



Department for
Communities and
Local Government

Mrs Tamsin Cottle
JLL Ltd, City East Gate
Tollhouse Hill
Nottingham NG1 5FS

Our Ref: APP/P4605/W/15/3141154

30 November 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR LIAM NOLAN, PERRY BEECHES ACADEMY TRUST
AT COLSTON HEALTH CENTRE, 10 BATH ROW, BIRMINGHAM
APPLICATION REF: 2015/04556/PA**

1. I am directed by the Secretary of State for Communities and Local Government to say that consideration has been given to the report of the Inspector, R C Kirby BA (Hons) DipTP MRTPI who held a hearing on 15 March 2016 into your client's appeal against the refusal of Birmingham City Council ("the Council") to grant planning permission for a proposed primary school at Bath Row, Birmingham in accordance with application reference 2015/04556/PA, dated 4 June 2015. Due to the demolition of the Colston Health Centre that previously occupied the site, the parties agreed at the hearing that the development is best described as; the erection of a 700 place primary school in a part 5 storey and part 2 storey building with associated external works including a roof top play area.
2. On 30 March 2016, the Secretary of State recovered the appeal for his own determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because it involves a proposal for development of major importance having more than local significance.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation except as noted below, allows the appeal and grants planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy and Statutory Considerations

4. 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 Birmingham Urban Development Plan 2005 (UDP).
5. The emerging Birmingham Development Plan (BDP) has been examined and the interim findings published. The Inspector found that the BDP policy of most relevance to the appeal is TP35 concerning education and the parties were in agreement that this should be given considerable weight. Although the BDP was previously subject to a direction made by the Secretary of State under section 21A of the Planning and Compulsory Purchase Act 2004 on 26 May 2016, preventing the Council from adopting the plan, this has since been withdrawn which will enable the Council to adopt the BDP should they choose to do so. Having considered paragraph 216 of the Framework, the Secretary of State attaches great weight to the relevant policies in the emerging plan, given its advanced stage and overall consistency with the Framework.
6. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* March 2012 ('the Framework') and the planning practice guidance first published in March 2014 ('the Guidance') and a Ministerial Statement Planning for School Development published in August 2011; section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as well as the Council's Supplementary Planning Document on Car Parking Guidelines, adopted in February 2012.

Procedural Matters

7. On 7 September 2016 the Secretary of State wrote to the main parties requesting views on the implications of the Secretary of State's direction of 26 May 2016 then in force for the BDP. However, since receiving responses the direction has been lifted on 24 November 2016 and therefore the Secretary of State is satisfied that no interests have thereby been prejudiced.
8. As the responses were copied to the parties, the Secretary of State does not find it necessary to reproduce them here. Copies of the responses may be obtained on written request to the address at the foot of the first page of this letter.

Main Issues

9. The Secretary of State agrees that the main issues in this case are those identified by the Inspector at IR84.

Character and appearance

10. The Secretary of State has given careful consideration to the Inspector's analysis of the scheme's impacts on the character and appearance of the area, including the ensuing tree removal at the time of the demolition of the health centre which occupied the site (IR85-90). For the reasons given the Secretary of State agrees with the Inspector that the proposal would not be harmful to the character and appearance of the area and that there would be no conflict with the environmental quality and landscaping objectives of Paragraphs 3.8, 3.10, 3.14 and 3.16A of the UDP (IR90).

Highway safety

11. The Inspector's assessment states both that the site is well served by public transport (IR92) but also that the area is likely to have more residential and other development in future which could place additional demands on on-street parking in the area (IR98). He also concludes that it would be unlikely that staff employed at the school would place a demand on the parking provision in the area (IR93), that servicing and delivery times could be controlled by way of planning condition (IR94) also considering the impact of the peak times when the pressure for parking spaces would be at its highest (IR95-96). Therefore, taking into account all these factors, for the reasons given at IR91-99, the Secretary of State agrees with the Inspector at IR100 that the proposal would not be harmful to highway safety and that the residual cumulative impacts of the proposal on highway safety would not be severe. He therefore agrees that there would be no conflict with the safety objectives of Paragraph 6.39 of the UDP, emerging Policy TP35 of the BDP or the Framework.

Living conditions

12. The Secretary of State has also given careful consideration to the Inspector's analysis of the effect on living conditions for the occupiers of nearby properties (IR101-107). He agrees that the noise and disturbance that would result from children playing outside the school and the coming and going of parents and children to it and from proposed plant and equipment would not be so significant or to a degree that would be harmful to the living conditions of occupiers of nearby residential properties (IR107). He therefore concludes that there would be no conflict with Paragraphs 3.8 and 3.10 of the UDP, emerging Policy TP35 of the BDP or with the Framework.

Other matters

Need for the school and suitability of the site

13. For the reasons given at IR108 the Secretary of State agrees that planning policies do not require need to be demonstrated, and the matter has therefore not been a determining factor in this case. The Secretary of State agrees with the reasons set out by the Inspector at IR109 and attaches limited weight to the matters raised regarding the suitability of the site.

Design of building

14. For the reasons set out at IR110-111 the Secretary of State agrees that the proposal would reflect the character and appearance of the area, and that harm would not be caused as a result.

Congestion/Suitability of the road junction

15. For the reasons given at IR112-113 the Secretary of State gives limited weight to associated congestion and the suitability of the Bath Row and Cregoe Street junction.

Size of play space

16. For the reasons set out at IR114 the Secretary of State agrees that it has not been demonstrated that the proposed play area would be unsuitable for the proposed school.

Litter/vandalism

17. The Secretary of State agrees with the Inspector for the reasons given at IR115 that limited weight should be attached to the issues of increased litter and vandalism.

Effect on Heritage Assets

18. The Secretary of State has given consideration to the Inspector's assessment of the effect of the proposal on the remains of St Thomas's Church, a grade II listed building (IR116-118). He agrees with the Inspector on this matter, that there would be no adverse impact on the setting of this important heritage asset (IR118). He therefore concludes, as does the Inspector, that the proposal does not conflict with either the Framework or the Planning

(Listed Buildings and Conservation Areas) Act 1990 (IR118) and therefore attaches limited weight to this matter.

Conditions

19. The Secretary of State has given consideration to the Inspector's analysis at IR80-83, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector and set out at Annex A to this letter, comply with the policy test set out at paragraph 206 of the Framework.

Planning balance and conclusion

20. 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. For the reasons given above, the Secretary of State considers that the appeal is in accordance with the development plan overall. He has gone on to consider whether there are any material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State concludes that the proposal would not be harmful to the character and appearance of the area, and that the residual cumulative impacts on highway safety would not be severe. He finds that noise and disturbance resulting from the proposal would not be so significant, or to a degree that would be harmful to the living conditions of occupiers of nearby residential properties. He gives only limited weight against the proposal to congestion and the suitability of the junction; and to a possible increase in litter and vandalism. He therefore concludes that there are no material considerations which indicate that this proposal should be determined otherwise than in accordance with the development plan.

Formal Decision

21. 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 erection of a 700 place primary school in a part 5 storey and part 2 storey building with associated external works including a roof top play area at Bath Row, Birmingham, in accordance with application reference 2015/04556/PA, dated 4 June 2015, subject to the conditions set out at Annex A.
22. 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.
23. 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

24. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
25. A copy of this letter has been sent to Birmingham City Council, with notifications sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Conditions

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 following approved plans:

15002-A101 rev P5 -Proposed ground floor plan; 15002-A102 rev P5 -Proposed first floor plan; 15002-A103 rev P10- Proposed second floor plan, 15002-A104 rev P5 -Proposed third floor plan; 15002-A106 rev P1-Proposed location plan; 15002-A107 rev P3, Proposed tree removal plan; 15002-A108 rev P2-Proposed Roof Plan; 15002-A205 rev P2 -Proposed North elevation; 15002-A206 rev P2 -Proposed East elevation; 15002-A207 rev P2 - Proposed South elevation; 15002-A208 rev P2 - Proposed West elevation; EC1234-101 - Drainage Strategy; 15098-SK-M-001- Flues and ventilation extraction concept drawing; 15098-SK-M-002 - First Floor Flues and ventilation extraction concept drawing; 15098-SK-M-003 rev A, Second floor flues and ventilation extraction concept drawing; 15098-SK-M-004 - Third floor flues and ventilation extraction concept drawing; 15098-SK-M-005 - Roof level flues and ventilation extraction concept drawing; 15098 – SK-E 001- External Lighting Concept Drawing.

3) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for -

- the parking of vehicles of site operatives and visitors
- maintenance of access to Perry Beeches III and its existing school staff car parking
- loading and unloading of plant and materials
- storage of plant and materials used in constructing the development
- construction hours
- delivery routeing
- wheel washing facilities
- measures to control the emission of dust and dirt during construction

The development shall be implemented in accordance with the approved details.

4) No development shall take place until a package of highway measures have been agreed with the Local Planning Authority. The package of measures shall include alterations to footway crossing on Cregoe Street to provide suitable vehicle access to the redesigned car parking space, school signage and markings on Bath Row and Cregoe Street, measures in the footway to prevent parking on the adjacent footways such as bollards and planting, associated Traffic Regulation Orders for school keep clear markings and recommended alterations to Sutton Street TRO to allow short stay parking at the school start and finish time. The development shall not be occupied until all such measures have been substantially completed in accordance with the approved details.

5) The existing tree on the Cregoe Street frontage and the screen planting on the southern boundary of the site shall be retained and shall not be uprooted, felled, lopped, topped, or cut back in any way until a scheme for such works has been submitted to and approved in writing by the Local Planning Authority. If the retained trees and shrubs are damaged during construction works they shall be replaced with plants/trees of the same size and species in the same location during the next available planting season.

6) No development shall take place unless measures for protecting the trees and hedges which are to be retained on site, as shown on the approved plans (apart from Tree T21), have been submitted to and agreed in writing by the Local Planning Authority. All tree protection

measures shall accord with BS5837:2005 Trees in Relation to Construction and shall include establishing a Root Protection Area (RPA) around each tree and hedge and enclosing all RPAs suitable fencing. No equipment, machinery or materials shall be brought on to the site until the agreed tree/hedge protection measures are in place nor shall anything be stored or placed within the RPAs. The protective fencing shall be maintained for the full duration of development and shall not be removed or re-positioned.

7) No development shall take place until details of earthworks and any retaining works or features have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas, and shall include the finished levels, the relationship of proposed mounding to existing vegetation and surrounding landform and the appearance, height and materials of any retaining features required. Development shall be implemented in accordance with the approved details and thereafter maintained. The works shall be implemented prior to occupation of any part of the development.

8) No development shall take place until a Sustainable Drainage Assessment (including drainage plans, detailed design, hydrological and hydro-geological assessment) using appropriate sustainable drainage principles and a Sustainable Drainage Operation and Maintenance Plan (including details of agreement with an adopting body and proposed inspection and maintenance actions) has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved Sustainable Drainage Assessment prior to the use of the building and shall be maintained thereafter for the lifetime of the development in accordance with the Sustainable Drainage Operation and Maintenance Plan.

9) No development shall take place, apart from ground works, until samples of materials to be used in the construction of the external surfaces of the building hereby approved have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

10) No development shall take place, apart from ground works, until details of the materials to be used for hard and paved surfacing have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and thereafter maintained.

11) No development shall take place, apart from ground works, until detailed drawings of the proposed external doors and windows illustrating materials, finish, fenestration profiles, lintels and reveals have been submitted to and approved in writing by the Local Planning Authority. The doors and windows shall be constructed and installed in accordance with the approved details and thereafter maintained.

12) Prior to any installation, full details of the proposed boundary treatment for the site shall be submitted to and approved in writing by the Local Planning Authority. These details shall include plans showing the locations of existing retained and proposed new boundary treatments and shall indicate the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented before first occupation of the school hereby permitted and shall be retained thereafter.

13) Prior to the first occupation of the development, a verification report demonstrating completion of the works set out in the Remediation Strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring and shall include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The works shall be carried out as approved.

14) Prior to the first occupation of the development, and notwithstanding the details shown on drawing ref. 15002-1500-P7, further details of hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall include proposals for the replacement of tree T21, proposed and existing functional services above and below ground, fully annotated planting plans including planting schedules, noting species, plant sizes and proposed numbers and details of the proposed planting implementation programme. These works shall be carried out as approved. The works shall be implemented prior to the first occupation of the development, or in accordance with the planting programme agreed with the Local Planning Authority and thereafter maintained. Any trees or shrubs which, within a period of two years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.

15) Prior to the first occupation of the development, a landscape management and maintenance plan, including long term design objectives, management responsibilities and maintenance operations for all landscaped areas, shall be submitted to and approved by the Local Planning Authority. The landscape management plan shall cover a minimum period of 5 years and be implemented in accordance with the approved details.

16) Prior to the first occupation of the development, the roof top plant and machinery shall be enclosed with sound insulating material and mounted in a way that will minimise transmission of structure borne sound, in accordance with details to be submitted and approved in writing by the Local Planning Authority. The sound insulation shall thereafter be retained and maintained.

17) The rating levels for cumulative noise from all plant and machinery shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing LAeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.

18) The school premises shall only be open between the hours of 07.30 - 18.00 Mondays to Fridays.

19) The external school play areas shall only be used between the hours of 08.00 and 18.00 Mondays to Fridays.

20) Prior to the first occupation of the development, a scheme for the provision of a network of closed circuit television cameras (CCTV), including the proposed location of the cameras, mounting columns, proposals for the use and management of the system and its installation shall be submitted to and approved in writing by the Local Planning Authority. The CCTV system shall be installed in accordance with the approved details prior to first occupation of the building and shall thereafter be maintained.

21) Prior to the first occupation of the development, details of the proposed bin storage area including the design, height, materials and proposed finishes shall be submitted and approved in writing by the Local Planning Authority. The bin storage area shall be installed in accordance with the approved details prior to first occupation of the building and shall thereafter be maintained.

22) Prior to the first occupation of the development, an Ecological Enhancement Strategy for the site based on the recommendations contained in the submitted Preliminary Ecological Assessment ref RT-MME-18755-01 shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.

23) Prior to the first occupation of the development, details of the provision for secure and covered storage for cycles and motorcycles shall be submitted to and approved in writing by the

Local Planning Authority. Provision shall thereafter be implemented and maintained in accordance with the approved details.

24) Prior to the first occupation of the development, a detailed School Travel Plan including proposals for staff parking, shall be submitted to and be approved in writing by the Local Planning Authority. This should include clear objectives to influence and encourage reduced dependency on the private car with a package of measures to meet this objective. The plan shall be reviewed within 3 months of the school being opened and on an anniversary basis as the school expands to full capacity. The review findings and any variations or improvements required, shall be submitted to and agreed in writing by the Local Planning Authority. The plan and any subsequent amendments shall be implemented in accordance with the approved details.

25) The development hereby permitted shall not be occupied until a strategy for the management of the disabled parking space, to ensure that it is only occupied by authorised persons, has been submitted to and approved in writing by the Local Planning Authority. The disabled parking bay shall thereafter only be operated in accordance with the approved strategy.

26) The development hereby permitted shall not be occupied until a strategy for servicing and deliveries to and from the site has been submitted to and approved in writing by the Local Planning Authority. The servicing and deliveries to and from the site shall be undertaken in accordance with the approved details.

27) The development hereby permitted shall not be occupied until details of the proposed canopies and internal fencing to be erected within the site have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

28) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (England) (as amended), (or any Order revoking or re-enacting that Order with or without modification), the building hereby approved shall be used as a school and for no other purpose.

Report to the Secretary of State for Communities and Local Government

by R C Kirby BA (Hons) DipTP MRTPI

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

Date: 16 June 2016

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY MR LIAM NOLAN, PERRY BEECHES ACADEMY TRUST

BIRMINGHAM CITY COUNCIL

Hearing held on 15 March 2016

Colston Health Centre, 10 Bath Row, Birmingham B15 1LZ

File Ref: APP/P4605/W/15/3141154

File Ref: APP/P4605/W/15/3141154

Colston Health Centre, 10 Bath Row, Birmingham B15 1LZ

- 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 Mr Liam Nolan, Perry Beeches Academy Trust against the decision of Birmingham City Council.
- The application Ref 2015/04556/PA, dated 4 June 2015, was refused by notice dated 2 October 2015.
- The development proposed is described as demolition of existing health centre and the erection of a 5 storey primary school and associated external works.

Summary of Recommendation: The appeal be allowed and planning permission granted subject to conditions.

Procedural Matters

1. This appeal was recovered for decision by the Secretary of State for Communities and Local Government, by letter dated 30 March 2015. This is because the appeal involves a proposal for development of major importance having more than local significance.
2. The description of development in the banner heading has been taken from the application form. However, it was agreed between the parties at the Hearing, that as the health centre has been demolished, the following description best describes the appeal proposal: 'erection of a 700 place primary school in a part 5 storey and part 2 storey building with associated external works including a roof top play area'. It is on this basis that I have approached the appeal.
3. During the course of the appeal a Statement of Common Ground (SoCG) was agreed between the main parties. Although reference on the front cover was made to 'Draft', both parties agreed at the Hearing that this was included in error. I have therefore treated the submitted SoCG as an agreed statement.
4. The Council has indicated in its evidence that it wishes to withdraw its reasons for refusal 3 and 5 relating to the outdoor sport and recreation facilities, and the safety of the roof top play area. The appellant has been made aware of this and these matters have not formed part of my consideration of the appeal proposal.

