



Department for
Communities and
Local Government

21 January 2014

Mr Eoin O'Connor
T P Bennett LLP
1 America Street
London
SE1 0NE

Our Ref: APP/E5900/A/13/2203743
Your Ref: P2700 CETPSTH

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CET PRIMARY SCHOOLS
11 SOLEBAY STREET, LONDON E1 4PW
APPLICATION: REF PA/13/00444**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr Simon Hand, MA who held a hearing on 12 November 2013 into your client's appeal against the decision of the London Borough of Tower Hamlets ('the Council') to refuse planning permission of an application by CET Primary Schools for the change of use from office/warehouse use (B1/B8) to a two form entry primary school (D1). The proposal involves minor alterations to infill existing parking and service bays and a roof-top extension providing additional teaching and external play space in accordance with application number PA/13/00444, dated 18 February 2013.
2. On 28 August 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because it involved proposals for development of major importance having more than local significance.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be granted. 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 application for costs made by your client at the Hearing (IR1) is the subject of a separate decision letter, also being issued today by the Secretary of State.
5. The Secretary of State notes that following the decision by the Council to refuse planning permission, your clients substituted plans showing a revised treatment for the Key Stage 1 (KS1) entrance onto Solebay Street and altered the roof configuration for the playground (IR7).

Policy considerations

6. In deciding the application, 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. In this case, the development plan comprises the Council's Managing Development Document 2013 and the Core Strategy, adopted 2010. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR9.
7. Other material considerations which the Secretary of State has taken into account include: The Policy Statement – planning for schools development (2011); The National Planning Policy Framework ('the Framework'); and Circular 11/95: *The Use of Conditions in Planning Permission*. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not been finalised, he has attributed it limited weight.

Main issues

8. The Secretary of State considers that the four main issues in this case are as set out at IR32.

Safety of pedestrians

9. The Secretary of State agrees with the Inspector's reasoning and conclusions on the issue of safety of pedestrians set out in IR33-38.

Congestion

10. The Secretary of State agrees with the Inspector's reasoning and conclusions on the issue of congestion set out in IR39-40.

Noise

11. The Secretary of State agrees with the Inspector's reasoning and conclusions on the issue of noise set out in IR41-43.

Loss of commercial building

12. The Secretary of State agrees with the Inspector's reasoning and conclusions on the issue of loss of commercial building set out in IR44-45.

Planning Conditions

13. The Secretary of State has considered the proposed conditions and the Inspector's comments at IR47-54. He is satisfied that the conditions proposed by the Inspector and set out at the Annex to this letter are reasonable, necessary and comply with the provisions of Circular 11/95.

Overall Conclusions

14. Therefore, for the reasons given by the Inspector at IR46, the Secretary of State concludes that planning permission should be granted, subject to conditions.

Formal Decision

15. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the change of use of the existing building to a two form entry primary school, subject to the conditions listed in the Annex of this letter.
16. 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.
17. 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

18. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
19. A copy of this letter has been sent to the London Borough of Tower Hamlets. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Lindsay Speed

Authorised by Secretary of State to sign in that behalf

Annex

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the plans schedule below.
- 3) The development hereby approved shall adhere to the Construction Method Statement submitted with the application throughout the construction period.
- 4) Prior to the first occupation of use hereby permitted, a School Management Plan shall be submitted to and approved in writing by the local planning authority, and the use as a primary school hereby approved shall only operate in accordance with the approved School Management Plan.
- 5) Within 3 months of occupation of the use hereby permitted, the draft School Travel Plan submitted with the application will be reviewed, completed and submitted to the LPA for final approval. Thereafter the school shall only operate in accordance with the approved School Travel Plan.
- 6) Within six months of the commencement of works a Scheme of Highway Works necessary to serve this development shall be submitted to and approved in writing by the local planning authority. The use shall not commence until the Scheme has been completed in full accordance with the approved details. The works where necessary shall comprise: removal of vehicular crossover in Toby Lane; replacement of kerbs and making good of footway; installation of cycle stands on Solebay Street.
- 7) Prior to the first occupation of use hereby permitted, a Delivery and Service Management Plan shall be submitted to and approved in writing by the local planning authority. The Delivery and Service Management Plan shall specify servicing hours and the approved plan shall be adhered to thereafter.
- 8) Full samples of external wall infill materials, roof and atrium rooflights shall be submitted to and approved in writing by the local planning authority prior to commencement of the relevant works. The development shall not be carried out otherwise than in accordance with the details thus approved.
- 9) The energy efficiency and renewable technologies shall be implemented in accordance with proposals set out in the Energy and Renewable Energy Statement prepared by Building Services Design and retained for so long as the development exists.
- 10) Use of the roof top play area allowed by this permission shall not take place other than between the hours of 09.00 and 17.30 Monday to Friday and at no times on Saturdays or Sundays.
- 11) Prior to the first occupation of the use hereby permitted, a coach/mini-bus parking strategy shall be submitted to and approved in writing by

the local planning authority. Any coach/mini-bus parking shall thereafter be carried out in accordance with the agreed strategy.

