

A G E N D A

(Pages)

1. **Apologies for Absence**

2. **Declarations of Interest**

Any Member attending the meeting is reminded of the requirement to declare if he/she has a personal interest in any item of business, as defined in the Code of Conduct. If that interest is a prejudicial interest as defined in the Code the Member should also withdraw from the meeting.

3. **Pioneer House, Hollybush Hill, Stoke Poges**

To consider the report of the Head of Legal and Democratic Services. **(5 - 8)**

Appendix

4. **Exclusion of Public**

(9 - 78)

The Chairman to move the following resolution:-

“That under Section 100(A)(4) of the Local Government Act 1972 the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Act.”

5. **Pioneer House, Hollybush Hill, Stoke Poges**

Barrister's advice referred to in item 3 above attached. **(79 - 84)**

The next meeting is due to take place on Wednesday, 20 April 2016

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SUBJECT:	Pioneer House, Hollybush Hill, Stoke Poges
REPORT OF:	Head of Legal and Democratic Services
REPORT AUTHOR	Joanna Swift joanna.swift@southbucks.gov.uk 01494 732761
WARD/S AFFECTED	Stoke Poges

1. Purpose of Report

- 1.1 This report is brought to Cabinet as a matter of urgency following the decision of Planning Committee on 9 March that the Council should challenge the Secretary of State's decision of 18 February to grant prior approval for a state-funded school at Pioneer House. That decision was subject to Cabinet approving the funding for the necessary legal action.
- 1.2 The deadline for issuing court proceedings is 31 March 2016 which is before the next scheduled meeting of the Cabinet. As the statutory 28 days notice of this decision has not been given, the Chairman of Overview and Scrutiny Committee has been informed in accordance with Regulation 10 of the Executive Procedure Regulations 2012.

FOR DECISION

Whether to approve the use of the Council's General Reserves to meet the expenditure which will be incurred in challenging the Secretary of State's Decision dated 18 February 2016 to grant prior approval for permitted development for a state funded school under Part 3 Class K of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 at Pioneer House, Hollybush Hill, Stoke Poges under section 288 of the Town and Country Planning Act 1990.

2. Reasons for Recommendations

This is a matter for Cabinet to consider having regard to Planning Committee's decision that it was expedient in the interests of the inhabitants of the area to challenge the Secretary of State's redetermination decision subject to approval to funding by the Cabinet, the legal advice from the Council's barrister and the financial and other implications set out in paragraph 7 of this report.

3. Content of Report

- 3.1 The Planning Committee refused prior approval for permitted development for a state funded school at Pioneer House in January 2014. The Secretary of State for Education appealed that decision and the appeal was called in for determination by the Secretary of State for Communities and Local Government in April 2014. An Inspector was appointed to conduct a hearing into the appeal which took place over 2 days in July 2014. The Inspector's recommendation was to refuse approval on noise grounds.

However, the Secretary of State decided not follow his Inspector's recommendation and granted prior approval on 17 September 2014.

- 3.2 This Council and Stoke Poges Parish Council issued proceedings in October 2014 under section 288 of the 1990 Act challenging the Secretary of State's decision on the grounds, amongst other matters, that he failed to properly address the evidence on noise impacts for local residents set out in the Inspectors Report. The Secretary of State bowed to judgement before a Court Hearing took place and the decision was quashed by Order of the Court in March 2015 and remitted to him for re-determination.
- 3.3 The redetermination decision was issued on 18 February and a copy is appended to this report. This accepts the Inspector's findings that there will be increased noise levels as a result of the school use of Pioneer House but again finds that they are insufficient to outweigh the benefits of using the site as a school. This has proved a controversial issue locally and there is considerable concern and frustration at the Secretary of State's continued failure to follow the recommendations of the appointed Inspector.
- 3.4 The Head of Legal and Democratic Services has sought advice from a leading planning barrister on whether there are grounds to challenge the Secretary of State's decision under section 288 of the Town and Country Planning Act 1990. Section 288 provides that any person aggrieved by a decision may question its validity 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. Following a recent change to court rules permission is required from the High Court before a challenge can be brought. An application for permission must be made within six weeks from the date of the decision i.e. by 31 March.
- 3.5 The barrister's advice is attached as a confidential appendix. In summary he considers the Secretary of State's findings and approach to the impact of internal and external noise on local residents are legally flawed and therefore there are arguable grounds on which to challenge the decision. If Cabinet wish to discuss the legal advice in further detail it will be necessary to move into private session and exclude the public and press, so as not to prejudice the conduct of the Council's case in the potential legal proceedings.
- 3.6 Cabinet are nevertheless reminded that the outcomes of legal action are by no means certain. Even if the Council were successful in obtaining leave to challenge the decision there would be a hearing, probably lasting a day, to decide whether the decision should again be quashed and remitted back to the Secretary of State for redetermination. If the decision is quashed at first instance, there is the possibility of further appeals by the Secretary of State. In terms of timescales if an application for permission to challenge is issued by 31 March a decision is likely to take 3 to 6 months. The timescale for redetermination would normally be 3 to 9 months, although the current redetermination has taken 11 months.
- 3.7 The Council has power under section 222 of the Local Government Act 1972 to take legal proceedings where it considers this is expedient for the promotion or protection of the interests of the inhabitants of their area. Cabinet will note that Planning Committee, having considered the barrister's advice, decided that it was expedient to

take proceedings in this case. The financial considerations of taking this action are covered in paragraph 7 below.

4. Consultation

Not Applicable

5. Options

- a) Do not seek support a legal challenge - the Council has discretion whether to challenge the decision and is not obliged to do so, even if they have legal advice that the decision is flawed. The test under section 222 is whether it is “expedient” to take legal proceedings and therefore the Council can have regard to the likely costs of legal proceedings and what would be achieved by taking such action. It should also be noted that the Secretary of State for Education and the Educational Trust running the school are required by a planning obligation agreement to adhere to a noise management plan and submit details of an acoustic barrier, to mitigate noise impacts from the school use. The approval is also subject to a condition limiting noise emitted from the site.
- b) Seek leave to challenge the decision under section 288 – the advice from a specialist planning barrister is that the decision does have legal flaw in relation to the impact of internal and external noise from the school use on local residents and therefore there are arguable grounds for a challenge. The financial and other risks of this option are explained in paragraph 7 and would require approval to the use of General Reserves. If the challenge was successful the Secretary of State would be required to re-determine his decision

7. Corporate Implications

Financial

- 7.1 As this decision has already been re-determined once following a successful legal challenge it is likely to be defended by the Secretary of State at the highest level, and may result in appeals to higher court if it is quashed at first instance. If the Council’s application for leave is unsuccessful the costs are likely to be in the region of £10k. If leave is granted and the challenge proceeds to a full hearing the costs will increase to the order of £20k to £30k. If the challenge is unsuccessful at this stage, in addition to its own costs the Council could be faced with meeting equivalent sums in respect of the Secretary of State’s legal costs. If the case proceeds to the higher courts on appeal by the Secretary of State, legal costs would increase significantly.
- 7.2 These costs are unbudgeted and of a scale that cannot be contained within existing budgets for planning appeals. Therefore the costs of a challenge will need to be met from the Council’s General Reserve. If the application for leave is unsuccessful the Head of Legal and Democratic Services would not recommend taking further action and this will limit the Council’s costs exposure. Should permission to challenge be granted then further legal costs of a full hearing will flow, unless the Secretary of State again bows to judgement in advance of a hearing. If the challenge is unsuccessful after a full hearing the Head of Legal and Democratic Services would not recommend that the Council seeks to appeal to the higher courts. This will again limit the Council’s

exposure to legal costs. However, if the challenge is successful there is a risk that the Secretary of State will appeal to the Court of Appeal rather than accept the quash and redetermine his decision. Further legal costs of defending such an appeal would then follow.

Risk Issues

7.3 The Council could face reputational issues from a decision not to support a legal challenge following advice that there are arguable grounds to do so, as well as financial risks and credibility issues with the Department of Communities and Local government if it does mount a further challenge.

Equalities

7.4 In terms of equalities, this is very much a case of balancing the interests of local residents in terms of noise impact from a school which is being imposed under a regime that removes any local authority involvement in considerations of the need and location of the facility. The site had pre-existing consent for B1 use which is a commercial and industrial use capable of being carried out in a residential area.

Sustainability

7.5 There are no direct sustainability implications from a decision whether to challenge this decision.

8. Links to Council Policy Objectives

Objective: Work Towards Safer and Healthier Communities/Engage with parish and Town Councils.

9. Next Steps

If Cabinet supports the funding of a challenge the Head of Legal and Democratic Services will arrange for the necessary legal proceedings to be issued in the High Court by the deadline of 31 March 2016

Background Papers:	Secretary of State's Decision Letters dated 17 September 2014 and 18 February 2016
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Department for
Communities and
Local Government

Mr Guy Bransby
Jones Lang LaSalle Ltd
30 Warwick Street
London
W1B 5NH

Our Ref: APP/N0410/A/14/2215541
Your Ref:

18 February 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY SECRETARY OF STATE FOR EDUCATION
PIONEER HOUSE, HOLLYBUSH HILL, STOKE POGES, SOUTH BUCKINGHAMSHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Ava Wood DipArch MRTPI, who held a hearing on 10 and 11 July 2014 into your client's appeal against the decision by South Buckinghamshire District Council ("the Council") to refuse an application for prior approval for permitted development under Part 3, Class K of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 1995, in accordance with application Ref: 13/01947/KNOT, dated 18 November 2013. Following commencement of the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO"), on 15 April 2015, and pursuant to section 17 of the Interpretation Act 1978, the Secretary of State has treated this as an application for prior approval under Part 3, Class T of Schedule 2 to the GPDO ("Class T"). Class T is materially identical to Class K of the 1995 Order.

Procedural matters

2. The appeal was recovered for the Secretary of State's determination on 2 April 2014, 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.
3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 17 September 2014. That decision was the subject of applications to the High Court by South Buckinghamshire District Council and Stoke Poges Parish Council and was subsequently quashed by order of the Court dated 11 March 2015. The appeal has therefore been re-determined by the Secretary of State. In re-determining the appeal, the Secretary of State has taken account of the relevant evidence submitted prior to his earlier determination of the appeal, including the Inspector's report, and all the representations since then, including those received in response to his letter of 9 April 2015 (see paragraph 5 below).

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Inspector's recommendation and summary of the decision

4. The Inspector recommended that prior approval for permitted development be refused. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He allows your client's appeal and grants prior approval. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the decision letter dated 17 September 2014.

5. Following the quashing of his decision, the Secretary of State issued a letter dated 9 April 2015 to interested parties under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 setting out a written statement of the matters with respect to which further representations were invited for the purpose of his redetermining the appeal – namely that *he misinterpreted and misunderstood certain objective evidence and his Inspector's findings as regards predicted noise levels for 840 pupils.*
6. The responses received are listed at Annex A to this letter and copies may be obtained on request from the address at the foot of the first page of this letter.

Policy considerations

7. The Secretary of State agrees with the Inspector (IR5.1 and IR12.1.2-12.1.3) that, in considering this appeal, they are both restricted to consideration of those matters related to the acceptability of a prior approval scheme under Class T(1)(b) of the GPDO, namely: (i) transport and highways impacts; (ii) noise impacts; and (iii) contamination risks on the site. Furthermore, the Secretary of State agrees with the Inspector at IR12.1.4 that, because this appeal does not involve an application for planning permission, section 38(6) of the Planning and Compensation Act 2004 is not engaged so that the appeal scheme is not required to be determined in accordance with the development plan.
8. The Secretary of State has also had regard to BS 8233:2014: Guidance on sound insulation and noise reduction for buildings; and to the WHO Guidelines for Community Noise.

Main issues

9. The Secretary of State agrees with the Inspector that the main areas for consideration are those listed at IR12.1.7.

Highways and transport impacts of the proposal

10. Having carefully considered the Inspector's findings at IR12.2.1-12.2.22, the Secretary of State agrees with her conclusions at IR12.2.23-12.2.24 that the residual impact resulting from traffic generated by the Academy, even when fully occupied, would not be severe and safety would not be compromised. He therefore agrees that the proposal would not be rendered unacceptable because of the severity of its impact on highways or transport.

