be admitted into the reception year. It cannot be assumed that the catchment area would be static. If the school were to move to the appeal site, it seems likely that the catchment area would shift, over time, to reflect the new conditions. [63, 127]
253. The Council also drew attention to the school's admissions policy. If the new school was oversubscribed (as the current school is) the criteria would give a high priority to children with siblings already at the school. This is a factor that could affect the rate at which the catchment area might adjust to the new location. However, it seems likely that any such effect would tend to diminish over time. Moreover, many of the affected families already live relatively close to

both sites and all families would benefit from the enhanced opportunities to use public transport. [63, 72, 125, 126]

254. The addendum TA projects a higher mode share for car use in the opening year, declining thereafter as the school becomes established on its new site and the number of older children increases. The projection is based on judgements which take account of the PTAL rating of the location and the average car mode shares for Hackney primary schools, including faith schools. In my view that is a reasonable approach. I therefore accept the analysis of the addendum TA as a basis for considering the transport impacts of the appeal scheme. [71]

Impacts on highway network

255. Under the alternative proposal pupil numbers would build up year on year, reaching full capacity in 2025. The addendum TA indicates 60 to 67 vehicles arriving in the morning, with a similar number in the afternoon. Junction modelling has been carried out, indicating impacts on the Lower Clapton Road/Urswick Road junction of 2% (morning) and 3% (afternoon). The output of this modelling has been reviewed by TfL and no further junction analysis has been sought. These figures indicate that there would not be any significant impacts on the highway network.

256. At the Inquiry the Council argued that the number of vehicles turning into Churchyard Gardens may be higher than that indicated in the addendum TA. However, the Council did not lead any evidence to the effect that turning movements here would have a harmful effect on network performance. Although this junction was modelled in earlier iterations of the TA, it was not thought necessary to model it in the addendum TA. It can be inferred that the impacts were not thought to be significant. [131, 132]

257. ACE expressed concern that increased use of the pedestrian crossing at Lower Clapton Road would result in delays to bus passengers and to traffic generally. The school is committed to upgrading this crossing to a toucan, a matter which could be secured by a planning condition. TfL commented that the installation of a toucan represents the most practical option for mitigating the impact of extra crossing movements on bus journey times by providing a measure of control in peak periods. TfL has confirmed that the location meets its thresholds for upgrading to a toucan and that the signals could be aligned with those at the Lower Clapton Road/Urswick Road junction to maintain network performance¹⁰¹. [76, 134, 159]

258. Notwithstanding the school's proposals to maximise non-car modes, it is anticipated that some pupils would travel by car. As noted above, the opportunities for parking near the school are limited. The most obvious options are the pay and display bays within the Churchyard Gardens and St John's Church Road. The pay and display bays are operated by the Council under licence from the land owner. This arrangement is under review and these bays may no longer exist by the time the school might open. Nevertheless, for so long as the bays remain, the appellant acknowledged that it could not prevent their use by parents. There is no evidence that such use would in itself be harmful. If parents were to park outside the marked bays this would potentially cause congestion

¹⁰¹ LBH7

and inconvenience. The outline school travel plan states that this is one of the locations where a traffic marshal would be deployed to direct parents not to park or stop other than in the marked bays. [74, 169]

259. St John's Church Road is subject to parking controls. At present, parents could lawfully park there before 08.30 in the morning. This would be potentially hazardous because the road is a cul-de-sac with no formal turning area. Any parents parking in the road may be tempted to turn at the western end, at the very point which would be busy with parents and children using the southern entrance to the school. The school has stated that St John's Church Road would not be a safe place for parents to park. I share that view due to the potential for pedestrian/vehicle conflict at the western end of the road. The appellant proposes that parents would be required to comply with a code of conduct which would preclude dropping off in St John's Church Road. This is another location where it is proposed that a traffic marshal would be deployed to prevent parents from parking. [74]
260. ACE and some local residents have questioned the likely effectiveness of traffic marshals. Given the pressure on parking facilities, and the fact that the marshals would have no formal powers, those concerns are understandable. On the other hand, the Executive Head Teacher gave evidence of her experience of a similar approach being used successfully at other schools. Given that this would be primarily a matter of the safety of school pupils, I have no reason to doubt that it would be a high priority for the management of the school. Moreover, I was able to see traffic marshals in operation at the Cazenove Road site. In that location they appeared to be effective in persuading drivers not to park on double yellow lines close to junctions¹⁰². Finally, I note that the Council welcomes the proposals for traffic marshals. Having regard to all those factors, I consider that the outline school travel plan would provide satisfactory mitigation of the potential risks to safety. [74, 135, 149]
261. Capacity at the Churchyard Gardens is limited so it is likely that those parents seeking to drive children to school would need to look further afield. This would be likely to involve parking in residential streets at some distance from the appeal site. Whilst this would add to on-street parking generally, the Council does not dispute the appellant's survey evidence of availability of parking in the wider area. Any traffic impacts would be dispersed and, given the likely numbers, I see no reason to think that this would result in significant congestion or safety issues. [133, 160]
262. ACE expressed concern regarding impacts on Churchwell Path. It was suggested that the conflict between pedestrians and cyclists would be hazardous and that delays to cyclists would cause them to divert to less suitable or unsafe routes or even to give up cycling altogether. The outline school travel plan describes how the school would manage the arrival and departure of pupils. Some would arrive early for the breakfast club and the others would be divided between the front and rear entrances. Traffic marshals would encourage parents to move on as soon as they had dropped off their children, rather than congregating near the entrances. There would be staggered departure times at