- 12) Detailed drawings of the Key Stage 1 entrance doors and samples of the materials to be used on the entrance shall be submitted to and approved in writing by the local planning authority before any works thereby affected are commenced. The KS1 entrance shall be constructed in accordance with the approved drawings.
- 13) Prior to the commencement of the development hereby approved, the applicant shall submit a BREEAM Refurbishment pre-assessment to demonstrate how the development has been designed to seek to achieve a "Good" rating.
- 14) Within 3 months of occupation of the development the applicant shall submit the final BREEAM certificates to demonstrate achievement of the "good" rating. The sustainable design and construction measures shall be implemented in accordance with the submitted proposals and retained for so long as the development shall exist.
- 15) The maximum number of children at the school shall be no more than 350 at any one time.
- 16) A scheme for cycle storage shall be submitted to and approved in writing by the local planning authority and the agreed storage facilities shall be installed prior to the first occupation of the use hereby permitted. The agreed scheme shall thereafter be retained.

Schedule of Plans referred to in condition 2

Drawing description	Drawing no	Amended drawing No (21 May 2013)	Revised drawings submitted at start of appeal
Site location plan	P2700		
Existing location site	112010/P001		
Existing ground floor	112010/P002		
Existing first floor	112010/P003		
Existing second floor	112010/P004		
Existing third floor	112010/P005		
Existing S & W elevations	112010/P007		
Existing E & rear elevations	112010/P008		
Proposed ground floor			112010/P012 Rev 7
Proposed first floor	112010/P013 Rev 3		
Proposed second floor	112010/P014 Rev 4		
Proposed third floor			112010/P015 Rev 2
Proposed S & W elevations			112010/P017 Rev 7
Proposed N & E elevations			112010/P018 Rev 4
Proposed Section AA			
Roof plan proposed builders work (showing PV panels)		112010/B005 Rev 1	

Report to the Secretary of State for Communities and Local Government

by Simon Hand MA

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

Date: 12 December 2013

Town and Country Planning Act 1990

London Borough of Tower Hamlets

Appeal by CET Primary Schools

The development proposed is change of use from office/warehouse use (B1/B8) to a two form entry primary school (D1). The proposal involves minor alterations to infill existing parking and service bays and a roof-top extension providing additional teaching and external play space.

Hearing held on 12 November 2013

11 Solebay Street, London, E1 4PW

File Ref(s): APP/E5900/A/13/2203743

File Ref: APP/E5900/A/13/2203743

11 Solebay Street, London, E1 4PW

- 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 CET Primary Schools against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/13/00444, dated 18 February 2013, was refused by notice dated 19 July 2013.
- The development proposed is change of use from office/warehouse use (B1/B8) to a two form entry primary school (D1). The proposal involves minor alterations to infill existing parking and service bays and a roof-top extension providing additional teaching and external play space.

Summary of Recommendation: That the appeal be allowed

Procedural Matters

1. The appeal was recovered for determination by the Secretary of State on the 28 August 2013 because it involved proposals for development of major importance having more than local significance.
2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Report.
3. I made an unaccompanied site visit on the afternoon of 11 November and an accompanied visit as part of the Hearing on the afternoon of the 12 November.

The Site and Surroundings

4. The proposed school would occupy a now vacant 4 storey office building with an attached 2 storey warehouse to the rear. It was purpose built for a garment manufacturer. Immediately to the east is a commercial premises occupied by the Sneath Group Ltd, who carry out electrical repair work and part of this building is also sub let to another garment manufacturer. There are houses further to the east around Canal Close and at the end of the cul-de-sac is Mile End Park. To the west is a block of student accommodation and then a small ambulance station. To the north, behind the site is a large Council depot and flats beyond that. Across Solebay Street to the south is James House, part of an extensive flatted development. This is very much a mixed area with residential, students and commercial uses existing side by side.
5. Solebay Street is a cul-de-sac, terminating in a bridge over a canal to Mile End Park. This little enclave, the site, depot, student and residential flats and the group of houses around Canal Close has effectively only one exit, onto Harford Street on the corner by the ambulance station.

