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## Appeal Decisions

Inquiry held on 2,3,4,5 & 11 September 2025

Site visit made on 2 September 2025

by **Elizabeth Pleasant BSc (Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date 29 October 2025

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**Appeal A Ref: APP/U5360/C/25/3365198**

**Appeal B Ref: APP/U5360/C/25/3365199**

**Land at 65-69 Amhurst Park, LONDON, N16 5DL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Talmud Torah London Limited and Appeal B by BYGS SH Ltd Alexander Julius Halpert against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 30 April 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of 69 Amhurst Park, and the land to the rear of 65 and 67 Amhurst Park, to a school, the laying of hardstanding to the land to the rear of 65-69 Amhurst Park, the erection of one front and two rear outbuildings, a fire escape staircase and a rear roof extension at 69 Amhurst Park.
- The requirements of the notice are to:
  1. Cease the use of Property as a School (Use Class: F1(a));
  2. Remove all fixtures and fittings and equipment facilitating the use of the Property as a School (Use Class: F1(a));
  3. Remove the two single storey outbuildings erected in the rear garden area (as marked with red numbers 1 & 2 in Appendix 2) and the single storey outbuilding (as depicted in Appendix 1) in the front garden area, in their entireties;
  4. Remove all hardstanding (the general location of which is marked in Appendix 4) and restore the rear gardens of the land at the Property to their condition before the breach of planning control occurred;
  5. Remove the rear roof extension (as depicted in Appendix 3) in its entirety and restore the roof to its condition before the breach of planning control occurred;
  6. Remove the fire escape staircase (as depicted in Appendix 3) in its entirety and restore any entry points to it to its condition before the breach of planning control occurred;
  7. Make good all damage to the Property and surrounding land, resulting from the removal of the unauthorised works as listed above;
  8. Upon completion of the above steps, remove all materials, debris, waste and equipment from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c) (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

**Summary Decision: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decisions.**

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### Applications for costs

1. Applications for a partial award of costs were made by Talmud Torah London Limited and BYGS SH Ltd Alexander Julius Halpert against the Council of the London Borough of Hackney. These applications are the subject of separate decisions.

## **Procedural Matters**

2. The Inquiry opened on 2 September 2025, and we sat for five days. The fourth day was a virtual session to deal with conditions and to discuss a Unilateral Undertaking. Closings were also heard at a virtual session on Thursday 11 September 2025. I closed the Inquiry in writing on 3 October 2025 following the submission of final documentation.
3. All evidence on the legal grounds, site availability, need and planning policy was heard under affirmation and through cross examination. Round table discussions were held to discuss the remaining main issues, including living conditions of neighbouring residents, character and appearance, transport, waste management and biodiversity. At the Inquiry the Council advised that they no longer wished to pursue one of their reasons for issuing the notice which related to mitigation of impacts of climate change through design.

## **The Enforcement Notice, Appeal A and Appeal B on grounds (b) and (c)**

### ***Summary of Cases***

4. The appellants' case is that they have not constructed a "rear roof extension" but instead have constructed what should be described as a "second floor extension". They suggest that I correct the alleged breach of planning control accordingly. It is also their case that there has not been a material change of use of the land to the rear of Nos. 65-67 Amhurst Park. They contend that this part of the appeal site, which is still in the ownership of the occupiers of Nos 65-67 and leased to the appellants, has always been in use for recreational/educational purposes as a Youth Club. They believe the Youth Club use is not materially different to the school use and falls within the same F1 (a) Use Class as the alleged school (Town and Country Planning Use Classes Order 1987, as amended (UCO), Class F.1 (a), for the provision of education).
5. On the other hand, the Council are satisfied that the alleged "rear roof extension" is adequately described. It is their case that the use of the land to the rear of Nos. 65-67 as a Youth Club was previously in a different use, a community use falling within Class F2(b) of the UCO (i.e. a hall or meeting place for the principal use of the local community). Thus, a material change of use of the Land has taken place to use as a school.

### ***Main Issues***

6. Grounds (b) and (c) are closely linked in the respective cases and so I shall deal with them together.
7. The issue in a ground (b) appeal is whether the alleged breach of planning control, or part of it, has occurred as a matter of fact. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The main issue is whether as a matter of fact and degree there was a material change in the use of 69 Amhurst Park, and the land to the rear of 65 and 67 Amhurst Park to a school. A main consideration is whether a significant difference in the character of the activities and use can be identified when compared to what has gone on previously. On these legal grounds the burden of proof falls on the appellants to make out their case and the test is the balance of probability.

## **Reasons**

### *Rear Roof Extension*

8. There is no dispute between the parties that an extension has been constructed to the rear of the appeal premises. The enforcement notice describes this extension as “a rear roof extension”. The appellant believes it should be described as “a second floor extension” because it has been built on top of the flat roof of an existing first floor rear outrigger. This concern relates to a possible misdescription rather than the matters alleged have not occurred as a matter of fact. Furthermore, it is agreed between the parties that if I agree that the description should be altered to refer to “a second floor extension”, then I could correct the notice without injustice to either party<sup>1</sup>.
9. I accept that the extension has been constructed directly above a first-floor outrigger and thus creates an extension at second floor level. However, that second floor is also at roof level of the appeal premises and provides accommodation within the roof. Section 173 (1) (a) of the Town and Country Planning Act 1990 (the Act) requires an enforcement notice to state the matters which appear to the local planning authority to constitute the breach of planning control, and S173 (2) advises that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are. Having regard to the matter at appeal, the appellant clearly understood what the alleged rear roof extension was referring to in the notice. Furthermore, from observations on my site visit, I am satisfied that the description of this element of the breach is sufficiently precise and unambiguous and complies with the provisions of Section 173 (2) set out above. To that extent to the appeal on ground (b) fails.

### *Material Change of Use*

10. The land to which the enforcement notice relates is set out at paragraph 2 of the notice as 65-69 Amhurst Park and is identified on the accompanying plan as land edged and hatched (the Land). The Land includes the property and garden known as No 69 Amhurst Park, the lawful use of which is a residential dwelling, and part of the rear gardens of the adjoining properties known as 65-67 Amhurst Park. Nos. 65-67 Amhurst Park are occupied by ‘Beis Yakov’ (Beth Yakob – Friends R Us London) and are in use as a Community Youth Club.
11. The alleged breach of planning control is: Without planning permission, the material change of use of 69 Amhurst Park, and the land to the rear of 65 and 67 Amhurst Park, to a school, the laying of hardstanding to the land to the rear of 65-69 Amhurst Park, the erection of one front and two rear outbuildings, a fire escape staircase and a rear roof extension at 69 Amhurst Park. In so far as the notice does not refer to the relevant time limits set out in S171B of the Act, the notice does not distinguish between alleged operations and the material change of use. Nevertheless, it is clear that the operations, including laying of the hardstanding to form the school playground, the erection of the single front and two rear outbuildings, and the rear roof extension have all been undertaken to facilitate the change of use of the appeal site to a school. It is, however, agreed between the parties that the fire escape staircase (staircase) was constructed prior to the material change of use taking place. However, it is the Council’s view that

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<sup>1</sup> Statement of Common Ground

subsequent alterations to partially enclose the staircase and construct a canopy above it, have facilitated the use of the appeal property as a school, and therefore the staircase as a whole can be enforced against. I shall deal with that matter later in my decision.

