



Department for
Communities and
Local Government

Mr Olivier Spencer
Capita Symonds
(inc. Andrew Martin Associates)
Croxtons Mill
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Our Ref: APP/K0235/A/12/2179676/NWF
Your ref:

23 November 2012

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY BEDFORD & KEMPSTON FREE SCHOOL
CAULDWELL HOUSE, 12-14 CAULDWELL STREET, BEDFORD, MK42 9AD
APPLICATION REF: 12/00641/MAF**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, R J Perrins MA MCMI ND Arbor, who held a hearing on 25 September into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Bedford Borough Council to refuse planning permission for the change of use from office (Class B1) to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works, dated 30 March 2012.
2. The appeal was recovered for the Secretary of State's determination on 26 September 2012, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for development of major importance having more than local significance.

Inspector's recommendation

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. The Secretary of State notes (IR5) that the Council indicated in a letter dated 22 August 2012 that they would not be pursuing their first reason for refusal (as set out at IR4.1) and that reason 2 would form the basis of their case. Accordingly, the Secretary of State has determined the appeal on that basis.

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5. The original description of the development is as set out at paragraph 1 above. However the Inspector notes that the parties agreed at the hearing that the description of the development should be amended to “*Change of use from education (Class D1c) as regulated by planning permission ref. 12/00275/MAF to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works.*” The Secretary of State agrees with the Inspector that the description of the development should be changed to reflect this agreed revised description (IR6), and he is satisfied that no interests would thereby be prejudiced.

Policy Considerations

6. In deciding this appeal, 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 East of England Plan (2008) and the Sub Regional Strategy (2008); the Bedford Core Strategy & Rural Issues Plan (2008); the Bedford Town Centre Area Action Plan (2008); and the Bedford Borough Local Plan (October 2002). The Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal are those set out at IR11.

7. The Localism Act 2011 provides for the abolition of RSSs by Order. However, the Secretary of State has attributed limited weight to the proposed plan to revoke the East of England Plan. Any decision to revoke the East of England Plan will be subject to the environmental assessment which is in train.

8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework – March 2012); the Ministerial Policy Statement - planning for schools development (August 2011); Circular 11/1995: *Use of Conditions in Planning Permission*; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Main issues

9. The Secretary of State agrees with the Inspector that the matters referred to at IR48 are not in dispute and that the provision of the school and the impact of the proposed external alterations would be in accord with the local development plan and government policy (IR49). In particular, he notes that the Council no longer wish to pursue their first reason for refusal (IR48, first bullet point, and paragraph 4 above) and agrees with the Inspector (IR54) that, if the Council's concerns regarding the traffic impact on the primary road system in the locality were severe, that reason would still have been relied upon. The Secretary of State also agrees with the Inspector's conclusions on the matters considered at IR64-66.

10. Hence, the Secretary of State agrees with the Inspector (IR55) that the issue upon which to focus is the generation of traffic dropping-off and picking-up on the one way gyratory system (the second reasons for refusal) and, for the reasons given at IR56-62, he agrees with the Inspector's conclusion at IR63 that the proposed use would not result in a significant generation of pick-up and drop-off activity and thus would not adversely affect the free flow of traffic on a primary route into the Town Centre or be detrimental to highway safety. The Secretary of State therefore agrees

that such activity would not conflict with the Bedford Borough Local Plan and that there is no evidence that the proposed use would give rise to severe residual cumulative impacts which could bring it into conflict with the Framework.

11. In coming to this conclusion, the Secretary of State has had regard to the fact that some of the Travel Plan systems are already in place and that the Inspector considers that these have been effective for users of the Free School (IR56). He also agrees with the Inspector that these measures would be enhanced by proposed traffic enforcement measures that would be carried out by Council Traffic Enforcement Officers (IR58). Furthermore, the Secretary of State agrees with the Inspector that the current permitted use is a material consideration (IR61), as it would allow use by the College without restriction on staff numbers or students and with no mechanism to control the dropping off of students on the gyratory system. The Secretary of State therefore agrees with the Inspector (IR62) that it would be reasonable to conclude that the proposed use and associated enforcement measures could have a positive overall effect on the gyratory system.

Conditions and obligations

12. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and the legal agreement, as set out in IR42-47. He is satisfied that the terms of the Section 106 Agreement are necessary on highway safety grounds and that the amount payable is fairly and reasonably related to the development. He is therefore satisfied that it is in accordance with section 122 of the CIL Regulations and paragraph 204 of the Framework. The Secretary of State is also satisfied that the conditions recommended by the Inspector and set out in the Annex to the IR are reasonable and necessary and meet the tests of Circular 11/95.

Overall conclusions

13. The Secretary of State is satisfied that the appeal proposal accords with the development plan and national policy and that there are no material considerations of sufficient weight to justify going against that. He is also satisfied that the proposed use and associated enforcement measures would not have any worse effect on the gyratory system than the current arrangements and could have a positive overall effect.

Formal Decision

14. 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 change of use from education (Class D1c) as regulated by planning permission ref. 12/00275/MAF to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works, in accordance with planning application ref: 12/00641/MAF (amended agreed description), dated 30 March 2012, subject to the conditions listed at Annex A of this letter.

15. 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.

16. 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

17. 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.