Noise

11. With regard to the condition imposed on the 1993 Pioneer House permission (IR12.3.1-12.3.2), the Secretary of State agrees with the Inspector's conclusion at IR12.5.3 that it is unenforceable and that the condition contained in the planning obligation is not applicable so that, in granting prior approval, the Secretary of State intends to impose a condition having the effect intended by that condition, but expressed in enforceable terms and explicitly directed at controlling plant/machinery (see paragraphs 27 and 34 below).
12. For the reasons given at IR12.3.3-12.3.4, the Secretary of State agrees that the impact of noise on residents arises from the use of the car park to the south of the building for external school activities before school, during breaks and PE classes and during an "enrichment period" between 15.45 and 16.45, along with the use of the field to the south of the building for organised sports during the summer. He agrees with the Inspector (IR12.3.5) that those dwellings most likely to be affected are those situated on School Lane and Hockley Lane; and also (IR12.3.6) that the starting point for assessing the impact on those neighbours has to be an objective assessment of the predicted noise levels against published guidance.
13. The Secretary of State notes that average noise levels would achieve recommended internal levels within adjacent dwellings with windows closed (IR12.3.7), and he gives significant weight to that. He acknowledges that, for the reasons given at IR12.3.8-12.3.10, these noise levels could be exceeded with windows and patio doors partially or fully open.
14. However the Secretary of State notes that the thresholds in the relevant guidance are guideline values only and that there are no European or National noise limits which have to be met. In addition the BS8233 guidance allows a 5dBA relaxation (Note 7, paragraph 7.7.2 of BS8233) such that the internal target levels may be relaxed by 5dBA and reasonable internal conditions still achieved. This relaxation means that the predicted noise levels would meet the criteria for dining rooms and be only marginally above the BS8233 criteria of 'moderate' annoyance for living rooms and (daytime resting) in bedrooms, if the 9dB increase were to be applied.
15. The Secretary of State notes that the noise statement of common ground agreed that 8dBA would be the appropriate increase of noise for 600 pupils (IR6.3.13). The Inspector noted that not all pupils will be outside at any one time (IR12.3.14) and in the report considers a maximum number of 600 pupils when assessing external noise levels, during the 20 minute morning break (IR12.3.4). The Secretary of State considers that the likelihood of 840 pupils being outside at any one time would not be usual and that the more accurate maximum is 600 pupils. The Secretary of State therefore considers that the 8dBA increase is to be applied, which further lowers the levels of internal noise experienced to only marginally above the BS8233 criteria of 'moderate annoyance'.
16. The Secretary of State has also taken into account the inspector's analysis that the 1 hour period for assessing noise is appropriate because of the character of the noise from the school (IR12.3.9). Whilst the Secretary of State accepts that it was appropriate to adopt the one hour period, it does highlight that the higher noise levels will only be present for limited periods throughout the day, during periods of increased activity. This was indicated at the inquiry to be limited to early in the morning, mid-

morning Break, and lunch-time, with only the morning-break period expected to result in the maximum 600 pupils being outside (IR 12.3.4).

17. The Secretary of State also notes that these occurrences would only occur during the 39 weeks of term-time and would not be present for the remaining 13 weeks of the year.
18. The Secretary of State considers it important to recognise that ambient noise levels can fluctuate over a short space of time for a number of reasons unrelated to children's play.
19. For these reasons the Secretary of State therefore gives only limited weight to the impact of internal noise on local residents.
20. Turning to external noise levels (IR12.3.11), the Secretary of State agrees with the Inspector that, having regard to the fact that ambient noise levels generally reflect the tranquil and semi-rural nature of the area, noise levels of 55dBA and above could potentially be out of place. However the Secretary of State considers it important to note that these are guideline values only. Additionally, as set out at paragraph 15 above, the Secretary of State considers that the 8dBA increase is an appropriate increase of noise given the number of pupils that would be outside at any one period of the day. The Secretary of State notes that the current external noise levels are 47dBA (IR12.3.14) and that, when combined with an 8dBA increase would mean the maximum external noise levels would be 55dBA. The Secretary of State notes that the WHO guidance, at paragraph 4.3.1, provides that external noise should not exceed 55 dBA to prevent serious annoyance. The Secretary of State therefore considers that the external noise levels would remain within the relevant guidelines for noise limits, to which he attaches substantial weight.
21. The Secretary of State has taken account both of the Inspector's comments at IR12.3.12-12.3.14 about the impact of the noise on the lives of those in the neighbouring properties and of the representations submitted in response to his letter of 9 April 2015, he gives substantial weight to the impact of such an increase.
22. However for the reasons set out above, including those at paragraphs 15 and 16 above, the Secretary of State does not consider that there is sufficient evidence to demonstrate that the noise levels predicted to be generated by the appeal scheme would diminish the occupants' living conditions so as to expose them to seriously annoying levels of noise giving rise to significant observed adverse impacts to health and quality of life.
23. The Secretary of State notes and agrees with the Inspector's conclusions at 12.5.2 that some levels of attenuation would be provided by the noise management strategy to which he gives limited weight. The Secretary of State has not considered the acoustic fencing as part of this assessment given that no certainty can be given that the necessary planning consent would be obtained.
24. The Secretary of State agrees with the Inspector (IR12.3.17) that, although the appeal scheme would generate noise from cars and coaches for a shorter period of the year than would fully occupied offices, this does not diminish the magnitude of the impacts experienced by local residents during that period of 39 weeks. Nevertheless, on the basis of the objective evidence presented to him, he does not agree that this could be

expected to be sufficient to lead residents to materially change the way they use their homes.

25. Following from his conclusions in the previous paragraphs, the Secretary of State disagrees with the Inspector's conclusions as he disagrees with her conclusion that the appeal proposal would cause exposure to noise giving rise to significant adverse impacts on health and quality of life.

Contamination

26. For the reasons given at IR12.4.1-12.4.3, the Secretary of State agrees with the Inspector's conclusion at IR12.4.3 that there is insufficient evidence to refuse prior approval on contamination grounds.

Conditions

27. The Secretary of State has considered the Inspector's reasoning and conclusions at IR11.2.1 and IR12.5.3 on the imposition of those planning conditions which she lists at Annex C to her report. The Secretary of State agrees with her conclusion that the landscaping condition would not serve a useful purpose (IR12.5.3) and acknowledges the concerns expressed by residents about loss of light which would result from dense planting close to their boundaries. With regard to the condition controlling plant/machinery noise in the terms suggested by the Inspector, the Secretary of State agrees with her that that would be reasonable and necessary and would meet the tests of the Framework and the guidance.

Obligation

28. The Secretary of State has carefully considered the Inspector's reasoning and conclusions at IR11.1.1- 11.1.6 and IR12.5.1-12.5.2 in relation to the Planning Obligation completed by the appellant (IR1.5), and agrees with her conclusion at IR12.5.2 that its terms would meet the Framework tests and comply with the CIL Regulations.

Public Sector Equality Duty

29. The Secretary of State does not consider that his decision as to whether to grant or refuse prior approval under Para T of the GPDO is likely to give rise to any differential impact on any "protected group" (within the meaning of section 149 of the Equality Act 2010).

Overall Conclusions

30. The Secretary of State is satisfied that the proposal for prior approval would be acceptable in terms of its impact on highways and transport; and that there is no evidence that contamination risks would point to a rejection of the appeal scheme.
31. In relation to noise impacts, the Secretary of State concludes that predicted external levels of noise would be acceptable with regard to the relevant guidelines for the reasons set out at above.
32. The Secretary of State notes that the internal noise levels relate to moderate annoyance rather than serious annoyance. The Secretary of State therefore considers that, given that the levels of noise are at the margins of those recommended

guidelines, the internal noise levels would not give rise to significant adverse impacts to health and quality of life. The Secretary of State therefore considers the levels of internal noise to be acceptable.

33. The Secretary of State has taken account of the fact that the residents' experience of the school has led them, and the Inspector, to conclude, that their living conditions would be materially harmed as the school develops to its full potential, but he does not consider that the predicted measurements when considered alongside the relevant guidelines support those conclusions. Overall, therefore, he considers that the appeal proposals satisfy the requirements for granting prior approval.

Formal Decision

34. Accordingly, for the reasons given above, the Secretary of State hereby allows your client's appeal and grants prior approval for permitted development under Part 3, Class T of the GPDO, for the change of use of existing office space (Class B1) into a state funded school (Class D1) at Pioneer House, Hollybush Hill, Stoke Poges, South Buckinghamshire, SL2 4QP, in accordance with application Ref: 13/01947/KNOT, dated 18 November 2013, subject to the following condition:

The level of noise emitted from the site shall not exceed 40 dBA $L_{Aeq15mins}$ for plant/machinery equipment between 07:00 and 22:00 and 30dBA $L_{Aeq15min}$ at any other time, as measured on the boundaries of the site at locations of monitoring points to be agreed with the local planning authority.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
36. Copies of this letter have been sent to the South Buckinghamshire District Council and to Stoke Poges Parish Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

ANNEX A

RESPONSES TO RULE 19 LETTER

South Bucks DC	25 May (statement dated 1 May)
Stoke Poges Parish Council	12 May and 9 June
Richard Forward	12 May
Margaret Benton	13 May
Brian Cox	14 May
Jon Homan:	15 May and 6 June
Margaret James,	17 May
Janet Cottrell:	18 May, 4 June and 12 June
James Cottrell:	19 May
Jonathan Dodd	19 May
Mrs M Cornall,	20 May
Jo Brar	21 May
Sue & Ron Johnson: t	21 May
Judith Sweeney	21 May
Jean Sage	22 May
Robin_Hanshawk	22 May
Jackie Taylor:	22 May
Vivien Woods	24 May
Leonard Stallwood:	24 May
Marion Woods:	25 May
Lisa Ivey	25 May
Ed Wrazen	25 May
Phil Taylor	26 May
Rachel Cornall:	26 May
Rebecca Cottrell:	26 May
Lisa Clyne	26 May
Jeff Ivey	27 May
DfE	1 June (Counsel) and undated (GLD) (rec'd 3 Aug)
Julia Borrowes	25 May
Elizabeth Cottrell	4 June
Rt Hon Dominic Grieve QC MP	14 May
Andrew Cottrell:	8 June
Adam Brigg and Catherine Perry	9 and 10 June (3 submissions)
D Cornall	25 May



Report to the Secretary of State for Communities and Local Government

by Ava Wood Dip Arch MRTPI

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

Date: 15 August 2014

Town and Country Planning Act 1990

Appeal by

Secretary of State for Education

South Bucks District Council

Hearing held on 10 and 11 July 2014

Pioneer House, Hollybush Hill, Stoke Poges, South Buckinghamshire SL2 4QP

File Ref: APP/N0410/A/14/2215541

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File Ref: APP/N0410/A/14/2215541

Pioneer House, Hollybush Hill, Stoke Poges, South Buckinghamshire SL2 4QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990.
- The appeal is made by the Secretary of State for Education against the decision of South Bucks District Council to refuse an application for prior approval for permitted development under Part 3, Class K of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.
- The application Ref:13/01947/KNOT, dated 18 November 2013, was refused by notice dated 10 January 2014.
- The development proposed is change of use of the existing office space (Class B1) into a state funded school (Class D1).

Summary of Recommendation: That prior approval be refused.