12. Talmud Torah is a boys' primary faith school that serves the local "Charedi" Orthodox Jewish Community. They first occupied the property as a school in 2020 with approximately 60 boys on the roll. The number of primary-aged children on the roll rose to 89 in July 2023<sup>2</sup> and there are currently 120 boys attending. During 2021 the land to the rear of Nos. 65-67 was enclosed by fencing, and hardstanding was laid across that area and the rear garden of No 69, to provide an all-weather playing surface/playground for the school. Building works subsequently took place to construct additional school accommodation on the playground to the rear of No 69, including two outbuildings. One of the outbuildings is used for assembly and as a dining room, and the other as additional Special Educational Needs (SEN) classrooms and a store. A container has also been placed at the front of the property to provide a staff office for the Special Educational Needs Coordinator (SENCO), and a rear roof extension constructed for additional SEN provision. A canopy has been constructed to cover the fire escape staircase and plywood boards attached to its railings to partially enclose it. An enforcement notice in respect of those unauthorised works was first issued on 14 February 2025, but due to an error in it, was subsequently withdrawn. The notice was reissued on 30 April 2025, and that notice forms the subject of this appeal.
13. Nos. 65-67 Amhurst Park is occupied by Beis Yakob. It is understood that this Charity has occupied the premises for use as a "Youth Club" for many years. Planning applications made in 2015 for development at Nos. 65-67 refer to the site's existing use as a "Jewish community youth centre" and as an "existing youth club"<sup>3</sup>. Evidence submitted by Mr Posen indicates that the Youth Club is for girls from the Jewish Community, for which a yearly membership is required for a nominal fee<sup>4</sup>. Membership entitles you to a weekly Shabbos group, Beis Yakov activities, enrolment in the Beis Yakov Show and many events throughout the year, including outings to swimming pools/aqua park and trips away. Mr Posen told the Inquiry that it was his understanding that a large part of the activities provided by Beis Yakob are associated with the production of their yearly show. Girls come to the group to partake in drama, sew costumes, make props/sets and to sing, all in preparation for a yearly production which is put on at a local theatre. He also told the Inquiry that he is aware that on Shabbos bible study groups are held.
14. I recognise that Beis Yakob may, as part of their charitable aims, provide educational activities. However, taking account of all the evidence available, including what I heard at the Inquiry, Nos 65-67 functions as a community centre for Jewish girls. The activities appear to take place outside of Jewish school hours, and to attend the activities the girls need to join the "Club" and pay an annual membership. It is a place for girls in the Jewish community to meet and come together for recreational activities, and it is not dedicated to providing education. It is not a school, and the Council confirmed that the Valuation Office Agency records show that this property is in use as a community centre and premises. In my

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<sup>2</sup> Appendix 1: Ofsted Inspection Report 2023, Malka Schweitzer POE.

<sup>3</sup> Appendices 6, 7 & 8, LPA Statement of Case.

<sup>4</sup> Rebuttal Proof, Shulem Posen, Appendix 1 – Youth Club.

opinion the Youth Club is a community use which would fall within Class F2 (b) of the UCO.

15. Nevertheless, in considering the material change of use alleged, a starting point is to identify the planning unit, which is the most appropriate physical area to assess the materiality of the change. Referring to the leading case of *Burdle*<sup>5</sup>, a useful working rule is to assume that the unit of occupation is the appropriate planning unit unless a smaller area can be identified which is physically separate and distinct, and or occupied for a different unrelated purpose.
16. Having regard to the facts set out in the paragraphs above, prior to the unauthorised use of the Land as a school, the Land functioned as two separate planning units, a dwelling (No 69) and a Jewish Community Youth Club (Nos. 65-67). A google earth aerial image, dated March 2021, shows that a fence separated the rear gardens of these separate units of accommodation with each of their rear gardens being laid predominantly to grass.
17. In 2020 the use of No 69 changed its use to a school. Shortly after that use commenced, and to facilitate the school's expansion and its function as a school, the dividing fence between these properties was removed and the grassed area to the rear of Nos.65-67 enclosed by a new fence to separate it from its host property. This newly enclosed area was laid with hardstanding in conjunction with the laying of hardstanding on the garden to the rear of No 69, and integrated into the school use as a playground. A copy of a lease between the trustees of Beis Yakob – Friends R Us London and Talmud Torah indicate that Talmud Torah are able to utilise this land for recreational use as part of the school. Evidence at the Inquiry from the School Principal confirmed that the school utilises the playground during school hours, i.e. all-day Monday – Thursday, Friday morning and Sunday 10.00am - 03.00pm. The playground is used by the school for physical education on Sundays as part of the school curriculum, and this was confirmed by neighbouring residents. The School Principal was also clear in his evidence that, having regard to the number of pupils enrolled, the school would not be able to function without the playground, nor without the accommodation provided in the two rear outbuildings (assembly/dining room, SEN classrooms), the front outbuilding/container (SENCO staff accommodation) and the rear roof extension. All of which form part of the alleged breach of planning control.
18. I saw on my site visit that there is a pedestrian access gate within the new fence between the playground and the property known as Nos. 65-67, and it is also possible to close the wide connecting gates which have been installed within the newly formed playground between Nos 65-67 and No 69. We heard at the Inquiry that the Youth Club have retained use of the playground for its own use outside of school hours, albeit it is not entirely clear how the Youth Club utilise this Land, which is now a surfaced playground for the school. From the evidence available, including that given by neighbouring residents at the Inquiry, it seems that the Youth Club only utilise their former garden area on occasion for outdoor recreation (girl's play), and when it is not in use by the school.
19. Despite occasional physical separation to allow use of the playground by different groups, taking account of the evidence on physical and functional considerations, the land to the rear of Nos. 65-67 as a matter of fact and degree forms part of the

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<sup>5</sup> *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240.

school use. This is now the primary use of all the Land identified in the Notice and a new planning unit as a school has been formed. The character of the activities and use within that new planning unit are significantly different from its previous uses and a material change of use has occurred.

20. The owner/occupiers of 65-67 Amhurst Park were issued with a copy of the enforcement notice, but have not themselves appealed it, nor made any representations in relation to this appeal. I recognise that the Youth Club may use the school playground for recreation/play outside of school hours. However, that recreational use would not to my mind result in a mixed use of the Land but would be akin to a community football or netball team, dance club, etc, who may utilise school recreational facilities outside of school hours. As a matter of fact and degree the primary use of the Land is a school.
21. I conclude that the alleged breach of planning control has occurred as a matter of fact. In the absence of any planning permission for the material change of use of the Land, I find that it constitutes a breach of planning control. The appeals on grounds (b) and (c) therefore fail.

### **Appeal A and Appeal B on ground (d)**

22. It is the appellant's case that when the Council first purported to take enforcement action<sup>6</sup>, the fire escape staircase had been in situ for a period of at least four years and is therefore immune from enforcement action. The parties agree that the relevant date is 14 February 2021.
23. The Council accepts that the staircase was in situ on the relevant date. However, it is their view that, having regard to the alterations that have been made to the staircase since the school has been occupying the Land, and considering how the school utilises the staircase as a means of circulation, then the structure was not a substantially complete structure until the canopy and plywood panels which have been attached to it by the school were in place. It is the Council's view that the staircase as a whole can therefore be enforced against.
24. It is not known when the staircase was originally constructed. However, there is no dispute that it was in place prior to Talmud Torah purchasing No 69 Amhurst Road and changing its use to a school. Thus, the staircase was not constructed to facilitate the material change of use to a school but was constructed, complete and originally utilised for a different purpose/use. In *Bowring*<sup>7</sup>, the High Court made it clear that, *"if the installation.... had been undertaken for a different, lawful use, it would not appear necessary to require that they be removed to remedy a breach of planning control which consisted of the making of a material change of use"*. *"Where an enforcement notice is served alleging the making of a material change of use of land, and the notice requires that certain works be removed, those works must have been integral to or part and parcel of the making of the material change of use...it will not be sufficient if the works are integral to or part and parcel of the present unauthorised use of the land if the works had been undertaken for a different, and lawful, use, and could be used for that other lawful use even if the unauthorised use ceased."* Thus, it seems to me that should this appeal not succeed, the staircase could continue to be used for that other use/purpose. I

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<sup>6</sup> LPA issued an enforcement notice relating to this development on 14 February 2025. That notice was withdrawn on 30 April 2025 and replaced with the notice now at appeal.

<sup>7</sup> *Bowring v Secretary of State for Communities and Local Government* [2013] EWHC 1115

conclude that the staircase before it was altered was a substantially complete building operation before the unauthorised material change of use took place and is immune from enforcement action.