¹⁰² Inspector's note – my direct observation was only for a short period. I attach greater weight to the evidence of those who spoke on these matters at the Inquiry

the end of the school day. I consider that these measures, which could be secured by a condition as part of the travel plan, would be effective in mitigating congestion on footways. [75, 161, 162]

263. The appellant has carried out modelling of the pedestrian comfort levels within Churchwell Path. The time selected was the departure period on Friday afternoons when up to 500 people could be using the path in a short period. The modelling predicted that, whilst it would be possible to walk along the path, the width would be insufficient for comfortable movement. It must be borne in mind that Churchwell Path is a shared space, not a dedicated cycleway. I saw that at times it is busy with pedestrians and the cyclists adapt accordingly. Moreover, the Friday afternoon period, when the path would be most crowded, would not coincide with peak commuting times. [75, 134]
264. Nevertheless, it seems unlikely that cyclists would be able to pass at times when the path is at its most crowded. Even so, it does not follow that this would be unsafe. Cyclists would simply have to dismount and walk for a short distance or divert to another route. Regular cyclists might choose to adapt their journey time by a few minutes, take a short detour, select an alternative route or accept a short delay as the price of using an attractive Quietway rather than a busier route. I see no reason to think that the overall attractiveness of Quietway 2 as a strategic cycle route would be materially harmed. Nor do I consider that there would be any material impact on the choice of cycling as a mode of transport.

The original proposal

265. The original proposal included the provision of a bus layby in the Churchyard Gardens. The revised transport assessment¹⁰³ stated that there would be 9 bus arrivals in the morning and 9 in the afternoon. The officer's report¹⁰⁴ notes an objection from the traffic and transportation team on the basis that this arrangement would have a detrimental effect on the safety and efficiency of the highway network. However, the Council's second reason for refusal focussed on the deliverability of the bus layby rather than concerns about highway safety or network performance.
266. The revised transport assessment includes an analysis of the impact on the Churchyard entry and exit junctions¹⁰⁵. This is information that the Secretary of State would be able to take into account if he were minded to consider the appeals on the basis of the original proposal. That said, it should be noted that the evidence at the Inquiry related solely to the alternative proposal. Some matters have moved on since the revised transport assessment was prepared, for example in relation to the implementation of the pedestrian/cycle crossing improvements at Lower Clapton Road. If he were minded to consider the original proposal, the Secretary of State may wish to consider whether it would be appropriate to ask the parties to update their transport evidence.

¹⁰³ Appellant's Documents for Appeal A, tab 86 in folder 3, table 4.4

¹⁰⁴ Core Document 1, paragraph 4.9.2

¹⁰⁵ Appellant's Documents for Appeal A, tab 86 in folder 3, section 5

Conclusions on transport

267. The appeal site is in a highly accessible location which is, in principle, suitable for a use such as a primary school which generates a large number of trips. The proposal does not make provision for on-site parking or dropping off and seeks to maximise the use of sustainable modes of transport. In these respects the proposal is in accordance with LP Policies 6.1 and 6.13, CS Policies 6 and 33 and DMLP Policy DM47. I find no conflict with Policy DM44 which prioritises pedestrians, cyclists and users of public transport.
268. I have not identified any significant harm in terms of network performance. Whilst I have identified a potential safety issue relating to dropping off at St John's Church Road, I consider that the proposal includes satisfactory mitigation measures. The proposal would therefore accord with LP Policy 6.3 and DMLP Policies DM45 and DM46. These policies seek to avoid any adverse effects on the safety of the transport network, to maximise safe and convenient movement and to take account of walking and cycling safety.
269. I find no conflict with LP Policy 6.7, which relates to improvements to the quality of bus services, with Policies 6.9 and 6.10 which state that the Mayor will work to bring about significant increases in cycling and walking, or with Policy 6.11 which sets out the Mayor's wish to see a co-ordinated approach to tackling congestion.

The nature and extent of any social, economic and/or environmental benefits of the proposal

270. LP Policy 3.16 identifies that London requires additional social infrastructure provision to meet the needs of its growing and diverse population. LP Policy 3.18 states that the Mayor will support the provision of primary school facilities to meet the demands of a growing and changing population and to enable greater educational choice. CS Policy 8 seeks to deliver new and enhanced social infrastructure, particularly where there is evidence of need and in growth areas such as Hackney Central. CS Policy 9 states that the Council will work with education providers to meet the needs of Hackney's growing population of children through favourably considering appropriate proposals for new educational facilities. DMLP Policy DM5 supports the provision of community facilities. [17, 21, 22]
271. The Framework states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities and that local planning authorities should give great weight to the need to create, expand or alter schools. The Government has set out its view that the creation and development of state-funded schools is strongly in the national interest in *Policy statement – planning for schools development*. [25]
272. In the light of this policy context, the provision of purpose built facilities for an existing 3FE primary school operating from temporary premises would clearly be an important social benefit. In that the school would generate employment, both in the construction phase and when in operation, it would also bring economic benefits. The positive impacts on the listed building identified above could be regarded as environmental benefits. However, as I have already factored those

into the balance required by paragraph 134 of the Framework, I do not give them further weight here.