18. A copy of this letter has been sent to Bedford Borough Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

CONDITIONS

Annex A

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 00-CS-ZZZ-DWG-AR-BKS P01, P02, P03A, P04A, P05, P06, P07, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P60A, P61, P62, P63, P64, P65, P66, P67, P68, P69 and P70.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans as amended by the Travel Plan dated June 2012 confirming no buses to use Melbourne Street and mini buses to enter the school site.
- 3) Any vehicular access gates provided shall open away from the highway and be set back a distance of at least 13m from the nearside edge of the carriageway of the adjoining highway.
- 4) No groundwork, except for the installation of bolt-down cycle racks, shall take place on the land and, the use hereby permitted, shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within six months of the date of failure to meet any one of the requirements set out in (i) to (vi) below:-
 - (i) within 3 months of the date of this decision an archaeological mitigation scheme shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation and the following components; fieldwork and/or preservation “in situ” of archaeological remains; a post-excavation assessment report (to be submitted within six months of completion of fieldwork); a post-excavation analysis report; preparation of site archive ready for deposition at a store approved by the local planning authority; completion of an archive report; and submission of a publication report (to be completed within two years of the completion of fieldwork)
 - (ii) within 3 months of the date of this decision a scheme for car and cycle parking within the site shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The space shall thereafter be kept available for car parking only unless otherwise approved in writing by the local planning authority.
 - (iii) within 2 months of the date of this decision a detailed Travel Plan (with staff and student survey) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The Travel Plan shall be in accordance with the DfT’s “Good Practice Guidelines: Delivering travel plans through the planning stem” and include; a baseline survey of site occupants (staff and students) to be undertaken within 3 months of the first occupation; details and results of the school related monitoring/surveys undertaken since first occupation; details of the measures taken/to be taken to minimise private car use and facilitate walking, cycling and the use of public transport base on the results of the baseline surveys; details of the site specific marketing and publicity information that has been prepared for the school; details of the SMART travel plan targets with relevant target dates (revised from the June 2012 travel plan). The

SMART targets will form the basis for the travel plan review assessment; a detailed Action Plan (based on actual travel survey results) to include specific timetabled measures designed to promote travel choice; detailed proposed plans/methods to monitor and undertake reviews of the travel plan and its targets for a period of 5 years, those reviews to be carried out each school term for the first two years and annually thereafter; details of any financial contributions to the local authority which are assigned to additional physical or management measures to address any shortfall in the SMART targets which have been set. The Travel Plan shall be implemented in accordance with the Action Plan and timetable contained therein and shall continue in force for as long as any part of the development is occupied.

(iv) if within 11 months of the date of this decision the local planning authority refuse to approve any of the schemes or fail to give decisions within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(v) if an appeal is made in pursuance of (iv) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(vi) the approved schemes shall have been carried out and completed in accordance with the approved timetable.

5) The use of the site hereby approved shall be limited to a total on site occupation of no more than 500 pupils and 50 full time equivalent staff at any one time unless otherwise agreed in writing with the local planning authority.

End



The Planning
Inspectorate

Report to the Secretary of State for Communities and Local Government

by R J Perrins MA MCMI ND Arbor

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

Date 19 October 2012

TOWN AND COUNTRY PLANNING ACT 1990

BEDFORD BOROUGH COUNCIL

APPEAL BY

BEDFORD & KEMPSTON FREE SCHOOL

**AGAINST THE REFUSAL OF PLANNING PERMISSION FOR THE CHANGE OF
USE FROM OFFICE (CLASS B1) TO SCHOOL (CLASS D1); MINOR DEMOLITION
WORKS; REFURBISHMENT AND EXTERNAL ALTERATIONS, INCLUDING NEW
FENESTRATION, LANDSCAPING, PARKING, PLAY AREAS AND BOUNDARY
WORKS.**

Hearing held on 25 September 2012

Cauldwell House, 12-16 Cauldwell Street, Bedford MK42 9AD.

File Ref: APP/K0235/A/12/2179676

Appeal Ref: APP/K0235/A/12/2179676

Cauldwell House, 12-16 Cauldwell Street, Bedford MK42 9AD.

- 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 Bedford & Kempston Free School against the decision of Bedford Borough Council.
- The application Ref 12/00641/MAF, dated 30 March 2012, was refused by notice dated 27 June 2012.
- The development proposed is the change of use from office (Class B1) to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works.

Summary of Recommendation: That the appeal be allowed.

Procedural Matters

1. At the Inquiry an application for costs was made by the appellant against Bedford Borough Council. This application is the subject of a separate Report.
2. Prior to, and at the start of, the Hearing a number of documents¹ were submitted by the appellant and the Council. Given the number of interested parties present the Hearing was adjourned for 45 minutes to give those third parties an opportunity to study the submitted evidence. On resumption the interested parties indicated they had been given sufficient time to study the documentation.
3. Also, having regard to the number of people present, and the practicalities of carrying out a site visit involving everyone, the Hearing was closed prior to the site visit. Between the closure of the Hearing and the site visit I was informed that the Secretary of State had recovered the appeal. I informed the main parties of this at the start of the site visit which was carried out without any discussion of the merits of the case. The Secretary of State, by letter of 26 September 2012, states that the appeal was recovered for his determination on the grounds that it involves proposals for development of major importance having more than local significance.
4. The planning application was refused for the following reasons:
 1. *Insufficient information has been provided by the applicant to demonstrate that the objections of the Highway Authority have been satisfactorily addressed in respect of highway safety, parking and traffic impact implications of the development on the primary road system in the surrounding area (Kingsway/Cauldwell Street Gyratory) during the peak periods. The application as submitted is therefore contrary to saved Policy BE30 (iv), (v) and (vi) of the Bedford Borough Local Plan 2002.*
 2. *The proposed development would generate traffic and pick-up and drop-off activity that will give rise to increased danger and inconvenience to users of the highway and nearby premises and adversely affect the free flow of traffic*

¹ Those documents numbered 2 to 9a in the document list at page 18 of this report

on a primary route into the town centre. This would be contrary to Policy BE30 of the Bedford Borough Local Plan 2002.

5. The Council, in a letter dated 22 August 2012 addressed to the appellant's agent and copied to the Planning Inspectorate, stated that the Council would not be pursuing the first reason for refusal at the appeal and that reason 2 would form the basis of the Council's case. That decision was taken in light of an updated Transport Assessment, a new Travel Plan and a full draft S106 Agreement which were considered by the Planning Committee as part of a revised planning application on 20 August 2012; those documents form part of the appellant's case for this appeal.
6. The original description of the development is as set out in my final bullet point above. However, the appellant avers that does not accurately reflect the current land use and requested that it be changed to; *Change of use from education (Class D1c) as regulated by planning permission ref. 12/00275/MAF to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works.* At the Hearing the Council confirmed they would have no objections to such a change. If the Secretary of State accepts my recommendation then the description of development should be changed to reflect the agreed revised description.
7. An unsigned Statement of Common Ground (SCG) was submitted at the Hearing and the Council confirmed it reflected their views, save for the reference to the planning obligation which had not been completed prior to the Hearing. Subsequently, a completed S106 Agreement was submitted at the Hearing which the Council confirmed was a correct legal document.
8. I observed the site and surroundings on the morning of the Inquiry between the hours of 0800 and 0900 and again at the end of the day between the hours of 1600 and 1700.