Background to the Appeal

6. Pre-application discussions were held in November 2012. The Council's officers were generally supportive of the scheme, but had reservations about the impact on the highway network, especially on neighbouring businesses. A public exhibition was held and extensive consultation carried out. All but one response was supportive. The application was lodged on 19 February 2013, and in May a meeting was held with the Council's School Travel Plan and Highways officers to resolve the highway issues. On 19th June the application was considered at

committee with officers recommending approval. It was refused for three reasons, health and safety issues, congestion and noise and vibration from the roof-top play area. In line with Council procedures officers prepared a further report for the committee on 17 July 2013 which ratified its decision to refuse planning permission.

7. Following that decision the appellants substituted plans showing a revised treatment for the Key Stage 1 (KS1) entrance onto Solebay Street and altered roof configuration for the playground (blue folder on file).
8. The three reasons for refusal are:
 1. The proposed location of the school is likely to create health and safety issues due to surrounding light industrial activities and the associated vehicle movements and therefore would result in unsafe conditions for the users of the schools and the occupiers of the neighbouring buildings contrary to policies SP07, SP09 and SP10 of the Core Strategy 2010.
 2. The proposal is likely to create congestion to the local highway network which is associated with picking up and dropping off pupils and therefore it would be detrimental to the safety of the users of the highway and free flow of highway network. This is contrary to policy SP09 of the Core Strategy 2010.
 3. The proposal, by reasons of its play space provision in the open roof top space, is likely to create nuisance to the nearby occupiers is contrary to policy SP10 of the Core Strategy and policy DM25 of the Managing Development Document 2013.

Planning Policy

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the Managing Development Document (MDD) (2013) and the Core Strategy (adopted 2010) the relevant policies of which accord with the aims of the National Planning Policy Framework.

SP07 (core strategy) – supports an increase in provision of primary education and in particular that new schools should be easy to access on foot or by bicycle.

SP09 (core strategy) – deals with highway issues, in particular it puts pedestrians first and ensures new development has no adverse impact on the safety and capacity of the road network.

SP10 (core strategy) – ensures good design, that buildings are accessible and well integrated and protects amenity.

DM15 (MDD) – protects viable employment uses unless through a 12 month marketing exercise it can be shown there is no demand.

DM25 (MDD) – development should protect the amenity of surrounding residents and occupiers of buildings particularly from noise impacts.

10. The “Policy Statement – planning for schools development” (2011) is also material. This states at page 2 “a refusal of any application for a state-funded school, or the imposition of conditions, 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 or imposition of conditions to be unreasonable conduct, unless it is supported by *clear and cogent evidence*" (my italics).

11. The most relevant parts of the Framework are paragraph 72 which gives "great weight to the need to create, expand or alter schools" and paragraph 32 which requires developments that are likely to generate significant amounts of traffic to be supported by a Transport Statement and states that "development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe".

The Proposals

12. The appeal is against the refusal of proposals for a free school run by CET Primary Schools. They already run three other schools. One of them, the Kirtland Centre is about 1km to the north-east. It only has about 75 pupils and would be closed and the pupils transferred to the appeal site. The intention is to open in September 2014 with 175 pupils and build up to the full complement of 350 by September 2018. The external structure of the building would be retained but internally it would be remodelled, including enclosing the existing internal loading bay and creating two main entrances, one for KS1 pupils on Solebay Street and one for KS2 pupils on corner of Toby Lane. Part of the pitched roof of the current warehouse would be removed to create an open air roof-top playground.

Other Agreed Facts

13. These are set out in the Statement of Common Ground. In brief the Council do not object to the change of use (although third parties do, and I shall discuss this below), or the design. They accept there is a shortage of primary school places in the borough and the shortfall against the sustainability criteria of DM29 of the MDD in terms of CO2 emissions is acceptable given the nature of the existing building. They agree the provision for cycles and scooters is acceptable as is the proposed car free scheme. They also agree the substituted plans show only minor alterations and do not prejudice any of the interested parties.
14. It is agreed the only matters of dispute with the Council are highway safety and impact on local businesses, congestion, and harm to residential amenity caused by noise from the playground. A further matter of dispute with VVUK holdings who represent the Sneath Group Ltd is the loss of a commercial building.

The Case for the Appellants

Highway safety

15. The site is in a mixed area, with plenty of residential uses, including a footpath access to Mile End Park. The only business affected is Sneath Ltd, and they already have to operate with due care and attention to pedestrian safety. This they do, and all vehicles entering or leaving their premises do so with a banksman to alert pedestrians. There is currently no evidence of any road safety issues in the immediate area. The nearest traffic accidents are recorded on the main road some way from the school.