273. At the Inquiry the Council sought to downplay the need for the school on the basis that the capacity of other primary schools in the locality has been increased. The point was made that approximately half of the 19 schools reviewed in the Council's evidence will have spaces available in the reception class in September 2017. [37 to 39, 137]
274. Whilst that increase in capacity is to be welcomed, in my view it has only a limited bearing on the merits of the appeals. First, the evidence is a snapshot at a fixed point in time. The strategic policies referred to above make clear that there is a continuing need for social infrastructure, including schools, to meet the needs of London's growing population. The site is within the Hackney Central District Centre where the CS proposes significant housing growth (CS Policy 1). The CS also aims to develop a civic, cultural and administrative hub at Hackney Central, supported by new homes and a network of retail and leisure services. A new primary school would be consistent with these strategic objectives and would help to support the new housing which is planned in the locality. [20]
275. Moreover, the Framework and the LP do not seek only to meet a need expressed in numerical terms. On the contrary, the emphasis is on educational choice. The Olive School is one of only two Muslim faith primary schools in the borough and is the only state-funded Muslim faith primary school. The proposal would therefore contribute to the objective of improving educational choice. [41]
276. The Council argued that, in the absence of a condition limiting the permission to the Olive School, any benefits relating to the particular characteristics of the Olive School should be disregarded. Mindful of the advice in Planning Practice Guidance, I do not consider that such a condition would be appropriate in this case. The Council did not in fact advocate such a condition, nor did any other party at the Inquiry. I accept that there is no certainty that, if the appeals are allowed, the site would always (or even initially) be occupied by the Olive School. Nevertheless, given that the site has been acquired by the EFSA for the Olive School, it is very likely that the site would indeed be occupied by the Olive School if the appeals are allowed. That seems to me to be a material consideration. [139, 143, 144]
277. These considerations are relevant to the duties that decision makers have under s149(1) of the Equality Act 2010. In this context religion or belief is a protected characteristic. On the basis of the evidence before the Inquiry, it appears to me that the appeal proposal would advance equality of opportunity between those who share a protected characteristic and those who do not share it. At the Inquiry the appellant accepted that 3 of the 21 classrooms (located on the top floor of the listed building) would not be fully accessible to disabled persons. However, I accept that the school would be able to manage the use of teaching spaces to ensure that any disabled pupils or staff members were not disadvantaged. Overall, I consider that the equalities impacts of the proposal would be positive. [40, 41, 78]
278. In conclusion, I consider that the provision of a new primary school at the appeal site would represent a social benefit to which significant weight should be attached. Some weight should also be attached to the associated economic

benefits. The proposal would accord with LP Policies 3.16 and 3.18, with CS Policies CS1, CS8 and CS9 and with DMLP Policy DM5.

Other matters

Standard of educational accommodation

279. The Council's 3rd reason for refusal, which related to the standard of educational accommodation to be provided, was not pursued at the Inquiry. However, ACE did maintain an objection on these grounds. The concerns expressed included potential overcrowding at entrances and in corridors, lack of internal space (including classrooms, halls and circulation areas) and lack of external play space. [4, 155 to 158]
280. The appellant accepted that some of the teaching areas would not meet the relevant guidance on space standards, arguing that a balanced view is needed when working within the constraints of a listed building. The school's operational plan has considered the sequence in which the halls would be used. Meal times would be staggered. Use of the external spaces would also be staggered such that each of the two separate play areas would only be used by one year group at any one time. In assessing this issue I attach significant weight to the evidence of the appellant's architect, whose firm has extensive experience in the design of educational buildings. I also attach significant weight to the evidence of the Executive Head Teacher, who is experienced in operating primary schools, including schools on restricted sites. The concerns of ACE also related to means of escape in case of fire. Whilst that is a matter of great importance, it would be covered under other legislation. [78, 79]
281. In conclusion, whilst I acknowledge the challenges that operating a school here would bring, the evidence before me indicates that those challenges could be managed in a satisfactory way. I do not consider that this is a matter which should weigh against the appeals.

Impact on the living conditions of nearby residents

282. The proposal would have the potential to affect the living conditions of nearby residents, in particular through congestion around the school entrances and through noise. I have commented above on the measures which are proposed to mitigate and manage any congestion in Churchwell Path and St John's Church Road. Those measures would also serve to protect the living conditions of residents.
283. The Council's 3rd reason for refusal referred to the impact of noise on neighbouring residents. That reason for refusal was not pursued by the Council, following the submission of additional noise evidence. Nevertheless, an objection on noise grounds was maintained by ACE. The initial noise report, submitted with the application, found that noise from fixed plant could be controlled by a condition and that noise breakout from the main hall and external study areas was unlikely to be significant. Those conclusions were accepted by the Council and were not disputed at the Inquiry. The main point of concern was noise from external play areas. [4, 31, 164]

284. This matter was considered in a further noise report¹⁰⁶ which found that the highest noise levels at nearby residential properties would not exceed the World Health Organisation threshold for serious annoyance in external amenity areas. The report concluded that the noise from external play areas would be audible but would not cause significant adverse impacts.
285. Staggering the break times would reduce the number of children at play at any given time but would also increase the length of time for which the noise would be experienced. Even so, the longest combined break time would be 1.5 hours at lunchtime, with a shorter period mid-morning. There would be no such impacts in the evenings, at weekends or during school holidays. Having regard to the likely noise level, duration, time of day and frequency I conclude that the proposal would accord with DMLP Policy DM2 which seeks to avoid significant adverse effects on the amenity of neighbours. I do not consider that this is a matter which should weigh against the appeals.