The Site and Surroundings

5. The appeal site is 0.29 hectare and is located on the southern side of Bath Row, where the road forms a cross road with Cregoe Street and Grosvenor Street. It has frontages to Bath Row and Cregoe Street. The site was previously occupied by Colston Health Centre which was a part two storey, part single storey building, set back from the road frontages behind a number of well established trees. The Health Centre was demolished in August 2015, and the site cleared, apart from a single tree which was retained on the Cregoe Street frontage, and a row of trees and shrubs along the southern site boundary. The site is now enclosed by hoardings.
6. Adjoining the appeal site to the east is the Holloway Head playing fields. To the south of the site beyond the retained trees and shrubs is a development of elderly persons' bungalows. Opposite the site in Cregoe Street is Perry

Beeches III secondary school, and on Bath Row, opposite the appeal site are the Peace Gardens, within which are the remains of St Thomas's Church, a grade II listed building.

7. Aside from the existing school, the surroundings of the appeal site comprise a mix of residential and commercial properties, including retail premises, offices and apartments fronting Bath Row, and single, 2 and 3 storey dwellings fronting Cregoe Street.

Planning Policy

Development Plan

8. 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.
9. The development plan comprises the saved policies of the Birmingham Plan, Birmingham Unitary Development Plan 2005 (UDP). The Council's environment strategy is set out in Paragraph 3.8 of the UDP. This strategy is based on the principles of protecting and enhancing what is good in the City's environment and improving what is less good; and recognising the key relationship between environmental quality and levels of economic activity. In support of this, paragraph 3.10 states that proposals will not normally be allowed where there would be an adverse effect on the quality of the built environment.
10. An objective of paragraph 3.14 of the UDP is that design should be of a high standard with both the design and landscaping of new developments expected to contribute to the enhancement of the City's environment. The UDP sets out good urban design principles in paragraph 3.14D and sets out a list of criteria used to assess development proposals, including, amongst other matters, the impact of a scheme on the local character of the area; landscaping of the site and the retention of mature trees. The importance of trees is reiterated in paragraph 3.16A of the UDP. This policy recognises that trees are important for their visual amenity, health benefits, historical significance and nature conservation value. The objective of this policy is for priority to be given to the retention of trees upon development sites and where trees are removed they will be required to be replaced.
11. Paragraph 3.14E of the UDP establishes that development should be designed to minimise reliance on the private car and encourage walking, cycling and the use of public transport. Paragraph 6.39 of the UDP sets out matters which will be taken into consideration, on roads not part of the strategic highway network, including environmental impact, safety and pedestrian and cyclist needs.
12. Paragraph 4.55 of the UDP seeks to encourage opportunities for research, education and training. Where proposals accord with other policies and proposals set out in the UDP, improvement and expansion of such facilities will be encouraged.
13. Although not yet adopted by the Council, the emerging Birmingham Development Plan (BDP) has been examined and the Interim Findings

published and Proposed Main Modifications (PMM) issued. Following a public consultation exercise in respect of the PMM, the Council was advised that no further consultation or further Examination Hearings were necessary. At the Hearing I was advised that it is the Council's intention to adopt the BDP after the end of May 2016.

14. There is no dispute between the main parties that the relevant policy of the BDP is Policy TP35 and that considerable weight should be given to this. This policy recognises the importance of high quality education provision to assist in the delivery of the Council's growth agenda. Amongst other matters, the policy requires proposals for new education facilities to have safe access by cycle and walking, as well as by car. It requires that a school travel plan is submitted and that there should be safe drop-off and pick-up provision.

Other documents

15. Within its evidence the Council made reference to 2 supplementary planning guidance documents (SPD)¹. Objectives of these documents were, amongst other matters, to provide a tree lined boulevard along Bath Row and provide tree planting along each street, as well as improving Holloway Head playing field. The Council confirmed at the Hearing that both documents have been revoked. Whilst they provide a background into the redevelopment of the area, I have attached limited weight to them in my consideration of the appeal proposal.
16. The Council has adopted its Car Parking Guidelines as SPD. This document sets out maximum parking standards for new development throughout the City.

National Planning Policy

17. Government guidance set out in the National Planning Policy Framework (the Framework) states that development proposals should be approved without delay where they accord with the development plan.
18. Paragraph 72 of the Framework states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. 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 and work with school promoters to identify and resolve key planning issues before applications are submitted.
19. The core planning principles of the Framework are set out in paragraph 17. Of particular relevance to the appeal proposal are: the account that should be taken of and support given to local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs; the securing of high quality design and a good standard of amenity for all existing and future occupants of land and buildings; the account that should be taken of the different roles and character

¹ 'The Central Area Estates Development Framework' and 'The Bath Row and Holloway Head Development Framework Supplementary Planning Guidance'.

of different areas; the support that should be given to the transition to a low carbon future; the enhancement and improvement of the places in which people live their lives; the conservation and enhancement of the natural environment; the encouragement of the effective use of land by reusing land that has been previously developed; the conservation of heritage assets in a manner appropriate to their significance, and the management of patterns of growth making the fullest possible use of public transport, walking and cycling, focussing significant development in locations which are or can be made sustainable.

20. Paragraph 32 of the Framework requires that a safe and suitable access to the site is achieved for all people. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
21. A Ministerial Statement issued in 2011 (Policy Statement – Planning for Schools Development), is also highly relevant in this case. It states that it is the Government's view that the creation and development of state funded schools is strongly in the national interest and that planning decision makers can and should support that objective in a manner consistent with their statutory obligations. This includes academy schools like the one before me. It also advises that the answer to proposals for the development of state-funded schools should be, wherever possible, yes.

Planning History

22. Planning permission was granted for the health centre on the site in 1987. In August 2015, prior approval was granted by the Council for the demolition of the health centre. As part of this application the trees along the Bath Row and Cregoe Street frontages were shown for removal, apart from one tree on the Cregoe Street frontage.
23. On the opposite side of Cregoe Street, planning permission was granted in July 2013 for a change of use from offices (Use Class B1(a) to a 620 place school (Class D1) and construction of an associated multi purpose games area. This permission has been implemented and the site is occupied by Perry Beeches III, a secondary school.
24. To the east of the appeal site on the Holloway Head playing fields, planning permission was granted in September 2014 for the reinstatement of the existing playing fields, formation of new access from Sutton Street, widening existing access onto Cregoe Street, car parking and lighting, refurbishment of existing changing rooms and partial demolition of former caretaker's house.

The Proposal

25. The appeal proposal is for the construction of a 700 place primary school. The building would be 5 storeys to Bath Row, with 4 storeys of accommodation and plant and equipment above, and 2 storeys to the rear, constructed of brick with curtain walling and powder coated metal cladding. Outdoor play space would be provided on the roof space of the 2 storey element of the building, and within the grounds. The site would be enclosed by railings on the Bath Row frontage and a fence along Cregoe Street. New landscaping would be provided within the site and along the road frontages.

26. One car parking space is proposed, which would be accessed from Cregoe Street. Pedestrian access into the building would be from Bath Row and from the corner of Bath Row with Cregoe Street. The appellant has indicated that there would be a staggered intake of pupils, with an initial intake of 200, rising to 700 in 3 years. When the school is fully occupied, it is intended that there would be 62 staff working at the school, comprising 28 teachers, 20 teaching assistants and 14 administrative/auxiliary staff. The school would operate between the hours of 07.30 and 18.00 and offer a breakfast and after school club within these times.

Other Agreed Facts

27. As part of the submission of the planning application several supporting documents were submitted including: a Design and Access Statement; a Preliminary Ground Investigation and Test Report by GIP Ltd; an Environmental Noise Assessment by HRS Services Limited; a Preliminary Ecological Assessment by Middlemarch Environmental; a School Travel Plan dated June 2015, and a Transport Assessment by Phil Jones Associates.

The Case for the Appellant

Statement of case for the appellant prepared by JLL Ltd, and oral evidence of Mr Peter Leaver, Miss Ravinder Bains, Mr Chris Stack, Mr Nigel Millington, Mrs Louise Caller, Mr Simon Knott, Mr Jerry Ludlow and Mr John MacDonald.

