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## Appeal Decision

Inquiry opened on 15 December 2015

Site visit made on 21 December 2015

**by David Prentis BA BPI MRTPI**

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

**Decision date: 13 May 2016**

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**Appeal Ref: APP/G5180/W/15/3002521**

**Former All Saints Roman Catholic School Site, Layhams Road, West Wickham, Kent BR4 9HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by The Roman Catholic Diocese of Southwark and Regalpoint Homes (WW) Ltd against the Council of the London Borough of Bromley.
  - The application Ref DC/13/03743/FUL, is dated 8 November 2013.
  - The development proposed is described as: *Demolition of all school buildings, with the exception of the reception building and north stable block. The erection of 48 new dwellings comprising: 24 No 4 bedroom houses, 16 No 1 bedroom flats, 8 No 2 bedroom flats and conversion of the stable block into 2 No 2 bedroom residential units with the provision of 56 car parking spaces, associated landscaping, hardstanding areas, cycle stores and bin stores. Conversion of reception building into 799sqm of office floor space (Class B1A) with 8 dedicated parking spaces and the construction of two tennis courts, designated car park and amenity area for community use.*
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of all school buildings, with the exception of the reception building and north stable block, the erection of 48 new dwellings comprising: 24 No 4 bedroom houses, 16 No 1 bedroom flats, 8 No 2 bedroom flats and conversion of the stable block into 2 No 2 bedroom residential units with the provision of 56 car parking spaces, associated landscaping, hardstanding areas, cycle stores and bin stores, conversion of reception building into 799sqm of office floor space (Class B1A) with 8 dedicated parking spaces and the construction of two tennis courts, designated car park and amenity area for community use at the Former All Saints Roman Catholic School Site, Layhams Road, West Wickham, Kent BR4 9HN in accordance with the terms of the application, Ref DC/13/03743/FUL, dated 8 November 2013 subject to the conditions set out in the attached schedule.

### Preliminary matters

2. The Inquiry sat for 7 days on 15 – 18 December 2015 and 29 February, 1 March and 4 March 2016. I carried out an accompanied visit to the site on 21 December 2015 as well as unaccompanied visits to various locations referred to in the evidence before and during the Inquiry.
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3. The two appellants in this case were jointly represented and in the main I refer to them collectively. Insofar as it is necessary to differentiate between them, I refer to the first appellant, The Roman Catholic Diocese of Southwark, as RCDS and to the second appellant, Regalpoint Homes (WW) Ltd, as RH. The Rule 6 party, the Hyderi Islamic Centre, was generally referred to as 'Hyderi' at the Inquiry and I have done so in this decision.
4. The appeal is made against the failure of the Council to determine the application. The Council subsequently resolved that it would have refused planning permission for reasons which may be summarised as: loss of land for education use; inappropriate development in the Green Belt; unsustainable location for residential development; failure to deliver affordable housing and absence of an obligation to mitigate the impacts of the development. The Council considered that the proposal would conflict with policies C1, G1, H1, H2 and IMP1 of the Bromley Unitary Development Plan and Policies 3.16 and 3.18 of the London Plan.
5. The scheme was amended whilst under consideration by the Council. Amongst other matters, the number of dwellings proposed was reduced from 50 to 48. At the Inquiry, the appellants sought to make a further amendment to the site layout, deleting a proposed pavilion adjacent to the tennis courts and altering the layout of some parking bays and footpaths. The Council had no objection to these small scale changes and I am satisfied that no-one would be prejudiced by them. I have considered the appeal on this basis. The Council and the appellants agreed a consequential change to the description of development which is set out above.
6. The Council and the appellants indicated that they were minded to enter a s106 Agreement (the Agreement) relating to the implementation of a travel plan. The Agreement was submitted to the Inquiry in final draft form and I allowed a short period after the close of the Inquiry for a signed version to be provided. There was no dispute that the Agreement is necessary, reasonable and otherwise in accordance with the relevant statutory provisions<sup>1</sup>. I share that view and have taken it into account accordingly. The Council and the appellants also agreed that the delivery of 35% of the dwellings as affordable housing could be secured by a condition. As a result of agreement on these matters the Council confirmed that it no longer relied on the 5<sup>th</sup> and 6<sup>th</sup> reasons for refusal, relating to affordable housing and infrastructure contributions, thereby resolving the conflicts with UDP Policies H2 and IMP1 identified in those reasons.
7. On the first day of the Inquiry one of appellants' witnesses became unwell whilst giving his evidence<sup>2</sup>. He was unable to continue and, for health reasons, was not able to return to the Inquiry. In considering the weight to be attached to his evidence I have had regard to the fact that it was not fully tested through cross-examination. On the other hand, the witness did appear in person and his evidence was tested to some extent, at least in part. Moreover, an important element of his evidence comprised a history of the marketing of the appeal site which was supported by extensive documentary evidence. Those documents were of course available to all parties. Notwithstanding these

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<sup>1</sup> Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010

<sup>2</sup> Inspector's note - The witness was Mr Graham Collins of Stanley Hicks and Son, surveyors to the Trustees of RCDS. At the time Mr Collins became unwell he had given his evidence in chief and was part way through being cross-examined by Hyderi.

unfortunate circumstances, I have been able to reach conclusions based primarily on this documentary evidence and related submissions. I am satisfied that I have been provided with sufficient information on these matters and that no party has been prejudiced by the illness of this witness.

8. At the Inquiry the appellants submitted a letter from the Archbishop of Southwark to the Secretary of State giving a commitment to apply the net proceeds of sale of the appeal site to the promotion of a new Catholic secondary school at the St Peter and St Paul (SPSP) site. After the close of the Inquiry the appellants submitted a Unilateral Undertaking (UU) which contained the same undertaking. I allowed a further period for comments to be made on the UU and I have taken account of the comments received. The weight to be attached to this commitment is a matter which I return to below.
9. After the close of the Inquiry my attention was drawn to a recent judgment in *The London Borough of Bromley v Secretary of State for Communities and Local Government and Rookery Estates Company* [2016] EWHC 595. This was relevant to one of the Council's arguments in relation to Green Belt. Accordingly, I allowed a period for comments to be made on the judgment. At the Inquiry, the Council had argued that the proposal amounted to inappropriate development because, (amongst other reasons), it would be a material change of use. Having considered the judgment, the Council withdrew this line of argument. In my view it was right to do so.

### **Main issues**

10. The main issues are:

- whether the proposal would amount to inappropriate development in the Green Belt, for the purposes of the development plan and the Framework,
- the effect of the proposal on the availability of land for education use, and
- whether the proposal would facilitate the use of sustainable modes of transport.

### **Reasons**

#### ***Background and Policy Context***

11. The appeal site, which extends to around 2.3ha, lies to the south west of Layhams Road, beyond which is the predominantly built-up area of Coney Hall. The southern part of the site is densely developed with a complex of former school buildings. Most of these appear to date from the 20<sup>th</sup> century although there are some older structures including former stable blocks. Access to the site is gained from Layhams Road, via an access road which passes through the northern part of the site. This access road also serves Wickham Court School, to the east of the appeal site, and the Church of St John the Baptist to the west. The northern part of the site also includes car parking areas, hard-surfaced games areas and amenity open space. There is open land to the north and west of the church and school sites. To the south and south east of the site are the Daughters of Mary and Joseph convent and retreat centre and the Coloma Court Care Home, beyond which there is further open land.
12. Although there are no designated heritage assets within the appeal site there are some in close proximity. Wickham Court is a Grade I listed building, the

Church of St John the Baptist and its associated Lych-gate are Grade II\* listed buildings and a Lodge in Layhams Road, opposite Wickham Court, is a Grade II listed building.