Consideration of alternatives

286. The Council is of the view that the site constraints are such that a 3FE school cannot be satisfactorily accommodated and that the option of a 2FE school should be explored. This is a view which the Council has held consistently since its earliest engagement in the project and it provides the context for the Council's case in relation to the consideration of alternatives. It was argued that the main elements of the scheme, particularly the scale of development, were settled before the pre-application process began. Options other than 3FE were not considered. [85 to 97, 118, 119]
287. The Framework states that early engagement has significant potential to improve the effectiveness of the planning application system. However, it makes clear that planning authorities cannot require that a developer engages with them before submitting a planning application. In this case, I have no doubt that the appellant's participation in the pre-application process was genuine and that, as a result, improvements were made to the proposals. However, the evidence indicates that the quantum of development was not a meaningful part of that discussion. On the other hand, whilst a meaningful discussion about quantum might have been good practice, there was no absolute requirement for the appellant to have such a discussion. Having resolved to pursue a 3FE scheme it was open to the appellant to test that scheme through the planning process. [45 to 48]
288. The Council suggested an alternative design approach for a 3FE school together with options for a 2FE school and a mixed use scheme. Although these options were presented in the form of outline sketches, they were intended to inform a discussion about the scale and nature of the development. No doubt the Council was seeking to encourage the appellant to work up the options in more detail, although in the event that did not happen. [86, 96, 97]
289. At the Inquiry this led on to a discussion about optimum viable use (OVU). Planning Practice Guidance (the Guidance) on conserving and enhancing the historic environment discusses the concept of OVU. It states that, if there is only one viable use for a heritage asset, that use is the optimum viable use. If there is

¹⁰⁶ Appellant's Statement of Case, tab 36

a range of alternative viable uses, the optimum use is the one likely to cause the least harm to the significance of the asset. In this case it is not possible to say whether the appeal proposal represents the OVU of the former police station. Evidently there are other potential uses, as provided for in the SALP and the Council's options, but only the appeal scheme has been developed in any detail. [23, 138 to 140]

290. The Guidance goes on to say that, in relation to the historic environment, public benefits could be anything that delivers economic, social or environmental progress. This may include heritage benefits such as securing the OVU of a heritage asset in support of its long term conservation. However, neither the Framework nor the Guidance places any requirement on a decision maker to determine whether or not a particular proposal represents the OVU of a heritage asset. In this case I have found that the appeal proposal would secure a suitable use which would support the long term conservation of the police station. In my view that would be a significant public benefit, whether or not the proposal represents the OVU.
291. It would not be right to say that there has been no consideration of alternatives in this case. Alternative approaches are described in the design and access statement although, as the Council points out, these are all versions of a 3FE scheme. [119]
292. The question of whether there has been a sufficient assessment of alternatives is a matter for the decision maker to consider. In this case it is important to note that this is a proposal which, in my view, is in accordance with the development plan. My assessment is that the appellant's approach to the consideration of alternatives is not a matter which weighs against the appeals.

Effect on trees in the Churchyard Gardens

293. The Council's 4th reason for refusal referred to the impact on trees in the Churchyard Gardens. Having considered the results of further investigations regarding the spread of tree roots, the Council indicated that it would no longer maintain this reason for refusal. This matter was not controversial at the Inquiry and I see no reason to differ from the Council's assessment. [4, 31, 166]

Conclusions

Appeal A

294. For the reasons given above I consider that the proposal would accord with the relevant policies of the development plan relating to the historic environment, transport and social infrastructure. I have not identified any material conflict with the development plan and conclude that the proposal would accord with the development plan as a whole.
295. The Framework and *Policy statement – planning for schools development* are material considerations. I have not identified any conflict with the Framework insofar as it relates to the historic environment. Mindful of the approach of the Framework and the policy statement to the development of state-funded schools, I attach significant weight to the social benefit that would flow from the appeal proposal. I also attach some weight to the associated economic benefit. These are factors which add weight to my conclusions in relation to the development plan.

296. There are no considerations which indicate a decision other than in accordance with the development plan. My recommendation will therefore be that the appeal should be allowed.

Appeal B

297. For the reasons given above, my recommendation will be that the appeal should be allowed.

RECOMMENDATIONS

298. I recommend that:

- 1) The appeals should be determined on the basis of the alternative proposal. For Appeal A the description of development should therefore be:

Change of use and refurbishment of listed building, demolition of rear buildings and three storey new build to provide a new primary school with associated playspace, access, servicing and cycle parking

For Appeal B the description of the works should therefore be:

Demolition of rear buildings and structures and various internal and external alterations associated with conversion of the building to a primary school

- 2) The appeals should be determined on the basis of the revised ground floor plan AHR-AR-B01-20-100 revision 20.
- 3) Appeal A should be allowed and planning permission granted subject to the conditions attached at Annex C.
- 4) Appeal B should be allowed and listed building consent granted subject to the conditions attached at Annex D.

David Prentis

Inspector

Annex A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson	of Counsel, instructed by the Head of Planning, London Borough of Hackney
He called	
Tim Walder	Senior Conservation and Design Officer, London Borough of Hackney
BA(Hons) MA MSc PGCE	
Peter Foley	Principal Transport Planner (Development Management), London Borough of Hackney
BSc MSc HDip	
Barry Coughlan	Major Projects Planner, London Borough of Hackney
BSc MSc	

FOR THE APPELLANT:

Lisa Busch	Queen's Counsel, instructed by Trowers and Hamblins LLP
She called	
Julie Bradley	Executive Head Teacher for Olive Schools, Tauheedul Education Trust
	RPS CgMs
Jonathan Smith	
BA(Hons) MA PGCE	
PGDip MCIfA IHBC	
Michael Walters	AHR Architects
BA(Hons) DipArch RIBA	
Abigail Evans	HSP Consulting Engineers
BSc(Hons) PGCert	
MCIHT	
Karen Jones	RPS CgMs
BA(Hons) MSc MRTPI	

INTERESTED PERSONS:

Action for Clapton's Environment

Daniel Stedman Jones	of Counsel
Quintin Colville	Local resident
Louise Goodison RIBA	Local resident
Simon Newton	Local resident
Peter Sibley	Local resident
BSc MSc PGCE DipCons	
Helen McShane	Local resident

Others opposed to the appeals

Jane Straker	Local resident
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Beryl Jones
Conrad Romer