The Site and Surroundings

9. Cauldwell House is a purpose built office situated in Bedford town centre on the one-way gyratory system. It abuts business and college uses and, prior to its use by the school, was used as a training facility by Bedford College in association with its main town centre site which can be found directly opposite. The site is well served by vehicular access points on both sides of the building. Pedestrian access would be facilitated by pedestrian crossing facilities to the east at the junction with St. Mary's Street/St. John's Street and to the west at the junction with Kingsway. A public car park situated in Melbourne Street is a short walk away to the south. A commercial taxi office is situated opposite the entrance to the college.
10. At the present time development is well advanced and the building is currently being used by Bedford & Kempston Free School and Bedford College. At the time of the Hearing it was said that the school was running at 40% of its predicted capacity. I was able to observe children arriving and departing from the appeal premises and students using the main access to Bedford College which is on the opposite side of the road; the College has a number of car parks within its grounds. Bedford College is in the process of vacating Cauldwell House and I was able to see that some use by the College was subsisting at the time of my

inspection; there is nothing before me to suggest that will continue in the long term.

Planning Policy

11. 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 following précis of national and local planning policies were quoted by the main parties in the SCG as being relevant to the proposal; the Local Plan policies quoted have been "saved". Whilst the policies have relevance to the development as a whole, at the Hearing it was agreed that the most relevant policies and guidance in respect of the main issue were those of the Bedford Local Plan (Policy BE30), the advice in the National Planning Policy Framework and the Ministerial Statement on *planning for schools development* (August 2011).

Bedford Borough Local Plan (October 2002) (BLP)

Policy BE30- states the Council will have full regard to all material considerations; the following paragraphs being of particular relevance to this appeal: -

- iv) any additional traffic expected to arise from the development, either in relation to highway capacity or general disturbance, and provision made for car parking;
- v) the extent to which the development is served by, and makes provision for access by public transport, cycles and pedestrians;
- vi) the suitability of access arrangements to and within new development for all members of the community, including, pedestrians, cyclists and disabled people.

Policy BE49 – recognises the change of use or alterations of buildings used for employment and education purposes will normally be required to provide suitable access and facilities for disabled people.

Bedford Core Strategy & Rural Issues Plan (2008)

Policy CP1 – sets out the Spatial Strategy.

Policy CP2 – states that development and use of land will be in accordance with sustainable development principles.

Policy CP3 – sets out the locations for growth.

Policy CP11 – addresses the provision of employment land.

Policy CP19 – seeks the creation of a bustling, prosperous and safe town centre which is a more efficient, vibrant and attractive focus for the borough and its hinterland.

Policy CP21 – requires all new development to design in quality.

Policy CP26 – requires development to have regard to climate change and pollution.

Policy CP29 – seeks developments which are located and designed to include facilities which provide convenient access to local services by foot, cycle and public transport.

Policy CP30 – sets out the circumstances where developers would be expected to make or contribute towards such provision by means of planning condition or legal obligation.

Bedford Town Centre Area Action Plan (2008)

Policy TC15 – sets out the policy objectives for Kingsway Quarter.

Policy TC19 – recognises that successful regeneration activity will require network improvements, including improvements to the Kingsway/Cauldwell Street junction.

Policy TC21 – sets out proposed walking and cycle routes.

Policy TC24 – states what the Council and its partners will do with regards to parking in the town centre.

Policy TC35 – states that applicants will be expected to implement or contribute towards measures to mitigate adverse impacts upon the amenity of residents or other users.

Policy TC40 – requires developers to contribute to the delivery of key elements of highway and other infrastructure, along with other improvements where the proposed scheme would have a proven indirect or direct impact on the town centre.

Appendices E & F – address, respectively, a number of key urban design principles and parking standards.

East of England Plan (2008) and the Sub Regional Strategy (2008) - these were referred to by the appellant in setting the context of the development; no specific policies have been referred to by either party.

National Planning Advice - reference was made by the main parties to the National Planning Policy Framework (the Framework) and the Ministerial Policy Statement - *planning for schools development* (August 2011). The Statement sets out that there should be a presumption in favour of the development of state funded schools which include academies and free schools, as expressed by the Framework.

Planning History

12. The site has a planning history which includes five planning applications submitted in the last ten years:

04/00236/OUT – outline planning permission granted for the demolition of the adjoining social club and erection of an extension to the offices at Cauldwell House along with additional car parking (April 2004). The planning permission was not implemented.

05/01337/COU – planning permission granted for change of use from offices to education (Class D1) for a temporary period of 5 years for Bedford College (August 2005).

12/00275/MAF – planning permission granted for change of use from offices to education (Class D1).

12/00641/MAF – refusal of planning permission for the change of use from office (Class B1) to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works (June 2012). The application subject of this appeal.

12/01267/MAF – refusal of planning permission for the change of use from office (Class B1) to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works. Similar to the previous application but included a full draft S106 Agreement to address highway mitigation, an updated Transport Assessment and a revised Travel Plan (August 2012).

The Proposal

13. The planning permission granted in May 2012 (12/00275/MAF) was subject to a condition restricting the use of the building to Bedford College. The current appeal proposal seeks to use the college building (originally constructed as offices) as an entirely new school to educate 500 children between the ages of 11 and 16.
14. The development proposed would provide: a new play area towards the south west of the site, a new car parking layout, internal vehicle circulation, a revised internal layout, including partitions to form additional rooms and new toilets, new security gates, three new external window openings and two new external door openings. The security gates had been installed at the time of my visit.
15. The S106 Agreement submitted by the appellant (Document 10) is in respect of the following: mitigation to address highway concerns including traffic enforcement of parking, stopping and pick-up/drop-off infringements for 5 years, amendments to the existing Traffic Regulation Orders, signage and lining and Travel Plan monitoring for 5 years.