1. PROCEDURAL MATTERS

- 1.1 At the Hearing an application for costs was made on behalf of the appellant against South Bucks District Council (SBDC). This application is the subject of a separate Report.
- 1.2 The appeal was recovered by the Secretary of State for Communities and Local Government on 2 April 2014 for determination himself. The reason given was that the appeal involves a proposal for *"...development of major importance having more than local significance."*
- 1.3 Stoke Poges Parish Council (SPPC) and a large number of third parties requested that the appeal be heard by way of a public inquiry. Having considered this request, I arranged for the Planning Inspectorate to send out a pre-Hearing letter¹ explaining why a Hearing would be suitable and setting out arrangements for the event to take place as originally scheduled.
- 1.4 The Hearing was held over 2 days: 10 and 11 July 2014. I carried out unaccompanied visits to the area during the afternoon of 9 July and early morning 10 July. Inspections of the appeal premises, its surroundings and from private properties were undertaken on the morning of 11 July in the company of the appellant's consultants, the head teacher (Mrs Codling), representatives from SBDC, Stoke Poges Parish Council (SPPC) and Mr Homan (local resident). The list of those attending and properties visited are contained in Hearing Document (HD) 11.
- 1.5 At the Hearing it was agreed that the completed unilateral undertaking was to be submitted to the Planning Inspectorate 21 days after the event closed. The draft unilateral undertaking (HD23A) was discussed at the Hearing at some length. The completed copy was submitted to the Planning Inspectorate on 28 July and is listed as HD23B.

¹ PINS 1 – Pre-Hearing letter to main parties, dated 3 June 2014

2. THE SITE AND SURROUNDINGS¹

- 2.1 Pioneer House is a freestanding two/three storey modern building erected in the early 1990s for Class B1 office use. It occupies an irregular piece of land extending to some 4 Ha. The site includes areas of hard surface car parking to the front of the building and further spaces laid out at the north western corner of the site. There is additionally a large hard surfaced area extending in an arc at the rear of the building; it was originally laid out for parking purposes but is regularly used by the school (currently occupying part of the building) as a hard surfaced outdoor play area. An open grassed field, extending across much of the southern extent of the appeal site, is also used by the school for outdoor play. The site lies within the Metropolitan Green Belt.
- 2.2 The premises are served from two access points on Hollybush Hill to the north. There are residential properties adjoining the north western boundary, and part of the eastern and western boundaries of the site². A school operated by the Plymouth Brethren, occupying what was the original Victorian village primary school, is located at the south western corner of Pioneer House. I was told the Brethren school currently accommodates 98 pupils but the building has capacity for 200.
- 2.3 Hollybush Hill is primarily a residential street, linking Bells Hill (Gerrards Cross Road) to the west with Framewood Road to the east. The site is bound by School Lane to its west and south and by Hockley Lane and Hockley Lane properties to the east. The Stoke Poges village centre is located on Bells Hill. Industrial areas referred to in evidence are situated on Bells Hill and Framewood Road³.

3. PLANNING HISTORY

- 3.1 Section 2 of the Parish Council's evidence (SPPC1) provides a brief history of the site extending back to the 1950s. The application for the present Pioneer House in 1991 (S/91/1022) for 5,044 sqm of new office accommodation is of some relevance to the considerations in this appeal⁴. As the officer's report to committee on the application notes, the principle of redeveloping this site for B1 use was established by grant of an earlier outline permission for 5,800 sqm in 1991⁵. The later application envisaged 175 employees but the report acknowledges that under the 1991 consent there could be up to 400 employees. The later application was approved in 1993. The Pioneer House offices were only partially occupied in January 2013 when traffic surveys were undertaken
- 3.2 The site was acquired and subsequently approved by the Secretary of State for Education as the temporary location for the Khalsa Secondary

¹ HD12 – Aerial view illustrates the site in its context

² HD2 – Application plan shows site layout and adjoining properties

³ HD12 – Industrial Areas near the School

⁴ SPPC4 – Officer's report for application S/91/1022, SPPC6 – Completed s106 and DFE8 – Cole Jarman Noise Assessment, Appendix A includes decision notice

⁵ SPPC4 – Officer's report for application S/91/1022, page 6

School for a period of one year. It is currently occupied by 90 students as a secondary school under Class C of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995)¹. This use ceased on 31 July 2014.

- 3.3 Before the Class K GPDO rights were introduced, an application was submitted for the change of use of the offices to use as a secondary school (13/00271/FUL). The proposal included extensions, remodelling and refurbishment of the existing building and erection of ancillary buildings. Officers recommended refusal of the application, which was then withdrawn in May 2013 before it was presented to committee.
- 3.4 The application forming the subject of this appeal (13/01947/KNOT) was submitted and registered by SBDC on 19 November 2013. Officers' report on the application (received by the appellant on 23 December 2013) recommended that prior approval was required for the noise impacts of the proposal and that such approval be refused². Furthermore, if objections were raised by the highway authority then prior approval would be required for the highways/transport impacts of the development and that the approval should be refused. The report also concluded that prior approval would not be required for contamination risks.
- 3.5 A Noise Management Strategy³ (submitted on behalf of the appellant) led officers to retract their recommendation that prior approval was required for noise. However, the application was refused by committee on 10 January 2014 for highways and transport reasons⁴.
- 3.6 As confirmed in SBDC's appeal statement (SBDC1) an identical application was submitted (14/00483/KNOT) under Class K of the GPDO in an attempt to address the reasons for refusal. Following assessment and analysis by the highway authority of additional information submitted with the application, it was concluded that there was no longer evidence to refuse the application on the grounds of highways or transport impacts. SBDC confirmed that the three reasons for refusal would not be defended at appeal. However, a new reason for refusal based on noise grounds was introduced and pursued at the Hearing⁵. The Council explained that the late objection was introduced on the basis of noise complaints received⁶, as well as the findings of a noise assessment commissioned by the Council⁷. The duplicate application was refused on noise related grounds alone.

¹ The use of a building and any land within its curtilage as a state-funded school for a single academic year

² DFE7 – Core Document 8: Report to committee

³ DFE7 – CD9: Noise Management Strategy

⁴ DFE7 – CD10: Minutes of committee meeting and CD11: decision notice

⁵ SBDC1 – SBDC Appeal Statement; Paragraph 4 cites new reason for refusal

⁶ SBDC3 – Summary List of Noise complaints

⁷ SBDC2 – Environmental Noise Assessment

4. THE PROPOSAL

- 4.1 The proposal is for a Sikh faith-based secondary school to accommodate 840 pupils and 70 members of staff by 2018. The school will cater for cohorts aged 11-18 years and is to include a sixth form for 240 students. At present the school is occupied by 90 pupils in 4 classes. The intention is to create a multi-cultural school based on Sikh principles. Under the admissions policy, the Academy will admit 50% pupils from Sikh backgrounds and 50% of other or no faiths. In the event that fewer than 50% of other or no faiths apply, the remaining places will be allocated to those of the Sikh faith.
- 4.2 The school timetable¹ indicates that the school day starts when the pupils begin to arrive at 07:30 hours and extends to 16:45. As there is not provision on site for indoor sporting activities, the school will need to look at local sports provision from Year 3 of operation onwards. It is said that much of the school's sporting provision will be provided off-site². Currently, there are two options locally being considered but none has been selected and there are no arrangements in place. There is to be no weekend sporting or other activities at the site, save for an open event to be held annually on school premises at a weekend.

5. PLANNING POLICY

- 5.1 Part 3 section N of Schedule 2 to the GPDO sets out the procedure for applications for prior approval. Paragraph N(8)(b) notes that the local planning authority, when determining an application shall have regard to "*...the National Planning Policy Framework (NPPF) issued by the Department for Communities and Local Government in March 2012, so far as relevant to the subject matter of the prior approval, as if the application were a planning application.*"
- 5.2 Legal submissions on behalf of the appellant, SBDC and SPPC present opposing views on the relevance of development plan policies to the determination of a prior approval application. I return to these in the appropriate sections of this Report. Should the Secretary of State find it necessary to refer to relevant development plan policies, they are listed below.
- 5.3 **South Bucks Local Development Framework Core Strategy (CS) (Adopted February 2011)³**
- 5.3.1 CS Core Policy 7 supports rebalancing of the transport system in favour of more sustainable modes of transport. It seeks to focus new development generating substantial transport movements to locations accessible by public transport, walking and cycling.

¹ DFE8 – Cole Jarman Noise Report Schedule 2012-6730-2/SCH1

² Mrs Codling at the Hearing and confirmed in HD19 paragraph 3.

³ HD8 – Extract from CS

5.4 **South Bucks District Local Plan (LP) (adopted March 1999)¹**

- 5.4.1 LP Policy EP3 expects the scale of a proposed use to be compatible with and not adversely affect the character or amenities of neighbouring properties or the locality in general. Under LP Policy TR5, the Council will have regard to the effects on safety, congestion and environment when considering proposals that generate additional traffic. Development will only be permitted where the existing situation on a highway is not exacerbated or where proposals would encourage use of the network for short local trips or compromise the safe movement and free flow of traffic.

6. THE CASE FOR THE APPELLANT

The material points are:

6.1 Legal Submissions

- 6.1.1 The prior approval process, which is prescribed by paragraph N in Schedule 2, Part 3 of the GPDO is a two-stage process involving the local planning authority giving notice that prior approval is not required or, where it is required, their grant of refusal or approval. The National Planning Practice Guidance (NPPG) also explains that prior approval is a light-touch process. The decision maker cannot have regard to any matters going beyond those for which prior approval may be required, namely: (i) transport and highways impacts; (ii) noise and (iii) contamination².
- 6.1.2 Schedule 2, Part 3, section N requires that the decision maker have regard to: "*the National Planning Policy Framework (NPPF) issued by the Department for Communities and Local Government in March 2012, so far as relevant to the subject matter of prior approval³, as if the application were a planning application.*" The NPPF must therefore be considered only in respect of the issues subject to prior approval⁴. The only relevant paragraphs are therefore:
- paragraph 32: on transport impacts it says that "*[d]evelopment should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*"
 - paragraphs 109, 120 and 121, insofar as they deal with contamination ; and

¹ HD7 – Extracts from LP

² GPDO paragraph K2 in Schedule 2, Part 3

³ Words inserted by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) Order 2014/564, art. 5(8)(b) as from 6 April 2014.

⁴ The Planning Encyclopaedia states at 3B-2079.1 that paragraph N(8)(b) "*makes it clear that the content of the NPPF is only relevant to consideration of the specific criteria which are identified for each Class.*"

- paragraph 123 on noise: The NPPF says on noise that policies should seek to avoid “*significant adverse impacts on health and quality of life*” as a result of noise¹.
- 6.1.3 The development plan is not relevant. For the development plan to be material to a prior approval decision some statutory provision would need to provide for it. Paragraph N(8)(b) does not refer to any policies other than the NPPF as being required to be taken into account². s70(2) of the Town and Country Planning Act 1990 (TCPA) is not applicable, as this is not an application for planning permission. The absence of any provision like s70(2) under the prior approval regime is thus critical.
- S38(6) of the TCPA itself does not lay down when the development plan is to be had regard to, only what its effect is when it is relevant. s38(6) is not confined to planning applications, it in fact applies to “*any determination*” under the Planning Acts but only if regard is to be had to the development plan for the purposes of the determination. In a planning application s38(6) brings s70(2) into play. For a prior approval application nothing engages s38(6).
- 6.1.4 Other planning policies are also irrelevant: e.g. policies in the NPPF not concerned with the matters subject to prior approval, other national policies and also other local policies e.g. Buckinghamshire’s Local Transport Plan 3, as referred to in the SBDC initial reasons for refusal. The wording in the GPDO requires prior approval for the transport and highways impacts of the development. That does not include accessibility per se and certainly not ‘sustainable transport’ policy, unless a lack of accessibility or (less credibly) sustainability manifests itself in terms of actual transport and highways impacts. Beyond that, these matters, and especially ‘sustainability’ are wider planning impacts of the development and thus irrelevant. Paragraph 14 of the NPPF does not apply.
- 6.1.5 A number of issues sought to be raised by objectors are thus irrelevant to the determination of this appeal, including: sustainability; the availability of alternative sites; Green Belt issues; the impact on Conservation Areas; wildlife impacts; overdevelopment of the site; and impact on local services.

6.2 Transport and Highways Effects

- 6.2.1 A number of key points to be made before the detailed cases are considered
- The NPPF advises that development should only be prevented or refused on transport grounds where the residual cumulative

¹ The NPPF in dealing with noise expressly references the Noise Policy Statement for England and it is thus accepted that this can be looked at.