Effect of the scheme on the character and appearance of the area, particularly with regard to loss of trees and proposed landscaping

28. The trees that the Council refer to within its decision notice as being of high visual amenity were not protected by a Tree Preservation Order (TPO) and were shown for removal on the application for prior approval of the health centre. Pre-application discussion in respect of the new school was entered into and the new building was sited close to the back edge of the pavement on Bath Row to reflect the character and appearance of the area. As a result of the design approach adopted, the trees were shown for removal along Bath Row and Cregoe Street. Had the Council considered that the trees were of importance it could have issued a TPO to protect them. The Council chose not to take this course of action.
29. A landscaping strategy was submitted with the planning application showing one tree along Cregoe Street to be retained, as well as those along the rear boundary of the site. Furthermore, the proposal would provide 9 large trees, 26 small trees, 48 shrubs and 109 plants. Six new trees would be provided along Cregoe Street and 3 would be provided along the southern boundary to supplement the existing landscaping in this area.
30. The appellant recognises that Bath Row is not a tree lined boulevard; however, he has indicated that he would be prepared to plant new trees upon highway land in Bath Row to address the Council's concerns about the loss of trees on the site. However, at this stage, survey work in respect of service runs has not been undertaken. There is therefore no certainty that new trees could be planted within the ground, but if this was not possible, trees could be placed within planters in Bath Row.

31. An alternative solution would be to set the building further back from Bath Row to allow planting to the front of it. This is something that the Council has not encouraged, because of the character and appearance of the area. Furthermore, this approach would also take the building closer to residential properties and would result in less outdoor space to the rear of the building.
32. It is recognised that UDP policies seek to reflect environmental quality, however, they also require new development to reflect the surrounding built environment, so a balance does need to be made. The Council could control the species of plants and trees by way of a planning condition concerning landscaping.

The effect of the proposal on highway safety, having particular regard to staff car parking provision, servicing, and drop-off and pick-up provision

Staff car parking

33. Reference is drawn to paragraph 32 of the Framework, to paragraph 6.39 of the UDP and Policy TP35 within the emerging BDP.
34. Although the Council refused the planning application on highway safety grounds, the highway officer had no objection to the proposal, subject to a package of highway measures being provided, including alterations to the footway crossing on Cregoe Street, school signage, markings on Bath Row and Cregoe Street, measures taken in the footway to prevent car parking and to make provision for short stay parking on Sutton Street. The appellant is happy to agree to this package of measures. Matters such as cycle storage spaces, a school travel plan and measures to be taken during the construction of the building could be controlled by planning conditions.
35. The scope of the submitted Transport Assessment was agreed with the Council prior to submission. In terms of car parking provision, the Council's Car Parking Guidelines SPD requires places of higher and further education and schools in Area One, within which the appeal site is located, to provide 1 space per 4 staff. This is a maximum standard.
36. It is proposed that there would be 20 staff initially when the school opens, increasing to 62 when the pupil numbers reach 700. Staff car parking has been arranged at the National Indoor Arena (NIA) and Singers Hill Synagogue. A minibus will be provided at 07.30, 16.30 and 18.00 as part of a park and ride scheme. This matter could be controlled by a planning condition relating to a travel plan.
37. As a result of the parking restrictions in the area, which prevent long term parking, none of the staff at the adjacent Perry Beeches III school park within the surrounding roads. It is likely that future staff at the new school would not park in the road either. The area is regularly patrolled by the Council and existing parking restrictions are enforced.

Servicing

38. It is anticipated that servicing would be coordinated with Perry Beeches III. There would be no increase in the size of vehicles servicing this school and the frequency of deliveries would be the same. A combined delivery would be of benefit to the environment as it would reduce the amount of deliveries which

would otherwise be generated. Deliveries for both schools would be taken at Perry Beeches III, and then caged trolleys would be used to wheel the goods across Cregoe Street to the new school. Food and other deliveries to the schools are usually outside of peak hours.

39. There is capacity at Perry Beeches III to accommodate the new school's bins on collection day. The Council's highway officer raised no concerns in respect of the proposed servicing arrangements.

Drop-off and pick-up arrangements

40. It is intended that the catchment area of the new school would be localised, serving the needs of the resident population living within walking distance of it. The main pedestrian access into the site would be from Cregoe Street, through secure gates which parents could access to drop off and collect their children. Older pupils would access the site from Bath Row through secure gates, where there would also be a waiting area for parents.
41. Using mode share information for 2 local, city centre schools, the submitted Transport Assessment (TA) identified that when the school initially opens with 200 pupils, there would be up to 42 vehicle trips by car or taxi, rising to 143 trips when the school was fully occupied. However, the TA states that these figures are likely to be lower given the number of households within 1 kilometre of the school site that do not have access to a car (56% of households), as well as the number of primary school age and pre-school age children living within this area (1,430) who could walk to the school. Furthermore, there are likely to be linked trips between the new school and the adjacent secondary school, thereby only 1 trip would be generated, rather than 2.
42. For those future pupils that lived further away from the school, sustainable transport modes could be used. There are bus stops in Bath Row to the front of the site which is served by 3 bus services, operating every 20 minutes during the day. Five Ways station is 0.6 kilometres distant (calculated as an 8 minute walk or 4 minute cycle), and Birmingham New Street station is 0.8 kilometres distant (10 minute walk or 3 minute cycle).
43. For those parents that would drive to the school, the Technical Note submitted by Phil Jones Associates identified that within 0.5 kilometre of the site there was parking capacity for 314 vehicles, of which 178 of these spaces are free of charge. A parking beat survey was undertaken which identified that the minimum spare capacity of free of charge parking spaces within the vicinity of the site for potential future parent drop off was 75 vehicles in the AM peak and 44 vehicles in the PM peak. The survey states that the PM peak number of spaces was likely to have been affected by contractor parking on the day of the survey, associated with the clearance of the appeal site, and the fact that enrichment after school lessons had been temporarily suspended at the Perry Beeches III school.
44. The school day would be from 08.30 until 15.30. It would operate a breakfast club from 07.30 and an after school club until 18.00. As such, it is unlikely that all of the intended pupils would be arriving and leaving the school at the same time. The predicted profile of arrivals at the new school indicates that a maximum accumulation of 56 vehicles may occur, based on parents staying in

the area for 15 minutes (dwell time) or 29 vehicles based on a 10 minute dwell time. Although no predictions were made for the PM peak, it is assumed that given after school activities and clubs the pick up of pupils would be likely to be spread out similar to the AM peak drop off.

45. With the amendment of the traffic regulation order, as proposed on Sutton Street, there would be sufficient available car parking spaces within the vicinity of the site to accommodate the estimated traffic associated with the dropping off and picking up of children at the new school.

The effect of the proposal on living conditions of occupiers of nearby dwellings, having particular regard to traffic, noise and disturbance

46. The southern boundary of the site lies adjacent to four rows of elderly persons' bungalows that face towards the appeal site. The bungalows are set at a lower level fronting a footpath, behind the site's boundary fence and existing landscaping.
47. The scheme has been designed to locate the building away from the residential properties and to step the building down to 2 storeys closest to these dwellings. The existing boundary treatment along the southern boundary would be retained and supplemented. The building would be located 12 metres from the boundary and no windows are proposed in this end of the building. A separation distance of 19.7 metres would be provided with the rear of the new building and the front elevation of the nearest bungalows. At its closest, the roof top play area would be 18 metres from the boundary and 25.7 metres from the front of the bungalows. There would be no undue overlooking of the bungalows from the scheme.
48. The design of the building and separation distance from the bungalows would ensure that there would be no overbearing impact on the outlook from the bungalows and the Council does not raise this as a concern.
49. In terms of noise and disturbance there are several possible sources of noise, including that from air conditioning plant, which could be soundproofed and controlled by planning condition; noise from pupils playing within the outdoor spaces and noise within the area from children and parents arriving and leaving school.
50. The hours of use of the outdoor play areas would be Monday-Friday between 07.30 and 18.00. The use of the play areas would be staggered and pupil numbers using these spaces would be limited to a maximum of 300 at any one time. Those using the roof top play area would be limited to 100 at any one time. Environmental Health has not raised any concerns over these proposed hours of use, nor have the residents of the bungalows.
51. Pupils would arrive and leave school when background noise in the area would be likely to be high, as a result of general activity in the area. Given the likely number of available car parking spaces in the area, the number of cars parked associated with the school will be limited. Regulatory Services has not raised objection to the scheme and it is considered that the living conditions of neighbouring occupiers would not be adversely affected by the proposal. There would be no conflict with paragraphs 3.8 and 3.10 of the UDP.