25. Since the school's occupation of the Land and use as a school, the staircase has been altered/modified. A canopy has been constructed above it to provide cover from the rain, and plyboard sheets have been affixed to its railings to provide some enclosure and screening from when it is in use. The appellants have provided a copy of the invoice for the installation of the canopy and a statutory declaration from an employee of Barzel Fabrication who installed it, confirming the installation date as 7 February 2021<sup>8</sup>. The Council does not have any evidence that would cast doubt on that version of events, and thus I have no reason to believe that the canopy was not installed prior to the relevant date. However, whether the canopy was part and parcel of, and integral to, the material change of use to a school and can thus be enforced against is a separate matter which I shall consider under the appeal on ground (f).
26. For the reasons given above, I conclude that the staircase is immune from enforcement action by the passage of time having had regard to its construction, completion and use for a different purpose before the unauthorised material change of use took place. The appeal on ground (d) succeeds to that extent. I shall correct the enforcement notice and delete the requirement to remove the fire escape staircase in its entirety.

### **Appeal A on ground (a), deemed planning application.**

#### **Main Issues**

27. The main issues are:

- whether the development is acceptable in principle having regard to local and national planning policy, including site availability and educational need;
- the effect on the living conditions of neighbouring residents, having particular regard to noise, disturbance, including light pollution and privacy;
- the effect of the development on the character and appearance of the area;
- whether the development is in an accessible location and makes suitable provision for sustainable modes of transport;
- whether the development makes suitable provision for waste/recycling management and storage; and
- whether the development incorporates measures to mitigate the impact on biodiversity?

28. Integral to my decision-making will be exercising duties under the Human Rights Act 1998. Article 2 of the First Protocol affords a person a right to an education. Article 8 affords a person the right for their private and family life, their home and their correspondence. Article 9 affords a person freedom of thought, conscience and religion. These are all Convention Rights<sup>9</sup> (ECHR). Articles 8 and 9 are

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<sup>8</sup> Appendix 4, Mr Posen Proof of Evidence.

<sup>9</sup> Article 2 of the First Protocol, Article 8 and Article 9 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998.

qualified rights that require a balance between the rights of the individual and the needs of the wider community, whilst Article 2 of the First Protocol is a limited right, meaning it can be restricted under certain specific circumstances outlined in the ECHR itself. I shall also have regard to Article 14, which does not confer any free-standing right, but requires “*the enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, associated with a national minority, property, birth or other status*”. The best interests of the children will also be a primary consideration in my decision-making, in exercising duties under Article 3(1) of the United Nations Convention on the Rights of the Child (UNCRC). Under the Equality Act 2010, the public sector equality duty (PSED) requires that I have due regard to the three aims identified in the Act – to eliminate discrimination, advance equality of opportunity and foster good relations. The Jewish Community have a protected characteristic of religion under section 149(7). The PSED is engaged. The decision must be proportionate to achieving the legitimate planning aims.

## Reasons

### *Whether the development is acceptable in principle*

29. Consistent with Policy H8 of the London Plan, 2021 (LP), Policy LP24 of the Hackney Local Plan 2033, adopted July 2020 (HLP) seeks to prevent the loss of housing within the Borough. It advises that the change of use of land or buildings involving the loss of residential floor space will be resisted and will only be permitted where at least one of a number of listed conditions are met. The appellant acknowledges that the development has resulted in the loss of residential floorspace but is of the view that condition (vi) of Policy LP24 is met. Condition (vi) requires the development to be for an essential community use or infrastructure for which there is a demonstrable need, and it can only be provided by the loss of existing residential floorspace.
30. In support of the appellant’s appeal Rabbi Motty Pinter submitted a proof of evidence and provided oral evidence to the Inquiry. He is the Director of Communal Affairs at Chinuch UK, which represents the Charedi schools across the United Kingdom. Chinuch UK is a charitable organisation that advocates for the rights of Jewish families to access affordable education in alignment with their religious beliefs. He has extensive knowledge of the educational infrastructure challenges facing this community, particular in areas of high Charedi population such as Hackney, and regularly engages with government bodies, including local authorities to address the educational needs of the Charedi community.
31. It is clear from Rabbi Motty Pinter’s evidence that having regard to the Charedi population’s religious obligations, attending mainstream state schools is not an option for children of this faith. That is because Charedi schools must provide: integrated Torah and secular studies (Kodesh and Chol); separate education for boys and girls as required by religious law; Yiddish language instruction (the first language for thousands of our children); kosher food facilities and observance of Jewish holidays; and an environment aligned with Orthodox Jewish laws, customs and values. Hackney has the largest Charedi community outside of Isreal and New York and there is no dispute between the parties that there is a critical shortage of school places in Hackney for Charedi children. The Stamford Hill Social Infrastructure Needs Assessment, 2021 confirmed that 1,421 Charedi children were

already being educated in overcrowded conditions with 82.3% of schools reported needing facilities “well above current capacity”. 1 in 3 children in Hackney are Charedi children and the community is growing at an average of 4% per year. Future projections are that 7,211 additional school places will be needed by 2035 which requires at least 500 new school places for Charedi children every year in Hackney.

32. Talmud Torah currently provides 120 school places for Charedi boys of primary school age. We also heard from their SENCO, that over 50% of the students require SEN support. The SEN provision is regarded by Ofsted as “a strength of the school”. Parents told the Inquiry that the school provides their children with an opportunity to gain a balanced education that includes both Torah learning and a strong emphasis on the National Curriculum and SEN. It is clear from parents that the school is highly valued by the Charedi community it serves and that there remains a demonstrable need for more Charedi school places to meet both existing and future needs of this Jewish Community.
33. The Council do not dispute that there is a demonstrable need for those school places. It is their case that the appellant has not demonstrated why the appeal site is the most suitable for this purpose. Furthermore, they do not agree that the Study Area utilised by Savills to conduct their Alternative Site Assessment (ASA) is necessarily the most appropriate area and they raise concerns regarding the criteria used to identify suitable sites within that area.
34. In support of their appeal and to demonstrate that the identified and agreed need can only be provided by the loss of existing residential floor space, the appellant appointed Savills to undertake an ASA to review whether there were and are suitable alternative sites for the school to meet its needs<sup>10</sup>. The report assesses whether there are, or could be, within a reasonable timeframe, suitable alternative non-residential sites available to accommodate the school in a suitable local area.
35. The Study Area was identified having regard to Talmud Torah requiring a site to serve its existing Charedi community in and around Stamford Hill. The boundary of the Study Area thus took account of where existing students attending the school reside, where the local Jewish population in and around Stamford Hill reside and the area covered by the Stamford Hill Area Action Plan (AAP). Quantitatively, the Study Area includes all Middle Super Output Areas (MSOAs) where at least 10% of the population identifies as Jewish, with some boundary smoothing applied to account for the irregular shapes of individual MSOAs.
36. The Council expressed concern that the Study Area did not include all the area covered by the emerging AAP, and in particular excluded land within the southeastern part of that area where it is known that there is a Jewish Girls School. In response to those concerns, Mr Brooke explained in his rebuttal proof and told the Inquiry that the criteria used to establish the Study Area includes significantly more land than that covered by the AAP and importantly factored in the location and addresses of existing pupils who attend the school and provided a catchment within the Jewish Orthodox community of Stamford Hill, having regard to the AAP boundary and quantitative demographic analysis. The Satmar Girls Seminary which is outside the Study Area serves a particular sub-group of the Jewish Community, the Satmar group, and is located where the Satmar Community

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<sup>10</sup> Talmud Torah London Limited, Alternative Sites Assessment, Savills, August 2025.

generally reside which is within walking distance of that school. Conversely, pupils attending Talmud Torah generally reside in the north western Tottenham area, which is much closer to the appeal site, and crucially within walking distance. Considering the number of bicycles and scooters which I observed at the school on my site visit, it is clear that a significant number of pupils use that means of transport to attend the school. I also heard at the Inquiry that it is important that children and parents are able to walk to school and in a location where they feel safe within their part of the Jewish Community.