13. Following the closure of the Coloma College of Education, a teachers' training college, the St John Rigby Catholic Comprehensive Secondary School opened on the appeal site in 1979. The school operated until 2004 although in later years it was not fully subscribed. In 2004 a new school called All Saints Catholic Secondary School opened. However, pupil numbers declined and the school closed in July 2007. The buildings have not been used since that time. The RCDS has a contract with RH such that RH will purchase the site in the event that the appeal is allowed. As noted above, the RCDS has given a commitment, (contained in the UU), that the net proceeds of sale would be applied to the promotion of a new Catholic secondary school at the SPSP site at St Paul's Cray, to the north of Orpington.
14. The development plan includes the saved policies of the Bromley Unitary Development Plan 2006 (UDP) and the London Plan (March 2015) (LP). The policies which the Council considers would be offended by the appeal scheme are identified above. In addition, there are other relevant development plan policies relating to matters such as design, heritage, transport, parking, access and nature conservation. The Council has also published supplementary planning guidance/documents on design, affordable housing and planning obligations<sup>3</sup>. The Council did not suggest that the appeal scheme would conflict with these other policies or with the supplementary guidance.
15. The Council has also published the Draft Allocations, Further Policies and Designations Document (September 2015) (DAFP). This is an emerging development plan document which is not at a sufficiently advanced stage for significant weight to be attached to it.

***Whether the proposal would amount to inappropriate development in the Green Belt***

16. The site is located in the Green Belt, the extent of which is defined in the UDP. UDP Policy G1 states that inappropriate development within the Green Belt will not be permitted unless there are very special circumstances. The UDP pre-dates the National Planning Policy Framework (the Framework) and the approach taken to previously developed sites in the Green Belt refers to the former Planning Policy Guidance Note 2, which has been cancelled. For example, Policy G1 refers to limited infilling or redevelopment within designated major developed sites whereas the Framework refers more generally to limited infilling or redevelopment of previously developed sites without any requirement that such sites be 'designated' and/or 'major'. To this extent Policy G1 is not up-to-date and I attach greater weight to the approach set out in the Framework.
17. At the Inquiry, the Council argued that the appeal proposal would amount to inappropriate development for two reasons. First, it was suggested that there would be a material change of use of the site which would not fall within one of the exceptions set out in the Framework. As noted above, the Council subsequently withdrew this argument in the light of a recent court judgment. In addition, it was argued that the proposal would not accord with paragraph

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<sup>3</sup> Relevant policies and guidance are identified in the Statement of Common Ground

89 of the Framework because it would have a greater impact than the existing development on the openness of the Green Belt and the purposes of including land within it.

*Effect on openness and purposes of the Green Belt*

18. It is convenient to start by considering the northern part of the appeal site which comprises an access road together with car parks, games areas and amenity open space. No new buildings are proposed here. The scheme would involve some alterations to the layout of existing footpaths and areas of hard surfacing. However, there was no suggestion from any party that these engineering operations would result in any harm to the openness of the Green Belt or the purposes of including land within it. The openness of the Green Belt would be preserved and, in accordance with paragraph 90 of the Framework, these elements of the scheme would not amount to inappropriate development.
19. Next, the proposals include the conversion of the former reception building to offices. It was not disputed that this element of the scheme would be the re-use of an existing building which is of permanent and substantial construction. In accordance with paragraph 90 of the Framework, this element of the scheme would not amount to inappropriate development.
20. I turn to the construction of new buildings in the southern part of the site. This falls to be considered in the light of the 6<sup>th</sup> bullet point of paragraph 89 which allows for the redevelopment of previously developed sites which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. The starting point for this analysis is that the southern part of the site is already densely developed with a complex of former school buildings which occupy around 57% of the ground area. The effect of the proposed redevelopment is that the proportion of ground covered by buildings would fall to about 29%<sup>4</sup>.
21. The overall building footprint of the existing buildings is 6,193sqm, compared with a total of 3,191sqm for the proposed buildings. This would be a reduction of around 48%. The total volume of built development would reduce from 39,354 cubic metres to 24,700 cubic metres, a reduction of around 37%<sup>5</sup>. To my mind these significant reductions in site coverage, footprint and built volume provide a strong indication that the appeal scheme is unlikely to have a greater impact on the openness of the Green Belt than the existing development. Nevertheless, the figures do not tell the whole story and I have also had regard to the distribution, height and massing of the built form together with other relevant factors.
22. The school complex includes some large footprint blocks. The sports hall/communal wing and the teaching wing each have footprints in excess of 2,000sqm. In contrast, the proposed residential blocks would have footprints in the range 274 – 577sqm. The residential development would be comprised of smaller elements of built form with more gaps between them. I note that plot 5 would be sited closer to the site boundary than the existing sports hall. However, many of the proposed dwellings would be sited further from the site boundaries than the existing buildings, whilst others would be in more or less

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<sup>4</sup> These figures are given in the evidence of Ms Toyne and were not disputed. It should be noted that they include the reception building which is to be converted to offices.

<sup>5</sup> The figures for footprint and volume also include the reception building.

- the same position relative to the boundary. The siting of the proposed buildings would be generally within the part of the site which is already occupied by buildings.
23. I note that some of the proposed dwellings would be higher than the existing structures. For example, the gables of the apartment buildings along the western site boundary would rise above the roofline of the teaching wing. Nevertheless, the increased height in this part of the site would be offset by a more fragmented built form with gaps between the blocks and variation in the roofline as compared with the rectilinear mass of the teaching wing.
24. In summary, I consider that the built development for which permission is sought would have substantially less impact than the existing buildings on the openness of the Green Belt. It would not result in further encroachment on the countryside nor could it be characterised as contributing to the sprawl of the built-up area.
25. The Council argued that the appeal scheme would have a greater impact on openness than the existing development when matters such as traffic, parking and domestic paraphernalia are taken into account. The appellants' transport witness provided comparative figures for the traffic generated by the appeal scheme and the potential re-use of the site for a secondary school. These figures, which were not disputed, showed that a secondary school would generate over 200,000 vehicle trips per year whereas the appeal scheme would generate around 125,000 trips. During term time, school use would generate more trips per hour throughout the day, with many more trips during peak periods. These figures show that, insofar as traffic movements have an effect on openness, the appeal scheme would reduce that effect.
26. School use would, no doubt, create a great deal of short term parking at the beginning and end of the school day. Moreover, having regard to the scale of a secondary school operation, it seems likely that there would be significant parking associated with it at all times when the buildings were in use. Evening, weekend and holiday activities making use of the buildings could extend the times at which such parking would be experienced well beyond the normal school day. On the other hand, there would be times, such as evenings and weekends, when the proposed residential development may well generate more cars parked in the open than a school use would. On either scenario, parked cars would have some effect on openness, the extent of which would vary over time. On the evidence before me, I do not think it has been demonstrated that the proposed scheme would have a materially greater impact in this respect.
27. It is also necessary to consider the potential impact on openness from ancillary structures associated with the proposed dwellings and domestic paraphernalia. The layout drawing shows that each of the 26 houses<sup>6</sup> would have a private garden which is likely to be enclosed with walls or fencing of some sort. There would also be potential for extensions, conservatories and garden sheds, together with moveable items such as garden furniture and play equipment. Whilst all of these things could have some impact on openness, I consider that in practice the extent of any such impact would be significantly limited by the modest size of the garden each house would have. Moreover, amenity areas for

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<sup>6</sup> 24 new build houses plus 2 from the conversion of a stable block

flats tend to be managed and used communally and typically attract much less by way of domestic paraphernalia than enclosed private gardens.