Other Matters

52. The Council's Education Sufficiency Requirements report outlines the forecast shortage of places in terms of primary and secondary provision until 2023. The report states that there is significant potential for Academies and Free Schools to provide additional places. The area where the proposed school is to be located is in desperate need of additional school places. As central areas of the City are developed, increasing numbers of families are moving into the affordable housing opportunities that are provided. The 2011 census data identifies that there were 430 under 1s in the catchment area of the new school.
53. Current provision of school places without the new school would see a shortage of approximately 100 school places in the local area. The 2 local faith schools had over 100 applications for places and combined only offered 6 places based on distance criteria. As a result children from the area need to travel to schools located further away, thus increasing the number of car journeys needing to be made for school drop-off and pick-up.
54. The admissions policy for the new school would follow the City Council's admission policy and would be based on distance from school. There would be no selectivity for any groupings including secular, religious or faith.

The Case for Birmingham City Council

Statement of case for the Council and oral evidence of Ms Lesley Sheldrake, Mr Andy Wayro and Mr Warren Bellamy

Effect of the scheme on the character and appearance of the area, particularly with regard to loss of trees and proposed landscaping

55. Prior to the clearance of the appeal site there were 29 well established trees upon it. Paragraphs 3.14D and 3.16A of the UDP require development proposals that result in a loss of trees to provide replacement trees and suitable additional planting to complement and enhance existing landscaping. Whilst it is accepted that the trees were not protected by a TPO, it is considered that the proposal for new landscaping on the site would not satisfactorily mitigate the number of trees that have been removed from the site. The value of the trees was identified in the appellant's submitted Ecological Assessment which identified them as having intrinsic value. This report recommended that they be protected and retained; however, if they were removed this loss should be mitigated within the landscape design, through the inclusion of appropriate native or wildlife attractive species of adequate size.
56. Whilst the Council raise no concern in respect of the relationship of the new building to Bath Row, trees could have been planted in a similar location to those that were removed, for example to the side of the building close to the Holloway Head playing fields and on the corner of Bath Row and Cregoe Street. The proposed planters along Bath Row would be unlikely to support any sizeable or long lived plants or offer any mitigation for the trees that have been removed. Furthermore, there is uncertainty as to whether any trees could be provided within the footway of Bath Row.

57. Although raising concern in its statement of case in respect of T21, the Council acknowledged that this tree did not survive the demolition works on the adjoining playing field site.
58. The Council is concerned that the proposed hard landscaping close to retained tree T3, as well as soft landscaping in this area could threaten the tree's survival. Furthermore, it is unlikely that the proposed planting within the root protection area of trees T25 and T29 could be delivered because of the presence of tree roots in this area.
59. The submitted landscaping scheme shows that 26 small trees would be planted upon the site. These new trees would be planted under the canopy of existing and proposed standard trees. They would be unlikely to become established and achieve their potential, as they would be competing with larger trees for the same nutrients, light and water. As such they would not offer compensation for the lost trees upon the site. The same would be the case for the 2 new pear trees proposed either side of retained tree T3.
60. It is also considered that the proposed landscaping areas are too narrow to allow the successful provision of replacement tree and shrub planting. The proposed species are not native, or of an adequate size for the location. On Cregoe Street for example, the planting bed is only just over a metre wide and would be located between the pavement and hardsurfacing within the site. A 2.1 metre high fence would further reduce the width of this planting bed. The resulting space for plants to grow would be very limited. The other proposed planting area within the site would be even narrower and would be located between a 1.2 metre high fence and 2 hard surfaced areas. The success of these areas in achieving satisfactory landscaping to mitigate the loss of trees is considered doubtful.
61. Having regard to the concerns raised, it is considered that the proposed planting would not offer sufficient mitigation for the loss of the trees that were upon the site. There is insufficient space provided for new planting within the site, which would be harmful to the visual amenities of the area.

The effect of the proposal on highway safety, having particular regard to staff car parking provision, servicing, and drop-off and pick-up provision

Staff car parking

62. The Council's adopted parking standards require that a maximum of 5 car parking spaces are provided for staff when the school first opens (based on 20 staff) rising to a maximum of 15 spaces when the school was fully occupied (62 staff). There are no staff car parking spaces proposed within the site.
63. Whilst acknowledging the appellant's intentions to park at the NIA and synagogue, these sites are respectively 1.1 kilometres and 450 metres from the appeal site. There is no control possible to secure this parking provision and this could result in staff parking in the local roads. If this occurred, the potential for parents to use available on street parking spaces when dropping off or collecting their children would be reduced. It should be noted that the adjoining secondary school has 24 car parking spaces on site which appear to be fully utilised.

Servicing

64. Safety concerns were raised at the Hearing in relation to transferring goods across Cregoe Street from Perry Beeches III to the appeal site, particularly when the road was busy with traffic and pedestrians.

Drop-off and pick-up arrangements

65. The Council acknowledge that each school has to some degree, a level of school gate parking pressure at the school start and finish times. Parents generally seek to park as close to the school as possible. This can raise issues of the safety of pupils, as well as localised congestion usually between 10 and 15 minutes at the start and end of the school day. The objective of both Paragraph 6.39 of the UDP and Policy TP35 of the emerging BDP is that there is safe access to the site for pedestrians, cyclists and cars.
66. The availability of parking within the surrounding roads is likely to be reduced in the future as a result of the adjoining school increasing its pupil numbers, and the implementation of planning permissions for residential development in the Bath Row/Holloway Head area, as set out in paragraph 7.7 of the Council's statement.
67. The assumptions made by the appellant regarding likely modes of travel to the school could well be affected by various factors, including intake criteria, past academic performance and availability of existing school places. As such there is a degree of uncertainty as to the highway impacts of the scheme from drop-off and pick-up. There would be no control over the extended hours of the school or the provision of before and after school clubs. This could increase peak demand around the school start and finish times, which would increase congestion at these times in the area.
68. There is evidence of illegal parking associated with the neighbouring school and dangerous and illegal manoeuvres in the highway. The proposal is likely to exacerbate this.

The effect of the proposal on living conditions of occupiers of nearby dwellings, having particular regard to traffic, noise and disturbance

69. Nos 20-28 Cregoe Street face toward the rear boundary of the appeal site. Whilst the previous use of the site had a health centre car park close to these properties, the proposed school would result in a greater amount of activity in close proximity to these dwellings. The site would be used more intensively than the previous use. The number of vehicle movements in the area would increase, particularly at peak school hours as parents drop-off and collect their children. The large number of people using the site would considerably add to the noise levels of the area, to the detriment of local residents, particularly those living in the elderly persons' bungalows, who are likely to be in occupation during the day.
70. Furthermore, at its closest, the outdoor play area proposed would be 0.5 metres from the boundary of the site. It would be only 8.2 metres away from the main living room window of the adjoining bungalows. The existing and proposed boundary treatment along the southern boundary would not mitigate the noise from the site.

71. The roof top play area would be another potential source of noise, together with the roof top plant. Whilst it is acknowledged that plant could be the subject of a planning condition, the noise from children cannot. It is the intermittent nature of this noise which would cause disturbance. Taken with the noise from the adjoining school, which is not yet at its 620 pupil and 60 staff capacity, and having regard to parents congregating to collect their children in close proximity to residential properties, there would be likely to be considerable disturbance caused to existing residents.
72. Local residents already experience parking issues, traffic congestion, noise and litter associated with Perry Beeches III. The new school would exacerbate these issues and unacceptably impact on neighbouring residents.

Other Matters

73. The Birmingham Mainstream Primary and Secondary Education Sufficiency Requirements 2016 details the current and projected need for education places in the City. The document identifies that the City requires expansions from year 3 and further bulge classes across years 1-6 in order to meet anticipated cohort growth and address current pressure from in-year admissions in the primary phase. However, it states that growth in the primary sector varies from area to area. Within the Ladywood Ward, where the appeal site is located, the document identifies the need for 30 permanent spaces for year 3 pupils and 30 temporary spaces for year 4 in 2016; for 2017, the need was identified for 30 temporary spaces to be provided in years 1, 2 and 3 respectively.
74. The document states that the Free Schools opened to date in the City are not always in areas where additional places are needed. This has a negative impact on the stability and improvement of neighbouring schools and diverts valuable resources away from where they are most needed. Although the proposed school would be located close to residential properties, most of these are apartments and not family housing. The Council is not aware of where the new housing is in the area that is attracting more young families to the area.