Local resident
Trustee, Hackney Historic Buildings Trust
(speaking in personal capacity)

In support of the appeals

Irfan Mehter
Nuha Benalia
Nashrin Master
Shukri Adan
Himayat Ali Ughradar
Ms Rujie
Dr Mufti Abdurrahman Mangera

School Governor, Olive School
Parent, Olive School
Hackney resident and former Imam

ANNEX B**DOCUMENTS****Documents submitted at the Inquiry**

APP1	<i>Appellant's documents</i> Appearances
APP2	Opening submissions
APP3	Means of escape review – Omega Fire
APP4	Revised ground floor plan AHR-AR-B01-20-100 revision 18
APP5	Revised ground floor plan AHR-AR-B01-20-100 revision 20
APP6	Proposed admission arrangements – Tauheedul Education Trust
APP7	Closing submissions
	<i>Council's documents</i>
LBH1	Preliminary issues note
LBH2	Opening submissions
LBH3	Pre-application report - 27 November 2014
LBH4	Pre-application report – 23 February 2015
LBH5	Email re schools data
LBH6	Note of pre-application correspondence November 2014 to August 2015
LBH7	Emails re toucan crossing – Transport for London
LBH8	Closing submissions
	<i>Action on Clapton's Environment</i>
ACE1	Legal submissions
ACE2	Bernard Wheatcroft v Secretary of State for the Environment
ACE3	Johnson v Secretary of State for Communities and Local Government
ACE4	Extract from Planning Inspectorate Guidance
ACE5	Appearances
ACE6	Statement of Quintin Colville - overview
ACE7	Statement of Louise Goodison - design
ACE8	Statement of Simon Newton - transport

ACE9	Statement of Peter Sibley – amenity, heritage and trees
ACE10	Statement of Helen McShane – community impacts
ACE11	Final statement (plus appendices)
	<i>Agreed documents</i>
ID1	Statement of common ground
ID2	Conservation principles, Policies and Guidance – Historic England
ID3	Suggested conditions
	<i>Other documents</i>
OD1	Statement of Jane Straker
OD2	Statement of Conrad Romer

Core Documents

- 1 Committee report
- 2 Decision notice – 2015/3306 (Appeal A)
- 3 Decision notice – 2015/3316 (Appeal B)
- 4 The London Plan
- 5 Hackney Core Strategy
- 6 Hackney Development Management Local Plan
- 7 Hackney Site Allocations Local Plan
- 8 National Planning Policy Framework
- 9 Policy Statement – Planning for Schools Development
- 10 Planning (Listed Buildings and Conservation Areas Act) 1990
- 11 Bedford City Council v Nuon
- 12 Site plan with bus layby – AHR-AR-B01-20-010 Revision 9
- 13 Site plan without bus layby – AHR-AR-B01-10-010 Revision 3
- 14 Existing elevations
- 15 Proposed elevations

Statements of Case

- 1 Council's Statement of Case (plus appendices)
- 2 Appellant's Statement of Case (plus appendices)

Proofs of evidence – for the Council

- 1 Barry Coughlan – planning (plus appendices and rebuttal)
- 2 Peter Foley – transport (plus appendices)
- 3 Tim Walder – heritage (plus appendices)

Proofs of evidence – for the appellant

- 1 Julie Bradley – Tauheedul Trust (plus appendices and rebuttal)
- 2 Karen Jones – planning (plus appendices and rebuttal)
- 3 Jonathan Panter – arboriculture (plus appendices)
- 4 Jonathan Smith – heritage (plus appendices and rebuttal)

- 5 Michael Walters – architecture (plus appendices and rebuttal)
 - 6 Martin Jones – noise
 - 7 Abigail Evans – transport (plus appendices and rebuttal)
- Note – appellant's rebuttals and summaries are in separate folder*

Other supporting documents

- 1 Council's supporting documents (1 folder)
- 2 Appellant's supporting documents – Appeal A (3 folders)
- 3 Appellant's supporting documents – Appeal B (2 folders)

ANNEX C

Conditions for Appeal A – the planning appeal

- 1) The development hereby permitted must be begun not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out and completed in accordance with the plans listed in the attached Annex E and any subsequent approval of details.
- 3) Notwithstanding the approved drawings, details of the following matters shall be submitted to and approved in writing by the local planning authority before any work in relation to these matters takes place. Development shall be carried out in accordance with the approved details.
 - air handling plant and louvres on roofs, including 1:20 scale plans, sections and elevations showing the relationship of the new elements to the historic fabric
 - the new entrance through the western boundary wall, including 1:20 scale plans, sections and elevations showing the relationship of the new elements with the historic fabric
 - new and replacement windows, including 1:20 scale elevations showing glazing patterns and 1:10 scale sections showing glazing and joinery details
- 4) Notwithstanding the approved drawings, details of the materials to be used for the external surfaces of the proposed buildings shall be submitted to and approved in writing by the local planning authority before any work on the external elements of the buildings takes place. The details shall include samples of facing bricks and roofing materials. Development shall be carried out in accordance with the approved details.
- 5) Prior to occupation of the development hereby approved, a school management plan shall be submitted to and approved in writing by the local planning authority. The approved management plan shall be adhered to for so long as the premises are operated as a school. The plan shall include details of the following matters.