37. I am mindful that no Study Area will be perfect. However, considering all the evidence available, including what I heard at the Inquiry, it seems to me that the parameters set by Savills to establish a relevant Study Area are robust and reasonable given their purpose. The Council's witness, Ms McLean, although maintaining her stance that the site search perhaps should have included the southeastern part of the Borough, agreed in cross examination that Savills approach to the search area was reasonable.
38. Other core assessment criteria for the site search included: minimum gross internal area; gross site area; hard informal and social outdoor areas; and space characteristics for the school, e.g. classrooms, dining areas, assembly, offices, etc. There was much discussion at the Inquiry about whether it was a statutory requirement to provide outdoor space, and thus whether the ASA should have considered sites without such space. The ASA considered that the minimum external area required for Talmud Torah would be 300sq.m. That area is smaller than the existing outdoor space at the school which is roughly 500sq.m. It was accepted by Mr Brooke that having regard to Department of Education 'Area guidelines for mainstream schools' Building Bulletin 103, June 2014, it is not a statutory requirement to have outdoor space, and that the ASA hadn't considered the possibility of looking for sites where such space could be shared. Nevertheless, having regard to the existing school at Amhurst Park, which has outdoor space available, and that space is evidently necessary for the school to function<sup>11</sup>, it was not unreasonable to restrict the search for sites to those where there was some outdoor space available, as set out in the core assessment criteria. I acknowledge that this has meant that a number of the sites identified which met the gross internal area requirement, were subsequently discounted because they had no available outdoor space.
39. Savills identified 56 sites which met the core assessment criteria for gross internal area. However, only two of those were deemed to be suitable having regard to all the core assessment criteria and were available or potentially available. Having regard to the existing development and uses at Woodberry Works and adjoining shared land uses, I agree that this site would not be suitable for a school. This was also accepted by Ms McLean in cross examination. The other site deemed as suitable was St Mary's Church of England Primary School. Whilst this site was not available at the time of the search, it was understood that the school was due to close due to a drop in pupil numbers and the associated impact on the educational and financial viability of the school. It is also understood that as pupil numbers have decreased within mainstream schools in the Borough, other schools are to be closed, including Stamford Hill Primary School which is outside of the Study Area.

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<sup>11</sup> Evidence at the Inquiry by the School Principal.

40. The appellant has made enquiries with the local education authority regarding the possibility of those schools being made available to Talmud Torah in the future, albeit accepting that they are not available now. My understanding from that correspondence is that any plans to re-purpose the schools have not yet been finalised but would need to ensure they met the Council's long-term value and sustainability requirements. Furthermore, as explained by Rabbi Motti Pinter, the existing regulatory framework makes it extremely difficult for Charedi independent schools to enter the state sector due to conflicts between regulations and religious requirements. Thus, whilst St Mary's and Stamford Hill School may provide suitable accommodation for Talmud Torah, they are not currently available and nor is there any guarantee that they would be an option in the near future.
41. Savills Report concludes that they have not found any currently available, suitable non-residential alternatives for Talmud Torah in the Study Area. Whilst I recognise that the Council has some misgivings regarding the core assessment criteria which excluded sites with no outdoor space, I consider the ASA to be a reasonable and robust report, based on the best evidence available. I am also aware that the appellant's sought to engage with the local community in their search for a school site, instructing "birx" to carry out a focused and sustained search for suitable alternative non-residential premises to accommodate the school<sup>12</sup>.
42. During her cross-examination Ms McLean said that she recognised that there would need to be some changes of use from residential floorspace to schools to ensure the educational needs of Charedi children are met. However, she did not believe that this would be the 'only' way that new schools could be provided for. For that reason, she did not accept that the development complied with the provisions of HLP Policy LP24 A. (vi). However, it seems to me that although non-residential sites may become available in the future, and provide for some new schools, as Ms McLean accepted, there will still need to be a loss of residential floorspace to meet the overarching demonstrable need for Orthodox Jewish School Places. That said, then it must be that the overall need can 'only' be provided for by the loss of some existing residential floorspace. Condition A (vi) of Policy LP24 is therefore met.
43. Policy H8 of the London Plan (LP) seeks to ensure that a loss of existing housing should be replaced by new housing at existing or higher densities, whilst LP Policy S3 requires Boroughs to ensure they have a sufficient supply of good quality educational facilities to meet demand and offer educational choice. Policy LP24 of HLP whilst seeking to prevent the loss of housing in conformity with the LP, recognises that in certain circumstances residential floorspace may be lost. In this case that loss is required to meet a demonstrable need for school places for the Jewish Community.
44. I therefore conclude that the development is acceptable in principle having regard to local planning policy set out above, which is consistent with the National Planning Policy Framework (NPPF). There is a demonstrable need for the school, which can only be provided for by the loss of existing residential floorspace. In this main issue there is no conflict with the development plan and I find no conflict with Policy LP24 of the HLP.

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<sup>12</sup> Appendix B, AAS, Birx Letter (Document 8 at the Inquiry).

### *Living conditions*

45. Paragraph 198 of the NPPF advises that planning policies and decisions should seek to ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area impacts that could arise from the development. In doing so they should, amongst other criteria, mitigate and reduce potential adverse impacts resulting from noise from new development, and limit the impact of light pollution from artificial light on local amenity. Consistent with the NPPF, Policy LP2 of the HLP states that new development should have no adverse impacts on the amenity of occupiers or neighbours, whilst Policy D14 of the LP advises that new development should avoid significant adverse noise impacts on health and quality of life.
46. Amhurst Park in the vicinity of the appeal site is a relatively busy thoroughfare, characterised by a mix of uses, including school sites and residential use. The neighbouring property to the west of No 69 is occupied as a Jewish girl's school, whilst further to the east, Nos 49-57 are also independent schools. As discussed in the legal grounds above, the adjoining properties, Nos. 65-67, are in use as a community youth club. Bergholt Crescent lies to the south of the appeal site and apart from No 36 Bergholt Crescent, which is in use as a synagogue, the remaining properties on this street are residential. The synagogue (No.36) is situated directly to the rear of No 69 Amhurst Park, with neighbouring properties Nos.30-34 Bergholt Crescent residential. No 30 is in use as two flats. These properties overlook the appeal site, and their rear gardens adjoin the playground which has been constructed and is in use by the school.
47. Since the school first opened, neighbouring residents have consistently complained to the Council's Planning and Environmental Protection Service about noise/disturbance, light pollution and loss of privacy in connection with the use of the school. Noise nuisance is resultant from the use of the playground by children when the school is open, including balls being continually kicked against the playground's timber fencing and from the use of the fire escape staircase. In addition, there is significant use of megaphones, public address systems, and whistles by staff to control the children throughout the day. The school bell also rings every half hour. Residents who live in the properties on Bergholt Crescent adjoining the school playground told the Inquiry that they have had to change the way that they occupy their homes since the school opened. They can no longer work from home in the rooms at the back of their house during the day, nor sit in the garden when the school is open, due to the noise and disturbance which is incessant. It also impacts on when they can entertain and have friends over. There has been a resultant impact on their mental health and quality of life.
48. The school has 120 pupils with 10-16 members of staff on site each day. It operates during the hours of 0900 - 1730 Monday -Thursday, 0900 – 1300 on Fridays and 0930-1630 on Sundays. Bank holidays are not observed by the Jewish Faith and thus those days are normal school days. However, they do have their own religious holidays. Mr Posen's proof advises that playtimes are controlled for pupil groups with usually 50 children at any one time, and up to 65 children at the lunch break:

Monday to Friday

10.30 – 11.30 – (Three groups of 20 minutes – 10.30 – 10.50 – 11.10).

12.30 – 13.15 – (Two groups of 20 minutes – 12.30 – 12.55)

14.00 – 14.35 – (One group)

15.15 – 15.45 - (One group)

16.15 – 17.00 - (One group)

On Saturdays the school is closed, although the playground is occasionally used by the Youth Club. On Sundays, the School Principal confirmed that physical education (PE) lessons take place outside on the playground.