16. The school itself has been designed with internal holding areas. The redesigned KS1 entrance is close to one of the two entrances to Sneath Ltd. This would have a large set of folding doors, opened to allow complete access to the entrance lobby where cycles are also stored. Parents and carers waiting for children would be ushered into the main hall to pick up their children. This would minimise the formation of groups of adults and children outside the KS1 entrance, which is the prime concern of Sneath Ltd.
17. The School would also operate a staggered leaving time, so that each year group would leave at a different time. It was explained at the Hearing that with 6 years, split into KS1 and KS2, this meant for example, that the youngest class of KS1 would be leaving from Solebay Street entrance at the same time as the youngest class of KS2 leaves from the Toby Lane entrance, followed by the second classes of each KS and then the top classes. This would spread out leaving times so reducing numbers of parents, carers and children likely to be gathering at any one time. This system is used at the other schools run by the appellants to good effect.
18. In addition the school would be open to children from 08:00 to 17:30 with a pre-school breakfast club, after school activities and an after school club minding children for parents. This would further spread the entering and leaving times. All this would be managed by the school staff and monitored through the School Management plan and the Travel Plan. Transport for London and the Council's own highways department and School Travel Plan Officer accept there is no resulting problem.

Congestion

19. Based on existing patterns of travel at The Kirtland Centre only about 15% of pupils would travel by car to the school, which equates to 51 pupils when the school is full. It was explained at the Hearing that The Kirtland Centre is relatively new, and pupils came from further afield than might be expected once the catchment had settled down. The same would be true of the new school, where it could reasonably be expected that more pupils would attend from the local area once it is established, reducing the need to travel by car. There are excellent public transport links by tube and bus locally so most pupils would either walk all the way or walk the last part of the route to school.
20. The staggered times, the use of internal holding areas for adults and children, the two entrances and the Travel Plan, all mentioned above, would reduce congestion. There would also be a Voluntary One Way System (VOWS), running clockwise from Harford Street – Toby Lane – Solebay Street. Although 'voluntary', because this is a 'free school' parents would be required to sign up to the VOWS. A VOWS is used at several other schools in the borough and is considered to be a successful way of managing traffic.

Noise

21. Intense use of the rooftop playground would only be for three short periods of play during the school day. Noise consultant reports show there would be no problems with noise. The nearest residential properties are 49m away and shielded from the playground by the building itself. The Council's criticism of the noise report, that it failed to consider L_{Amax} figures was met by a further report which did so. This suggested that predicted L_{Amax} figures for the playground were

less than for existing levels and in any event would be only heard during the day, when the school was open. Subsequent to this report, the revised plans showed the gable wall and part of the roof to be retained, so although open to the sky, the playground was now contained within the fabric of the building. This would further reduce the potential impact.

The Case for the Council

22. The school is close to various commercial premises, the ambulance station, the Council depot and in particular, to Sneath Ltd. The latter have operated from their site for over 50 years and generate a large number of vehicle movements. When reversing out of the nearest entrance there is limited rear visibility. As most pupils would arrive on foot, there would be a significant increase in pedestrian numbers, concentrated into a few hours of each day. Many would cross the entrances of the commercial premises.
23. Local residents have also raised concerns about congestion on pavements. The width of the pavement is about 2.5m and could easily be blocked by large numbers of school children and carers. The mitigation measures suggested by the appellants would not overcome these concerns.
24. Parking on the road is fully used "at a stressed level". All on street parking is either for resident or commercial permit holders only. Any increase in traffic movements and parking would cause significant issues for local residents and businesses. None of the mitigation measures would actually reduce the inevitable demand in the mornings and afternoons for parking, and the ensuing congestion as cars all seek to enter and leave the cul-de-sac area by the same road.
25. The open top roof area is of particular concern to local residents. The noise survey did not accurately consider this as it omitted L_{Amax} . Both the elevated position and its exposed nature are bound to create noise and disturbance for local residents. Some are bound to work in shift patterns and need to sleep during the day so disturbance during school hours would still be a problem.

The Case for VVUK Holdings

26. VVUK raised a number of concerns on behalf of Sneath Ltd. Their premises are next door to the appeal site. The proposed KS1 entrance would be within a few metres of one of the entrances to Sneath Ltd, and the one most used by heavy lorries, cranes etc, as well as cars and vans. At the Hearing they suggested about 24 vehicular movements a day, either entering or leaving the premises. The staggered times proposed for the school would simply stretch out the period when large groups are likely to congregate on the pavement right next to this busy and potentially dangerous entrance.
27. The business responds to emergency calls for repairs, so cannot predict when the access is likely to be used. They are also concerned that children might sneak into the premises to have a look around, as children are wont to do, which could also be very dangerous. If the KS1 entrance was moved further along Solebay Street, or better still into Toby Lane that would alleviate many of their concerns.
28. There was also an issue with potential noise from the playground affecting Sneath Ltd's offices which face towards the school site, although it was clear from the Hearing this was not a primary concern. They confirmed they had not been

aware of any pre-application discussions or consultation, or they would have sought to negotiate with the appellants at an earlier stage.