² HD18 – paragraph 29 of R.(on the application of Millgate Developments Ltd) v Wokingham BC accepting that if development plan has to be had regard to, statutory provision is needed to do so.

impacts of development are severe (emphasis added). That is the test for refusal on this ground. It is a high test.

- Bucks County Council (BCC) as the statutory highway authority has withdrawn all its objections. BCC has throughout been advised by its own consultants – Origin Transport Consultants. Both BCC and its consultants are thus satisfied that there is no highways objection to the appeal application. Neither appeared at the Hearing.
- Following submission of further information on matters concerning transport and highway impacts, as part of the second prior approval application, SBDC resolved to no longer pursue any highways grounds of objection on this appeal.
- The appeal application cannot be assessed on the basis of Pioneer House as a greenfield site. Pioneer House is a large existing office development with a lawful Class B1 use; which would be the lawful use to which the site would revert if the appeal application was refused. It was used for B1 purposes until it was acquired by the Government for school purposes, albeit that in more recent times at only about 50% of its capacity. Any impacts of the appeal application on the local road network must be assessed compared to its former lawful use as offices. It is agreed by all the main parties that there is no restriction on the use of Pioneer House for B1 purposes in terms of the number of employees.

Trip Generation: Class B1 use

Traffic Surveys

- 6.2.2 In January 2013 the appellant commissioned manual and ATC traffic counts at: 1) access points into Pioneer House; 2) the Hollybush Hill/Framework Road, and 3) Hollybush Hill/Gerrards Cross Road junctions¹. The results are based on less than 50% office occupation of Pioneer House. A speed survey was also undertaken².
- 6.2.3 Despite SPPC's concerns about the surveys being undertaken in a non-representative month, BCC was satisfied with the methodology. Further surveys were not possible because there were concerns that the surveys would be sabotaged³. The results of a survey undertaken by Transport for Buckinghamshire in February 2014 showing a difference of 892 (two-way) flows on Hollybush Hill is not representative⁴, being either affected by sabotage or by the road closures/flooding that local residents referred to. SBDC confirmed

¹ DFE5 - Appellant's Statement on Highway Matters, Results summarised in Tables 4A, 4B, 4C and 4D.

² DFE5 – Appellant's Statement on Highway Matters, Result summarised in Table 4E

³ DFE10 – Rebuttal to Opus Expert Highways, Traffic and Transport Report dated 15 May 2014, Appendix 1

⁴ DFE11 – Traffic Note 2, Table 1

that there are no other developments that would lead to increased traffic on local roads of that magnitude between 2013 and 2014. Use of the building as a school would not have led to this level of increase.

Estimate of Trip Generation

- 6.2.4 TRICS was used to estimate the vehicle trips potentially generated by B1 use of Pioneer House if fully occupied¹. The DfT Guidance on Transport Assessment (TA) of March 2007 (current at the time the survey results were interrogated) advises the use of person trips which might realistically be generated by any extant permission or permitted use, where a site is vacant. The new Guidance (February 2014) says that the scope of any transport assessment should be agreed with the highway authority. That is the basis on which the TA was developed². In assessing the residual impact, it is acceptable to take account of what a fully occupied office development could generate.
- 6.2.5 The TRICS sites agreed with BCC were selected to achieve a representative figure. The results estimate that a fully occupied school would generate an average trip rate of 1,030 vehicles per day (two-way); with 140 two-way trips in the morning peak hour (08:00 – 09:00) and 113 two-way trips in the evening peak hour (17:00 – 18:00)³. These represent increases of 54% and 58% over the observed rates at AM and PM peak periods respectively. The survey also shows that the average speed on Hollybush Hill in the vicinity of the appeal site is 33 mph eastbound and westbound. Average speeds on Gerrards Cross Road are 27 and 26 mph northbound and southbound respectively, and on Framewood Road 32 mph⁴.

Trip Generation: Academy

Traffic and Modal Surveys

- 6.2.6 In February 2014 surveys were commissioned of the eastern access into Pioneer House. It was by then in its current school use by 90 pupils and 16 staff members and only the eastern access was operational. The results show a daily two-way flow of 193 (5-day average)⁵. Surveys undertaken at the same time of both staff and pupils to assess how they travelled to the Academy⁶ showed that 68.3% of pupils used the mini-bus – a figure just below the 70% target in the Travel Plan (May 2013)⁷.

¹ The building is 5,424m². Moreover, there were no planning conditions limiting the number of employees

² DFE7 – Core Document 3: TA prepared in May 2013

³ DFE5 - Appellant's Statement on Highway Matters paragraphs 4.2.5 – 4.2.11; Tables 4G and 4H

⁴ DFE5 - Appellant's Statement on Highway Matters, Table 4E

⁵ DFE5 – Appellant's Statement on Highway Matters, Tables 4I and 4J

⁶ Appellant's Statement on Highway Matters paragraphs 5.1.3 – 5.1.4, 91% sample rate was achieved for pupils and 75% for staff

⁷ See also the Appellant's Rebuttal dated 20 June 2014 at paragraph 5.1.4

Modal Split

- 6.2.7 Based on these surveys and observed data an assessment was made of the modal split when the Academy is full (840 pupils)¹ and the traffic generated by 840 pupils was estimated to be an average of 1048 trips per day (two-way); with 394 in the morning peak hour (07:00–08:00) and 372 in the evening peak (16:00 – 17:00)².
- 6.2.8 The modal split was achieved by adjusting the observed data to reflect the potential for staff car sharing and using other modes of transport. Account was also take of an expected increase in the use of the Academy bus by older pupils (70% instead of 68.3%) and increased use of the Academy by local children (increasing walking to 2% from 0%). Sixth formers are not expected to drive to the school, based on data from a travel survey undertaken at a secondary school in Slough. SPPC has provided no evidence to support its contention with regard to sixth formers generated traffic.
- 6.2.9 SPPC argue that the modal split applied by the appellant is aspirational and unreliable. Criticism focused on the 2% walking and the 70% use of bus. The 2% walking is a modest assumption. Despite the fact that presently no children walk to the school, the likelihood of 2% walking is based on an expression of interest from parents³. Stoke Poges has a 10% Sikh population, and the school is open to non-Sikh children. Thus, there will be children attending the school who live in the village and who could thus walk (the September intake already bears this out⁴). All the children responding to the survey are Years 7/8 and older children are more likely to walk. In any event, this 2% is immaterial, even if redistributed to car based journeys.
- 6.2.10 The 70% using school buses is based on surveys of the travel patterns of the children currently at the Academy; very nearly 70% use the school mini-buses⁵. The combination of the Travel Plan and the bus service which must be provided under the s106 unilateral undertaking (HD23B) provides a strong incentive to the Academy to maintain this percentage. BCC at one stage sought further assessments of the modal share, but ultimately were satisfied that the 70% was achievable, following the survey undertaken.

¹ DFE5 - Appellant's Statement on Highway Matters paragraphs 5.1.5 5.1.8 and Tables 5C and 5D

² DFE5 - Appellant's Statement on Highway Matters paragraphs 5.2.3-5.2.6 and Table 5F

³ HD23 – Travel Plan, Section 5

⁴ The evidence was that 4 children from Stoke Poges primary school are starting in September and that 3 families with children starting then have bought houses in the village.

⁵ HD23 – Travel Plan, Table 5.1

Trip Generation¹ and Comparison

- 6.2.11 The Travel Plan looks to achieve a target of 80% using the school coaches, but for robustness a figure of 70% is used. The calculations take account of: increased number of trips by coaches provided by the school (10 pick-up/drop-off runs instead of the five runs per peak=40 coach trips per day); daily mini-bus trips out for off-site activities; 28% of pupils arriving by car and ancillary vehicles movements generated by deliveries/maintenance/visitors etc. This gives a total of 1048 vehicle trips per day (two-way).
- 6.2.12 When compared with fully occupied offices at Pioneer House, the Academy (when operating at capacity) would generate an increase of 18 trips (two-way) or 1.7% over an average weekday². There would be an increase in traffic in the periods 07:00 – 08:00 and 16:00 – 17:00 hours but decreases in the periods 08:00 – 10:00 and 15:00 – 16:00 and 17:00 – 18:00 hours³. At weekends and out of term time the Academy would generate no traffic. By contrast a B1 use could generate traffic on each and every weekday of the year (save for bank holidays); and also at weekends.

Highway Impacts

Access Arrangements

- 6.2.13 The school would use the existing accesses from Hollybush Hill, which served the office use at Pioneer House. The visibility splays⁴ comply with the requirements for a road subject to a 40mph speed limit with a recorded 85th percentile of 39 mph⁵. The accident analysis demonstrates there were no accidents associated with the current access arrangements⁶.

Highway Safety

- 6.2.14 There are no safety issues regarding internal arrangements. Coaches are expected to park on the access road to the rear car park. The road is 6.5m wide and a coach is less than 2.5m wide; there would be sufficient space for cars to circulate in a one-way route past the coaches.
- 6.2.15 SPPC's concerns about the safety of Hollybush Hill due to limited visibility at the junctions of School Lane and Hockley Lane are unfounded. As described earlier, the Academy would not be adding noticeably to traffic flows passing these junctions when compared to

¹ DFE5 - Appellant's Statement on Highway Matters, Appendix LRJ13.0, Traffic Generation for Academy

² DFE5 - Appellant's Statement on Highway Matters, Tables 4G and 5F 1030 two-way peak hour trips generated by B1 use of Pioneer House and 1048 generated by the Academy at full capacity.

³ Paragraphs 5.2.1 – 5.2.7, 7.2.2 – 7.2.6 and Table 5G. .

⁴ DFE7 – Core Document 3: TA Appendix 12

⁵ SPPC confirmed that visibility at the access is acceptable

⁶ DFE5 - Appellant's Statement on Highway Matters, paragraphs. 2.4.1 – 2.4.9.

a potential office use. Furthermore, records show that no accidents have been reported between May 2007 and October 2013 involving vehicles turning in or out of School Lane or Hockley Lane¹.

Traffic Impact Assessment

- 6.2.16 Site access junctions² have been assessed for 2014 and 2024 traffic flows based on the two scenarios: 1) Pioneer House fully occupied as offices and 2) Pioneer House fully occupied as the Academy. The analysis is based on a worst case situation of adding Academy peak periods (07:00 – 08:00 and 16:30 – 17:30 hours) to the network peak hours (08:00 – 09:00 and 16:30 – 17:30 hours).
- 6.2.17 The results of the capacity analysis demonstrate that all three junctions would operate within capacity in the 2014 and 2024 situations³. All relevant local junctions have sufficient capacity. BCC have responsibility for this network, had they taken the view that this proposal could adversely impact the network they would have maintained their objections.
- 6.2.18 The analysis estimates a need for some 10 coaches (60 seat capacity each) to accommodate the number of pupils likely to arrive by that mode of transport. The 10 coaches would not need to park on site all at the same time – a shuttle arrangement involving 5 coaches undertaking two runs per peak could be used. Either way, the numbers of coaches would not result in a severe impact on the highway network.
- 6.2.19 SPPC alleges that further sensitivity tests should have been carried out. The work required was ultimately agreed with BCC and carried out accordingly; they required no more to be done. Furthermore, assessment combining the network and development peaks is itself a form of sensitivity testing. SPPC have offered no evidence to demonstrate that the appellant's highways assessments are flawed. The evidence presented by the appellant has satisfied both the highway authority and the local planning authority and their consultants. The case advanced for refusal on highway grounds is without merit.

Parking

- 6.2.20 The total daily arrival/departure profile shows a peak parking demand for 63 vehicles between 13:00-14:00 hours⁴. A more detailed analysis during the AM and PM peak hours has also been calculated at full occupancy of the Academy, which shows a maximum car parking

¹ DFE7 – Core Document 3: TA Section 2.3

² Gerrards Cross Road/Bells Hill/Hollybush Hill and Wexham Street/Framewood Road/Hollybush Hill

³ DFE5 - Appellant's Statement on Highway Matters, Appendix LRJ14, Tables 14.3 – 14.14 showing capacity in terms of RFC and queue lengths

⁴ DFE5 - Appellant's Statement on Highway Matters, Appendix LRJ13

demand for 84 spaces between 07:30 -07:45 hours and 171 spaces during the PM peak period of 16:30-16:45 hours¹.