28. To conclude on the first main issue, I take account of the potential impact on openness from ancillary structures and domestic paraphernalia. However, in this case I find that the scale of any such impact would come nowhere near to outweighing the significant reductions in site coverage, footprint and built volume that would result from the appeal scheme. Moreover, the appeal scheme would result in smaller elements of built form with more gaps between them and would generate significantly less vehicular traffic. My overall assessment is that the proposal would not have a greater impact than the existing buildings on the openness of the Green Belt. Nor would it have a greater impact on the purposes of including land within the Green Belt. Having regard to paragraph 89, I conclude that it would not amount to inappropriate development for the purposes of the Framework.
29. The appeal proposal would be inappropriate development for the purposes of UDP Policy G1 because it would not fall within the exceptions set out in the policy. This is because, although the appeal site is previously developed, it is neither 'major' nor 'designated'. However, in this respect Policy G1 is inconsistent with the approach to previously developed sites in the Green Belt set out in the Framework. Consequently I attach limited weight to the conflict with Policy G1 and much greater weight to the scheme's compliance with the Framework<sup>7</sup>.

#### ***Effect on the availability of land for education use***

30. UDP Policy C1 supports the provision of new community facilities, including education facilities. It states that permission will not be given for development which results in a loss of community facilities unless it can be demonstrated that there is no longer a need for them or, alternatively, provision is to be made in an equally accessible location. LP Policy 3.18 is also supportive of new school provision. In relation to existing education facilities it states that proposals which result in a net loss of such facilities should be resisted, unless it can be demonstrated that there is no ongoing or future demand. LP Policy 3.16 deals more generally with social infrastructure. It states that proposals which would result in a loss of social infrastructure in areas of defined need, (for that type of infrastructure), without realistic proposals for re-provision should be resisted. The Mayor of London's Social Infrastructure Supplementary Planning Guidance (the Mayor's SPG) also seeks to resist the net loss of educational space. The Framework states, at paragraph 70, that planning decisions should guard against unnecessary loss of valued facilities and services.

#### ***The need for new secondary school places in Bromley***

31. There is projected to be significant growth in the demand for secondary school places in Bromley. This demand is expected to peak at 2022 by which time an additional 34 forms of entry (FE) will be required. Current proposals for Free Schools and school expansions are forecast to provide sufficient capacity until 2018 and these will reduce the need to 20 additional FE by 2022. Currently

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<sup>7</sup> See paragraph 215 of the Framework

there are insufficient places in the north west of the borough whilst spaces remain at schools in the east of the borough<sup>8</sup>.

32. There are various ways in which additional capacity may be brought forward. These include the expansion of existing schools and new Free Schools. There is currently no Catholic secondary school in the borough. The RCDS is keen to address what it sees as a significant unmet demand in this respect. The Council is supportive of the principle of a new Catholic secondary school and is committed to working with the RCDS to achieving this objective. As things stand, it seems unlikely that a new Catholic secondary school could be achieved via the Free School route<sup>9</sup>. At the Inquiry, it emerged that the option preferred by RCDS is for a secondary school to be provided at the SPSP site. This is intended to be a satellite campus of the St Thomas More Academy Secondary School in Eltham.
33. The DAFP identifies indicative site options to address secondary school requirements. The appeal site is identified as being a policy compliant site (in the terms of the Framework). The DAFP identifies three sites within the Green Belt where, it is proposed, the Green Belt allocation could be changed to Urban Open Space (UOS). The purpose of designating such sites as UOS would be to give greater flexibility in respect of the expansion of existing educational premises.
34. As noted above, the DAFP is an emerging development plan document. It is not at a stage where weight can be attached to it as a statement of policy. However, it is of relevance insofar as it illustrates the extent of the need for new secondary school provision and the challenges that the Council faces in identifying suitable sites. In particular, the fact that the Council is considering reallocating Green Belt sites as UOS provides a clear indication of the difficulty of finding suitable locations to bring forward new school places.
35. In its roles as local planning authority and education authority the Council is in a position to work alongside existing education providers, and potential new providers, with a view to meeting the identified need. However, it is not in a position to direct that a particular site is used to build a new school.

*The prospects for achieving a new secondary school at the appeal site*

36. If the appeal is allowed, the appeal site would be lost to educational use. There is a pressing borough-wide need for secondary school places and there are difficulties in finding suitable new sites. Consequently it is understandable that the Council, as local planning authority, is reluctant to see an existing school site put to an alternative use. Nevertheless, it is relevant to consider what the prospects for achieving a new secondary school would be if the appeal were to be dismissed.
37. The site already contains a complex of school buildings, mostly dating from the latter half of the 20<sup>th</sup> century. The buildings have been vacant since 2007 and would no doubt require extensive works to bring them back to a serviceable condition. The appellants' quantity surveyor estimates that the costs of

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<sup>8</sup> The latest figures before the Inquiry are at CD D17, page 225

<sup>9</sup> The funding arrangements for Free Schools include provisions relating to admissions criteria which would not be acceptable to the Bishops of England and Wales.



refurbishment would be about £10.6 million<sup>10</sup>. This figure was not disputed and no alternative figures were before the Inquiry. The estimated cost of refurbishment is well below the Council's cost estimate of £32 million for the provision of a new secondary school. There was no evidence that the buildings themselves, once refurbished, would be unsuited to education use and nothing I saw on my visit led me to think that would be the case.

38. An obvious difficulty with the existing site is that it is very constrained. There is limited external space for formal sports or for informal play/social activity during break times. It seems likely that, if a new school were provided, it would be necessary to take pupils off-site for sports education. On the other hand, it is clear from the Council's evidence that a diverse range of sites will have to be considered if the borough-wide need for school places is to be met. Such are the constraints within the borough that an ideal site is unlikely to be found. Consequently, whilst the constrained nature of the All Saints site is a disadvantage, to my mind it does not preclude the possibility of a new school being established here.
39. Wickham Court School, which shares the site access, draws attention to the traffic conditions which occurred when All Saints School was in operation. However, from what I saw on site, it appears that there is considerable scope for parking and dropping off pupils clear of the public highway. In this respect the All Saints site appears relatively well provided. I can appreciate that, with two schools in operation, some co-operation and management would be required but I do not regard this as an important factor in assessing the prospects for re-use of the site.
40. The development plan policies identified above do not distinguish between Catholic schools and other education providers. Even so, as the RCDS is an established education provider, it is appropriate to consider the prospects for a new Catholic school on the appeal site as well as considering other potential education providers.
41. In February 2014 a meeting was held between RCDS and Members and officers of the Council to discuss the options for promoting a new Catholic secondary school in the borough<sup>11</sup>. Those present agreed that the All Saints site should not be considered further because:
- it was not in the right location,
  - due to past problems<sup>12</sup>, it would not attract children from the local Catholic community, and
  - the buildings would require a substantial amount of funding to bring them up to current standards.