29. VVUK were also concerned the building had not been marketed properly. They were aware there was considerable demand for commercial buildings in the area, and had recently sublet part of their own premises to a garment manufacturer "East End Manufacturing Ltd". They were not aware the premises were even up for sale. They considered the proposal was contrary to DM15 which protects viable employment uses.

Written Representations

30. The only written representations at appeal stage were from VVUK Holdings. However, 14 local residents objected at application stage and a petition against the proposal from The Emmott Close Senior Citizens Club was received by the Council. Their concerns concentrated on traffic congestion and noise from the playground.

Conditions

31. Conditions are contained in section 6 of the SOCG. Nos 1-12 are agreed between the appellants and the Council. The BREEAM condition is disputed. A further pair of highways conditions was suggested at the Hearing (Doc 2) and two more planning conditions were also discussed. In the event that the Secretary of State allows the appeal I consider the conditions in detail below [47-54]. I have set out the recommended conditions in Annex A to this Report.

Inspector's Conclusions

In this section, references in brackets identify sources in preceding paragraphs of the Report and listed Documents and Plans.

Main issues

32. It is accepted there are only four areas of dispute [14] and these form the main issues. The impact of the proposal on the safety of pedestrians and whether it would cause congestion to the detriment of users of the highway. The potential impact of the roof top playground on the amenity of locals through noise and whether the property was adequately marketed.

Safety of pedestrians

33. The introduction of a school with 350 pupils on the roster, plus staff, would undoubtedly serve to increase the numbers of comings and goings, especially at the beginning and end of the school day. Staggered timings and the use of before and after school clubs would reduce the impact [17-18] by spreading it over a longer period. I am also aware there used to be a thriving business in the building which would have generated its own movements, but taking all this into account, there would still clearly be a mass of people arriving in the morning and leaving in the afternoon.
34. Sneath Ltd operates from two entrances on Solebay Street, both normally covered with roller shutters. The nearest one to the proposed KS1 entrance provides access to the main workshop areas, where larger trucks are used and deliveries taken. The further one seems to be used mainly by cars and vans. As I saw on my site visits, when the shutter opens a man places a temporary

- hoarding to block the pavement and guides out the lorry. I saw two pedestrians having to wait for one of the lorries. The appellants did consider moving the KS1 entrance, but this would have resulted in both entrances being on Toby Street. On balance they felt this would create more potential for congestion as all the children would be exiting onto the same street from doors that were close to each other. This view was shared by the Council's School Travel Plan officer.
35. Despite the school's best efforts to provide an internal holding area and to discourage groups congregating on the street, [16] there is bound to be an increase in people, especially children, near to Sneath Ltd's entrance, compared to now. However, Sneath Ltd already operates responsibly and vehicles are careful when backing out of the entrance. The opening of the shutters provides plenty of warning that a vehicle movement is expected and there is good visibility along the street to see any delivery vehicles arriving. With adequate supervision by teachers and a reasonable level of commonsense there should be no significant conflict between pedestrians and vehicles. I am also aware that 24 movements in a working day [26] is not a lot, possibly less than 3 an hour, depending on how long Sneath Ltd is open. Again I consider this reduces the potential for conflict.
 36. There are other commercial entrances in the area, particularly the Council depot, but Sneath Ltd is the only one with a direct and close relationship to a main entrance to the school. I should imagine wherever a school is in London there would be the potential for conflicts between children and traffic. In this case the cul-de-sac means traffic use is low and this would seem to be a particularly safe area for pedestrians. Taking all this together, I am not persuaded that the potential extra numbers of children and adults in the area would be a significant additional hazard and there would be no material increase in harm to highway safety.
 37. There is a potential for children to sneak into Sneath Ltd, [27] but this seems to be unlikely, given the presence of a banksman when the doors are open and of supervision outside the premises by teachers. I cannot see that the numbers of people likely to be around would actively prevent vehicles from leaving Sneath Ltd and so there should be no impact on the operation of the business. Similarly there should be no significant problems on the pavements. At times they would be crowded, but that is no different than for many places near to schools.
 38. The first reason for refusal implies there would also be an issue from the non-vehicular commercial activities, but no suggestions as to what these might be have been put forward, and this was not pursued at the Hearing. Consequently, I do not consider the proposal would result in unsafe conditions for the users of the schools and the occupiers of the neighbouring buildings. It is thus not contrary to policies SP07, SP09 and SP10 of the Core Strategy.