- 6.2.21 There are a total of 201 car parking spaces on the site². The Academy has the advantage of a large amount of marked out on-site parking, albeit some of it serves the dual function of playground space. It is not uncommon for playgrounds to act as overspill parking in schools; such dual uses require management, but are not unusual. Furthermore, the s106 makes a Traffic Regulation Order (TRO) contribution to allow further controls of on-street parking on Hollybush Hill. There would be no 'severe' impacts arising from the parking, dropping-off or picking-up generated by the Academy.

Accessibility

- 6.2.22 SPPC is critical of the sustainability credentials of the school, because it alleges that the majority of students reside outside the local area. This fails to recognise the admissions policy (50% of pupils are to be admitted without preference to faith) and that Stoke Poges has a 10% Sikh population. The Academy also advises that 23% of applications for the September 2014 intake reside in South Bucks.
- 6.2.23 The site is easily accessible on foot from Stoke Poges village. A large percentage of those children who currently attend use the bespoke mini-buses and the provision of the requisite transport by bus is to be secured by the s106 obligation – the use of buses is thus anticipated to continue. The school will additionally encourage use of the school buses through the home/school agreement with parents. The 70% predicted to travel by school bus is a realistic target. Parents pay £200-300 per year and choose to do so to make use of the service provided. That pattern is likely to continue. As the school expands, a bigger catchment would need to be served and the bus service would be extended. The Travel Plan provides opportunities to review the situation; it cannot set demand because the demand could be higher than estimated.
- 6.2.24 The NPPF advises that decisions should take account of "*opportunities for sustainable transport modes have been taken up depending on the nature and location of the site ...*" That has been done; and a bespoke bus services designed, provided and secured. The Travel Plan accompanying the s106 (HD23B) sets out the school policy and further aims to improve access by non-car modes.
- 6.2.25 Accessibility is only relevant to the extent it manifests itself in transport or highways impacts, and for refusal these must be 'severe'. That is not the case here.

¹ DFE5 - Appellant's Statement on Highway Matters, Tables 5H and 5I

² HD2 – Application Plan

6.3 Noise

Noise Statement of Common Ground

6.3.1 The Statement of Common Ground records the following:

- The noise issue of concern is the noise from use of the car park to the south side of Pioneer House when used as a playground and for external school activities.
- With windows closed and school external areas in use, internal noise levels within adjacent dwellings will achieve the levels recommended in Table 4 of BS8233:2014.
- L_{Amax} levels from playground noise would remain approximately the same as present, once the school is fully occupied.
- With an increase in pupil numbers to 840 a median value of +9dBA is appropriate to apply to estimate the increase in noise levels.

Introductory Points

6.3.2 A school is not an inherently inappropriate use, if located close to residential properties. Schools are very often close to houses; that is entirely to be expected. South Bucks is no different in that it has secondary schools surrounded by residences. Design guidance for schools actually directs the location of schools to quieter areas where ambient noise does not disturb lessons.

6.3.3 Some of the houses close to the Khalsa Academy are situated on School Lane; on which there is located another existing school (that currently has c. 100 children¹). The appellant is unaware of any complaints ever having been made by local residents about noise from that school², notwithstanding that when children are in the playground at that school noise can be clearly heard. Yet Khalsa Academy with only 90 children presently (e.g. similar to the existing school) has in recent times, albeit not for its first 6 months of operation, attracted some complaints. There is nothing particular about the appeal proposal that means it will be noisier than any other school.

6.3.4 The Academy has been at Pioneer House and operating as a school since September 2013. Despite that, the appellant has seen no records of any complaints made to SBDC about noise associated with the school use of the playground prior to March 2014. Local residents' complaints to SBDC about leaf blowing causing noise in late

¹ The latest inspection report (dated November 2013) says there are 98 Full time aged 11-18 pupils

² SPPC1 - SPPC Acoustic Assessment paragraphs. 2.4 and 5.23 confirming the absence of any complaints about noise from that school.

November 2013¹ counter the arguments that residents were unaware of where to direct their complaints. The more recent complaints coincided with the second prior approval application and SBDC's decision to oppose that application (and the appeal application) on noise grounds.

- 6.3.5 Response to noise is subjective and it would seem that recent sensitivity to any noise generated by the Academy is directly linked to local opposition to the appeal application. In any event, the variability of the subjective response to noise illustrates the fact a small number of opinions cannot be relied on to determine whether it is likely to be annoying. Instead, an objective method of assessment should be used.
- 6.3.6 In relation to noise generated by a school, it is important to note that a school is in use for less than half of a year i.e. only during term time, and generally is not used in the evenings, bank holidays or weekends. Moreover, the noise issue arises from use of a former car park as a playground² – this noise will be for only limited periods of the day, and the highest noise levels associated with the whole school (when full) would be confined to short periods at break times.
- 6.3.7 When SBDC considered the appeal application it ultimately determined not to refuse prior approval on noise grounds. This conclusion was based on the advice of its own Environmental Health officers³ who, having received a Noise Management Strategy⁴, withdrew their objection. The appellant has now offered a s106 obligation that will seek to provide a legal mechanism for compliance with that approved Strategy. The appellant has gone further and agreed to seek planning permission for acoustic screens – while this is regarded as unnecessary, it would provide yet further mitigation of any noise impacts⁵.
- 6.3.8 The noise evidence of SBDC and SPPC appears to assume a nil use for the existing office development⁶. Were Pioneer House to be used fully for offices there would be noise associated with the office use, including parking and vehicle movements, deliveries. None of which would be controllable by the (unenforceable) noise condition imposed on the planning permission for the offices⁷. The condition was intended to relate to noise from fixed plant and machinery, as

¹SPPC1 - SPPC Acoustic Assessment paragraphs 5.4 of the SPPC noise evidence; acknowledging that the number of complaints is "low" and explaining that is due to local people not knowing where to complain to.

² The reason for refusal alleges that due to external activity noise levels "*in the vicinity of residential dwellings cause annoyance, sleep disturbance and reduce the ability of people to satisfactorily work from home and enjoy their garden areas during the school day*"

³ DFE7 – Core Document 14: Email from Dr Maxwell dated 9 January 2014

⁴ DFE7 – Core Document 9: Noise Management Strategy

⁵ HD23B – Plan attached to the s106 showing positioning of acoustic screens

⁶SPPC1 - SPPC Acoustic Assessment paragraph 1.

⁷ HD9 – Noise Statement of Common Ground, paragraph 7.2. The condition is reproduced in DFE8 Appendix A.

evidenced by building management files relating to Pioneer House¹. Furthermore, an office use would cause the levels imposed in the condition to be exceeded every time a car drove onto the site.

The Detailed Noise Case

6.3.9 The appellant's Noise Assessment (DFE8) applies the relevant standards as follows:

- For residential properties both BS8233:2014 and the WHO Guidelines² consider it desirable for external noise levels not to exceed 50 dBL_{AeqT} with an upper guideline value of 55 dHBL_{AeqT}. Both expressly recognise that this is not always achievable.
- For internal noise at residential properties BS8233:2014 recommends levels of between 35 and 40 dBL_{Aeq16hour} during the daytime (the relevant period here). The advice in both the BS and the WHO Guidelines is that noise reduction via a part open window should be 15dBA³; and for a shut window 27 - 30dBA (assuming they are only single glazed⁴).
- In terms of L_{Amax} neither the BS nor the WHO Guidelines provide specific guidance for internal or external noise levels for the daytime⁵.
- It is not appropriate to use any night time noise levels in the guidance documents to assess the noise at issue – all of which will occur in the daytime. The BS daytime standards have regard to people sleeping in the daytime⁶.

Assessment

6.3.10 The appellant's Noise Assessment analyses the situation against the noise survey undertaken at Cherry Tree Cottage garden⁷. This assesses the existing average noise level externally to be 47dBL_{Aeq1hour}⁸. This level is within the 50dBL_{AeqT} 'desirable' category and therefore acceptable.

6.3.11 The measured noise levels (being external) cannot be judged against the internal noise guidelines without taking proper account of the recommended 15dBA reduction for a partially open window. The appellant's Noise Assessment in fact uses a 13dBA reduction to account for the noise levels being measured being freefield. SBDC's evidence uses a 5-10dBA reduction for windows and a 0-5dBA for

¹ DFE8 – Appellant's Noise Assessment, paragraphs 5.47-5.52

² Guidelines for Community Noise

³ HD9 - Noise Statement of Common ground, paragraph 4.1.

⁴ DFE8 - Appellant's Noise Assessment at paragraph 5.23 referring to Annex 6 of PPG24.

⁵ BS Note to Table 4 suggests limits can be set but these should relate to night time only.

⁶ DFE8 – Appellant's Noise Assessment, page 9, Table 4

⁷ SBDC2 – Mr Ellis (INVC) Noise Survey

⁸ HD9 -Noise Statement of Common Ground, paragraph 3.1: The noise measurements are all broadly agreed

patio doors¹ with no convincing explanation for departing from the guidelines. In applying the proper reduction, the results show that existing noise levels are all compliant with internal noise standards².

- 6.3.12 Consideration needs to be given to what the noise levels would be when the Academy is operating with 840 pupils. SBDC's noise evidence does this by a +10dBA correction. However, this is a pessimistic approach, as the assessment fails to take account of the profile of the school and how it would operate. Currently, the school is occupied by Years 7 and 8 pupils. Older students are unlikely to play the same way and, as the school develops towards its full capacity, the more expansive outdoor games and play currently undertaken would not be possible. The combined outdoor activities would only take place before school, at break and lunchtimes. At other times, the use would be supervised and there would be smaller numbers. Sixth formers are more likely to use the sixth form centre, rather than the outdoor areas.
- 6.3.13 Despite these likely predictions of usage, the appellant's Noise Assessment applies the +10dBA correction so as to allow for a robust assessment. The Noise Statement of Common Ground in fact agrees a +9dBA factor for 840 pupils and +8dBA for 600³.
- 6.3.14 Applying this robust assessment, the external noise levels would be anticipated to be no more than +1dBA above the external noise upper guideline value of 55dBL_{AeqT} based on a 1 hour average, and would be below the standard on a 16 hour average⁴. Moreover, assuming only 600 children in the playground at any time rather than 840⁵, there would be no exceedance at all.
- 6.3.15 Applying the 13dBA correction for partially open windows, recommended internal noise levels would be exceeded by 4–9dBA based on a 1 hour average. Using a 16 hour average the exceedances would be small at 3dBA⁶.
- 6.3.16 Any exceedance of recommended values would need to be judged against a number of factors. First, the school would only operate Mondays to Fridays in term times. This means that the external activity would not take place at weekends or evenings at all. Overall, the external activity associated with the school would take place some 187 days per year, approximately 50% of the days in the year, and then only during the school days. Therefore some flexibility may be considered reasonable. Secondly, the highest noise levels under

¹ HD9 -Noise Statement of Common Ground, paragraphs 4.1-4.3

² DFE8 - Appellant's Noise Assessment, Table 3 at paragraph 5.12

³ HD9 -Noise Statement of Common Ground, paragraph 6.4

⁴ DFE8 - Appellant's Noise Assessment, Table 6 at paragraph 5.30 but taking account of the +9dBA increase instead of +10dBA.

⁵ This is likely given that some children will do inside activities e.g. computer clubs etc., and sixth formers are likely to have a common room. At lunchtime the numbers in the playground will be less still as some will be having lunch.

⁶ DFE8 - Appellant's Noise Assessment, Table 4 at paragraph 5.19

consideration would only occur when the whole school was likely to be in the playground. This would only be for small periods of the day e.g. arrival time, morning break and lunchtimes.