The outcome of the meeting was that the option of providing a new school at the SPSP site should be pursued. The RCDS subsequently agreed to carry out a

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<sup>10</sup> Inspector's note – Mr Harrabin explained during his evidence in chief that this estimate was based on a desk top study, supplemented by a site visit, but without detailed surveys. He considered his figure to be accurate plus or minus 20%.

<sup>11</sup> The meeting note is attached to Ms Bamford's proof of evidence. Those attending on behalf of the Council were Members and officers concerned with education.

<sup>12</sup> Inspector's note – Mrs Slater explained, during her evidence in chief, that the school had suffered from poor management and there had been a well-publicised incident relating to the misuse of school funds.

feasibility study of the SPSP site and this study emerged, in draft form, during the adjournment between the first and second phases of the Inquiry.

42. Whatever the outcome of the appeal, there appears to be no realistic prospect of a Catholic school being re-established at the appeal site. The RCDS, as site owner and as an education provider, considers that a school here would not be successful. With the support of Education officers within the Council, it has directed its efforts to secure a new school elsewhere. It considers that the best option for attracting the required funding and meeting the need for Catholic education would be a satellite campus of the St Thomas More Academy located at the SPSP site.
43. I turn to the prospects for another educational provider to achieve a new secondary school at the appeal site. It is relevant to note that neither the St John Rigby School nor the All Saints School was able to attract a sufficient number of pupils to remain viable, a situation which ultimately led to closure in 2007. The evidence indicates that there were various reasons for this decline, including reputational issues and transport difficulties. The Council's Director of Education has previously commented that '*Catholic families would always see it as a failed school*'<sup>13</sup>. The reputational issues are likely to be of much less significance now, due to the passage of time. Moreover, if a potential new school were not a Catholic school it seems unlikely that the past difficulties would be of any significance to future parental choices. Even so, the locational factors would apply to any potential new education provider.
44. The site is close to the south west boundary of the borough, to the south of the main built-up areas. The appellants' education witness stated that, when the St John Rigby School was operating, most pupils travelled from different parts of the borough by private coaches. The school had 6FE in its first 10 years but, when the Council proposed to stop payment of a transport subsidy, this fell to just 3FE. Numbers rallied for a while helped by pupils from the neighbouring borough of Croydon who, by 1989, made up 40% of the intake. The All Saints School, which opened in 2004, never achieved the published admission number it was designed for and the numbers of new pupils each year continued to decline.
45. The Council has identified that the need for new school places is concentrated in the north west of the borough. This part of the borough is beyond a convenient walking or cycling distance from the appeal site. The evidence does not identify any direct or convenient public transport links, either by bus or train. This suggests to me that any new school at the appeal site, if it had a wide catchment, would be reliant on some form of private transport. This is a factor which would be relevant in the event that a new Free School were proposed because it would increase the running costs of the school<sup>14</sup>.
46. This conclusion is consistent with a report made by Council officers to the School Place Planning Working Party. In relation to the All Saints site the report noted that '*the location near the boundary with Croydon is not ideal as the travelling distances and routes from other parts of the borough are difficult and would require special services to be put in place*'<sup>15</sup>.

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<sup>13</sup> Letter from Mr Parkin, Executive Director of Education Care and Health Services – at appendix E to Ms Bamford's evidence

<sup>14</sup> Inspector's note – Ms Bamford, in answers to my questions, explained the importance of value for money criteria when applications for funding are considered by the Education Funding Agency.

<sup>15</sup> CD D9, page 95, paragraph 88

47. Data from the National Travel Survey shows the propensity for secondary school pupils to use different modes of transport for trips to school, depending on the distance travelled. Trips of up to two miles are predominantly made by walking or cycling. The appellants' transport witness provided an analysis of the population within 3km of the appeal site, compared with the populations within 3km of other proposed school sites. This analysis highlights the fact that the appeal site has a much lower population within this distance than does, for example, the Beckenham Academy. This is relevant because it significantly reduces the potential for the pupils of any new school to travel on foot or cycle.
48. Drawing together the evidence on locational factors, it appears to me that the appellants are right to say that transport issues were an important factor leading to the decline and ultimate closure of the schools which previously operated on the site. Notwithstanding the time which has passed, it seems to me that the underlying problem of poor accessibility has not materially changed. In one sense the problem is more acute because any potential Free School provider would have to take account of abnormal transport costs in its business plan and in any funding application. It would also have to make a judgement as to the effect of accessibility on parental choice. I conclude that the relatively poor accessibility of the site to potential pupils is an important consideration which reduces the likelihood of a new secondary school being established at the appeal site.

#### *Marketing the site*

49. Following the closure of All Saints School the Trustees of the RCDS appointed surveyors Stanley Hicks and Son (SH&S) to dispose of the site. Offers were received during 2010 but these proved to be abortive due to market conditions at that time. The marketing effort was re-launched in September 2011 with advertisements in the Estates Gazette, production of a brochure and information on the surveyors' website. This generated a significant number of enquiries and viewings. Four offers were received by the due date (25 November 2011). The offer from RH was the best, albeit that it was conditional on the grant of planning permission for residential development.
50. The appellants' witness dealing with the marketing of the property gave evidence that only two expressions of interest were received from educational bodies. One, from Hyderi, is discussed further below. The other was from the Catholic University of Murcia, a private university based in Spain. Representatives of this organisation inspected the site. An offer was made but there were doubts that the necessary funds were available<sup>16</sup>. At the Inquiry Hyderi suggested that there may have been other approaches from educational bodies. However, the evidence from the appellants' surveyor<sup>17</sup> was quite clear on this point and I see no reason to doubt it.
51. Moreover, I have no reason to doubt that the marketing carried out by SH&S was a genuine effort to expose the property to potential purchasers and that the offers received were properly reported to the Trustees. In my view it is significant that no organisation with a track record of promoting Free Schools has shown any interest in the appeal site. There was no suggestion at the Inquiry that the Council was aware of any such organisation. Indeed, apart

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<sup>16</sup> Inspector's note – Mr Collins, in his evidence in chief, said that the University of Murcia proposed to spread the purchase price over several years. This was thought to be too risky by the Trustees of RCDS.

<sup>17</sup> Mr Collins

from Hyderi, there has been no approach from anyone interested in operating any type of school at the site<sup>18</sup>.