49. From the evidence available, having regard to the number of pupils attending the school and amount of outdoor space available, it is apparent that school play and dinner times need to be staggered to accommodate all the children. Thus, as we heard from the neighbouring residents at the Inquiry, there is very little time within the school day when the playground is not in use. In addition, the school playground is in use throughout the school day on a Sunday for PE. I also noted on my site visit that the rear outbuildings constructed to provide SEN classroom space, and an assembly/dining area room are also accessed directly from the playground, thus resulting in further activity when those rooms are in use.
50. Neighbouring residents told the Inquiry that they are aware that there are other school premises located close by, and there is noise associated with those uses. However, since No 69 has operated as a school, with a rise in pupil numbers, and the associated school playground extension to the rear of Nos. 65-67 Amhurst Park, the noise and disturbance has become intolerable. There is no respite with the playground being in use most of the day and throughout the week, including on Sundays and Bank Holidays. They do not consider that the new acoustic/internal fence has improved the situation, balls are constantly kicked against it, children climb over it, and there is no acoustic benefit to the occupiers of the upstairs flat at No 30.
51. Residents are aware that the Youth Club utilise the playground area on a Saturday and acknowledge that for many years this former garden area to Nos. 65-67 has been utilised by Beis Yakob for play. Neighbours told the Inquiry that they occasionally hear a choir singing from those premises and some girls playing and talking in the garden/playground area. However, prior to the school opening, the use of Nos. 65-67 rear garden was not intrusive. It is also apparent that since the school has opened, the playground is also on occasion used in the evening, with complaints to the Council including reference to “chanting” and outdoor play in the evenings until 9pm. The school advised the Council that although they do not rent out the premises for events, on occasion they let the staff utilise it for their family parties/events. However, from the evidence available, it is not clear whether those evening events referred to by residents were related to the school use or the Youth Club. Mr Posen suggested the noise could have been the Youth Club celebrating ‘Lag boamer’, a minor holiday in the Jewish Calendar, when bonfires are lit. This could not however be confirmed. Nevertheless, a major source of noise and disturbance for neighbouring residents is clearly attributed to the continual use of the adjoining playground by the school and during school hours.
52. There is also noise, disturbance and loss of privacy to neighbouring residents resultant from the use of the fire escape staircase on the rear elevation of the

property. The staircase now provides access to the rear roof extension that has been constructed by the school and there is also direct access to the staircase from classrooms within the first and second floor of the school building. Residents have complained to the Council that the staircase is used as a means of circulation for the school. They consider this use to not only cause noise/disturbance, but also an infringement of their privacy. Since the school has occupied the property, alterations have been undertaken to the staircase. A canopy has been constructed over it to prevent the metal stairs from becoming slippery in the rain. Plywood panels have also been fixed to the staircase railings. The school advised that these were installed to prevent pupils when utilising the staircase from viewing and shouting to the girls in the playground at the neighbouring school. The School Principal confirmed to the Inquiry that they utilise the staircase as a means of access to the playground, for play and lunch times. Whilst it is not the only means of circulation, it is often used because the interior staircase gets congested. It is also the only way that teachers and pupils can enter the SEN classroom in the rear roof extension. I noted on my site visit that the interior staircase is narrow and winding with fire doors. Thus, utilising the fire escape is a safer and easier option for the pupils. In addition, due to staggered play and lunch times, exiting via the external staircase is less disruptive for pupils who are still in class. Despite complaints regarding the use of the staircase, the school has continued to utilise it as a means of circulation, which suggests that they consider its use is necessary for the school to function.

53. To support their appeal the appellant commissioned an Environmental Noise Impact Assessment (ENIA)<sup>13</sup>. The ENIA was undertaken after a further internal fence had been erected within the site which was intended to provide an acoustic barrier to the neighbouring residential properties on Bergholt Crescent. The ENIA sought to establish background noise levels on a Monday to Friday and also on a Sunday. It then considered noise generated by the boys when in the playground and took recordings within the rear garden of No 34 Bergholt Crescent and at the second floor window at No 36 Bergholt Crescent which lies to the rear of the school playground. Having regard to BS8233 (2014)<sup>14</sup>, the ENIA then evaluates whether the noise from the school is excessive utilising the principle that for daytime noise, gardens should not exceed 55dBA and bedrooms should not exceed 35dBA over the 16-hour period between 7am to 11pm.
54. The ENIA recognises that there are other schools adjacent to the appeal site and close by, with the closest residential properties on Bergholt Crescent. Furthermore, noise from the school is only significant during playtimes when children are outside. Background noise for Mondays to Fridays has been measured in the playground when the boys were not present but other nearby schools were active. It was found to be 65dBA average over the day. The average is driven by the high noise levels from the other existing schools at 71 to 73 and 51 to 57 Amhurst Park. Background noise levels for Sundays when other school playgrounds are not in use was found to be 45dBA. Noise levels from the boys in the playground were measured during a typical school day and on Sunday during their extra curricular activities (PE lessons). The ENIA concluded that noise levels arising at 34 Bergholt Crescent, calculated from the recordings with the boys in the playground, was found to be below 55dBA both in the garden and outside the windows. It advises that noise levels in the garden and in the rooms with windows open will be more than 10dBA

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<sup>13</sup> Environmental Noise Impact Assessment, Stinton Jones Consulting Engineers LLP, dated June 2025.

<sup>14</sup> BS8233:2015 Guidance on sound insulation and noise reduction for buildings

below the existing background noise that arises from pre-existing schools and therefore insignificant.

55. However, the assessment and calculations are based on a period of 16 hours, which is considerably longer than the length of a school day. I am also mindful that technical methods, while providing guidance, are not the only way in which noise and disturbance can be assessed. For example, the calculations indicate that the sound generated by the school activities at No 69 would not be significantly different to background noise levels when the school is not in use, which is not the experience of neighbouring residents.
56. The sounds of children playing can be perceived as less disturbing than industrial noise, as it is a natural noise. However, the variation in the level and quality of the noise can also result in it being intrusive. High pitched screaming, shouting, kicking of balls against the fence and continual blowing of whistles to control behaviour are all described by neighbours as irritating and intrusive. It is also understood that the fences along the southern boundary of the playground, whilst having some acoustic value, are also often climbed by children to retrieve balls and climb trees. This makes the atmosphere particularly difficult for the residents of No 30 as they are closest to the extended playground and have habitable rooms facing the school. Although the school related noise is during the daytime, neighbouring residents work from home, and the school is also open and in use on Sundays and Bank Holidays, which is when residents might wish to relax outdoors and, in the summer, have their windows open.
57. I appreciate that there are other schools in the area which generate noise audible to residents on Bergholt Crescent, and that the Youth Club has historically utilised the land to the rear of their property for play for many years. However, I am also aware that the planning permission for the neighbouring Jewish girls' school, at 71 Amhurst Park, restricts opening to weekdays only, with no use on Saturdays, Sundays or Bank Holidays and outside play is restricted to three short periods of a day<sup>15</sup>. The evidence from neighbours is that the complaints of noise and disturbance are directly resultant of the use of the school the subject of this appeal and in particular due to the intensive use of the playground to the rear of their property. The current situation is that due to the staggered lunch and play times, necessitated by the number of pupils in attendance and restricted accommodation, the playground is in use for most of the school day. Moreover, it is also in use on Sundays and Bank Holidays, which are traditional rest days and a time when more people are at home. I have no doubt from what I have seen and heard that the noise and disturbance generated by the use of the playground is incessant and has a harmful impact on the living conditions of neighbouring residents, who have a reasonable expectation to some peaceful enjoyment of their home and garden.
58. I have considered whether suggested conditions could be imposed to mitigate the harm identified. However, the appellant would not be willing to accept a condition that the school does not operate on a Sunday or Bank Holiday, nor that the extended playground (land to the rear of No 65-67) cannot be used on a Saturday or during the evenings, as they do not have control over that area during those times. A Management Plan is suggested as a means of controlling the use of external play areas, including staggered play times and pupil numbers. However, the evidence is that due to pupil numbers the school currently has staggered play

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<sup>15</sup> Local Planning Authority Ref: 2013/3238

and lunch times, and as a result the playground is in almost constant use, which has a harmful effect on the amenity of neighbouring residents. The School Principal made it clear that the school required the playground to the rear of Nos. 65-67 for the school to function, and it seems to me that despite complaints from residents, the school has not sought nor been able to moderate the use of those outside areas to any effect. I am not therefore persuaded, given the intensity of use and size of the school, that a suitable Management Plan could be negotiated and implemented, as it is apparent that the whole of the outside area is necessary for the school to function throughout the school day. A condition to prevent the use of tannoy/public address systems and amplified music outside of the buildings would however provide some reduction in noise/nuisance. External lighting could also be controlled by condition.