- management of external play areas including details of staggered play times and pupil numbers
 - management of rooftop study area
 - management of extra-curricular and physical education including travel to off-site locations
 - management of children arriving and leaving school including the use of entrances and provision of traffic marshals
 - use of school outside teaching hours
- 6) Prior to occupation of the development hereby approved, details of planting to be incorporated on the rooftop study area and semi-permeable screening to circulation areas shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to the occupation of the development and shall be permanently retained as such thereafter.
- 7) Notwithstanding the approved drawings, a full post construction BRE certification confirming that the refurbished element of the development has achieved a BREEAM rating of Very Good with a minimum score of 62 points and that the new construction element has achieved a BREEAM rating of Excellent shall be submitted to and approved in writing by the local planning authority within 6 weeks of the first occupation of the development hereby approved.
- 8) Prior to occupation of the development hereby approved, specification and layout details of the proposed photo voltaic panels shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to the occupation of the development and shall be permanently retained as such thereafter.
- 9) Notwithstanding the approved drawings, details of the following shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development. Development shall be carried out in accordance with the approved details and permanently retained as such thereafter.
- low NOx emitting combined heat and power and emergency generator plant (referred to hereafter as plant)
 - performance data including emissions standards and technical data for each piece of plant. The data shall demonstrate that the plant is low NOx in relation to air quality standards and other similar plant available on the market. The plant installed shall meet or improve upon the approved emissions standards and technical data
 - details of the plant installed (including measured emissions) and details of any emissions mitigation equipment installed
- 10) No new plumbing, pipes, soil stacks, flues, vents, grilles, security alarms or ductwork shall be fixed on the external faces of the buildings unless as otherwise shown on the drawings hereby approved.

- 11) Prior to occupation of the development hereby approved, a refuse strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include the use of a commercial waste management company. Thereafter, refuse collection shall only be carried out in accordance with the approved strategy.
- 12) Prior to occupation of the development hereby approved, a school travel plan shall be submitted to and approved in writing by the local planning authority. The school travel plan shall include measures to discourage the use of private cars and to encourage the use of sustainable modes of transport. Baseline travel surveys of staff and pupils will be undertaken within 3 months of the school opening and the full travel plan will be operational within 6 months of the school opening. The school travel plan shall seek to achieve TfL Mode STARS Gold Accreditation in the 4th year of operation. The site shall be operated in accordance with the approved school travel plan at all times.
- 13) Prior to occupation of the development hereby approved, details of the means of mechanical ventilation and the extraction and dispersal of cooking smells/fumes shall be submitted to and approved in writing by the local planning authority. The details shall include the method of construction and odour and noise control. The details shall be implemented as approved prior to the occupation of the development and shall be permanently retained as such thereafter.
- 14) No roof plant, including any external enclosures, machinery or other installations, shall be placed on or attached to the roof of the development unless shown on the drawings hereby approved or otherwise approved pursuant to the conditions imposed on this permission.
- 15) No development shall take place until a site specific Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting and shall include:
 - a demolition and construction method statement to include details of noise control measures and measures to preserve air quality, including a risk assessment of the demolition and construction phase
 - a plan setting out how resources will be managed and waste will be controlled at all stages during the construction phase, including details of dust mitigation measures during site clearance and construction works (including any works of demolition of existing buildings or breaking out or crushing of concrete) and the location of any mobile plant or machinery
 - details of the locations where deliveries will be undertaken, the size and number of lorries expected to access the site daily, the access arrangements (including turning provision if applicable), construction traffic routing, details of parking suspensions (if required) and the duration of construction

- mitigation measures (as defined in BS 5228: Parts 1 and 2: 2009 Annex F *Noise and Vibration Control on Construction and Open Sites*) which shall be used to estimate LAeq levels and minimise noise disturbance from demolition and construction works
- procedures for maintaining good public relations including complaint management, public consultation and liaison
- arrangements for liaison with the Council's Community Safety Team
- any works or ancillary operations which are audible at the site boundary shall be carried out only between 08.00 and 18.00 on Mondays to Fridays, 08.00 and 13.00 on Saturdays and at no time on Sundays and Bank Holidays
- deliveries and/or removal of materials, plant, equipment, machinery and waste from the site shall only take place within the permitted hours detailed above
- procedures for emergency deviation from the agreed working hours

The approved Construction Environmental Management Plan shall be adhered to throughout the construction period.

- 16) No development above ground shall take place until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- planting plans showing the location, species, type of stock, numbers of trees/plants, tree pits and areas to be seeded or turfed
 - external lighting including location and types of light fitting
 - play areas and play equipment

The hard landscaping shall be carried out as approved prior to the occupation of the development. The soft landscaping shall be carried out as approved within 12 months of the commencement of the development or in the first planting season following completion of the development. Any plants forming part of the approved scheme which die or are seriously damaged or diseased or are removed within a period of 5 years of being planted shall be replaced with others of the same size and species unless otherwise agreed in writing by the local planning authority.

- 17) The development hereby approved shall not be occupied until a detailed Delivery and Servicing Management Plan has been submitted to and approved in writing by the local planning authority. Delivery and servicing to the site shall only be carried out in accordance with the approved Delivery and Servicing Management Plan.
- 18) The rating level of any noise generated by any plant and equipment forming part of the development shall be at least 5 dB below the pre-existing background level as determined by BS4142 *Method of rating industrial noise affecting mixed residential and industrial areas*.