Congestion

39. The figures provided by the appellant for the modal split of transport uses [19] were not challenged, and I have no reason to doubt that 15% is a reasonable figure for those getting a lift to school by car. It also seems reasonable that as the school becomes established in what is a predominantly residential catchment area its attraction to local children would increase and car use could decline [19]. We are looking, therefore, at an increase of 50 or so cars. Rather like the number of pedestrians, this would undoubtedly register as an increase compared

to the existing situation. However, it would be a staged increase as the school grows towards 2018 [12] and not all the cars would arrive at the same time due to the staggered hours the school would operate [17-18]. If the VOWS operates successfully it would ensure that little or no traffic moves in front of Sneath Ltd.

40. On street parking is highly prized [24], but on my site visits I saw several empty parking bays. I have no doubt some people would park or wait on the forecourt of James House opposite, I also have no doubt there would be an increase in congestion at times. 50 cars arriving within an hour in the morning, along with residents own movements and those of the commercial uses would lead to some disruption. I have been given no actual evidence to support this supposition, however, and I have no reason to believe it would be serious or sustained. Consequently, while the proposal may not be entirely in accord with policy SP09, I do not consider there would be sufficient congestion to weigh heavily against the development.

Noise

41. I was informed that roof top playgrounds are not unusual in London. In this case the proposal is to remove about half the roof panels facing towards the Council depot (Plan PO18 Rev 4, blue folder). The floor of the playground would be about 120cm below the parapet, so either at or above head height of most of the children. The open space above would be covered by netting to prevent balls etc from being lost over the side. The revised plans show that the gable end facing towards Sneath Ltd and a section of roof attached to that gable would be retained so that most noise would spill out of the open section over the Council depot. There would be no direct line of sight from the opening to the student blocks to the west and the houses to the east would be some 60-70m from the opening. The flats opposite would also be over 50m away. The noise would not act like the usual noise from a chain link fenced ground level playground, due to the parapet and the gable walls. Even without the benefit of the noise analysis provided by the appellant I would not consider the relatively short periods of use of the playground would cause a nuisance to local residents and the noise figures bear this out.
42. The Council accepted the original noise assessment but noted that it did not include L_{Amax} figures which measure the one-off loudest sounds [25]. They were particularly concerned that playground noise would include shouts, screams and whistles, all of which would not be caught by the average figures in the report. To address this the appellants produced a further report which estimated L_{Amax} figures to be between 61db at the Canal Close houses and 73.2db on the Toby Street façade of the student building and so within the acceptable range. This also did not include the screening effect of the parapet, roof and gable ends, as well as the bulk of the main school building. The actual figures should, therefore, be lower still. Because of the retention of the gable and roof on the western side of the building there should also be no significant noise issue for the offices at Sneath Ltd.
43. At the Hearing the Council argued that a 70db maximum was essential, especially if people were trying to sleep during the day [25]. Given the projected L_{Amax} figures are all below 70db for residential areas (I am excluding the student flats as they are unlikely to be sleeping during the day) and likely to be even less because of the screening of the building etc, I do not see that there is a need for

concern over noise. Because the plans had changed (ie the gable and roof section were to be retained) the Council also argued that the noise measurements should be done again. I do not think this is necessary. Firstly the results were already within the acceptable range and secondly the changes could only improve matters. In conclusion, there is no evidence to counter the appellants' noise measurements and they show there would be no noise problem caused by the rooftop playground. The proposal is in accord with policy SP10.

Loss of commercial building

44. Although the Council accepted the marketing efforts of the appellant, VVUK holdings were more sceptical [29]. DM15 seeks to protect commercial uses unless there is no further use for them. This should be determined by a marketing exercise of at least 12 months. The marketing information is contained in the appellant's Planning and Impact statement. The original owners could not sustain a building of this size during the recession and so eventually moved to smaller premises. The site was marketed for 18 months at a commercially realistic rent (£16.50 a sq ft). There were only a handful of inquiries and no serious interest. I was told at the Hearing that no advertisement board was put out as the building was, at the time, still occupied by the owners who did not want to harm staff morale.
45. Although VVUK suggested they might have been interested in purchasing the building had they known it was on the market, no evidence has been provided to support that claim, and no evidence was provided to suggest the rent levels were too high. Consequently, I cannot agree the marketing exercise was flawed and I consider that DM15 has been complied with.

Overall conclusion

46. The introduction of a school into this location is bound to create an increase in pedestrian flows, traffic and some noise and disturbance. These factors are inevitably associated with any school. There would also be an increase in the potential for conflict with Sneath Ltd next door. However, there is little or no evidence to suggest that any of these increases would be harmful. There is no reason why, if access to the school is properly managed, it should not co-exist satisfactorily with the neighbouring commercial uses and local residents. There is no evidence to suggest there would be a noise nuisance from the playground, nor that the building was not properly marketed in accordance with Council policy. I consider the proposal is in accord with the Council's policies and with the Framework.