The Case for Interested Parties against the proposal

Letters of representation and oral evidence from Councillors Gareth Moore, Cllr Mrs Fiona Williams, and Cllr Martin Straker Welds

75. Letters of objection were received from local residents raising concerns about the need for a further school in the area. Concern was also raised about the suitability of the site for a school given the proximity to a busy road and unsuitable neighbouring uses, including a club. Several local residents and the local councillors expressed concern about the proposal causing further parking issues in Cregoe Street, to the detriment of existing residents, as well as vandalism, litter and noise. Further concerns were raised regarding the suitability of the Cregoe Street/Bath Row junction and staff parking, and the suitability of the outdoor play space.
76. A letter from a nearby school states that it has the space and a proven track record of meeting the needs of families within the community. A further school in this location would cause significant risk to pupils and members of the public as a result of traffic associated with the development.

- 77. West Midlands Police expressed concern that the proposal would result in traffic congestion in the area, particularly when there was inclement weather. It was suggested that crime prevention and security measures be incorporated into the scheme.
- 78. Local Councillors expressed concern that the air quality of the area would be adversely affected through the loss of trees upon the site. The proposed planting would not absorb nitrogen dioxide to the same degree as the mature trees that were removed. The local road network is very busy and Bath Row is gridlocked every evening. The proposal would result in increased congestion in the area, and result in air pollution.
- 79. Furthermore, the appeal site is not located close to family homes, and it is likely that a greater number of parents would drive to the school than the appellant has indicated. The parking situation is bad now and would only get worse as a result of the new school. Concern was also expressed that the design of the building would dominate the streetscene and would be overpowering.

Conditions

- 80. Both main parties agreed a list of conditions prior to the Hearing. The suggested conditions were discussed and additional conditions raised during the course of the Hearing. Should the Secretary of State be minded to grant planning permission, the Schedule of Conditions appended to this report at Annex A comprises those conditions that I consider should be imposed. The conditions comply with the Planning Practice Guidance and the Framework.
- 81. For the avoidance of doubt, a condition is necessary specifying the approved plans. In order to protect the character and appearance of the area, conditions are necessary requiring the external materials to be used in the development to be controlled, including the hard surfaced areas. Conditions are also necessary requiring further details to be submitted for approval in relation to landscaping and landscape management, tree retention and protection, levels, bin storage area, boundary treatment, fenestration and doors, and internal canopies and fencing.
- 82. In the interests of highway safety and living conditions are necessary requiring adherence to a Construction Method Statement and preventing the change of use of the building without planning permission. In the interests of highway safety, conditions are necessary in relation to servicing and deliveries, requiring mitigation measures to be undertaken within the area and to control the use of the parking space upon the site. To protect the living conditions of nearby occupiers, conditions are necessary controlling the noise emitted from plant and machinery, the opening hours of the premises and use of the external play areas.
- 83. In the interests of security and crime prevention a condition requiring the installation of CCTV and other security measures is necessary. In the interests of pollution control, a condition is necessary requiring remediation works to be undertaken. In the interests of sustainability, a condition requiring a travel plan to be submitted and agreed is necessary, as is the provision of cycle/motorcycle storage upon the site. A condition is also necessary

controlling drainage. To enhance biodiversity on the site, it is necessary to require an Ecological Enhancement Strategy to be implemented.

Inspector's Conclusions

84. The main considerations identified at the beginning of the Hearing were the effect of the proposal on:
- the character and appearance of the area, having particular regard to the proposed landscaping of the site;
 - highway safety, having particular regard to parking facilities, servicing, and drop-off and pick-up provision; and
 - the living condition of occupiers of nearby dwellings, having particular regard to noise and disturbance.

Character and appearance

85. The surrounding area is of mixed character with a range of commercial and residential properties, including offices, a small supermarket and apartments fronting Bath Row, and single, two and three storey housing fronting Cregoe Street. A feature of the area is tall buildings constructed on the back edge of the pavement. Whilst there are a number of mature trees within the area, these are largely limited to open sites, including within the Peace Gardens opposite the appeal site and within the grounds of the Holloway Head playing fields. There are trees planted within the pedestrian area between the Perry Beeches III secondary school on the opposite side of Cregoe Street and the office building occupied by Midland Heart Housing. There are also trees within the limits of the highway in Cregoe Street, which are established, but not yet mature. Trees within the highway in Bath Row are not a feature of the area.
86. Prior to the health centre being demolished, there were a number of trees upon the site, fronting Bath Row and Cregoe Street. The Council and local residents consider that the trees made an important contribution to the character and appearance of the area. Be that as it may, the Council were made aware of the intentions to remove the trees as part of the application for prior approval for the demolition of the health centre and as part of the pre-application discussions for the new school. Had it considered that the amenity value of the trees was so important, the Council could have protected them by serving a TPO. The Council did not do this, and whilst I do not doubt that they were valued locally, the trees no longer form part of the character and appearance of the area.
87. Notwithstanding this, the policies of the UDP are quite clear that landscaping is an important element of design proposals. Where trees have been removed, they should be replaced. The appellant submitted a landscape strategy with the planning application which proposed planters to the front of the building, new trees and landscaping beds along the Cregoe Street frontage, new planting along the southern boundary of the site and planting beds within it.
88. Whilst noting the Council's concerns in respect of the proposed landscaping, the appellant has indicated that they would be prepared to amend their landscaping proposals to take account of the matters raised. Revised details could be required to be submitted, implemented and maintained, and this

could be controlled by way of a suitably worded planning condition. I agree that matters including plant species, the width of the planting beds and positioning of trees could be controlled by planning condition. This would enable the Council to consider a revised landscaping strategy, including future maintenance and it could ensure that its concerns were addressed. I am in no doubt that a suitable scheme could be designed which would meet the objectives of Paragraphs 3.8, 3.10, 3.14, 3.14D and 3.16A of the UDP. The future scheme would assist in improving the character and appearance of the area.

89. I note that the appellant has indicated that they would be prepared to plant trees within the pavement adjacent to the site, or within planters upon it. I was advised at the Hearing that the necessary surveys to identify where the services are located had not been undertaken, and as such a planting scheme has not been produced. Whilst noting the appellant's intentions, and the Council's desire for planting to the front of the building, this matter is not before me.
90. I therefore conclude on this matter that the proposal would not be harmful to the character and appearance of the area. There would be no conflict with the environmental quality and landscaping objectives of Paragraphs 3.8, 3.10, 3.14, 3.14D and 3.16A of the UDP.

Highway safety

91. Paragraph 6.39 of the UDP sets out matters which will be taken into consideration, on roads not part of the strategic highway network, including environmental impact, safety and pedestrian and cyclist needs. Emerging Policy TP35 of the BDP requires proposals for new education facilities to have safe access by cycle and walking, as well as by car, to have a school travel plan and safe drop-off and pick-up provision.
92. There is no dispute that the site is well served by public transport. It is within a short walking/cycling distance to nearby rail stations. Regular bus services operate along the Bath Row. Therefore for those members of staff that chose not to drive to work, there are opportunities available to them to use public transport. Such modes of transport would accord with the sustainability objectives of the UDP, emerging BDP and the Framework.
93. The appellant has indicated that the school travel plan would encourage staff to use public transport, walk or cycle to work. For those members of staff that choose to drive to work, parking would be available under arrangements established with NIA and nearby synagogue. Whilst I appreciate that such arrangements could be terminated in the future, I am not convinced that staff would choose to park within the local roads within the vicinity of the site, as there are parking restrictions which would prevent day long parking in the area. As a result it would be unlikely that staff employed at the school would place a demand on the parking provision in the area.
94. Whilst noting the concerns regarding the proposed servicing of the site, I have not been provided with convincing evidence that this would result in conflict with pedestrians or result in highway safety concerns. The Perry Beeches III has been operating for some time, and I am not aware that the current

servicing of this school causes problems in the area. The new school would share the servicing with this school, and as a result, it is unlikely that there would be additional large vehicles using the area as a result. In any event servicing and delivery times could be controlled by way of planning condition to prevent potential conflict with the start and end of the school day.