### *Hyderi*

52. Hyderi is a registered charity founded in 1983 based in Streatham, in south London. It primarily caters for the Khoja community, which is a community of Indian origin, but is also open to the wider community. Amongst other activities Hyderi runs a Saturday school for around 450 children aged 4 – 18 years. The school seeks to provide a complete education system within an Islamic curriculum including GCSE and A-Level courses. Hyderi also operates a day nursery for 49 children aged 2 – 5 years. Hyderi's umbrella body is the World Federation of Khoja Shia Ithna-Asheri Muslim Communities (WF). The WF has existed for over 30 years and has about 125,000 community members worldwide. The WF has established secondary schools in Toronto and Vancouver.
53. Hyderi's statement of case sets out its vision to open a school for the local community. At the Inquiry it was explained that the intention was to found a secular school based on Khoja values, starting with one or two year groups and building up to be fully operational by 2025 to 2030. It was stated that Hyderi would like to pursue a Free School option but, failing that, it would operate a private school. Hyderi has a sister organisation in north London which is in the process of setting up a Free School and it would be able to draw on that experience<sup>19</sup>.
54. At the Inquiry there was extensive discussion regarding the history of Hyderi's attempts to acquire the appeal site. The RCDS stated that at no time did Hyderi make an offer for the site which was compliant with normal commercial requirements for such offers. Hyderi, on the other hand, argued that they were not made aware of any such requirements and that SH&S did not act diligently in respect of Hyderi's offers. In short, Hyderi does not believe that it was taken seriously.
55. Hyderi was aware of the site in January 2011 when SH&S offered to arrange a viewing. This was before the marketing re-launch in September of that year. The next documented exchange between Hyderi and SH&S was in December 2011, after the deadline for tenders had passed. In February 2012 surveyors Edward Symmons (ES), acting for Hyderi, made a formal offer in the knowledge that a sale had been agreed (subject to contract). ES sought to persuade SH&S that its offer should be preferred because it was unconditional. Hyderi made a further approach in October 2012, this time not via ES. In January 2013 SH&S arranged a viewing for Hyderi. In April 2013 contracts were exchanged with RH.
56. Hyderi identified some inconsistencies in the appellants' evidence on these matters. For example, although the evidence stated that SH&S sent property details to Hyderi in January 2011, it was accepted at the Inquiry that this did not happen<sup>20</sup>. Nevertheless, it is clear that the site was marketed generally in

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<sup>18</sup> Inspector's note – Mr Collins, in his evidence in chief, said that the University of Murcia was seeking to provide a university campus at the site.

<sup>19</sup> Inspector's note – these comments were made by Mr Dato during evidence in chief and during cross-examination by Mr Steel. In the second phase of the Inquiry Mr Dato confirmed that the sister body has now been approved to establish a Free School in Harrow.

<sup>20</sup> Inspector's note – accepted by Mr Collins in answer to questions from Mr Noorali

- the latter part of 2011. For whatever reason, Hyderi did not respond by the tender date.
57. Various approaches were made after this time. The appellants and Hyderi disagreed as to whether or not these should be characterised as 'offers' or, if they were, whether they were 'compliant'. Whatever view one takes on that, the context for these later exchanges was that the RCDS was working towards exchange of contracts with a preferred bidder, which had been selected following a tender process. This did not preclude Hyderi from coming forward with alternative approaches and SH&S would have been duty bound to report any such approaches to its client. However, it seems to me that the Trustees would have been bound to take a commercial view, acting on appropriate professional advice.
58. This would have involved making judgements not only about price but also about the timescale and certainty of completing the disposal of the property. On the basis of the evidence before me I see no reason to think that the decision to exchange contracts with RH in April 2013 was reached unreasonably.
59. If the appeal is dismissed then it seems likely that RCDS would have to seek a new purchaser. Hyderi could then make an offer although it would not be bound to do so. Nor would the RCDS be obliged to accept any offer that might emerge. There would be considerable uncertainties in terms of funding. At the Inquiry Hyderi produced correspondence which indicated that pledges of funding had been made by the WF and an individual benefactor. However, circumstances can change and such pledges are not equivalent to a guarantee of funding.
60. In any event, on the evidence before the Inquiry, it seems unlikely that the pledges made would provide sufficient funds to carry out the refurbishment of the buildings in addition to meeting the purchase price. There is no evidence that Hyderi has carried out any surveys of its own or made any assessment of the costs that would be involved in bringing the existing buildings back into use. Nor is there any business plan showing how the operational costs of a school might be funded.
61. Whilst Hyderi has experience of running a Saturday school and a nursery, it would be a new provider in terms of providing a secondary school. At the Inquiry it became clear that Hyderi's ideas for the site are at a very early stage. There was, for example, no feasibility study and no detail of the school envisaged other than the broad vision described above. Hyderi's ideas for the site evolved during the appeal process. In its statement of case, Hyderi stated that the intention was to open a school using its own funds and through funding from the WF. At the Inquiry, it was stated that Hyderi would like to pursue a Free School option but, failing that, it would operate a private school. There is no evidence that the option of a Free School at the All Saints Site had been explored in any detail, if at all, prior to the Inquiry itself.
62. The operation of a Free School would require funding via the Educational Funding Agency (EFA). There was no evidence before the Inquiry as to the likelihood of such funding being made available. Moreover, the problems of accessibility, referred to above, would apply in the same way to a potential Hyderi school as they would to any other secondary school in this location.

Those issues would no doubt be taken into account by the EFA in the event that an application for funding was made.

63. I have no reason to doubt the sincerity of Hyderi's ambitions for the All Saints site. On the evidence before me it appears that Hyderi would be in a position to attempt to acquire the site and there is some prospect that it could succeed. However, the scale and nature of any educational facilities that might be provided is uncertain. In my view it has not been demonstrated that there is a realistic prospect that Hyderi could make a significant contribution to the need for secondary school places in Bromley over the period up to 2022.

*The St Peter and St Paul site*

64. A feasibility study for the development of a new school at the SPSP site emerged during the course of the Inquiry. The study sets out three options, two involving development within the SPSP site. Option 3, the preferred option, would involve a land swap with the Council. The proposed school would be located on land adjacent to St Pauls Wood Hill which is currently in Council ownership. The existing school site would be returned to an open condition once the new school was in operation.
65. The appellants drew attention to a number of advantages which, as they see it, this approach would have. As a satellite campus to the St Thomas More Academy it would be able to share staff, facilities and administration. Moreover, it would be well located to serve parts of the borough which have high population density and relatively high levels of deprivation. The appellants argued that the ability of RCDS to provide land, shared facilities and some capital funding from the sale of the appeal site would make the school an attractive proposition from the perspective of the EFA.
66. Whilst I note the various factors highlighted by the appellants, the proposals for SPSP are at the earliest stage of development. At the time of the Inquiry the feasibility study was still a draft document. In any event, the study does not seek to address matters such as funding or planning issues. The proposals are subject to uncertainty in relation to educational, land ownership, financial and planning considerations. First, in order to create a 6FE secondary school it is suggested that the existing SPSP primary school could combine with two other primary schools nearby<sup>21</sup>. This would be subject to consultation and due statutory processes. Second, the preferred option requires a land swap with the Council. There is no evidence either that the Council has had any opportunity to consider this suggestion or that there has been any investigation of the property issues involved. Third, there is no financial appraisal.
67. Fourth, in relation to planning, the feasibility study proposes a significant amount of new building in the Green Belt. The site is not allocated in any local plan, nor is it being promoted through the local plan process. No pre-application discussions have taken place. The proposals are likely to have significant impacts in terms of the openness of the Green Belt, landscape and visual impacts, effect on public open space, highways and transportation. There may well prove to be many other important planning considerations. None of these matters have been the subject of any assessment at this stage.

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<sup>21</sup> Alternatively an 'all through' school could be created with one primary FE and five secondary FE.