Agreed Facts

16. These are as set out in the SCG (Document 3) under the heading *Statement of Matters Not in Dispute*, in brief they set out the following:
 - The Council no longer wish to pursue reason for refusal 1 on the basis of the additional information submitted in support of the revised planning application (12/01267/MAF) and as submitted to the Planning Inspectorate as evidence in support of the appeal. The agreed drawings are as per the Schedule of Drawings submitted at the Hearing (Document 13).
 - Following a Highway Officer's recommendation for refusal of the application subject of this appeal, the parties held a series of meetings; that resulted in a revised Transport Assessment, Travel Plan, Planning Statement and Design Introduction & Access Statement; the Travel Plan was subject to a number of revisions. A verbal update and revised recommendation was given to the Planning Committee on 25 July 2012 and addressed the proposed bus pick-up/drop-off arrangements, pedestrian movement and safety, and staff car parking arrangements. The Highway Officer's recommendation was to approve the application subject to three conditions addressing positioning of access gates, cycle and car parking, the submission of a Travel Plan and S106 Agreement.

- The parties agree that: staff car parking can be monitored as part of the Travel Plan, student pick-up and drop-off could be accommodated within the Melbourne Street car park provided it is properly managed and enforced, spare capacity exists at the car park, the area outside the school is not suitable for any amount of stopping traffic and parking, enforcement would be required and the costs could be secured by way of a Planning Obligation.
- The appeal site has been in education use since 2005, it has previous consent for 3000 square metres of educational accommodation for the sole use of Bedford College. The proposal would result in a significant reduction in on-site parking. Infrastructure provision for pedestrians and cyclists in the vicinity of the appeal site is of a good standard. It is well served by public transport.
- The occupation of the appeal site would be phased with 200 pupils and 13 staff in Year 1 rising to 500 pupils and 50 staff by Year 4 (academic year 2015/16). Provision for access for deliveries, servicing, and emergency vehicles would be covered by a management strategy embedded within a Travel Plan. Such a plan to be submitted, approved and implemented, then to continue in force for as long as any part of the development would be occupied.
- The Framework supports ensuring sufficient choice in education. The Government's Policy Statement - *planning for schools development* confirms that creating free schools is one of the Government's flagship policies.
- Given the permanent lawful use (Class D1), the loss of the former office use is no longer a relevant planning consideration to the appeal. The proposed gates and external alterations would have no material impact on the appearance of the building. The proposal is not expected to adversely impact on neighbouring amenity. The proposed arrangements for off-site physical education would be acceptable.
- There are no concerns regarding landscaping, ecology, archaeology or arboriculture. The proposal would not increase the risk of flooding. Physical changes would not improve sustainability or energy efficiency of the building although the re-use would preserve the embodied energy used in the original construction.
- A schedule of conditions was agreed (Appendix 2 to the SCG) (Document 3)

The Case for the Appellants

The material points are: -

17. The site already benefits from planning permission for education (Class D1) use albeit the Council has sought to condition that to Bedford College's use only. Of note here is that such a condition is being imposed apparently for the express purpose of excluding the operation of the Use Classes Order and the General Permitted Development Order that is contrary to government advice found in Circular 11/95. That states it is not appropriate to apply a personal permission to corporate bodies. Therefore an appeal to remove that condition could be expected to succeed. Even if no such application were made, the College could choose to diversify and to open its own Free School at the appeal site.

18. Nevertheless, the school has submitted two planning applications and no objections were raised by the Council's Officers to the proposals and planning permission was recommended to the Council. Although refused for two highway/transport reasons the Council only now wish to pursue one of the reasons at appeal specifically that "...the proposed development would generate traffic and pick-up activity that will give rise to increased danger and inconvenience to users of the highway and nearby premises... contrary to Policy BE30 of the Bedford Borough Local Plan 2002"
19. That reason for refusal contradicts the advice received from the Council's Highway department (and subsequently the Planning Officer's recommendations) noting that "...through traffic enforcement it is envisaged that student pick-up/drop-off will not be experienced in the areas immediately outside the school." It was agreed, prior to the 25 June 2012 Planning Committee that a S106 Agreement could secure a financial contribution toward that enforcement and Travel Plan monitoring. Since that date an updated Transport Assessment a new Travel Plan and a completed Planning Obligation have been prepared to further reinforce the transport aspects of the proposal.
20. The updated Transport Assessment recognises the site is currently used for educational purposes by the College and as such has the ability to generate person trips by all modes on a regular daily basis. It demonstrates the proposal would not cause any significant, additional, detriment to the level of services on the local road network. Supplementary evidence submitted by the appellant sets out the school's operational characteristics since the beginning of term; photographic evidence shows no instances of parents stopping in Cauldwell Street; car park activity surveys for Melbourne Road car park show that it is significantly under occupied under current conditions, with more than enough capacity to accommodate drop-off and pick-up activity associated with the school; and a 'hands up' survey of pupils showed a significant proportion of trips were undertaken by non-car modes. The history of traffic accidents in the vicinity is low.
21. The weight that should be given to Local Plan Policy BE30 (given it was adopted prior to 2004) depends on its degree of consistency with the Framework. Whilst Policy BE30 states that the Council will give consideration to any additional traffic generated by a proposal; paragraph 32² of the Framework adopts a more relaxed approach. It directs that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. The proposal complies with all relevant development plan policies.
22. Furthermore the application is supported by key provisions in the Department for Education's Schools white paper, the Government's Policy Statement - *planning for schools development* which sets out, amongst other things that; there should be a presumption in favour of the development of state funded schools; local

² All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

authorities should make full use of their planning powers to support state-funded schools applications; 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; where a local planning authority refuses planning permission for a state-funded school, the Secretary of State will consider carefully whether to recover for his own determination appeals against the refusal of planning permission.

23. In addition the Framework, sets out a presumption in favour of sustainable development and (para 72) "...attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should: give great weight to the need to create, expand or alter schools...".