- 19) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. The assessment shall be carried out by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: *Investigation of potentially contaminated sites* and the Environment Agency's *Model Procedures for the Management of Land Contamination* (CLR 11) (or equivalent British Standard and/or Model Procedures if replaced) and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include a survey of the extent, scale and nature of contamination and the potential risks to human health and property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes, adjoining land, ground waters, surface waters, ecological systems, archaeological sites and ancient monuments.
- 20) No development shall commence where (following a risk assessment) land affected by contamination is found which poses unacceptable risks until a remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of the remediation objectives and remediation criteria and a description and programme of the works to be undertaken, including a verification plan. The scheme shall ensure that, upon completion, the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
- 21) The development shall not be occupied until the remediation scheme approved pursuant to condition 20 has been carried out and a verification report by a suitably qualified contaminated land practitioner has been submitted to and approved in writing by the local planning authority.
- 22) In the event that, when carrying out the development hereby approved, contamination is found that was not previously identified it must be reported in writing to the local planning authority within 7 days and development on the affected part of the site shall cease. A risk assessment in accordance with condition 19 shall be carried out and submitted to and approved in writing by the local planning authority. If unacceptable risks are found a remediation scheme in accordance with condition 20 shall be submitted to and approved in writing by the local planning authority before development resumes. The development shall not be occupied until the approved remediation scheme has been carried out and a verification report has been submitted to and approved in writing by the local planning authority.
- 23) The development shall not be occupied until a post-development verification report has been submitted to and approved in writing by the local planning authority. The report shall set out any restrictions on the use of the development and demonstrate that arrangements have been made to inform future site users of the restrictions.
- 24) Notwithstanding the approved plans, lockable space shall be made available within the site for the secure parking of 34 cycles before the first occupation of the development. Use of the cycle parking shall be monitored by the travel plan coordinator each term and should the cycle parking be more than 95% occupied for more than one month then additional parking shall

be provided in accordance with details which shall be submitted to and approved in writing by the local planning authority up to a maximum of 106 cycle stands.

- 25) No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
- 26) The proposed ecological enhancements, including bird and bat boxes, shall be delivered in accordance with the details contained within the submitted Phase 1 Habitat Survey prior to the occupation of the development hereby approved.
- 27) No development other than demolition to existing ground level shall take place until the applicant (or their heirs and successors in title) has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority and a report on the results has been submitted to the local planning authority.
- 28) The development hereby permitted shall not be occupied until an agreement under section 278 of the Highways Act 1980 has been entered into between the applicant and the Council in order to upgrade the crossing adjacent to the site on Lower Clapton Road to a toucan crossing.
- 29) Notwithstanding the approved drawings, no development shall take place until an arboricultural method statement has been submitted to and approved in writing by the local planning authority. The method statement shall include details of tree protection measures for all trees within and adjoining the site and shall be adhered to throughout the construction period.
- 30) The school shall admit no more than 90 pupils in its first year of operation. Thereafter, the school roll shall increase by no more than 90 pupils per year until the full capacity of 630 pupils is reached. At no time shall the school admit more than 630 pupils. *[Note – this condition is only required if the Secretary of State is minded to determine the appeal on the basis of the alternative proposal in accordance with the Inspector’s recommendation]*
- 31) The development hereby permitted shall not be occupied until the bus layby shown on plan C2042-205 revision A has been provided and the applicant has put in place arrangements to enable the layby to be used by school buses in accordance with details which have been submitted to and approved in writing by the local planning authority. *[Note – this condition is only required if, contrary to the Inspector’s recommendation, the Secretary of State is minded to determine the appeal on the basis of the original proposal].*
- 32) No works on the southern elevation of the classroom block hereby permitted shall be commenced until details of that elevation have been submitted to

and approved in writing by the local planning authority. *[Note – this condition is only required if the Secretary of State is minded to determine the appeal on the basis of the revised ground floor plan AHR-AR-B01-20-100 revision 20 in accordance with the Inspector’s recommendation]*

ANNEX D

Conditions for Appeal B – the listed building appeal

- 1) The works hereby permitted must be begun not later than the expiration of three years beginning with the date of this consent.
- 2) The works hereby permitted shall be carried out and completed in accordance with the plans listed in the attached Annex E and any subsequent approval of details.
- 3) Notwithstanding the approved drawings, details of the materials to be used for the external surfaces of the proposed buildings shall be submitted to and approved in writing by the local planning authority before any work on the external elements of the buildings takes place. The details shall include samples of facing bricks and roofing materials, together with one metre sample panels of brickwork showing pointing and face bond. The works shall be carried out in accordance with the approved details.
- 4) All existing historic features including chimney pieces, plasterwork, internal joinery, panelling, doors, staircases and floors shall remain undisturbed in their existing position and shall be fully protected during the course of works on site, unless specifically authorised otherwise on the drawings hereby approved.
- 5) No demolition or works shall take place until the applicant or their agents or their successors in title has secured the implementation of a programme of building recording work in accordance with a written scheme which has been submitted to and approved in writing by the local planning authority. The scheme should be at Level 2 as described in paragraph 5.3 of the Historic England document *Understanding Historic Buildings: A Guide to Good Recording Practice* (English Heritage 2006). The record shall be preserved as described in paragraphs 7.1 to 7.3 of that document. The completed record shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development and shall then be submitted to the Greater London Historic Environmental Record.
- 6) All new works and works of making good to retained fabric, whether internal or external, shall be finished to match the original work with regard to the methods used and to material, colour, texture, profile and (in the case of brickwork) face bond and pointing.
- 7) Notwithstanding the approved drawings, details of the following matters shall be submitted to and approved in writing by the local planning authority before any work in relation to these matters takes place. The works shall be carried out in accordance with the approved details.

- air handling plant and louvres on roofs, including 1:20 scale plans, sections and elevations showing the relationship of the new elements to the historic fabric
 - the new entrance through the western boundary wall, including 1:20 scale plans, sections and elevations showing the relationship of the new elements with the historic fabric
 - new and replacement windows and external doors, including 1:20 scale elevations showing glazing patterns and 1:10 scale sections showing glazing and joinery details
- 8) Details of rainwater goods including guttering, hoppers, junctions and downpipes shall be submitted to and approved in writing by the local planning authority before the relevant part of the works is commenced. The details shall include elevations and manufacturers specifications and images. The works shall be carried out in accordance with the approved details.
- 9) No new plumbing, pipes, soil stacks, flues, vents, grilles, security alarms or ductwork shall be fixed on the external faces of the buildings unless as otherwise shown on the drawings hereby approved.