95. It is the new school's intention to attract pupils who live close to the site, and as a result it is likely that a high percentage of the pupils would walk to school. For those pupils that live further away from the site, it is likely that some would use public transport. However, I accept that those parents that would drive to school would place a demand on the available parking places in the surrounding streets and roads. Although the school would offer a breakfast and after school club, it is likely that the majority of pupils would arrive at school close to the start time of 08.30, and leave at 15.30. The morning drop-off is likely to be staggered, however in the afternoon, it is likely that parents would arrive at a similar time and as such, this is when the pressure for the available parking spaces would be at its highest.
96. However, the appellant's survey on the availability of car parking within the area has demonstrated that there would be likely to be places for parents to park. Although my site visit was slightly later than 15.30, it was at a time when it would be reasonable to expect parent's cars to be present in the area. There were numerous available spaces in both Bath Row and Cregoe Street. Whilst I accept that the survey and my observations are just a snapshot in time, I am not convinced that the proposal would place an unacceptable demand on parking spaces within the area. The proposed highway measures, including short stay car parking in Sutton Street would provide additional spaces for parents to park, as could the possible future use of parking upon the adjacent playing field site.
97. Furthermore, given the nature of the school drop-off and pick-up, the demand for parking spaces is relatively short term. The Council's Transportation Department calculated this as being around 15 minutes. I have no reason to disagree in this respect. For the majority of the day the new school would be unlikely to place a demand on the available car parking in the area. Whilst it is likely that some parents may park illegally in the area, I was told that the area is regularly patrolled and such matters could be controlled by other legislation.
98. I acknowledge that the area is likely to have more residential and other development in the future which could place additional demands on on-street parking in the area. 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.
99. I note that the Transportation Department did not raise an objection to the scheme. In considering the application, this department would have taken into account the demands placed on the local highway network by existing schools in the area including St Thomas's Primary School and Perry Beeches III. Moreover, the school would be able to monitor the highway situation as part of the review of its travel plan and address any issues that may arise.

100. In light of the foregoing, and in the absence of substantive evidence to demonstrate otherwise, I find that the proposal would not be harmful to highway safety. The residual cumulative impacts of the proposal on highway safety would not be severe. There would therefore be no conflict with the safety objectives of Paragraph 6.39 of the UDP, emerging Policy TP35 of the BDP or the Framework.

Living conditions

101. An objective of Paragraphs 3.8 and 3.10 of the UDP is to minimise the harmful effects of new development. Emerging Policy TP35 of the BDP requires proposals for new schools to avoid conflict with adjoining uses.
102. The new building would be designed such that the part closest to residential properties would be 2 storeys in height. It would have no windows on the elevation facing the elderly persons' bungalows in Cregoe Street. The separation distance between the new school and bungalows, and intervening landscaping that would be supplemented and enhanced, would ensure that there would be no loss of privacy or harmful impact on outlook.
103. I accept that the new school would introduce activity close to these bungalows. Children would be playing outside in close proximity to the front windows and gardens of these properties, in the surface playground, and approximately 25 metres away in the roof top playground. It is inevitable that noise from children in the playground would be heard in the outside space of neighbouring properties, or within the building, if there were windows open.
104. However, I observed on my site visit that background noise levels were relatively high as a result of traffic and general activity in Bath Row and Cregoe Street. Whilst the noise source would be different to that which currently exists, I was not provided with substantive evidence that noise of children playing outside would result in harm to living conditions. Such evidence could have included records of complaints from other schools in the area which are located similarly close to residential properties. Indeed I note that no objections were raised by the Council's Environmental Health Officers in this regard.
105. There would be likely to be increased activity in the area, around the new school, particularly at the start and end of the school day. Parents would be likely to congregate outside the school to drop-off and collect their children. Sounds of people talking would be likely to be heard outside neighbouring properties. Whilst this might be the case, any noise and disturbance to local residents would be during the day, at a time when there is general activity and associated noise in surrounding streets. I am not convinced that the noise that would be generated would be so great to be harmful to living conditions.
106. The proposed plant and air conditioning on the roof of the building could be a further source of noise. However, I concur with the main parties that matters such as sound insulation of this equipment could be controlled by a suitably worded planning condition.

107. In respect of the third main issue, I conclude that noise and disturbance that would result from children playing outside the school and the coming and going of parents and children to it and from the proposed plant and equipment would not be so significant, or to a degree that would be harmful to the living conditions of occupiers of nearby residential properties. There would be no conflict with Paragraphs 3.8 and 3.10 of the UDP or with the compatibility objectives of emerging Policy TP35 of the BDP. Furthermore, there would be no conflict with the core planning principle of the Framework which requires that a good standard of amenity is secured for all existing and future occupiers of land and buildings.

Other Matters

Need for the school and suitability of the site

108. Whilst I note both main parties' representations on the issue of need for the school, and those of local councillors and residents, I have not been directed to any local or national planning policies that require need to be demonstrated. This matter has therefore not been a determining factor in this case.
109. The Framework makes it clear at paragraph 109 that, amongst other matters, new development should be prevented from being put at unacceptable risk from, or being adversely affected by unacceptable levels of, amongst other sources, air or noise pollution. Whilst noting that the new school would be close to the Bath Row and that concerns have been raised about the level of nitrogen dioxide in the area, I have not been provided with substantive evidence that the level of this pollutant would be so high to be unacceptable or adversely affect the health and well being of the intended pupils and staff at the school. Furthermore, the Council has not raised this as a concern within its Decision. I have therefore attached limited weight to this matter in my overall Recommendation.

Design of the building

110. I accept that the new 5 storey building would have a greater visual presence than the 2 storey medical centre on the site. The scheme before me has been the subject of several meetings between the appellant and the Council and its design and siting was driven by, amongst other matters, the Council's revoked SPDs.
111. The building would reflect the scale, siting and design of neighbouring development in Bath Row. I therefore have no reason to reach a different conclusion to the Council, that the new school would reflect the character and appearance of the area. Harm would not be caused as a result.

Congestion/Suitability of road junction

112. The new school would be likely to add to the congestion of roads within the area, particularly in the morning, when the journey to school would be likely to coincide with the morning rush hour. I have not been made aware of highway capacity issues in the area and note that the Transportation Department did not consider such matters would amount to harm to highway safety.

113. Similarly, whilst it may be difficult to access Bath Row from Cregoe Street during busy periods, I have not been provided with convincing evidence that this junction is unsafe, and I therefore attach limited weight to this matter.

Size of play space

114. I note the concerns regarding the size of the outdoor play space. The appellant has indicated that pupil numbers using the outdoor areas would be restricted. I have not been advised of any outdoor play area space standards that would be relevant to the proposal. I also note that the Council has withdrawn its reason for refusal in respect of this matter. Accordingly, it has not been demonstrated that the proposed play area would be unsuitable for the proposed school.

Litter/Vandalism

115. Whilst noting the concerns raised that the proposal would result in increased litter and vandalism in the area, I have not been provided with substantive evidence that this is an issue in the area, nor have I been provided with convincing evidence that the proposed use of the site by primary aged children would add to the alleged situation. I therefore attach limited weight to this matter.

Effect on Heritage Assets

116. On the opposite side of the Bath Row to the appeal site are the remains of St. Thomas's Church, a grade II listed building. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that when considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.
117. When considering the impact of a proposed development on the significance of a designated heritage asset, paragraph 132 of the Framework advises that great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
118. The listed building derives a degree of its significance from the open ground around it comprising the Peace Gardens. It is visible from Bath Row, from the junction of Cregoe Street with Bath Row and from Granville Street. There is the wide Bath Row highway between the appeal site and the proposal, and although the respective buildings would be seen in the same context from certain vantage points, I agree with the Council that there would be no adverse impact on the setting of this important heritage asset. I therefore conclude that the proposal would not lead to any harmful change to the setting of this heritage asset, and neither would the proposal degrade its significance in any way. On that basis, the proposal does not conflict with the requirements of the Act or the Framework.

Recommendation

119. Accordingly, I recommend to the Secretary of State that the appeal be allowed and planning permission be granted subject to the 28 conditions set out in the Annex to this report. The reasons for the conditions are set out in paragraphs 80 – 83 above.

R C Kirby

INSPECTOR

ANNEX A

SCHEDULE OF CONDITIONS:

- 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 following approved plans:

15002-A101 rev P5 -Proposed ground floor plan; 15002-A102 rev P5 - Proposed first floor plan; 15002-A103 rev P10- Proposed second floor plan, 15002-A104 rev P5 -Proposed third floor plan; 15002-A106 rev P1-Proposed location plan; 15002-A107 rev P3, Proposed tree removal plan; 15002-A108 rev P2-Proposed Roof Plan; 15002-A205 rev P2 -Proposed North elevation; 15002-A206 rev P2 -Proposed East elevation; 15002-A207 rev P2 - Proposed South elevation; 15002-A208 rev P2 - Proposed West elevation; EC1234-101 - Drainage Strategy; 15098-SK-M-001- Flues and ventilation extraction concept drawing; 15098-SK-M-002 - First Floor Flues and ventilation extraction concept drawing; 15098-SK-M-003 rev A, Second floor flues and ventilation extraction concept drawing; 15098-SK-M-004 - Third floor flues and ventilation extraction concept drawing; 15098-SK-M-005 - Roof level flues and ventilation extraction concept drawing; 15098 –SK-E 001- External Lighting Concept Drawing.
- 3) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for -
 - the parking of vehicles of site operatives and visitors
 - maintenance of access to Perry Beeches III and its existing school staff car parking
 - loading and unloading of plant and materials
 - storage of plant and materials used in constructing the development
 - construction hours
 - delivery routeing
 - wheel washing facilities
 - measures to control the emission of dust and dirt during constructionThe development shall be implemented in accordance with the approved details.
- 4) No development shall take place until a package of highway measures have been agreed with the Local Planning Authority. The package of measures shall include alterations to footway crossing on Cregoe Street to provide suitable vehicle access to the redesigned car parking space, school signage and markings on Bath Row and Cregoe Street, measures in the footway to prevent parking on the adjacent footways such as bollards and planting, associated Traffic Regulation Orders for school keep clear markings and recommended alterations to Sutton Street TRO to allow short stay parking at the school start and finish time. The development shall not be occupied until all such measures have been substantially completed in accordance with the approved details.