Other matters

24. The site falls within the urban area boundary where there is a general presumption in favour of the development. Located in the town centre it is in close proximity to existing public transport links and the proposed use would ensure the previously developed land does not become redundant. The principle of development should be acceptable in this location and the education use is appropriate at this site.
25. The main focus for the Bedford & Kempton Free School is to raise standards and to widen choice in education, more than to meet the specific quantitative need. It will offer a wider curriculum, smaller year groups and a longer school day fitting in with modern family life. The intention is to deliver the school in three phases: 200 in September 2012, a further 200 in September 2013 and an additional 100 in September 2014. The delivery of new sites for education is supported by local and national policy.
26. The development would represent a significant employment benefit compared to that of a vacant site resulting in some 50 staff being employed. The external alterations and appearance would have no material impact upon the appearance of the building and would be in accordance with local planning policies in that regard.
27. The site is located in a mixed use part of the town centre and is bounded by the main Bedford College campus to the north, various commercial units to the east, a retail park to the south and a social club to the west and none of these are particularly vulnerable to noise or disturbance. The opening times would be regulated and the use would not adversely impact on neighbouring amenity. With regard to the noise complaint submitted at the Hearing, the appellant averred that the noise currently experienced was from the younger pupils that currently use the school without any peers. That would reduce over time as the influence of older pupils would reduce the current emphasis on play. Furthermore they had spoken to the complainant who was now satisfied that the matter was being addressed.
28. Until recently the site provided 37 marked parking spaces, predominantly used by college staff. Under the proposed development, the number of parking spaces would be significantly reduced. Staff would be encouraged to use the nearby Melbourne Street car park and the number of cycle spaces would be increased to

58 at the site. Landscaping would be retained and amenity space increased. Sports provision would be provided off-site.

The Case for the Council

The material points are: -

29. Notwithstanding the Officers' recommendations, the Council decided to refuse planning permission as they considered the proposed development would generate traffic and pick-up and drop-off activity that would increase danger and inconvenience and the free flow of traffic. The Bedford Borough Local Plan was adopted in 2002 and certain policies 'saved' by direction of the Secretary of State under the 2004 Act, issued in 2009. Policy BE30 was saved and it is consistent with the policies of the Framework and due weight should be given to it accordingly.
30. The subject site is situated in an "island" in the middle of the one-way gyratory. The area is one of the key components in Bedford's highway network: one of the main gateways to the town centre from the southern and western areas of the Borough. Any additional congestion caused on the gyratory could be detrimental to the operational capacity of the area and Bedford town centre. The area outside the school is not suitable for any amount of stopping traffic. It is apparent that any stopping traffic, at various times of the day, creates a significant hold up on the gyratory. It is important to note that the impact of the development would increase over time and would not be felt fully until 2015/16.
31. The submitted Travel Plan contained a travel survey completed by pupils (28% sample) that indicated that 18% of pupils would travel to the school by car. A second survey (50% sample) indicated that 25% would travel by car. This demonstrates the traffic impacts of the school may be understated. That could be compared to Bedford Girls School Travel Plan and Travel Survey which indicates that 32% travel by car; the Free School would have a similar catchment area extending further than other local state schools.
32. The school proposes to provide 2 mini-buses to accommodate the school transport demand but there are no details of movements or level of demand. There has been no consideration of any seasonal variation in the mode of transport that pupils may choose to take and it is the Council's opinion that the school would not be operating outside of peak periods in terms of traffic volumes. Parents would have to drive past the school site to drop their children at Melbourne Street and in some cases would have to traverse the gyratory twice: this has not been taken into account. Children may also try and alight from cars when stationary on the gyratory system.
33. Furthermore there is likely to be a need for strong enforcement of the gyratory system and the Melbourne Street car park during peak periods; that may need to be increased during adverse weather conditions. There is a danger that the failure of the travel management plan would lead to unacceptable levels of congestion and place pedestrian driver safety at risk. There would also be a limit as to how many cars could gain entry to the Melbourne Street car park even just for dropping off and picking up. That could be exacerbated in the future by the introduction of Controlled Parking Zone (CPZ) around the nearby hospital site.
34. If all parents were to arrive and depart from Melbourne Street car park at the same time this could lead to queuing and delays on the gyratory. Enforcement

would be an onerous and ongoing matter which the S106 Agreement would only partly cover. There have been a number of reports and complaints regarding pupils of the Free School being dropped off on the gyratory system and elsewhere. The Council therefore consider the impacts of the school in this location would be harmful and unacceptable and would outweigh the benefits of widening the choice of educational opportunities.

The Case for Opponents who were at the Hearing

Councillor Mr D McMurdo Bedford Borough Council

35. Expressed concern that there had already been one or two incidences with traffic in the first two weeks of opening. The previous use was for post 16 year olds, the proposed use is completely different and would not reflect the travel patterns experienced previously. Furthermore it would be difficult to enforce stopping outside the school, it is not an offence to stop on a double yellow line and the proposed action that would be taken by the school against 'offenders' is not robust. The proposed use would have an untenable effect upon the gyratory system which is already working at capacity.

Mr G Wright – interested person

36. Objects to the proposed use as it would significantly increase the number of traffic movements to and from the site. The current usage is only at 40% of capacity and it is likely that more children would be driven to school during the darker winter months and during periods of inclement weather.
37. No account has been taken of the pressures that a number of proposed and permitted residential developments nearby would have on the gyratory system. Bedford has three river crossings which are all currently under pressure during peak times. Furthermore the building is not fit for purpose: it is too small to house the number of pupils, there is insufficient outdoor space, and the car park is being used as a playground which is not satisfactory. It does not meet the standards set out in Building Bulletin 98: *Briefing Framework for Secondary School Projects*³.

The Case for Supporters who were at the Hearing

Councillor Mrs C Fensome Bedford Borough Council

38. Lower Schools are currently oversubscribed and this has resulted in children being driven further from their homes to school further away; the Free School would in effect reduce the number of car journeys. The proposed Park & Ride at Great Denham will also reduce the impact on the town centre and this should be taken into account.

Miss N Brown – interested person

39. Stated that she was fully supportive of the school which provides freedom of choice for parents. There is no reason why parents would not park, as directed, and allow their children to walk into school.