Conditions

47. Conditions 1-12 are contained in the SOCG. Conditions 1 and 2 are standard and necessary. No 3 is required to control development in an area with many residential uses. Nos 4 and 5 deal with the important management and travel plans and are essential. No 6 is required for minor highway works. No 7 deals with servicing of the building once the school is open and is required because of the congestion issues. There is a small amount of external development so No 8 (materials) is required as is No 9, to deal with energy use. No 10 is important to control the use of the playground and No 11 is for the occasional times a bus trip may be planned. No 12 is needed to ensure the entrance doors are agreed and installed.

48. As to BREEAM it was accepted that the developers could not achieve an 'Excellent' rating, but could reach 'Good'. The Council wished to retain 'Excellent' as an aspirational target, but I consider that if this is agreed to be impossible, then such a target is pointless. It also would give the Council the power to stall the development while expensive work was undertaken to demonstrate something that had already been investigated and was not in dispute, namely the achievable rating of the building. I recommend the condition should be kept but with the target rating reduced to 'Good'.
49. The Council asked for two highways conditions. The first was that a system (CCTV was mentioned at the Hearing) should be installed at the entrances and independently monitored. The system could then be used to resolve any arguments in the event of a dispute about the operation of the school travel plan. The appellants argued this would be expensive and entirely unnecessary. I agree. There is no suggestion that the travel plan would not work, or that if it is, on occasions, breached, that the school would not act to deal with such problems. To install a system to monitor movements outside the school on the off-chance there might be a serious and irresolvable dispute is unnecessary and excessive and I recommend the condition is not applied.
50. The second condition stated that if the proposed modal shift targets in the Travel Plan were not met, the Council would be able to prevent the school from increasing its roll to the full 350 complement until they were. In other words if more than 15% of pupils came by car the expansion of the school could be stopped until the percentage was reduced. Again I consider this to be excessive. An increase of only 1% could trigger the condition which would be unreasonable. There is no reason to expect there would be a serious deviation from the proposed modal shift and a minor one would not be of such significance as to require the operation of the condition. I recommend this condition is not applied.
51. Two planning conditions were suggested. One that a scheme for noise mitigation measures should be agreed and installed should the L_Amax exceed 70db at any one of four noise sensitive receptors. The appellant argued this was unnecessary as noise was adequately dealt with in their noise reports. I consider the noise issue above [41-43], and as I do not think there would be any problems, I agree that such a condition would be unnecessary and I recommend it is not applied.
52. The second condition was to limit the number of children to 350. The appellant opposed this as it would prevent them responding to changes in the funding model, or the space per pupil ratios. In my view such a condition does not create an outright ban on any increase, but requires the school to first agree it with the Council. As the travel and management plans are based on a maximum number of 350 pupils it would not be sensible to allow expansion beyond that without giving the Council an opportunity to consider the potential impacts and to review how the school was operating at that time. I recommend this condition is applied.
53. The recommended conditions at Annex A have all been modified where necessary to meet the advice in Circular 11/1995 *the use of conditions in planning permissions*.
54. I pointed out at the Hearing that the details of cycle parking shown on the proposed builder's work plan of the ground floor (112010/B001 Rev 2) were different to those shown on the plan 112010/PO12 Rev 7, which was substituted

for the application ground floor plan (112010/PO12 Rev 5). It was agreed that PO12 Rev 7 was the final plan and therefore the details of the cycle storage should be dealt with by a 'scheme to be submitted' condition. I recommend such a condition is applied.

Recommendation

55. I recommend that planning permission be granted for the change of use of the existing building to a two form entry primary school, subject to the conditions in annex A. Should the Secretary of State not agree with my recommendations on the individual conditions I have included those that I recommend should not be attached at the end of the annex. Because the exact wording of those conditions (a-c) was not provided by the Council until after the close of the Hearing, the appellant asked they should be given the opportunity to comment should the Secretary of State be minded to apply those conditions.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Mike Ibbott
John Talbot
Ronda Fogel
Stuart Denton

TP Bennett
Wilmot Dixon
CET Primary Schools
EFA

FOR THE LOCAL PLANNING AUTHORITY:

Adrian Walker
Rachel Yorke
Joe Aghomi

Planning -Tower Hamlets
Highways – Tower Hamlets
Environmental Health – Tower Hamlets

INTERESTED PERSONS:

John Veness
Christine Veness
Jane Gleeson

VVUK Ltd
VVUK Ltd
Firstplan

HEARING DOCUMENTS

- 1 Written application for costs on behalf of the appellants
- 2 Highway conditions suggested at the Hearing

Annex A

This is the conditions annex referred to in my decision dated:

by Simon Hand MA

Land at: 11 Solebay Street, London, E1 4PW

Reference: APP/ E5900/A/13/2203743

I recommend the following conditions (Nos 1-16) are attached to the grant of planning permission.