- 5) The existing tree on the Cregoe Street frontage and the screen planting on the southern boundary of the site shall be retained and shall not be uprooted, felled, lopped, topped, or cut back in any way until a scheme for such works has been submitted to and approved in writing by the Local Planning Authority. If the retained trees and shrubs are damaged during construction works they shall be replaced with plants/trees of the same size and species in the same location during the next available planting season.
- 6) No development shall take place unless measures for protecting the trees and hedges which are to be retained on site, as shown on the approved plans (apart from Tree T21), have been submitted to and agreed in writing by the Local Planning Authority. All tree protection measures shall accord with BS5837: 2005 Trees in Relation to Construction and shall include establishing a Root Protection Area (RPA) around each tree and hedge and enclosing all RPAs suitable fencing. No equipment, machinery or materials shall be brought on to the site until the agreed tree/hedge protection measures are in place nor shall anything be stored or placed within the RPAs. The protective fencing shall be maintained for the full duration of development and shall not be removed or re-positioned.
- 7) No development shall take place until details of earthworks and any retaining works or features have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas, and shall include the finished levels, the relationship of proposed mounding to existing vegetation and surrounding landform and the appearance, height and materials of any retaining features required. Development shall be implemented in accordance with the approved details and thereafter maintained. The works shall be implemented prior to occupation of any part of the development.
- 8) No development shall take place until a Sustainable Drainage Assessment (including drainage plans, detailed design, hydrological and hydro-geological assessment) using appropriate sustainable drainage principles and a Sustainable Drainage Operation and Maintenance Plan (including details of agreement with an adopting body and proposed inspection and maintenance actions) has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved Sustainable Drainage Assessment prior to the use of the building and shall be maintained thereafter for the lifetime of the development in accordance with the Sustainable Drainage Operation and Maintenance Plan.
- 9) No development shall take place, apart from ground works, until samples of materials to be used in the construction of the external surfaces of the building hereby approved have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 10) No development shall take place, apart from ground works, until details of the materials to be used for hard and paved surfacing have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and thereafter maintained.

- 11) No development shall take place, apart from ground works, until detailed drawings of the proposed external doors and windows illustrating materials, finish, fenestration profiles, lintels and reveals have been submitted to and approved in writing by the Local Planning Authority. The doors and windows shall be constructed and installed in accordance with the approved details and thereafter maintained.
- 12) Prior to any installation, full details of the proposed boundary treatment for the site shall be submitted to and approved in writing by the Local Planning Authority. These details shall include plans showing the locations of existing retained and proposed new boundary treatments and shall indicate the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented before first occupation of the school hereby permitted and shall be retained thereafter.
- 13) Prior to the first occupation of the development, a verification report demonstrating completion of the works set out in the Remediation Strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring and shall include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The works shall be carried out as approved.
- 14) Prior to the first occupation of the development, and notwithstanding the details shown on drawing ref. 15002-1500-P7, further details of hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall include proposals for the replacement of tree T21, proposed and existing functional services above and below ground, fully annotated planting plans including planting schedules, noting species, plant sizes and proposed numbers and details of the proposed planting implementation programme. These works shall be carried out as approved. The works shall be implemented prior to the first occupation of the development, or in accordance with the planting programme agreed with the Local Planning Authority and thereafter maintained. Any trees or shrubs which, within a period of two years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.
- 15) Prior to the first occupation of the development, a landscape management and maintenance plan, including long term design objectives, management responsibilities and maintenance operations for all landscaped areas, shall be submitted to and approved by the Local Planning Authority. The landscape management plan shall cover a minimum period of 5 years and be implemented in accordance with the approved details.
- 16) Prior to the first occupation of the development, the roof top plant and machinery shall be enclosed with sound insulating material and mounted in a way that will minimise transmission of structure borne sound, in accordance with details to be submitted and approved in writing by the Local Planning Authority. The sound insulation shall thereafter be retained and maintained.

- 17) The rating levels for cumulative noise from all plant and machinery shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing LAeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.
- 18) The school premises shall only be open between the hours of 07.30 - 18.00 Mondays to Fridays.
- 19) The external school play areas shall only be used between the hours of 08.00 and 18.00 Mondays to Fridays.
- 20) Prior to the first occupation of the development, a scheme for the provision of a network of closed circuit television cameras (CCTV), including the proposed location of the cameras, mounting columns, proposals for the use and management of the system and its installation shall be submitted to and approved in writing by the Local Planning Authority. The CCTV system shall be installed in accordance with the approved details prior to first occupation of the building and shall thereafter be maintained.
- 21) Prior to the first occupation of the development, details of the proposed bin storage area including the design, height, materials and proposed finishes shall be submitted and approved in writing by the Local Planning Authority. The bin storage area shall be installed in accordance with the approved details prior to first occupation of the building and shall thereafter be maintained.
- 22) Prior to the first occupation of the development, an Ecological Enhancement Strategy for the site based on the recommendations contained in the submitted Preliminary Ecological Assessment ref RT-MME-18755-01 shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
- 23) Prior to the first occupation of the development, details of the provision for secure and covered storage for cycles and motorcycles shall be submitted to and approved in writing by the Local Planning Authority. Provision shall thereafter be implemented and maintained in accordance with the approved details.
- 24) Prior to the first occupation of the development, a detailed School Travel Plan including proposals for staff parking, shall be submitted to and be approved in writing by the Local Planning Authority. This should include clear objectives to influence and encourage reduced dependency on the private car with a package of measures to meet this objective. The plan shall be reviewed within 3 months of the school being opened and on an anniversary basis as the school expands to full capacity. The review findings and any variations or improvements required, shall be submitted to and agreed in writing by the Local Planning Authority. The plan and any subsequent amendments shall be implemented in accordance with the approved details.
- 25) The development hereby permitted shall not be occupied until a strategy for the management of the disabled parking space, to ensure that it is only

occupied by authorised persons, has been submitted to and approved in writing by the Local Planning Authority. The disabled parking bay shall thereafter only be operated in accordance with the approved strategy.

- 26) The development hereby permitted shall not be occupied until a strategy for for servicing and deliveries to and from the site has been submitted to and approved in writing by the Local Planning Authority. The servicing and deliveries to and from the site shall be undertaken in accordance with the approved details.
- 27) The development hereby permitted shall not be occupied until details of the proposed canopies and internal fencing to be erected within the site have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 28) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (England) (as amended), (or any Order revoking or re-enacting that Order with or without modification), the building hereby approved shall be used as a school and for no other purpose.

End

ANNEX B

APPEARANCES

FOR THE APPELLANT

Mr Peter Leaver	JLL Limited
Miss Ravinder Bains	JLL Limited
Mr Chris Stack	Phil Jones Associates
Mr Nigel Millington	Phil Jones Associates
Mrs Louise Caller	Morgan Sindall
Mr Simon Knott	Education Funding Agency
Mr Jerry Ludlow	Education Funding Agency
Mr John MacDonald	Education Funding Agency

FOR THE COUNCIL

Ms Lesley Sheldrake	Principal Planning Officer
Mr Andy Wayro	Landscape Officer
Mr Warren Bellamy	Highways Officer

INTERESTED PARTIES

Cllr Gareth Moore	Birmingham City Council
Cllr Fiona Williams	Birmingham City Council
Cllr Martin Straker Welds	Birmingham City Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Paragraph 4.55 of the Birmingham Unitary Development Plan 2005
2. Copy of Car Parking Guidelines Supplementary Planning Document 2012
3. Copy of Drawing Nos: A206 rev P2; A207 rev P2; A107 rev P3; A500 rev P7; A103 rev P10

DOCUMENTS SUBMITTED AFTER HEARING

1. Agreed wording of conditions



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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