- 6.3.17 Moreover, with windows and patio doors shut (and applying the relevant reductions), there would be no exceedances of recommended internal noise level guidelines¹. The BS expressly allows for relaxing internal target levels by up to 5dBA where development is considered desirable. The changes to the GPDO to allow school use underline the importance and desirability of such development.
- 6.3.18 In terms of L_{Amax} , SBDC's evidence wrongly tries to apply the 60dBL_{Amax} level for night-time. The noise surveys show that with children playing at the Academy, L_{Amax} levels are in the range 55–72 dBA; and without them 54–69 dBA². The Noise Statement of Common Ground records the agreement of the experts that L_{Amax} levels at residences arising from playground noise will remain approximately the same as currently.
- 6.3.19 It can thus be said that there will be an 'observed adverse effect' that is to say noise that causes small changes in behaviour. It cannot be said that the noise amounts to a 'significant observed adverse effect'³.
- 6.3.20 In terms of mitigation, the Noise Management Strategy is made enforceable via a s106 obligation. The Strategy satisfied SBDC's Environmental Health officers that there was no sustainable noise ground for refusal. SBDC's Senior Scientific Officer said: "*Whilst the normal school activities will have some impact on residents ... we are of the view that the impact on local residents would not be sufficiently significant for us to sustain an objection*"⁴. The Noise Management Strategy will provide enforceable limits on operating times, weekend use, no-go areas and other restrictions (e.g. on use of whistles, tannoys and bells).
- 6.3.21 An undertaking is also given for seeking planning permission and, if granted, to erect acoustic fencing. The fencing would give agreed reductions of 7, 10 and 12 dBA with 2m, 2.5m and 3m height fencing respectively⁵.
- 6.3.22 All in all, there is no basis for refusal of this application on noise grounds, - a view shared by SBDC's own Environmental Health Department.

¹ DFE8 - Appellant's Noise Assessment, Table 5 at paragraph 5.24

² SBDC2 - Mr Ellis's Environmental Noise Assessment Appendix A

³ NPPG Noise Exposure Hierarchy

⁴ DFE7 - Core Document 14: Email from Dr Maxwell dated 9 January 2014

⁵ DFE8 - Appellant's Noise Assessment, Table 7 at paragraphs 7.11 and 7.12 and HD9 -Noise Statement of Common Ground, paragraph 8.4

6.4 Contamination

- 6.4.1 The appeal application concerns only a change of use – no building works are proposed. Many of the concerns raised by local residents on contamination appear to assume some operational development; the application would not authorise any such works.
- 6.4.2 SBDC’s Environmental Health Unit has assessed the application and supporting statements and has concluded that in terms of contamination “*there would be no significant or unacceptable impacts as a result of the proposal*” and that “*prior approval from the Council is not required in this instance regarding contamination risks of the development.*”¹
- 6.4.3 A Remediation Method Statement prepared by Geosphere Environmental Ltd, dated February 2014, recommended certain works be undertaken. These have now all been undertaken as confirmed by the Validation Report for remediation works carried out at Khalsa Academy produced by Geosphere Environmental Ltd and dated 8 May 2014 (HD4). The Validation Report concludes that any minor risks there might have been from school use have, on an ultra-precautionary basis, been mitigated and that the site is suitable for D1 use, thus meeting the NPPF tests on contamination.
- 6.4.4 The site was licensed by Her Majesty’s Inspectorate of Pollution, who oversaw the two stage decontamination process in the early 1990s with removal of radioactive materials². Further testing took place in 2013. Historical information and the 2013 results provide sufficient confidence to be assured that the site presents a very low risk of exposure to any residual radioactivity in the ground. It is suitable for the proposed use. In the event that works involving breaking ground takes place, the normal process of investigation and risk assessment would take place to determine whether remediation is needed. This accords with normal practice for redevelopment of brownfield sites, and with guidance in the NPPF as well as the NPPG.
- 6.4.5 SPPC confirmed that in light of the remediation works carried out on the land, they would not be contesting the appeal on contamination grounds. SPPC were right not pursue this matter.

7. THE CASE FOR SOUTH BUCKS DISTRICT COUNCIL

The material points are:

7.1 Legal Submissions on the Relevance of Development Plan Policies

- 7.1.1 The Council accepts that a prior approval notification under the GPDO is not a planning application. However, in considering whether prior approval is required for any of the three issues listed in K. 2(b), the decision maker has discretion to take relevant policies and guidance

¹ DFE7 – Core Document 8: Officer’s report to committee

² HD20 – Mr Crowcroft’s statement regarding radioactivity

on these issues into account, as well as having regard to the specific matters listed in paragraph N (8). This is because N (8) is not expressed to be an exhaustive list of matters to which Council can have regard. If this was the intention the paragraph could have included words limiting determination to the three issues in sub-paragraphs (a) to (c).

- 7.1.2 By way of example, in considering the noise impact of the development, the parties have agreed that (in addition to the NPPF) relevant policies and guidance include The Noise Policy Statement for England, the National Planning Policy Guidance, BS8233:2014 and WHO Guidelines for Community Noise.
- 7.1.3 In the Council's submission it is arguable that relevant development plan policies could be taken into account, albeit in this case the Planning Committee did not consider such policies added anything to the policy/guidance on noise in the NPPF and NPPG.

7.2 **The Council's Position with Regard to Highways and Transport Matters**

- 7.2.1 The application was refused on three grounds all of which related to highways and transport impacts. However, on assessing evidence submitted with the second application (14/00483/KNOT), the highway authority concluded that it had been successfully demonstrated that the proposed change of use would not result in severe highway or transport impacts. In the light of this conclusion, SBDC confirmed that the reasons for refusal would not be defended¹.

7.3 **Noise**

- 7.3.1 Although not refused for noise reasons, the Council raises noise objections. These originate from complaints received by the Council², as well as the findings of an independent noise survey undertaken on behalf of the Council³.

Noise Survey

- 7.3.2 Noise measurements were taken over a period of several days between 24 and 30 April 2014, during the normal school day⁴. In addition to time traces⁵, noise measurements were taken throughout

¹ SBDC1 – SBDC Appeal Statement, paragraphs 1-3

² SBDC3 – Summary list of noise complaints

³ SBDC2 – Mr Ellis's Noise Environment Assessment

⁴ SBDC2 - Mr Ellis's Noise Environment Assessment, Figure 1 shows location of noise measurements and Figure 2 shows location of Cherry Tree Cottage where the majority of measurements were taken.

⁵SBDC2 - Mr Ellis's Noise Environment Assessment Figures 3-6 illustrate the fluctuating noise levels during periods of external activity and when there was none. Figures 3, 5 and 6 show short term L_{Aeq} levels and Figure 4 shows L_{Amax} levels measure din the garden of Cherry Tree Cottage

the day, in particular during periods when children were outdoors¹. Based on the measurements taken, averaging the hourly L_{Aeq} values over a 16 hour period, gives a value of 41dBA.

Assessment of Results

- 7.3.3 The internal noise levels predicted are based on BS 8233:2014 levels taking account of reductions assumed for a partially open window (-10dBA) and an open patio door (-5dBA). The results show that the BS levels are exceeded by up to 7dBA for residents resting in living rooms with a patio door open. This is also the case for a dining room². With pupil numbers rising to 840, an increase of up to 16dBA over BS recommended levels would occur³.
- 7.3.4 Some local residents work night shifts and would need to sleep during daylight hours. If disturbed due to external noises, they would have difficulty getting back to sleep. The WHO standard confirms that external L_{Amax} levels of 60dBA would cause sleep disturbance. The survey results show that this occurs on a number of occasions⁴. Furthermore, a number of local residents work from home. Noise levels exceeding 30-40dBA could cause annoyance and preclude work requiring concentration.
- 7.3.5 The WHO guidelines confirms that indoor values for bedrooms of 45dB L_{Amax} for single sound events and lower levels depending on the nature of the noise source could cause sleep disturbance. To enable casual conversation indoors during daytime, the sound level of interfering noise should not exceed 35dB L_{Aeq} . Furthermore, to protect the majority of people from being seriously annoyed during the daytime, the outdoor sound level from steady, continuous noise should not exceed 55 dB L_{Aeq} . The hourly L_{Aeq} would exceed this level for up to 4 hours per day; that is equivalent to 'continuous' and would exceed the WHO criterion.
- 7.3.6 In terms of the NPPG Noise Exposure Hierarchy, the 'significant observed adverse effect level' boundary is crossed when the noise causes a material change in behaviour. That situation is occurring now, with only 90 pupils at the Academy. External activity at the Academy causes annoyance, sleep disturbance and reduces residents' ability to work from home. Residents have to keep windows closed or avoid using their gardens during the school day. Their quality of life would be unacceptably affected when the school reaches full capacity and predicted noise levels would be further increased, both internally and externally. Residents would experience the sort of 'significant

¹ SBDC2 - Mr Ellis's Noise Environment Assessment: the hourly L_{Aeq} levels for each period are listed in Table 1. Appendix A gives the noise levels measured in 5 minute values and includes periods when there was no outdoor activity at the school.

² SBDC2 - Mr Ellis's Noise Environment Assessment, Table 2, measured noise levels over a 16 hour and 1 hour basis

³ HD10 – Addendum to page 10 of Mr Ellis's Noise Environment Assessment, following agreement of predicted increase of +9dBA, with pupil number increasing from 90 to 840

⁴ SBDC2 - Mr Ellis's Noise Environment Assessment, Figure 4

observed adverse effect' which calls for avoiding action in the NPPG Noise Exposure Hierarchy.

- 7.3.7 The acoustic barriers would provide a degree of attenuation but not overcome the noise impacts sufficiently to render the situation acceptable. In any case, planning permission would be required for the barriers which cannot be assured, given the site's Green Belt location. The matter therefore can be accorded little weight.
- 7.3.8 When planning permission was granted to Pioneer House, it was clearly recognised that the ambient noise in the area was low. To protect the amenity of local residents, a noise level of 40dbA between 07:00 and 22:00 hours was imposed by a condition. Noise levels associated with the school would clearly exceed these levels and increase the general ambient noise in the area.

8. THE CASE FOR STOKE POGES PARISH COUNCIL

The material points are:

8.1 The Development Plan

- 8.1.1 This is an application for prior approval of the transport and highways impacts and noise impacts of the development. Determination of the prior approval issues requires the decision-maker to take into account material considerations other than simply the relevant part of the NPPF. The appellant's submission is that the decision-maker can only take into account those matters expressly referred to in the Order (by comparison with section 70 of the TCPA 1990), that is the NPPF. By implication, no regard can be had to the NPPG.
- 8.1.2 Local policies are put in place to ensure the good planning of an area. It would be odd if an application for planning permission for a school fell to be assessed against local policies for noise, and a prior approval application for a school could not be. There is nothing in the Order that makes local policies an irrelevant consideration. Paragraph N(8) of the GPDO creates a statutory duty to have regard to the relevant part of the Framework. It does not and should not prevent other matters being material.
- 8.1.3 The GPDO is clear that authority must only consider the specific prior approval issues. However, within that issue it is for the authority to determine what considerations are material, in addition to the NPPF. As with an approval of reserved matters, or to discharge a condition, the authority will apply local policy and guidance, notwithstanding that there is no statutory provision.
- 8.1.4 It is similarly open to the Secretary of State to place weight on the Local Plan policies and instances of their breach. Indeed, it would appear contrary to the principle of consistency for such policies not to be taken into account.
- 8.1.5 There may be a range of documents relevant to noise that are material. BS8233 and WHO guidance, for instance. Likewise, on highways, Manual for Streets will comprise relevant guidance.

Insofar as these points are material, then so is the development plan. The NPPF should not be used or viewed in isolation of the Development Management Plans or other adopted plans.