59. It is also suggested that a condition be imposed to prevent the use of the fire escape staircase as a means of circulation or general access to the building. The condition is considered necessary to mitigate the harmful effect on the living conditions of neighbouring residents by reason of noise and disturbance attributable to its use for that purpose. However, I am mindful of how the fire staircase has been modified by the school and its now daily use as a means of circulation since the school opened. It is also the sole means of access to the rear roof extension, which is a SEN classroom. Having regard to the existing restrictions of the internal staircase and intensity of use of the school premises, such a restriction would appear to prevent the school from its normal operation. Thus, the suggested condition would not be reasonable or enforceable.
60. For the reasons given above I conclude that the school has a substantial harmful effect on the living conditions of neighbouring residents. I have found that the use of conditions could not mitigate that harm, and thus the development is contrary to the development plan, including Policy LP2 of the HLP, Policy D14 of the LP and the provisions of the NPPF, the aims of which are set out above.

#### *Character and appearance*

61. Since the school has opened and as pupil numbers increased, the school has extended its accommodation on the site. A container has been placed on the forecourt of the property which is in use by the SENCO as office space and provides space for children to be seen on a 1:1 basis. The container by reason of its bulk and utilitarian form, including its materials, appears incongruous at the front of this vernacular building. It has a harmful effect on the character and appearance of the street scene. The appellant does not dispute that harm.
62. At the rear of No 69 two further buildings have been erected within the playground. They are single storey, have a simple rectangular form and are clad in white plastic. One of the buildings is sited along the boundary with the adjacent girl's school to the west. This building provides additional SEN classroom accommodation and a store. The other building is adjacent to the site's rear/southern boundary. This building is used for school assembly and is also used as the school dining hall. The buildings are very similar in design and appearance to outbuildings that have been constructed within the playground of the neighbouring school and they are not readily visible to neighbouring residents nor to public view due to intervening fencing and foliage. The Council accepted at the Inquiry that having now revisited the site, and since these two rear outbuildings have been completed, they no longer have concerns over their appearance which they agree does not have a

harmful effect on the overall character of the area. I agree with their assessment in relation to the two rear outbuildings.

63. The school has also extended the property at roof level. The extension has been constructed from timber and plywood with a flat roof finished in felt. Whilst the Council state that they do not have an objection in principle to an extension in this location, the roof extension that has been constructed is finished in poor quality materials and its design including its scale and bulk does not respond to the form and finish of the existing roof structure. It thus appears incongruous and has a significant and harmful effect on the character and appearance of the host property and surrounding area.
64. The fire escape staircase has also been modified. A canopy constructed from profile steel sheets has been installed and panels constructed from plywood have been fixed to its railings adjacent to its first and second floor platforms. These are discordant additions which have a significant and harmful effect on the appearance and character of the host property. Similarly, the playground fencing is crude and generally unsightly in its overall design and appearance.
65. The appellant recognises that the roof extension is not acceptable by reason of its design and appearance. However, they understood that they were at risk of the Council taking enforcement action against the unauthorised school use and thus did not want to invest in high quality materials or architects to plan and design the extensions they required. Whilst I understand this logic, those considerations do not mitigate the harm caused and do not weigh in favour of the scheme. The facilities and accommodation appear to have been developed in an ad hoc rather than in any planned manner and without due regard to their impact on the property's immediate surroundings.
66. I conclude that the development has a harmful effect on the character and appearance of the area. The development conflicts with the development plan and in particular with Policy LP1 of HLP which seeks to ensure that all new development is of the highest architectural and urban design quality and appropriate to its location. I also find conflict with Policy LP8 of HLP which requires proposals for social and community use to, amongst other criteria, be of a high quality and inclusive design providing access for all. There is also conflict with Section 12 of the NPPF which seeks to achieve well designed places by ensuring all development is of a good design which is sympathetic to local character and history, including the surrounding built environment.

#### *Accessible Location*

67. The Council's concern when the Notice was issued related to the failure of the school to have an approved transport assessment to demonstrate that the school encourages sustainable modes of transport. They also drew attention to the absence of adequate provision for cycle storage within the site.
68. In support of the appeal the appellant produced a Transport Statement (TS)<sup>16</sup> together with a Travel Plan, June 2025. It demonstrates that the site has a good level of accessibility to public transport (PTAL Rating 4), however, it also concludes that the pupils currently attending do not use public transport to travel to school, with over 47% walking, cycling or scooting to school and over 25% using a minibus.

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<sup>16</sup> Transport Statement, and Travel Plan, 69 Amhurst Park Road, produced by ttp consulting, dated, June 2025

It also accepts that currently there are no formal arrangements for cycle storage, and I noted on my site visit that there were a significant number of bicycles and scooters all piled up within the forecourt of the property. The TS suggests that this is the most efficient way to store the bikes, however, a plan which accompanied the TS showed that it would be possible to provide parking for 22 bicycles in accordance with Policy LP42 of HLP. A plan showing how those bicycles could be accommodated was appended to the TS and later revised to take account of waste and recycling management<sup>17</sup>. One parking space reserved for blue badge holders can also be provided within the forecourt area.

69. The Council acknowledge that the school is in an accessible location and confirm that subject to securing the implementation of the Travel Plan, cycle parking, a delivery and service management plan and securing a car free development by restricting occupiers from obtaining a parking permit, they are satisfied that the development would make suitable provision for sustainable transport. I see no reason to disagree.
70. The appellant has submitted planning obligations in the form of unilateral undertakings ('UUs'). The UUs, amongst other matters, provides a contribution for monitoring of the Travel Plan and secures car free development through prohibition of purchasing of parking permits for on street parking or in Council car parks, with the exception of disabled parking. The provision of the UUs in this regard are necessary to make the development acceptable in planning terms, they are directly related to the development and fairly and reasonably related in scale and kind to the development. The UUs meet the relevant tests, and the planning obligations are material considerations which satisfactory mitigate harm in this case. The Travel Plan, cycle parking and delivery and service management plan could be secured by condition.
71. For these reasons I find no conflict with the development plan in that regard, including Policies LP41, LP42, LP43 and LP45 of the HLP which collectively seek to ensure that development creates an environment where people actively choose to walk and cycle as part of everyday life and promotes sustainable transport. I also find no conflict with the sustainable transport objectives of Policies T2, T3 and T4 of the LP and those within the NPPF.

#### *Waste/recycling management and storage*

72. Policy LP57 of HLP seeks to minimise waste during construction and operation of development, and new development should provide clear details in plans for facilities needed for the storage and collection of waste and recycling.
73. In support of their appeal the appellant has produced an Operational Waste Management Plan<sup>18</sup>. It provides details of how waste will be managed, stored, including recycling provision and collection details. The plan also includes provision for continual monitoring and review. The Council accept that the plan meets the requirement of Policy LP57 and can be secured by condition.
74. I conclude that subject to a condition securing the Waste Management Plan there is no conflict with Policy LP57 of HLP, the aims of which are set out above.

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<sup>17</sup> Document 8 at the Inquiry.

<sup>18</sup> Operational Waste Management Plan, ttp consulting, August 2025.