Mrs S Cornish - interested person

³ This document has not been submitted as evidence.

40. As a parent at the school, Mrs Cornish set out that she had not experienced any issues thus far. Children are being dropped and walking; parents are in no doubt that the head teacher will not tolerate cars stopping outside the school. As children get older there would be more use of public transport and walking. Parents are sending their children to the school to secure a good education and will do all they can to help it succeed.

Written Representations

41. There were no written representations submitted for this appeal.

Conditions and Unilateral Undertakings

Legal agreement

42. A Section 106 Agreement has been submitted by the appellant; this has been prepared in conjunction with the Council and includes financial contributions in respect of highway and transportation matters. Specifically it sets out the contributions to be made over a period of five years towards; traffic enforcement of parking, stopping and pick-up/drop off infringements; amendments to the existing Traffic Regulation Orders, signage and lining; and Travel Plan monitoring for 5 years. It also places liability on the school to fund the Council's costs to deal with Travel Plan breaches after the five year period.
43. Evidence is submitted⁴ to show the contributions sought and offered are fairly and reasonably related in scale and kind to the proposed development. That shows the costs of traffic enforcement officers have been agreed in accordance with the Council's standard charges. Also, provision would be made for further payments, should it be necessary, to continue or resume such employment beyond the agreed period. Works to the highway, Travel Plan monitoring, and enforcement, would mitigate any concerns regarding the generation of pick-up and drop-off activity. I consider the measures are necessary on highway safety grounds and the amount is fairly and reasonably related to the development. It would therefore be in accordance with Section 122 of the Community Infrastructure Levy Regulations and paragraph 204 of the Framework.
44. In the event that the Secretary of State allows the appeal, I consider that the Section 106 Agreement (Document 10) should be accepted.

Conditions

45. The conditions agreed by the parties are included in the SCG at appendix 2 (Document 3). A further two conditions concerning a noise management plan and occupation restriction were submitted and discussed at the Hearing (Documents 11 and 12). In the event that the Secretary of State allows the appeal I suggest the following considerations be given in respect of the suggested conditions. I have set out the appropriate conditions in Annex 1 to this Report.
46. Suggested condition 1 is necessary for the avoidance of doubt and in the interests of proper planning; condition 2 is not necessary given the change of use has already commenced; condition 3 concerning details contained in the amended travel plan is also necessary for the avoidance of doubt; condition 4

⁴ Appendix A of the Appellant's statement of case.

should be imposed to safeguard any archaeological assets, it should however be amended to reflect the fact the use has already begun using the Planning Inspectorate's model condition where details are required when retrospective planning permission is to be granted. In the interest of highway safety, condition 5 is needed. A scheme for car and cycle parking is required as per condition 6 and again for the purposes of highway safety it would also need amending to reflect the retrospective nature of the permission; an amendment would also be required to ensure the space is retained for 'parking only' and not used as a playground.

47. The retrospective modification would also be required in respect of Condition 7 which should require a review of the Travel Plan every school term for the first two years (as set out in the draft Travel Plan); that is to ensure the plan could be adapted as necessary following surveys of travel behaviour and for the purposes of reducing the impact of the development on the local highway network. Condition 8 is not necessary; there is no evidence that the noise that would emanate from the development, in an area of high background noise, would be harmful to the living conditions of those living nearby. Condition 9 restricts the number of pupils and staff to that considered for the change of use, it would be necessary to ensure there would be no adverse impact upon highway safety and the free flow of traffic.

Inspector's Conclusions

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

Agreed matters and considerations

48. The application is for *Change of use from education (Class D1c) as regulated by planning permission ref. 12/00275/MAF to school (Class D1); minor demolition works; refurbishment and external alterations, including new fenestration, landscaping, parking, play areas and boundary works* [3]. Matters about which there is no dispute [15]:

- The Council no longer wish to pursue the first reason for refusal.
- Following the submission of revised Transport Assessment, Travel Plan, Planning Statement and Design Introduction & Access Statement a verbal update and revised recommendation was given to the Planning Committee on 25 July 2012. The highway officer's recommendation was to approve the application subject to three conditions.
- Staff car parking could be monitored; student pick-up and drop-off could be accommodated within the Melbourne Street car park; the area outside the school is not suitable for any amount of stopping traffic and parking enforcement would be required; the costs could be secured by way of a Planning Obligation.
- The appeal site has been in education use since 2005, it has previous consent for 3000 square metres of educational accommodation for the sole use of Bedford College. The proposal would result in a significant reduction in on-site parking. Infrastructure provision for pedestrians and cyclists in the vicinity of the appeal site is of a good standard. The site is well served by public transport.
- The occupation of the appeal site would be phased with 200 pupils and 13 staff in Year 1 rising to 500 pupils and 50 staff by Year 4 (academic year 2015/16). Provision for access would be covered by a management strategy embedded within a Travel Plan. Such a plan to continue in force for as long as any part of the development would be occupied.
- The Framework supports sufficient choice in education. The Government's Policy Statement - *planning for schools development* confirms that creating Free Schools is one of the Government's flagship policies.
- Given the permanent lawful use (Class D1), the loss of the former office use is no longer a relevant planning consideration to the appeal. The proposed alterations would have no material impact on the appearance of the building. The proposal is not expected to adversely impact on neighbouring amenity. The proposed arrangements for off-site physical education would be acceptable.
- There are no concerns regarding landscaping, ecology, archaeology or arboriculture. The proposal would not increase the risk of flooding. Physical changes would not improve sustainability or energy efficiency of the building

although the re-use would preserve the embodied energy used in the original construction.

- There is no dispute regarding other considerations pertinent to the appeal and as set out in the appellant's statement [23, 24, 25, 27]. Namely, the principle of development in this location, the intention of the Free School to widen choice in education, the employment benefit, cycle spaces provision and landscaping.

Main Issue

49. It is accepted that the provision of the school and the impact of the proposed external alterations would be in accordance with local development plan and government policy; I see no reason to disagree with that view. Thus, having read the written submissions and listened to the evidence given at the Hearing, I consider the main issue to be determined in this appeal is; the effect of the proposal upon highway safety in the locality, by way of the traffic that would be generated at pick-up and drop-off times.