8.2 Transport and Highways Impacts

Accessibility and Sustainability

- 8.2.1 The appellant's evidence only appears to focus on paragraph 32 of the NPPF, but paragraphs 29¹, 34² and 35³ are also relevant. There is no reason why prior approval (which refers to 'transport and highways impacts') should not allow consideration of development sustainability in transport terms and not just focus on highway safety and capacity. Furthermore, promoting development that contravenes the principles of sustainable transport does have impacts. Longer vehicle trips and the use of less sustainable transport modes would have implications for climate change and harm to the environment.
- 8.2.2 Against that policy background, SPPC notes that 100% of the staff currently working at the Academy travel by private vehicle and not one pupil uses public transport, cycles or walks to the school⁴. The TA predicts that not a single member of staff or pupil would use public transport. In any event, the bus stops are a long way from the site (550-700m)⁵, the services are infrequent and timings are not appropriate for staff and pupils.
- 8.2.3 The mode split share based on 90 (Years 7/8) pupils and 16 staff members reflects the principal attempt proposed in the Travel Plan to reduce car use by reliance on minibuses. The expected mode split figures are aspirational but even then reveal that 28% of pupils and 90% of staff members would travel by private car⁶. This cannot possibly be regarded as compliance with policy on sustainable transport. The school bus attempts to deal with the fact that the application site is the wrong location for development of a school and offends paragraphs 29, 34 and 35 of the NPPF.
- 8.2.4 The school coach may be more sustainable than the private car, and its use should be encouraged. However, a substantial number of pupils using the school coaches would be doing a daily round trip of several miles from Slough⁷ and the other routes⁸, if the current position is reflected in future travel patterns. This approach does not

¹ Requires the opportunities for sustainable transport modes to be taken up

² Decisions must ensure that developments that generate significant movements are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised

³ Development should be located to give priority to pedestrian and cycle movements and have access to high quality public transport facilities

⁴ DFE5 - Appellant's Statement on Highway Matters, Table 5B, Mode Split based on current intake and staff

⁵ DFE5 - Appellant's Statement on Highway Matters, Appendix 8.1, Location of bus stops

⁶ DFE5 - Appellant's Statement on Highway Matters, Table 5C

⁷ HD23 - Travel Plan attached to s106, Appendix F: Pupil Postcode Plot

⁸ HD23 - Travel Plan attached to s106, Figure 3.2 and 3.3

minimise the need to travel, nor accord with the principle of locating development where it is well related to sustainable means of transport.

- 8.2.5 In any case, the Secretary of State cannot be assured that 70% of pupils would use the coaches to travel to and from the school. The basis of the 70% derives from the existing situation of 90 pupils, within a given geographical distribution, being collected by two minibuses¹. There is no confidence that the same demand for school coach travel would apply once there are 840 children spread across a potentially very different and wider catchment. No evidence has been provided of generally how successful school buses are at attracting custom to schools of this nature/scale. No information is known as to the proposed routes, and no real information as to likely take-up. The school will have to create its own infrastructure to overcome the lack of public transport and walking/cycling opportunities.
- 8.2.6 The s106 does no more than secure sufficient coaches to service a demand. Thus, if the catchment gives rise to a demand for 50% of pupils to use the coaches then the s106 would provide for that demand. There is no means of enforcing the school bus targets in the Travel Plan. The Travel Plan has a target of 80% but no measures to drive it to that target. The target also makes unrealistic assumptions as to the number of sixth formers that would drive.
- 8.2.7 Based on the appellant's evidence of modal splits, and the acknowledged poor public transport accessibility, the only realistic alternative is the private car. The school's likely heavy reliance on the use of the private car, is contrary to the NPPF and the aims of Buckinghamshire's Local Transport Plan 3.

Safety and Capacity Impacts

Traffic Surveys

- 8.2.8 The surveys undertaken in January 2013 do not conform to best practice information. The DfT guidance recommends that data collection should be undertaken within spring and autumn and include neutral months of April, May, June, September and October².
- 8.2.9 The Transport for Buckinghamshire survey undertaken in February 2014³ records an extra 892 vehicles above the appellant's 2013 survey. This demonstrates that the January 2013 surveys were unrepresentative and not in accordance with DfT guidance.
- 8.2.10 Furthermore, based on the surveys undertaken as part of the TA, the AM network peak was identified as 08:00-09:00. The development

¹ Inspector's note: the school currently operates two 17-seater mini-buses running a shuttle service over four routes (Figures 3.2 and 3.3 of Travel Plan)

² DfT Guidance on Transport Assessments March 2007, paragraph 4.19

³ DFE11 – Traffic Note 2, Table 1

peak hour is 07:00 to 08:00¹. Surveys were only recorded from 07:30, and therefore the first 30 minutes of the development peak hour have not been captured. There is no way of knowing whether the development peak hour coincides with the network peak and ultimately demonstrate a greater number of vehicles on the highway network.

Trip Generation Office Use

- 8.2.11 The TRICS assessment has been calculated on full re-occupation of the site for office use and based on its Gross Internal Area of 5,242m². Pioneer House has only ever operated at a maximum of 50% capacity. As part of the office planning permission granted in 1993 the maximum number of employees could have been 400 but the application only envisaged that 175 people would be employed². The trip per employees rather than floor area would be more representative of the site's B1 use.
- 8.2.12 The reality is that the building had a relatively low density employment use (as evidenced by the s106 and Committee Report). Use of a more generic database, as opposed to the surveys for the specific building, masks the reality and overstates the realistic B1 trip generation.

Trip Generation School Use

- 8.2.13 The trip generation predictions are entirely dependent on the assumption that 70% would travel by coach. There is no justification for altering the 68% minibus mode share in the February 2014 survey to the 70% used in trip generation calculations³. There is no information on how and when the 10 coaches aspired to would become operational or what happens in the interim. Modal shifts are more likely to occur at the early stages of a development prior to people acquiring travel habits.
- 8.2.14 The appellant's February 2014 travel surveys informing the trip generation predictions show that none of the 90 pupils and staff at the existing school walks or cycles to the site. The 2% of pupils and staff estimated to walk and the 2% figure for staff cycling to work are not evidentially based. Cycle routes to and from the site are limited. Furthermore, the 'safer routes to school' assessment carried out on behalf of SPPC demonstrates that safety issues arise from the lack of footways on Framewood Road, and poor visibility because of gradient change on Hollybush Hill⁴. The levels of walking and cycling predicted in the calculations are over-estimated.
- 8.2.15 The appellant's February 2014 travel surveys also reveal that 31.7% of pupils are driven to school and 94% of staff members drive there.

¹ DFE10 – Rebuttal to Opus: Expert Report Highways, Traffic and Transport Report, paragraph 5.3.1

² SPPC4 – Officer's report to committee on the application relating to Pioneer House

³ DFE5 - Appellant's Statement on Highway Matters, Table 5B and 5C

⁴ SPPC2 – Opus: Expert Report Highways, Traffic and Transport Report, Section 5.5

That equates to approximately 266 cars travelling to and from the site for transporting pupils and 66 cars for staff when the school is fully occupied. There may be a level of car sharing but the car share figures in the travel surveys have not been correctly interpreted.

- 8.2.16 No account has been taken of sixth formers driving to the site. The Bayliss School in Slough is not an appropriate comparable, as it is better accessed by other modes of transport than the appeal site.
- 8.2.17 The reduction in car use from 31.7% to 28% has been held up as a realistic target for mode shift but no evidence provided to support this assumption. Of the pupils surveyed in February 2014, the most popular reasons for using cars to travel to and from school are convenience for parents and distance from the site¹. As the school develops, pupils would be travelling from greater distances and reliance on private vehicles would increase.

Operational Capacity

- 8.2.18 Given SPPC's criticisms of the traffic surveys, not capturing development peaks, incorrect interpretation and estimation of car-based journeys, heavy and undue reliance on the use of school buses, the worst case scenario has not been assessed. Moreover, there is no information on how the coach trips have been modelled in the traffic impact analysis. In other words, whether they have been modelled as HGVs to account for the additional space coaches would occupy on the highways.
- 8.2.19 The new Academy would be linked to the Khalsa Primary School on Wexham Street on Slough. The route from the primary school is past Wexham Park Hospital which suffers with severe congestion and parking stress. The increasing traffic flows at peak times would exacerbate the operational capacity on Wexham Street, but the impact on that route and part of the network has not been considered.
- 8.2.20 As part of an assessment of the full development impacts, the worst case scenario should be considered to demonstrate that, even if the aspirational modal targets are not met, the surrounding network would operate safely and within capacity. If the evidence is not robust then more conservative assumptions should be made. At the very least, sensitivity assessments should be presented to show what the effect of failing to meet the aspirational targets would be (as first suggested by BCC²). Without such sensitivity tests, the assessments of trip generation and therefore impacts cannot be robust or reliable.

¹ HD23 – Travel Plan Appendix D: Pupil Travel Survey Results

² DFE5 - Appellant's Statement on Highway Matters, Appendix LRJ 3.2, Origin Transport report paragraphs 6.2 – 6.6, dated January 2014

Car Parking and Internal Arrangements

- 8.2.21 The Local Plan standards require 2 parking spaces per classroom¹. Therefore, only 68 parking spaces are required for the site². The Local Plan further allows for a maximum provision of 10% above the operational minimum standard.
- 8.2.22 The 201 parking spaces that would be available on the appeal site is an overprovision, even allowing for the 10% above standard. This overprovision is an indication of the unsustainable location of the site. The proposal is contrary to CS Policy 7 and LP Policy TR5, as it would only encourage vehicular travel to and from the site.
- 8.2.23 Furthermore, the arrangements for drop-off and pick-up are unsatisfactory. The school buses would create conflict with cars and children being dropped off or picked up on site. It would create conditions leading to off-site parking on Hollybush Hill.

8.3 Noise Impacts

- 8.3.1 SPPC advances two bases for considering the impacts:
- A before and after comparison to assess the loss of amenity resulting from the proposal.
 - An assessment using the appellant's approach³ on absolute noise levels to assess the degree of disturbance.
- 8.3.2 The first method takes into account the existing quiet noise environment presently experienced by residents. The Academy is positioned in a quiet, tranquil part of the village. The predominant noise is birdsong and other naturally occurring sounds. Apart from the Academy, there are no other prominent noise sources in the area.
- 8.3.3 Adjoining the site's perimeter are 15 residential properties and 5 more with line of sight to the building and grounds less than 50m away. Neighbouring residents are often at home during the working week; 23 are either retired or home workers.
- 8.3.4 The limited noise readings undertaken in December 2013⁴ illustrate that the comparison would well exceed 10dBA⁵. That amounts to a significant impact on amenity in what is otherwise a quiet environment. It is also consistent with the subjective responses of local residents whose evidence confirms that they feel significantly adversely affected with only 90 pupils in occupation. Normal use of

¹ HD6 – Extract from Local Plan Appendix 6

² Based on 34 classrooms for 840 pupils

³ DFE8 – Cole Jarman Noise Assessment

⁴ SPPC1 – Mr Johnson's Acoustic Assessment of the Noise Impact, attached to the SPPC representations, paragraph 4.9

⁵ SPPC1 – Mr Johnson's Acoustic Assessment of the Noise Impact, attached to the SPPC representations, paragraphs 4.9 and 4.10: lunchtime and games period measurements were 14dBA and 13dBA louder than highest measured ambient background level

their homes has been disrupted and this will increase substantially with 840 students.