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the plans schedule below.
- 3) The development hereby approved shall adhere to the Construction Method Statement submitted with the application throughout the construction period.
- 4) Prior to the first occupation of use hereby permitted, a School Management Plan shall be submitted to and approved in writing by the local planning authority, and the use as a primary school hereby approved shall only operate in accordance with the approved School Management Plan.
- 5) Within 3 months of occupation of the use hereby permitted, the draft School Travel Plan submitted with the application will be reviewed, completed and submitted to the LPA for final approval. Thereafter the school shall only operate in accordance with the approved School Travel Plan.
- 6) Within six months of the commencement of works a Scheme of Highway Works necessary to serve this development shall be submitted to and approved in writing by the local planning authority. The use shall not commence until the Scheme has been completed in full accordance with the approved details. The works where necessary shall comprise: removal of vehicular crossover in Toby Lane; replacement of kerbs and making good of footway; installation of cycle stands on Solebay Street.
- 7) Prior to the first occupation of use hereby permitted, a Delivery and Service Management Plan shall be submitted to and approved in writing by the local planning authority. The Delivery and Service Management Plan shall specify servicing hours and the approved plan shall be adhered to thereafter.
- 8) Full samples of external wall infill materials, roof and atrium rooflights shall be submitted to and approved in writing by the local planning authority prior to commencement of the relevant works. The development shall not be carried out otherwise than in accordance with the details thus approved.

- 9) The energy efficiency and renewable technologies shall be implemented in accordance with proposals set out in the Energy and Renewable Energy Statement prepared by Building Services Design and retained for so long as the development exists.
- 10) Use of the roof top play area allowed by this permission shall not take place other than between the hours of 09.00 and 17.30 Monday to Friday and at no times on Saturdays or Sundays.
- 11) Prior to the first occupation of the use hereby permitted, a coach/mini-bus parking strategy shall be submitted to and approved in writing by the local planning authority. Any coach/mini-bus parking shall thereafter be carried out in accordance with the agreed strategy.
- 12) Detailed drawings of the Key Stage 1 entrance doors and samples of the materials to be used on the entrance shall be submitted to and approved in writing by the local planning authority before any works thereby affected are commenced. The KS1 entrance shall be constructed in accordance with the approved drawings.
- 13) Prior to the commencement of the development hereby approved, the applicant shall submit a BREEAM Refurbishment pre-assessment to demonstrate how the development has been designed to seek to achieve a "Good" rating.
- 14) Within 3 months of occupation of the development the applicant shall submit the final BREEAM certificates to demonstrate achievement of the "good" rating. The sustainable design and construction measures shall be implemented in accordance with the submitted proposals and retained for so long as the development shall exist.
- 15) The maximum number of children at the school shall be no more than 350 at any one time.
- 16) A scheme for cycle storage shall be submitted to and approved in writing by the local planning authority and the agreed storage facilities shall be installed prior to the first occupation of the use hereby permitted. The agreed scheme shall thereafter be retained.

I recommend the following conditions are not attached to the grant of planning permission.

- (a) Not to increase the school roll unless the School Travel Plan's modal split targets are fully met and maintained.
- (b) Prior to occupation of the development to submit to the Council for approval a scheme of surveillance in respect of the area of highway surrounding the two entrances to the development and thereafter to implement and retain the approved scheme until 12 months after all form years have been enrolled.
- (c) Should the L_{Amax} exceed 70db at any one of four noise sensitive receptors shown in the table to Appendix B of the appellants' statement of case a scheme for noise mitigation should be agreed and installed.

Schedule of Plans referred to in condition 2

Drawing description	Drawing no	Amended drawing No (21 May 2013)	Revised drawings submitted at start of appeal
Site location plan	P2700		
Existing location site	112010/P001		
Existing ground floor	112010/P002		
Existing first floor	112010/P003		
Existing second floor	112010/P004		
Existing third floor	112010/P005		
Existing S & W elevations	112010/P007		
Existing E & rear elevations	112010/P008		
Proposed ground floor			112010/P012 Rev 7
Proposed first floor	112010/P013 Rev 3		
Proposed second floor	112010/P014 Rev 4		
Proposed third floor			112010/P015 Rev 2
Proposed S & W elevations			112010/P017 Rev 7
Proposed N & E elevations			112010/P018 Rev 4
Proposed Section AA			
Roof plan proposed builders work (showing PV panels)		112010/B005 Rev 1	



Department for Communities and Local Government

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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.