Findings

50. Policy BE30 of the BLP sets out the Council will have full regard to all material considerations and those include; any additional traffic expected to arise from the development, the extent to which the development is served by, and makes provision for, access by public transport, cycles and pedestrians; and the suitability of access arrangements to and within new development for all members of the community, including, pedestrians, cyclists and disabled people.
51. There is no dispute that the site is well served by public transport and access arrangements for all members of the community would be available. In addition the appellant points to a local highway network with a good safety record. Whilst that record does not include the proposed use, I was able to see a large number of school children, not from the Free School, walking alongside and crossing the gyratory; it is evident therefore that the safety record has come about when school children would have been going to and from other schools in the locality.
52. There can also be no doubt, from the evidence before me, and from what I observed during my site visits, that stopping traffic would create considerable delays on the gyratory at various times during the day; that would inevitably have a knock-on effect on the local highway network. That is reflected by the recent instruction from the Council to Bedford College that their coaches, used to transport students, could no longer wait on Cauldwell Street. The area outside the school is unsuitable for any parking or waiting [30].
53. I also accept that the figures put forward by the appellant in respect of the numbers of pupils that would arrive by car are open to interpretation; that is borne out by the variation in the two surveys of pupils undertaken by the appellant [31]. In addition the Council point to the nearby Bedford Girls School, which has a similar catchment area, and where the Travel Plan and Travel Survey show up to 32% of pupils travel by car. There is also little detail of the operation of, or demand for, the two-minibuses that are proposed by the appellant.
54. In addition to this it would be reasonable to assume that the onset of winter, earlier sunsets, and poorer weather would lead to more journeys by car. However, the Council no longer rely on their first reason for refusal of the

planning application; it seems to me if concerns regarding the traffic impact implications on the primary road system in the locality were severe, then that reason would still be relied upon. In addition arguments regarding the fact that there has been no traffic assessments at nearby junctions should be given little weight given the withdrawal of reason one. Furthermore, the Council have had ample opportunity to request such information given the number of meetings that have taken place between Officers and the appellant [15, 2nd bullet]. Moreover, the Council's Highway Officer stated at the Hearing that, in his view, there had been no adverse impact upon the highway network thus far; the gyratory system was operating quite reasonably with the school running at 40% of its predicted capacity.

55. Therefore the issue upon which to focus is as per the second reason for refusal. Namely, the generation of traffic dropping-off and picking-up on the one way gyratory system. The appellant avers that this could be overcome by putting systems in place as set out in a Travel Plan and making a financial contribution towards preventative measures and enforcement which is the subject of the submitted S106 Agreement.
56. I was able to see that some of those measures were already in place, and whilst my observations are only a snapshot in time, I observed pupils were walking and cycling to and from the school. Staff in high-viz jackets were present at the start and end of the day at road junctions/pedestrian crossings and the Melbourne Street car park. I also observed pupils being grouped together before using the pedestrian crossings. I saw no pupils of the Free School alighting from cars on the gyratory system. I did see pupils being dropped off and picked up from the Melbourne Street car park.
57. On a number of occasions, I observed passengers alight from stationary cars on the gyratory system, near to the school, and then enter into the college grounds. It is reasonable to assume, given the time of day, these were college students and/or staff. I also noted on one occasion a car parked in the street outside the taxi cab office that sits opposite the entrance to the college; I was able to see the driver come out of the office before driving away.
58. From these observations, and accepting that there will always be a minority who will persist in "doing their own thing", it appears the systems currently in place have been effective for users of the Free School. Furthermore they would be enhanced by proposed traffic enforcement measures that would be carried out by Council Traffic Enforcement Officers. In addition to this it is apparent that parents are aware of the potential traffic issues and the need to drop their children off, preferably at Melbourne Street Car Park, and for them to walk the remainder of the journey to school [40]. Whilst the school is not currently running at capacity it is evident that there is sufficient room at the car park to accommodate any future demand [16 – 3rd bullet]. I say that having considered the potential CPZ [33] and the recently permitted Park & Ride [38] but neither of these schemes have been delivered and I give them little weight.
59. The reported traffic incidents submitted at the Hearing (Document 9a) show that the school is responsive in dealing with parents that infringe the aims of the school's Travel Plan and there is potential for vehicles to stop on the gyratory. However, this has been recognised by both parties and the appellants have submitted the S106 Agreement, following discussions with Council Officers, to

address the situation and I suggest, that in the event that the appeal is allowed, the legal agreement be accepted (Document 10).

60. Moreover, the site currently benefits from planning permission (12/00275/MAF) for education (Class D1) use. The Council have sought to restrict this to the use of Bedford College by way of a condition. The appellant questions the validity of that condition and has submitted a copy of letter (Document 4) setting out a proposed claim for Judicial Review centred upon a Breach of Condition Notice that the Council has served upon the school in respect of the condition.
61. Matters concerning the previous permission, the Breach of Condition Notice and the condition itself [17] are not matters subject of this appeal; an appeal has not been made under s173 of the Act to remove the condition. Nevertheless, the current permitted use is a material consideration. The building was used by up to 800 students and 100 staff; more than that under the proposed use. The current planning permission would allow use by the College without restriction on staff numbers or students. It is reasonable to assume that were such a use to subsist then students would be dropped on the gyratory, as they are now, and that would be unlike the proposed use by the Free School; there would be no mechanism to control that activity.
62. Given that, it would also be reasonable to conclude that the proposed use, and the enforcement that would be carried out, could have a positive overall effect on the gyratory system. I say that as it is likely that users of the College would also be discouraged from stopping by the presence of Council Traffic Enforcement Officers carrying out duties in respect of the school use.
63. For these reasons I find the proposed use would not result in a significant generation of pick-up and drop-off activity and thus would not adversely affect the free flow of traffic on a primary route into the Town Centre or be detrimental to highway safety. It would not therefore be at conflict with Policy BE30 of the BLP. Moreover, Government policy as set out in the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. There is no evidence that the proposed use, for the reasons set out above, would have a severe impact in any event.