### *Biodiversity*

75. One of the reasons for the Council issuing the notice was their concern that the development did not make provision for endangered biodiversity within the borough. The development has resulted in the removal of some trees and the loss of areas of lawn/grassland within the original garden areas to the rear of 65-69 Amhurst Park. There is no dispute that the development that has taken place has had a harmful impact on biodiversity in an urban environment.
76. The NPPF seeks to ensure that planning policies and decisions contribute to and enhance the natural environment by, amongst other things, minimising impacts on and providing net gains for biodiversity. The Council has made reference to the requirement for biodiversity net gain under the statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990, as amended (the Act) (inserted by the Environmental Act 2021). However, under the statutory framework for biodiversity net gain there are some exceptions which include, amongst other things, retrospective applications and successful enforcement appeals. Thus, the Council cannot seek to apply the objective for development to deliver at least a 10% increase in biodiversity value relative to the predevelopment biodiversity value of the onsite habitat as required by the statutory framework. Nevertheless, consistent with the NPPF, Policy LP47 of the HLP advises that all development should protect and where possible enhance biodiversity leading to a net gain. It is thus necessary for the appellant to demonstrate that there would be no biodiversity loss as a result of the development and if possible some enhancement.
77. In support of their appeal the appellant has submitted a report prepared to quantify the anticipated biodiversity losses and gains associated with the development and to demonstrate how the development will achieve a measurable net gain in biodiversity of at least 10%<sup>19</sup>. The site baseline was calculated based on historic satellite imagery as the development is retrospective. It concluded that there has been a loss of 1.8351 or 2.93% of habitat units. It further concludes that the nature of the development is such, that biodiversity net gain cannot be achieved on site and thus the additional 0.244 habitat units required to achieve a 10% increase would need to be purchased either from a local biodiversity bank or by applying for biodiversity credits from the government.
78. The appellant has submitted planning obligations in the form of unilateral undertakings ('UUs') which amongst also addressing other matters, secures the purchase of 0.244 habitat/biodiversity units from a Habitat Bank provider for Biodiversity Net Gain. The provisions of the UUs will ensure that the development compensates for the loss of biodiversity on the site and provides some enhancement in compliance with Policy LP47. The provision of the UUs in this regard are necessary to make the development acceptable in planning terms, they are directly related to the development and fairly and reasonably related in scale and kind to the development. The UUs meet the relevant tests, and the planning obligations are material considerations which satisfactory mitigate harm in this case.
79. For these reasons, the development accords with Policy LP47 of the HLP and the NPPF, the aims of which are set out above.

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<sup>19</sup> Biodiversity Net Gain Calculation, Stone & Brick Solutions, 69 Amhurst Park, 19 June 2025.

### *Other Matters*

80. Much was said and heard at the Inquiry in relation to the identified demonstrable need for school places for Charedi children, and how the appellant perceives the Council's failure to address that need. It is the appellant's case that the development plan policies in the HLP are not therefore meeting the needs of the Charedi children in the borough for school places and are therefore out of date. As such it is suggested that 'the tilted balance' as set out in paragraph 11.d) of the NPPF should apply.
81. The responsibility to provide sufficient school places for children is primarily the duty of local authorities under the Education Act. The duty is to ensure that the schools available are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education. This includes securing diversity in the provision of schools and increasing opportunities for parental choice. Whether or not the local authority has met their duty under the Education Act is not a matter for my consideration in this appeal.
82. The local development plan is a tool for guiding development to sustainable solutions, considering local circumstances and reflecting the character, needs and opportunities of an area. It should also provide a clear strategy for bringing sufficient land forward to deliver the strategic priorities of the area. The HLP was adopted in 2020 and it is understood that Hackney Borough currently has a five-year housing land supply. Policy LP8 of HLP advises that the Council, in partnership with service providers, will plan for, amongst other infrastructure, education up to 2033. The supporting text to this Policy, supported by Policy PP4, Stamford Hill Strategic Principles, advises that the Stamford Hill Area Action Plan will set out an approach to meet particular needs for such facilities in their respective areas, having regard to the increasing need over the Plan period for additional places in faith schools in the Stamford Hill Area. As part of the development plan, The Stamford Area Action Plan has been drawn up and is currently being examined. It is thus difficult to see how the development plan can be out of date in regard to those strategic priorities.
83. The most important development plan policies for determining this appeal and identified in the main issues set out above are Policy LP24 and Policy LP2 of the HLP. Policy LP24 seeks to prevent the loss of housing, for which there is a demonstrable need, unless that loss is necessary for an essential community use or infrastructure for which there is also a demonstrable need. It thus seeks to balance the competing needs of the community, an objective supported by the NPPF. There is no evidence that would suggest that Policy LP24 is out of date. Policy LP2 requires all new development to be appropriate to its location and designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours. This is a general development management policy which is consistent with the objectives of the NPPF and not out-of-date.
84. For the reasons given above the provisions of paragraph 11.d) of the NPPF do not apply and the policies which are most important for determining the application are not out-of-date.
85. I have also had regard to the appeal decisions submitted by both parties which they consider support their respective cases. Those appeals, as is also the case with this appeal, are fact sensitive in terms of the nature of the use, site circumstances

and relationship to neighbouring occupiers. Thus, those other decisions, whilst interesting, are not directly comparable to this case, which I have considered on its own merits.

***Planning Balance on Appeal A, including the best interests of the children, all in the context of Human Rights considerations and the Public Sector Equality Duty***

86. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise<sup>20</sup>.
87. In this case I have concluded that the development is contrary to policies in the development plan and the NPPF which seek to protect the living conditions and amenity of neighbouring residents. This harm arises from the intensive and perpetual use of external areas, including the playground and external staircase. The noise and disturbance associated with that use has a significant and substantial harmful effect on the living conditions of neighbouring residents, the peaceful enjoyment of their homes and their quality of life. This impact has not been shown to be capable of being successfully mitigated through conditions. The harm identified attracts substantial weight in the planning balance.
88. I have also concluded that the development is contrary to policies in the development plan and the NPPF which seek to ensure that new development is of the highest quality urban design and, amongst other criteria, requires the use of high-quality materials which complement local character. This impact has also not been shown to be capable of being successfully mitigated by conditions. This matter attracts significant weight against allowing the appeal.
89. The absence of harm arising from the loss of residential floorspace, impacts on sustainable transport, waste management and biodiversity have a neutral impact on the planning balance.
90. On the other side of the planning balance, and a material consideration in this appeal, are the 120 Charedi children currently receiving an education at this school. Allowing the appeal would enable those children to continue to access education without interruption. Having regard to the personal circumstances of the occupiers of the school, I attach substantial weight to those personal circumstances, including the best interests of the children.
91. Article 8 of the ECHR is incorporated into UK law through the Human Rights Act and provides that everyone has the right for their private and family life, home, and correspondence. For the reasons set out in Paragraph 87 above, I have found that the development would result in substantial harm to the living conditions of the resident occupiers of No 30 Bergholt Crescent and success of the appeal would be an interference with their individual Article 8 rights.
92. Article 2 of the First Protocol is relevant as it affords a person a right to an education. The duty to facilitate the Jewish way of life is part of that. Article 8 and Article 2 of the First Protocol must also be considered in the context of Article 3 (1) of the United Nations Convention on the Rights of the Child. This states that the best interests of the child shall be a primary consideration. Whilst these interests can be outweighed by other factors, no considerations can be inherently more important.

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<sup>20</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004.

93. A lack of success in this appeal would mean that the children attending the school may experience disruption to education and interference with their Article 8 rights. However, dismissing the appeal would not violate their right to an education under Article 2 of the First Protocol, albeit it would prevent them from access to education at this unauthorised site. Whilst recognising the demonstrable need for additional school places for Charedi children, it may, however, be possible for Talmud Torah to gain planning permission for a school elsewhere, for example, by converting another more suitable residential property. Alternatively, a consideration may be to reduce the intensity of the development and redevelop a smaller well-planned school on this Land, such that there is no conflict with the design and amenity objectives of the development plan.
94. The right of freedom of thought, conscience and religion are considerations in relation to Article 9 of the ECHR. Under the PSED, eliminating discrimination and advancing equality of opportunity, in terms of providing appropriate independent and faith education facilities may necessitate treating the children in the Jewish Community more favourably than those in mainstream education. However, the harms arising from the intensive occupation of the site by the school and the objections raised by neighbouring residents, means that its continued use in its current form would be unlikely to foster good relations. Human rights and PSED considerations will nevertheless be relevant to my consideration of ground (g).
95. Dismissing the appeal would give rise to an interference with the occupiers of the school and children's Article 8 and 9 rights. This interference would be in accordance with the law and necessary and proportionate to protect the private, family life and homes of the resident occupiers of the neighbouring property at 30 Bergholt Crescent, for the protection of their health, the environment, including securing well-designed places and the rights and freedoms of others.
96. I conclude that the adverse impacts I have identified of granting planning permission significantly and demonstrably outweigh the benefits, when assessed against the policies in the development plan and the NPPF taken as a whole. Other considerations do not indicate otherwise. The dismissal of the appeal is a proportionate response having regard to the PSED considerations set out above.

#### **Appeal A & Appeal B on ground (f)**

97. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
98. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
99. The breach of planning control relates to the material change of use the Land to a school and also cites operational development, including a fire escape staircase. It can be seen by my conclusion on ground (d) that I found that the staircase is immune from enforcement action by the passage of time, having regard to its construction, completion and use for a different purpose before the unauthorised material change of use took place.