68. I appreciate that the proposals for the SPSP site have the potential to contribute to the requirement for secondary school places in Bromley. Moreover, to meet that requirement the Council is considering the potential of sites currently located within the Green Belt. However, it does not follow that this particular project would ultimately be found acceptable in planning terms. Any future decision maker would have to take account of a whole range of planning considerations, including the views of local people.
69. Having regard to all of the above factors, I do not believe I can reach any conclusion as to the prospects for a secondary school being delivered at the SPSP site. The proposal is at too early a stage, and is subject to too much uncertainty, to attract material weight in this appeal decision.
70. Whilst I note the terms of the UU, the undertaking does not alter my view that the prospects for a new secondary school at the SPSP site are too uncertain to attract material weight. The level of uncertainty is simply too great, with or without a contribution from the sale proceeds from the All Saints site.

*Conclusion on the second main issue*

71. Given the pressing need for new secondary school places in Bromley, and the difficulties in finding suitable sites, I do not consider that this is a case where it can be said that there is no need or future demand for the school buildings which currently stand on the appeal site. Whilst the RCDS has proposals for providing new school places in another location, those proposals are at too early a stage, and are subject to too much uncertainty, to carry material weight in this decision. Consequently, the appeal proposals do not in my view accord with UDP Policy C1 or with LP Policies 3.16 and 3.18. Nor do they accord with the Mayor's SPG<sup>22</sup>.
72. Nevertheless, it is relevant to consider the practical consequences of dismissing the appeal. In particular, it is important to consider the prospects for achieving a new secondary school at the site. Although an alternative type of education use would be policy compliant, the Council agreed that it is the need for secondary school places which underpins the first reason for refusal<sup>23</sup>. The appeal site is identified as suitable for a new secondary school in the emerging local plan on the basis that it is a policy compliant option. Whilst that is an important point, it does not address the locational aspects which contributed significantly to the decline and closure of previous schools on the site.
73. I attach significant weight to the evidence before me which indicates that the poor accessibility of the site would make it difficult to establish a new secondary school here. The fact that no education provider with a track record in delivering secondary schools has shown interest in the site is a further factor which adds weight to this conclusion. If the appeal were dismissed it is, in my view, unlikely that this would result in a new secondary school being delivered.
74. I take account of the possibility that Hyderi could make some educational use of these buildings. However, even if Hyderi were to acquire the site, the scale and nature of any educational facilities that might be provided here is uncertain. It has not been demonstrated that there is a realistic prospect that

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<sup>22</sup> Given the time the premises have been vacant I do not think that they can be characterised as 'valued facilities and services' in the terms of paragraph 70 of the Framework. Accordingly, I find no conflict with this paragraph.

<sup>23</sup> Inspector's note – in answer to questions from Mr Steel, Mrs Slater agreed that the need that the Council was seeking to meet was the need for secondary school places.

Hyderi could make a significant contribution to the need for secondary school places in Bromley over the period up to 2022. In practical terms, the proposal would therefore have only a limited effect on the availability of land for education use.

***Whether the proposal would facilitate the use of sustainable modes of transport***

75. The appeal site is located on the edge of the built-up area. It is possible to walk to the local shopping parade at Coney Hall via a direct and attractive route through the recreation ground. This route provides access to a convenience store, pharmacy and other shops and services. Although the distance (just under 1km) may discourage some from walking, I consider that walking would be a reasonable option for many occupiers of the appeal site. Moreover, local services would be well within cycling distance.
76. The site is not at or near a public transport hub, such that it would be highly accessible from a wide range of locations. For example, I noted above that there are no direct or convenient links from the north west part of the borough, where there is currently a shortage of school places. Nevertheless, there are public transport services available which would meet some of the transport needs of future residents at the appeal site. In particular, there is a bus service to Bromley town centre and to Hayes station. Bromley town centre provides a wide range of shops, services and employment opportunities. Hayes station provides rail services to central London. This is significant because around 24% of the working population in the local ward commute by train to central London. Hayes station would also be accessible by cycle.
77. UDP Policy H1 states that the suitability of windfall sites for housing will be assessed against various criteria including the location of the site in relation to employment, facilities and services. The appeal site is in a peripheral location and could not be described as highly accessible. However, local services are available and there are opportunities for modes of transport other than the private car. It is relevant to note that the Agreement would promote the use of sustainable modes of transport, including walking, cycling and the use of public transport. My overall assessment is that the proposal would facilitate the use of sustainable modes of transport and would not conflict with UDP H1 in this respect.

***Other matters***

*Delivery of housing*

78. It was not disputed that Bromley currently has a 5 year supply of housing sites in accordance with the LP. Nevertheless, there is a pressing need for additional housing in London and the Framework stresses the importance of boosting the supply of housing generally. The appeal scheme would bring an unused previously developed site back into use and make a contribution to meeting the need for housing. These are important factors weighing in favour of the appeal. Moreover, 35% of the units could be provided as affordable housing, in accordance with the LP. This is a further factor weighing in support of the appeal.



*Effect on setting and significance of heritage assets*

79. The proposals would have beneficial effects on the settings of Wickham Court (listed Grade I) and the Church of St John the Baptist and its associated Lych-gate (both listed Grade II\*). At present the northern flank elevation of Founders Hall is built up to the boundary with Wickham Court. This is an unattractive feature which detracts from the setting of the adjoining listed building. The proposed layout would allow more separation at this point and there would be more gaps between the new buildings than there are at present. The car parking area adjacent to the entrance to Wickham Court is a featureless and utilitarian area of hard standing. The proposals would reduce the area of hard standing and introduce additional planting, thereby enhancing the approach to Wickham Court.
80. The hard surfaced games areas in the northern part of the site create a somewhat mundane approach to the Lych-gate and Church. The proposals would reduce the area of hard surfacing and provide some additional planting which would be a visual enhancement.
81. The settings of all three listed buildings make important contributions to their respective significance as heritage assets. Wickham Court has its own grounds around it and the Church stands on a prominent ridge, set amongst trees. However, the features which would be affected by the appeal proposals, although within the respective settings, are not particularly important in terms of the significance of the heritage assets. It follows that the proposed improvements, whilst positive, would have only minor beneficial impacts. Nevertheless, this is a factor to which some weight should be attached in the overall planning balance.
82. There would be no material change to the setting of the Lodge in Layhams Road, opposite Wickham Court (listed Grade II). Its setting would therefore be preserved.

*Effect on character and appearance of the area*

83. The appeal site is densely developed with mainly 20<sup>th</sup> century school buildings of no architectural merit. The site is not widely visible from the north, east or south due to the presence of buildings and vegetation. However, due to its elevated location, it is highly prominent in views from the public footpath which runs south west from the Church into open countryside. In these views the teaching wing, together with the neighbouring Emmaus Retreat, forms an unrelieved block of building on the skyline. The proposed development would have a more articulated built form with variation in the skyline and gaps between the new buildings. This would be a material improvement to the character and appearance of the area and the visual amenities of the Green Belt.

*Other considerations*

84. The appellant suggested that the tennis courts would be for community use. However, in the absence of any mechanism to secure such use I attach limited weight to this claimed benefit. It was also argued that the proposals would avoid the need for RCDS to incur security costs and would discourage unauthorised use of the site by travellers. Land owners are responsible for the

maintenance and security of their land and I do not consider that these are factors which should attract significant weight in this decision.