Other matters

64. I have also taken into account new residential developments close by [37] and accept that new homes have the potential to increase traffic upon the highway network. However, there are no details of those schemes and it is reasonable to assume any planning permissions would have been granted taking into account the effect on highway safety and local circumstances in any event.
65. I have also considered the concern regarding the noise emanating from the use of the playground (currently car park). Given the background noise in the locality and the operating times of the school any harm by way of noise would not be unacceptable. There is also some merit in the view [27] that as the children get older the noise would reduce. Also, the appellant's assertion that the complainant had been contacted and her concerns had been allayed was unchallenged.
66. Finally there is no reason to doubt the submission [37] that the school does not meet the space standards as set out in Building Bulletin 98: *Briefing Framework*

for Secondary School Projects. However, there is nothing before me to indicate that such standards are a statutory requirement or something that the Free School must comply with. Furthermore, the arrangements that would be made for off-site recreation are not in dispute and provision would be available for sport and recreation. The use would accord with the Government's policy statement and its commitment to ensure there is sufficient provision to meet growing demand for state-funded school places.

Recommendation

67. Accordingly, I recommend to the Secretary of State that the appeal be allowed and planning permission be granted subject to the conditions set out in the Annex to this report.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Dr C Riley	Capita Symons
Mr M Stevens MIHT	Milestone Transport Planning Ltd
Mrs K Charles BSc(Hons) DipTP	DTZ
MRTPI	
Mr O Spencer BA (Hons) MSc	Capita Symons
MRTPI	

FOR THE LOCAL PLANNING AUTHORITY:

Mr P White BA (Hons) MA DipTP	Bedford Borough Council
MRTPI	
Mr K Hegarty BE MENGSC CENG	Bedford Borough Council
MIEI MIHT	

INTERESTED PERSONS:

Cllr Mr D McMurdo	Bedford Borough Councillor
Mr G Wright	Interested party
Miss N Brown	Interested party
Susan Hills	Interested party
Mr T Holt	Interested party
Cllr Mrs C Fensome	Bedford Borough Councillor
Mrs S Cornish	Interested party

DOCUMENTS

- 1 List of persons attending the Hearing.
- 2 Email dated 24 September from the appellant concerning supplementary evidence.
- 3 Statement of Common Ground dated 21 September 2012.
- 4 Letter dated 14 September 2012 from Dickson Dees regarding potential judicial review proceedings.
- 5 Email from Council Officer dated 24 September 2012 concerning noise complaint.
- 6 Supplementary Evidence by M Stevens MIHT dated September 2012
- 7 Email from Susan Hills to the Council dated 21 September regarding noise from the school.
- 8 Copy letter from Naomi Brown to the Council dated 11 September 2012.
- 9 Supplementary Statement of Traffic Matters Since the Opening of the School.
- 9a Appendices to the supplementary statement.
- 10 Completed s106 agreement dated 25 September 2012.
- 11 Proposed Occupation Restriction Condition.
- 12 Proposed Noise Condition.
- 13 Agreed Schedule of Drawings.

Annex

Recommended conditions in the event that planning permission is granted,

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 00-CS-ZZZ-DWG-AR-BKS P01, P02, P03A, P04A, P05, P06, P07, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P60A, P61, P62, P63, P64, P65, P66, P67, P68, P69 and P70.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans as amended by the Travel Plan dated June 2012 confirming no buses to use Melbourne Street and mini buses to enter the school site.
- 3) Any vehicular access gates provided shall open away from the highway and be set back a distance of at least 13m from the nearside edge of the carriageway of the adjoining highway.
- 4) No groundwork, except for the installation of bolt-down cycle racks, shall take place on the land and, the use hereby permitted, shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within six months of the date of failure to meet any one of the requirements set out in (i) to (vi) below: -
 - (i) within 3 months of the date of this decision an archaeological mitigation scheme shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation and the following components; fieldwork and/or preservation "in situ" of archaeological remains; a post-excavation assessment report (to be submitted within six months of completion of fieldwork); a post-excavation analysis report; preparation of site archive ready for deposition at a store approved by the local planning authority; completion of an archive report; and submission of a publication report (to be completed within two years of the completion of fieldwork).
 - (ii) within 3 months of the date of this decision a scheme for car and cycle parking within the site shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The space shall thereafter be kept available for car parking only unless otherwise approved in writing by the local planning authority.
 - (iii) within 2 months of the date of this decision a detailed Travel Plan (with staff and student survey) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The Travel Plan shall be in accordance with the DfT's "Good Practice Guidelines: Delivering travel plans through the planning stem" and include; a baseline survey of site occupants (staff and students) to be undertaken within 3 months of the first occupation; details and results of the school related monitoring/surveys undertaken since first occupation; details of the measures taken/to be taken to minimise private car use and facilitate walking, cycling and the use of public transport base on the results of the baseline surveys; details of the site specific marketing and publicity information that has been prepared for the school; details of the SMART travel plan targets with relevant target dates (revised from the

June 2012 travel plan). The SMART targets will form the basis for the travel plan review assessment; a detailed Action Plan (based on actual travel survey results) to include specific timetabled measures designed to promote travel choice; detailed proposed plans/methods to monitor and undertake reviews of the travel plan and its targets for a period of 5 years, those reviews to be carried out each school term for the first two years and annually thereafter; details of any financial contributions to the local authority which are assigned to additional physical or management measures to address any shortfall in the SMART targets which have been set. The Travel Plan shall be implemented in accordance with the Action Plan and timetable contained therein and shall continue in force for as long as any part of the development is occupied.

- (iv) if within 11 months of the date of this decision the local planning authority refuse to approve any of the schemes or fail to give decisions within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (v) if an appeal is made in pursuance of (iv) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (vi) the approved schemes shall have been carried out and completed in accordance with the approved timetable.
- 5) The use of the site hereby approved shall be limited to a total on site occupation of no more than 500 pupils and 50 full time equivalent staff at any one time unless otherwise agreed in writing with the local planning authority.



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.