End of conditions

ANNEX E**Schedule of plans to be approved if the appeals are allowed**

Note – numbers in left hand column refer to tabs in Agreed Plans folder

1	AHR-AR-B01-10-001 Rev 4 AHR-AR-B01-10-001 Rev 6	Existing Location Plan (alternative proposal) Existing Location Plan (original proposal) <i>Note – delete one or other plan as appropriate</i>
2	AHR-AR-B01-10-010 Rev 3 AHR-AR-B01-10-010 Rev 5	Existing Site Plan (alternative proposal) Existing Site Plan (original proposal) <i>Note – delete one or other plan as appropriate</i>
3	AHR-AR-B01-10-340 Rev 3	Existing Elevation – West
4	AHR-AR-B01-10-330 Rev 4	Existing Elevation – South
5	AHR-AR-B01-10-320 Rev 4	Existing Elevation – East
6	AHR-AR-B01-10-310 Rev 3	Existing Elevation – North
7	AHR-AR-B01-10-302 Rev 4	Existing Site Elevation – West
8	AHR-AR-B01-10-301 Rev 4	Existing Site Elevations – South
9	AHR-AR-B01-10-300 Rev 3	Existing Site Elevations – North
10	AHR-AR-B01-10-099 Rev 4	Existing Plan – Basement Floor
11	AHR-AR-B01-10-100 Rev 5	Existing Plan – Ground Floor
12	AHR-AR-B01-10-101 Rev 5	Existing Plan – First Floor
13	AHR-AR-B01-10-102 Rev 5	Existing Plan – Second Floor
14	AHR-AR-B01-10-103 Rev 5	Existing Plan – Third Floor
15	AHR-AR-B01-10-105 Rev 4	Existing Plan – Roof from Above
16	AHR-AR-B01-10-220 Rev 3	Existing Section EE

17	AHR-AR-B01-10-210 Rev 3	Existing Section DD
18	AHR-AR-B01-10-202 Rev 2	Existing Site Section CC
19	AHR-AR-B01-10-201 Rev 3	Existing Site Section BB
20	AHR-AR-B01-10-200 Rev 2	Existing Site Section AA
21	AHR-AR-B01-11-099 Rev 6	Demolition & Strip Out Plan – Basement Floor
22	AHR-AR-B01-11-100 Rev 7	Demolition & Strip Out Plan – Ground Floor
23	AHR-AR-B01-11-101 Rev 7	Demolition & Strip Out Plan – First Floor
24	AHR-AR-B01-11-102 Rev 7	Demolition & Strip Out Plan – Second Floor
25	AHR-AR-B01-11-103 Rev 7	Demolition & Strip Out Plan – Third Floor
26	AHR-AR-B01-11-105 Rev 4	Demolition & Strip Out Plan – Roof from Above
27	AHR-AR-B01-20-010 Rev 4 AHR-AR-B01-20-010 Rev 9	Proposed Site Plan (alternative proposal) Proposed Site Plan (original proposal) <i>Note – delete one or other plan as appropriate</i>
28	AHR-AR-B01-20-099 Rev 13	Proposed Plan – Basement Floor
29	AHR-AR-B01-20-100 Rev 20	Proposed Plan – Ground Floor <i>Note – this is the amended plan (at APP5) which the Inspector recommends is accepted. If the amendment is not accepted by the Secretary of State then revision 19 of the same plan should be substituted.</i>
30	AHR-AR-B01-20-101 Rev 13	Proposed Plan – First Floor
31	AHR-AR-B01-20-102 Rev 13	Proposed Plan – Second Floor
32	AHR-AR-B01-20-103 Rev 13	Proposed Plan – Third Floor
33	AHR-AR-B01-20-105 Rev 5	Proposed Plan – Roof from Above
34	AHR-AR-B01-20-200 Rev 4	Proposed Site Section AA
35	AHR-AR-B01-20-201 Rev 4	Proposed Site Section BB
36	AHR-AR-B01-20-202 Rev 4	Proposed Site Section CC
37	AHR-AR-B01-20-210 Rev 4	Proposed Site Section DD

38	AHR-AR-B01-20-230 Rev 4	Proposed Site Section FF
39	AHR-AR-B01-20-300 Rev 4	Proposed Site Elevation – North
40	AHR-AR-B01-20-301 Rev 6	Proposed Site Elevations – South
41	AHR-AR-B01-20-303 Rev 4	Proposed Site Elevation – West
42	AHR-AR-B01-20-310 Rev 4	Proposed Elevation – North
43	AHR-AR-B01-20-320 Rev 5	Proposed Elevation – East
44	AHR-AR-B01-20-330 Rev 9	Proposed Elevation – South
45	AHR-AR-B01-20-340 Rev 4	Proposed Elevation – West
46	AHR-AR-B01-20-201 Rev 4	Proposed Site Section BB
47	L-1392-PPP-01 Rev 01	Planting Strategy
48	L-1392-PPP-02 Rev 01	Planting Palette
49	L-1392-GAP-01 Rev 01	Ground Level General Arrangement Plan
50	L-1392-GAP-02 Rev 02	Landscape Concept
No tab – last item in agreed plans folder	C2042-205 Rev A	Bus Layby Position and tracking <i>Note – this plan should only be included if the Secretary of State determines the appeal on the basis of the original proposal</i>



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.