### **Conclusions**

85. The appeal proposal would be inappropriate development in the Green Belt for the purposes of UDP Policy G1 because it would not fall within the exceptions set out in the policy. However, Policy G1 is inconsistent with the approach to previously developed sites in the Green Belt set out in the Framework. For the reasons given above, I conclude that the appeal scheme would not amount to inappropriate development for the purposes of the Framework. I therefore attach limited weight to the conflict with Policy G1 and much greater weight to the scheme's compliance with the Framework in respect of Green Belt considerations. Accordingly, this is not a case where it is necessary to demonstrate very special circumstances.
86. The proposal would facilitate the use of sustainable modes of transport and would not conflict with UDP Policy H1 in this respect. However, it would result in the loss of a school site and is therefore in conflict with UDP Policy C1 and with LP Policies 3.16 and 3.18. This conflict is of sufficient importance for me to conclude that the proposal would be in conflict with the development plan as a whole. It is therefore necessary to consider whether there are other material considerations which indicate that permission ought to be granted, notwithstanding the conflict with the development plan.
87. The appeal site contains 20<sup>th</sup> century school buildings which appear capable of refurbishment, albeit at significant cost. There is a pressing need for new secondary school places in Bromley and there are difficulties in finding suitable sites. These are important factors which weigh against the appeal.
88. There is a possibility that, if it were to acquire the site, Hyderi could make some educational use of these buildings. However, even if Hyderi did acquire the site, the scale and nature of any educational facilities that might be provided here, and the contribution that might be made to meeting existing and projected educational need in Bromley, is uncertain. These uncertainties about the acquisition of the site, and its subsequent use, significantly reduce the weight to be attached to this factor.
89. Turning to the factors weighing in favour of the appeal, I attach significant weight to the evidence which indicates that the poor accessibility of the site would make it difficult to establish a new secondary school here. The fact that no education provider with a track record in delivering secondary schools has shown interest in the site is a further important factor which adds weight to this conclusion. If the appeal were dismissed it is, in my view, unlikely that this would result in a new secondary school being delivered at the site within a timescale that would contribute to meeting the projected need for secondary school places in Bromley.
90. There are other important factors weighing in favour of the appeal. If the appeal is allowed there is a good prospect that a vacant previously developed site would be brought back into active use, contributing to the supply of housing. The scheme would also contribute to the need for affordable housing. There would be a material improvement to the character and appearance of the area and the visual amenities of the Green Belt. In addition, I attach some

weight to the enhancement of the settings and significance of designated heritage assets which would result from the appeal scheme.

91. The Framework states that all those matters covered in paragraphs 18 to 219 are to be taken into account when assessing whether or not a proposal would represent sustainable development. Looked at in that way, I consider that the social and economic benefits of new housing, together with the environmental benefits identified above, would outweigh any harm to the social dimension arising from the loss of a school site. The proposal would therefore represent sustainable development when considered in the context of the Framework as a whole.
92. My overall assessment is that the factors weighing in favour of the appeal are sufficient to outweigh those weighing against. To my mind the balance of material considerations is sufficiently in favour of the appeal to indicate that permission should be granted, notwithstanding the identified conflict with the development plan. Consequently, the appeal should be allowed.

### **Conditions**

93. The Council and the appellants suggested conditions which were, in the main, agreed by the parties. I have reviewed these suggestions in the light of Planning Practice Guidance (the Guidance). In some cases I have adjusted detailed wording to reflect the Guidance.
94. Condition 2 requires the development to be in accordance with the submitted plans, reflecting the Guidance. Conditions 3 (landscape), 4 (means of enclosure), 5 (tree protection), 6 (materials), 8 (external illumination) and 10 (site levels) are needed in the interests of protecting the character and appearance of the area.
95. Condition 7 requires details of refuse storage in the interests of sustainable development and protecting the character and appearance of the area. Condition 9 requires approval of construction and waste disposal working arrangements in the interests of highway safety and the amenity of nearby occupiers during the construction phase.
96. Condition 11 requires implementation of wildlife mitigation measures in the interests of biodiversity. Condition 12 relates to potential contamination of the site in the interests of managing risks of pollution. Condition 13 is needed to protect the archaeological potential of the site through approval of a written scheme of investigation. Condition 14 requires details of surface water drainage to be approved in the interests of sustainable development and managing flood risk.
97. Condition 15 requires submission of a site wide energy strategy in the interests of limiting carbon emissions. Condition 16 refers to wheelchair housing in the interests of meeting the housing needs of people with limited mobility. Condition 17 requires a proportion of the dwellings to be provided as affordable housing to address housing need within the Borough and in accordance with the development plan. I have adjusted the suggested wording to give greater certainty in relation to the delivery of affordable housing.
98. Some conditions require details to be submitted prior to the commencement of development. This is necessary in the case of conditions 3, 6, 7, 10, 14, 15 and 16 because the conditions relate to the design and/or layout of the

development. It is necessary in the case of conditions 9, 12 and 13 because these conditions seek to mitigate impacts during construction.

99. At the Inquiry the parties agreed that suggested conditions relating to wheel washing and Secured by Design were not necessary. The Council argued that permitted development rights should be withdrawn to protect the openness of the Green Belt. However, the permitted development rights set out in National legislation apply to houses in the Green Belt. I have not identified any reason why the proposed dwellings should be treated differently to other properties in the Green Belt. The Council also suggested a condition relating to Lifetime Homes. However, such a condition would not accord with the Guidance in relation to optional technical standards for housing<sup>24</sup> so I have not imposed it.

*David Prentis*

Inspector

Richborough Estates

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<sup>24</sup> Ref ID 56-008-20150327

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Gwion Lewis	of Counsel, instructed by the Solicitor to the Council
He called	
Gill Slater	Planning Policy Officer, London Borough of Bromley
BA(Hons) DipTP MRTPI	Partner, Kemp and Kemp LLP
Steven Sensecall	
BA(Hons) DipTP MRTPI	

### FOR THE APPELLANT:

John Steel	Queens Counsel, instructed by Winckworth Sherwood
He called	
Graham Collins FRICS	Partner, Stanley Hicks and Sons
Dr Anne Bamford	Director of the Education Commission for the Archdiocese of Southwark
PhD MA CA BEd	
Dip Teach	
Philip Harrabin MRICS	Director, Harrabin Consultancy Limited
Mike Axon	Director, Vectos
BSc FCIHT MTPS	
Lisa Toyne	Landscape Planning Director, Barton Willmore
BA(Hons) DipLA DipTP	
CMLI	
Nick Pryor	Partner, JTS Partnership
BSc(Hons) MRICS	

### FOR HYDERI ISLAMIC CENTRE, THE RULE 6 PARTY:

Aqeel Noorali	Solicitor
He called	
Abbas Datoo	Vice President, Hyderi Islamic Centre
BA(Hons) Econ	

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

*Agreed document*

APP/LPA1 Statement of common ground

*Documents submitted by the Council*

LPA1	Opening submissions
LPA2	Summary proof of evidence – Steven Sensecall
LPA3	Draft affordable housing condition
LPA4	United Nations Civil Society Participation – notes on applying for