100. However, after the unauthorised material change of use took place, modifications were made to the staircase. From the evidence available, including what I heard at the Inquiry, it appears that the modifications carried out were necessary for, and are part and parcel of the ongoing use of the property as a school. The staircase is now used by the school not only as a means of escape, but also for daily circulation. It is also the sole means of access to the rear roof extension (SEN Classroom) and provides access from the classrooms to the playground and dining/assembly room. The canopy was installed to prevent the staircase becoming slippery from rain, and the plywood panels/screening to prevent boys using the staircase from calling over to the neighbouring girl's school. Those modifications only took place to facilitate the use of the staircase as part of the functional operation of the school.
101. Despite the canopy having been in place for longer than the prescribed time limit (4 years) and notwithstanding that the plywood panels may not be development in their own right, those works were carried out for the unauthorised change of use and are thus part and parcel of it. Thus, having regard to relevant case law, including *Murfitt*<sup>21</sup>, *Kestrel Hydro*<sup>22</sup> and *Somak Travel*<sup>23</sup>, I am satisfied that the *Murfitt* principle is capable of being applied, and the notice can require those works to be removed. I have found that the use of the staircase as a means of circulation for the school has a harmful effect on the living conditions of neighbouring residents and its appearance is unsightly. It is not therefore excessive to require the removal of the canopy and plywood panels which facilitate the staircase use for general circulation.
102. For the reasons set out above, I conclude that the canopy and plywood panels were installed for the unauthorised use. It is necessary to remove those installations to achieve the purpose of the notice, and thus not excessive. I shall vary the requirements of the notice to delete the requirement to remove the staircase and substitute with a requirement to remove the staircase canopy and plywood panels attached to it.
103. The appeal on ground (f) fails.

### **Appeal A & Appeal B on ground (g)**

104. The issue is whether the compliance period of six months is reasonable and proportionate. It is understood that the original period for compliance was aimed at coinciding with the end of the school year to minimise disruption to the pupils attending school. However, the Council also point out that the appellants have been aware of the planning position for several years and have chosen to continue operating in breach of planning control, despite repeated refusals and without previous appeal. Thus, they request that any revised compliance period be limited to the shortest practicable timeframe, aligned with a natural break in the school calendar.
105. The current compliance period of six months would require compliance with the notice in full by April 2026. Having regard to the demonstrable shortage of school places for Charedi children in Hackney, that is a relatively short period of time for the pupils to find alternative arrangements and ensure their continued education. I

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<sup>21</sup> *Murfitt v Secretary of State for the Environment and East Cambridgeshire DC* (1980) 40P.& C.R.254; [1989] J.P.L.598; QBD; 6 May 1980

<sup>22</sup> *Kestrel Hydro v Secretary of State & Spelthorne BC* [2016] EWCA Civ 784

<sup>23</sup> *Somak Travel v SSE & Brent LBC* [1987] JPL 630

am also mindful that whilst I have found that the existing development is unacceptable due to its intensity of use and poor design, a better designed facility, which perhaps did not cater for so many pupils and thus could be shown to require a less intensive use of the outdoor space, may be acceptable in this location if it could be demonstrated that it would not result in harm to the living conditions of neighbouring residents. Thus, a longer time period for compliance would provide the appellants the opportunity to submit a revised planning application, and/or explore the future use of other premises for use as a school with the Council and the local education authority.

106. The decision that I have come to is that a period of nine months to cease the use of the school and a further three months to remove the unauthorised works/operations would be more proportionate and strikes the right balance. That timeframe would minimise disruption to the school children whilst recognising the ongoing harm to the living conditions of neighbouring residents.

107. The appeals on ground (g) succeeds to that extent.

### **Conclusion on Appeal A**

108. For the reasons given above, I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

### **Conclusion on Appeal B**

109. For the reasons given above, I conclude that the appeal succeeds to the extent indicated under grounds (d) and (g). I shall uphold the enforcement with variations.

## **Decisions**

### **Appeal A**

110. It is directed that the enforcement notice is varied by:

- the deletion of all the words in paragraph 5.6. and substitution with “Remove the canopy and plywood panels from the fire escape staircase (as depicted in Appendix 3) and restore any entry points to it to its condition before the breach of planning control occurred.”
- insert the word “STEP” as a prefix to each of the requirements 1.- 8. in paragraph 5.
- deletion of 6 months and substitution with 9 months for Step 1, and 12 months for Steps 2 -8 as the time for compliance.

111. Subject to the variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Appeal B**

112. It is directed that the enforcement notice is varied by:

- the deletion of all the words in paragraph 5.6. and substitution with “Remove the canopy and plywood panels from the fire escape staircase (as depicted in

Appendix 3) and restore any entry points to it to its condition before the breach of planning control occurred.”

- insert the word “STEP” as a prefix to each of the requirements 1.- 8. in paragraph 5.
- deletion of 6 months and substitution with 9 months for Step 1, and 12 months for Steps 2 -8 as the time for compliance.

113. Subject to the variations the appeal is dismissed and the enforcement notice is upheld.

*Elizabeth Pleasant*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT

Charles Streeten of Counsel, instructed by Eade Planning Ltd

He called:

Shulem Posen, Director of Eade Planning Ltd.

Malka Schweitzer, Diploma in Education, QTLS, SENCO Talmud Torah London.

Rabbi Motty Pinter, Director of Communal Affairs, Chinuch UK.

Rory Brooke, Bachelor in Mathematics and Economics, MA Town Planning, MRTPI, IED, Head of Economics, Savills.

Andrew Murdoch, TTP Consulting.

FOR THE LOCAL PLANNING AUTHORITY

Angelica Rokad of Counsel, instructed by Christine Stevenson, Solicitor, London Borough of Hackney.

She called:

Nyasha McLean, Planning Enforcement Officer

Peter Rathmell, Planning Enforcement Team Leader

INTERESTED PARTIES

Vincent Fannon                      Local Resident

Emma Milam                              Local Resident

Tim Mapley                                Local Resident

Gabby Koppel	Local Resident, Freelance Reporter, Jewish Chronicle.
Zeev Pollack	Local Resident
Miri Galandauer	School Parent
Reisi Zeivald	School Parent
Rabbi Chaim Schahter	School Principal

#### DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1	Corrected Plans to replace LPA Appendix 37
Document 2	Email from Sarah Lavery, Head of Property, LB of Hackney, RE: Stamford Hill Primary School, dated 1 September 2025.
Document 3	Extracts from The Town and Country Planning (Use Classes) Order 1987. Classes F.1 and F.2 and former Classes D1 and D2.
Document 4	Copies of photographs of external lights taken from neighbouring property on Bergholt Crescent.
Document 5	Appeal Ref: APP/U5360/C/23/3325497, 36 Bergholt Crescent.
Document 6	Appellant's response table to LPA Spreadsheet of Grants of planning permission.
Document 7	LPA Spreadsheet of grants of planning permission, 3 Sept 2025.
Document 8	TTP Consulting, Proposed Layout (revised) Drawing 202-3756-DWG-201 Rev A.
Document 9	'birx' letter to Rory Brooke, Alternative Site Search, dated 17 September 2015.
Document 10	Department of Education 'Area guidelines for mainstream schools' Building Bulletin 103, June 2014.
Document 11	Appeal Refs: APP/U5360/A/12/2168298 & 2168306, 91 Amhurst Park & 105 Cranwich Road.
Document 12	Planning Application Ref: 2013/3238, 71 Amhurst Park.
Document 13	Condition Schedules (drafted and redrafted from both parties).
Document 14	Appellant's suggested conditions.
Document 14	Unilateral Undertakings (individual documents signed by 1) Talgon; 2) BYGS SH Limited; and 3) Artemis Holdings International Limited.
Document 15	HM Land Registry Letter, Harneys, dated 21 January 2025 (by email).
Document 16	HM Land Registry DS1 form, 69 Amhurst Park.

Document 17      S106 SPD, July 2020.

Document 18      Huntswharf House Decision (APP/U5360/C/23/3326271).