- consultative status from UN website
- LPA5 Response to the appellants' revised statement of case
- LPA6 Additional proof of evidence – Gill Slater
- LPA7 Rebuttal proof of evidence – Gill Slater
- LPA8 Response to the supplementary proof of evidence of Nicholas Pryor
- LPA9 Schedule of meetings about secondary school provision
- LPA10 Department for Education Guidance – Making Significant Changes to an Existing Academy
- LPA11 Additional suggested conditions
- LPA12 Closing submissions
- Documents submitted by the appellants*
- APP1 Opening submissions
- APP2 Set of reduced scale plans
- APP3 Plan showing potential parking spaces on site as existing - Mike Axon
- APP4 Draft s106 Agreements and affordable housing condition (email of 21 January 2016)
- APP5 Revised statement of case
- APP6 Supplementary proof of evidence – Anne Bamford
- APP7 Supplementary proof of evidence – Mike Axon
- APP8 Supplementary proof of evidence – Nicholas Pryor
- APP9 Feasibility report – Chislehurst Campus of St Thomas More Secondary Academy School (REF/8335/Rev A – January 2016)
- APP10 Response to additional proof of evidence of Gill Slater – Anne Bamford
- APP11 Suggested affordable housing condition
- APP12 Letter to the Secretary of State from the Archbishop of Southwark dated 1 March 2016
- APP13 Suggested conditions
- APP14 Draft s106 Agreement
- APP15 Briefing note on parking – Nicholas Pryor
- APP16 Land Registry documents for s106
- APP17 Closing submissions

*Documents submitted by Hyderi Islamic Centre*

- HYD1 Supplementary Facts (13 December 2015)
- HYD2 Letter from the World Federation of Khoja Shia Ithna-Asheri Muslim Communities (10 December 2015)
- HYD3 Accounts and Trustees Report – year ended 31 December 2014
- HYD4 Letter from Raza Aly Hiridjee (12 December 2015)
- HYD5 Opening Statement
- HYD6 Additional proof of evidence – Abbas Dattoo
- HYD7 Minutes of special general meeting of 11 February 2016
- HYD8 Closing submissions

*Additional core documents*

- D11 Free schools – how to apply (Department for Education – July 2015)
- D12 Bundle of emails to/from Council officers
- D13a Timmins judgment (High Court) [2014] EWHC 654 (Admin)
- D13b Timmins judgment (Court of Appeal) [2015] EWCA Civ 10
- D14 Hyderi Islamic School – Information for parents
- D15 Area guidelines for mainstream schools (Department for Education – June 2014)
- D16 Letter from Brandon Lewis MP to The Planning Inspectorate (19 December 2014)
- D17 Report to Education Policy Development and Scrutiny Committee on 19 January 2016 (with extracts from the attachments)

**DOCUMENTS SUBMITTED AFTER THE INQUIRY**

Section 106 Agreement dated 22 March 2016

Unilateral Undertaking dated 22 March 2016

Emails from the Council and the appellants relating to *London Borough of Bromley v Secretary of State for Communities and Local Government*

Further closing submissions for the Council (1 April 2016)

Appellants reply to further closing submissions for the Council (8 April 2016)

### **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: 680.1001S; 680.1017A; 680.1046B; 680.1047A; 680.1048C; 680.1049D; 680.1050A; 680.1051B; 680.1062D; 680.1063D and 680.1102A  
except insofar as plan 680.1062D shows a pavilion which no longer forms part of the proposed development.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The approved scheme shall be carried out in the first planting season following the first occupation of the buildings hereby permitted or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted, unless otherwise agreed in writing by the local planning authority.
- 4) Before any part of the development hereby permitted is first occupied, details of the means of enclosure of the site boundaries and individual plots shall first have been submitted to and approved in writing by the local planning authority. The means of enclosure shall be implemented in accordance with the approved details prior to the occupation of the development and shall be permanently retained as such thereafter.
- 5) No trees on the site shall be felled, lopped, topped or pruned before or during building operations except with the prior approval in writing of the local planning authority. Any trees which are removed or die through lopping, topping or pruning shall be replaced in the next planting season with trees of such size and species as may be agreed in writing by the local planning authority.
- 6) No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until details of the arrangements for the storage of refuse and recycling materials (including any means of enclosure for such areas) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the occupation of the development and shall be permanently retained as such thereafter.
- 8) Before any part of the development hereby permitted is first occupied, a scheme for the illumination of the access roads and parking areas shall first have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme prior to the occupation of the development and shall be permanently retained as such thereafter.



- 9) No development shall take place until a Construction Management Plan, an Environmental Management Plan and a Site Waste Management Plan have been submitted to and approved in writing by the local planning authority. The approved plans shall be adhered to throughout the construction of the development hereby approved.
- 10) No development shall take place until details of existing and proposed site levels and finished floor levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) The development hereby approved shall be carried out in accordance with the recommendations set out in the submitted bat survey by Adonis Ecology dated 22 August 2014 and shall thereafter be permanently retained as such.
- 12) No development shall take place until a site investigation of the nature and extent of any contamination (including relevant soil, gas, surface water and groundwater sampling) has been carried out in accordance with a methodology which has first been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins.

If any contamination is found during the site investigation, no development shall take place until a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority. The approved measures shall be carried out before development begins.

No development shall take place until a closure report has been submitted to and approved in writing by the local planning authority. The closure report shall include details of the remediation work carried out including waste materials removed from the site, quality assurance certificates and details of post-remediation sampling.

If, during the course of the development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted for the approval in writing of the local planning authority. The remediation of the site shall include the remediation measures which have been so approved.

The site investigation, remediation and reports referred to above shall be carried out by contractors which have been approved in writing by the local planning authority.

- 13) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 14) No development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable development principles and shall include an assessment of the hydrological and hydro geological context of the development. The scheme shall achieve

reductions in surface water run-off to greenfield rates in accordance with the submitted flood risk assessment (L00403 Version 2 dated February 2014) and drainage assessment (L00403 Version 3 dated July 2014). Development shall be carried out in accordance with the approved scheme and permanently retained as such thereafter.

- 15) No development shall take place until a site wide energy assessment and strategy for reducing carbon emissions has been submitted to and approved in writing by the local planning authority. The strategy shall identify measures to achieve a reduction in carbon dioxide emissions of at least 35% above the target emission rate required by the Building Regulations and shall aim to achieve a reduction of at least 20% from on-site renewable energy generation. The strategy shall include a scheme to control noise, odour, fumes and soot emissions from any plant or equipment required as part of the approved strategy. The strategy shall be implemented prior to the occupation of the buildings hereby approved and shall thereafter be retained in operational working order for the lifetime of the development.
- 16) No development shall take place until a scheme to provide 10% of the dwellings hereby permitted as dwellings capable of occupation by wheelchair users in accordance with Part M4(3) of the Building Regulations has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and permanently retained as such thereafter.
- 17) At least 17 of the dwellings hereby permitted shall be provided as affordable housing in accordance with Policies 3.10 and 3.11 of the London Plan 2015. Not more than 25 of the dwellings hereby permitted shall be occupied before a written scheme for the provision of the affordable housing has been submitted to and approved in writing by the local planning authority. The scheme shall include:
  - plans and drawings of the affordable housing
  - the numbers, type, tenure and location on the site of the affordable housing
  - the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing
  - the arrangements for the transfer of the affordable housing to an affordable housing provider and/or the arrangements for the management of the affordable housing
  - the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing
  - the occupancy criteria to be used for determining the identity of the occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme for the lifetime of the development.