- 8.3.5 The second method comprises SPPC5 (Review of the Cole Jarman Noise Report). The existing noise surveys were adjusted in order to predict the impact of 840 pupils rather than 90. An increase of +9dBA was agreed¹. The predicted 1 hour impacts are 46dBA (indoors living room and daytime resting with windows open²) and 56dBA outdoors. There is good reason to use 1 hour L_{Aeq} . Averaging noise occurring at specific times of the day over the 16 hour period would seriously underestimate the impact of the noise when it occurs – i.e. at break and outdoor sports times.
- 8.3.6 The BS corresponding desirable thresholds are 35dBL_{Aeq,1hour} and 55dBL_{AeqT} respectively³. The latter is described as being an upper guideline value appropriate in noisier environments. The WHO guidance advises that 55 amounts to serious annoyance, depending on the character of the noise. The 50-55 range is not aspirational (as suggested in the appellant's evidence⁴), given the local context where presently noise levels fall well below these standards and more like 40dBA. It is therefore misleading to suggest that 50-55 must be tolerated.
- 8.3.7 On the figures before the Hearing, therefore, there are material exceedences of each standard using the 1 hour L_{Aeq} . The significances are large. On the appellant's own approach the indoor level is 8dBA over the relevant threshold for living room and daytime resting⁵. The external values are also breached, including the upper limit of 55dBA deemed appropriate for noisier environments, and not appropriate for the residential gardens surrounding Pioneer House.
- 8.3.8 Although the appellant emphasises that the noise is not all day every day, nothing is said about the character of the noise. BS8233 makes clear that its guidelines are intended to relate to noise without a specific character (see 7.7.1 of BS8233). The same point is made on page xii of the WHO guidelines. The nature of the use of the outdoor area giving rise to shouting, screaming, whistling etc. is an aggravating factor, meaning that these thresholds are too high⁶. Even using 16 hour L_{Aeq} figures, the internal and external guidelines would be exceeded⁷.
- 8.3.9 The appellant's reference to the note in BS8233 relaxing internal target levels where development is considered necessary or desirable⁸ ignores the character of noise. What is more, the

¹ HD9 – Noise Statement of Common Ground

² HD10 – Mr Ellis's modified Table 3

³ DFE8 - Cole Jarman Noise Assessment, Appendix A

⁴ DFE8 - Cole Jarman Noise Assessment, paragraph 4.23

⁵ DFE8 - Cole Jarman Noise Assessment, Table 4

⁶ DFE8 - Cole Jarman Noise Assessment, BS8233 Note to paragraph 7.7.1

⁷ DFE8 - Cole Jarman Noise Assessment, Table 4

⁸ DFE8 - Cole Jarman Noise Assessment, paragraph 5.20

approach relates to planning and positioning new development, not the impact on existing dwellings. It also refers to desirability of the development which is: (a) not relevant on a prior approval, and (b) relates to the desirability of the development that would suffer the noise impact – for example, much needed city centre housing which may then not meet the proposed internal noise standards. Finally, it still does not show that the impact on residents would be acceptable.

- 8.3.10 As to the effect of the noise, against the NPPG guidance a significant observed effect (and so a significant effect for the purposes of paragraph 123 of the NPPF) will take place where the impact causes a material change in behaviour. In this case, the exceedences are well above the threshold limits and clearly cause a material change in behaviour – it is no longer desirable to sit in the outdoor amenity areas, or to rest during the day. The fact that residents have to keep their windows closed during the day suggests that the levels fall within the 'Significant Observed Adverse Effect' category.

Mitigation

- 8.3.11 Schedule 2 of the s106 requires the Council to approve the Noise Management Strategy but no more than that. Should the Council not find the strategy acceptable the school can carry on without it in place.
- 8.3.12 The only genuine mitigation measures comprise the acoustic screens. Even with a 2m screen there would be substantial exceedences indoors (4dBA) and against the 50dBA guideline for external areas¹. In any case, this mitigation cannot be secured because the appellants have pursued the prior approval route rather than a full application which included the necessary operational development. This is unacceptable. A prior approval application does not grant permission. There is no power for the screens to be permitted through this application. Nevertheless, the SPPC agrees that it would be preferable to be included, rather than not have it at all.
- 8.3.13 The Noise Management Strategy provides some level of control but, as residents have commented, the no-go zone imposed by the school is unenforceable.

8.4 Other Matters

- 8.4.1 SPPC withdrew its objection to the proposal on contamination risk grounds.
- 8.4.2 The Khalsa Education Trust identified a need for a Sikh Secondary School in Slough and West London. Some 20 potential sites were identified and the two shortlisted were located in the South Bucks district. As the need is for Slough and West London, the search area should not have been limited to Slough and its immediate environs. Other more sustainable and suitable sites are available and do not fall within the Green Belt. It is difficult to understand why such sites

¹ DFE8 - Cole Jarman Noise Assessment, Table 7

have been regarded as unsuitable and eliminated from the selection process.

- 8.4.3 The proposal would cause harm to the Green Belt and to the nearby Framewood Conservation Area due to the intensification of use in a quiet, tranquil area.

9. REPRESENTATIONS FROM THIRD PARTIES BASED ON WRITTEN SUBMISSIONS AT THE HEARING

9.1 Rt Hon Dominic Grieve QC MP¹

The material points are:

- 9.1.1 The issues for decision on this appeal are narrow. However, the Secretary of State's attention is drawn to the range of grounds on which interested persons oppose or support the proposal.
- 9.1.2 Stoke Poges has a highly distinct identity and is an exemplar of inclusiveness and community cohesion. It is an active and neighbourly place with a great deal of voluntary and charitable activity. The village community is also diverse being both multi-ethnic and multi-faith. Some 22.05% of the population are non-white and 9.66% describe their faith as Sikh². Community relations in the village between persons of different ethnicities and faiths are outstandingly good.
- 9.1.3 The announcement by the DfE to allow the Khalsa Academy to open on the Pioneer House site and the period since has generated a greater volume of opposition to a planning proposal than any previously experienced by Mr Grieve³. The opposition crosses ethnic and religious lines with a strong sense expressed by many that their views are being ignored.
- 9.1.4 Objections from local residents have centred on what they see as the severe adverse impact that the school would have on the village. Firstly, the concern is loss of amenity from the increase in vehicle traffic once the site is used as a full sized secondary school. Residents greatly value the rural aspects of the village and consider that Hollybush Hill is unsuitable for large scale vehicle movements. It is also difficult for buses to manoeuvre in and out of the site. As the school is drawing pupils from a wide area of Slough and West London and not from the local community, the vast majority would travel by car or bus which would be disruptive, particularly at the start and finish of the school day. At present the small size of the school does not appear to have created any problems but it is felt that would inevitably change as the number of pupil rises.

¹ TP12 – Mr Grieve's written statement

² 2011 census

³ 600 individually written letters, a public meeting attended by over 450 people and a petition of ,020 signatures

- 9.1.5 A second issue of concern is the noise that would be generated. It is believed that the noise would exceed the decibel levels laid down in the original planning consent for use of Pioneer House as a purpose-built office and cause severe loss of amenity. Finally, it is believed that issue of contamination of the land is being ignored.
- 9.1.6 Other issues raised do not fall within the direct scope of the appeal but include concerns about preservation of the Green Belt and that the school has been imposed on the community as a result of Slough Borough Council's failure to co-operate in the search for a site. There is a widespread community view that the school would not benefit them, as they do not wish to send their children to a Sikh faith-based environment. Parents would be obliged to pay for transport to the established secondary schools, if the Khalsa Academy is not their first choice.
- 9.1.7 Promoters of the school see things differently. The Trustees are striving to create an excellent school and they believe there is a demand in the wider area and community they wish to serve for the faith-based education they are promoting and providing. They want to make the school welcoming to the local community, but it is highly unlikely that what the school offers is going to be accepted by the majority of residents.
- 9.1.8 The basis of the underlying intention in allowing Free Schools to be opened has been stated to be the empowerment of local communities to work together to develop high quality education that responds to their children's needs. In this case, however, what constitutes the relevant 'community' is an issue of intense and fundamental disagreement being those supporting and opposing its being a permanent presence in Stoke Poges. For those supporting it, any loss of amenity is seen as acceptable because of the benefits derived from its presence in the village. For those who judge no such benefits to exist, and the school to have been imposed on them, the loss of amenity is unacceptable.

9.2 Mr Homan – Local Resident¹

The material points are:

- 9.2.1 To fully understand the reaction to the school from residents living nearby, and from the wider community, it is important to understand the history of the site and the context to the application.
- 9.2.2 This is a quiet and tranquil part of the village and the major reason why residents in the immediate area chose to live here. Stoke Poges also enjoys a very strong sense of identity and village community.
- 9.2.3 Residents were unanimously opposed to previous applications on the site in 1989 and 1991 for the construction of office premises. The schemes were judged to be insensitive in this Green Belt location and adjacent to a Conservation Area. The 1991 application was approved

¹ TP3 – Mr Homan's written representations

but with conditions and a s106 agreement aimed at protecting the amenity of the area. Now the residents find themselves defending their neighbourhood again, against the intrusion of a Free School which is neither needed nor wanted.

- 9.2.4 Virtually the entire village is opposing the scheme; 5,000 people signed a petition which was delivered to 10 Downing Street. The Government expects Free Schools to be located only in areas of need and only if there is local demand. Not only is there no request or demand, not one pupil in the village has applied to attend the school and BCC has stated that there is no current or projected shortfall in upper school places.

Transport and Highways

- 9.2.5 On the basis of vehicular movements surveys carried out by the Residents' Association in December 2013 and February 2014 of vehicles entering and leaving the property, it is estimated that at full capacity the Academy would generate between 560 and 740 vehicle movements a day¹. While the Travel Plan envisages use of coaches, parents cannot be forced to use any such service. So the increase in use of private cars is a real issue.
- 9.2.6 The term time schedule² is confusing. It remains unclear how many classes would undertake sports lessons off-site, nor is there an indication of the level of traffic generated by transporting pupils on and off the site.
- 9.2.7 As the rear car park is being used as an outdoor playground, it is unclear where the drop-off and pick-up of 840 students would take place. It is inevitable that some children would be dropped off outside the school or in nearby lanes. It is not safe for them to walk, given the lack of pavements. Neither is there sufficient space on the lanes to accommodate the parking³. The section between Framewood Road and Hollybush Hill is particularly unsafe, given the lack of footways.

Noise

- 9.2.8 Residents living nearby have been greatly disturbed by the noise of children using the playground and the field. They are mostly used in the afternoons but also used on arrival in the mornings, sometimes as early as 07:10 hours, and during break times. Residents have lost enjoyment of their property. What was an oasis of calm is being destroyed by the pupils.
- 9.2.9 Many of the residents living within 100m of the school site are either retired or work from home. Their lifestyles have been severely affected by the noise particularly over the summer months. Even

¹ TP3 – Mr Homan's Appendix JH2

² TP3 – Mr Homan's Appendix JH3

³ TP3 – Mr Homan's Appendix JH4 illustrating the narrowness of the road and the effects of parking

with as few as 20 pupils playing rounders, noise levels as high as 60dBA and 81dBA have been recorded.

- 9.2.10 Complaints have been made to the head teacher and to SBDC. Some games sessions have been moved to a different part of the field but with minimal reduction in noise. In fact, the problem has moved closer to residents in School Lane.
- 9.2.11 The condition attached to the Pioneer House planning permission and the s106 securing conditions to protect residents' amenities are not time limited but run with the land¹. They must therefore apply to any use of the premises, even under the GPDO. If the appeal is successful, the protection offered by the s106 and all the conditions therein would be effectively lost.

Contamination

- 9.2.12 The site has a history of contamination as a result of its occupation over 40 years by Fulmer Research Institute from 1946 onwards. Processes included the use of radioactive materials such as depleted uranium and thorium. When the research buildings were demolished substantial amounts of waste material were tipped into the field. At the same time, a constant flow of trucks transported further waste material of unknown origin onto the site.
- 9.2.13 It may well be that there is no contamination risk insofar as the existing building is concerned, but insufficient attention has been given to the possibility of exposure to contaminated land elsewhere within the site.
- 9.2.14 In a belated response to a Freedom of Information request², the DfE admits to finding contaminants. As a result further investigations were carried out. The report³ shows that the investigation consisted of 60 hand augured boreholes to take samples from depths of just 0.6m. The works identified elevated concentrations of metals and polyaromatic hydrocarbon compounds within the made ground. Demolition material was also excavated. The report suggests that the presence of contamination at potentially elevated levels between the exploratory holes cannot be discounted.
- 9.2.15 There can be no confidence that dangerous or uncontaminated material was either fully identified or disposed of. Several unanswered questions remain and the risk justifies a refusal. As staff and pupils would have access to the whole of the site, they could come into contact with contaminated soil.

Conclusions

- 9.2.16 Should the appeal be successful, the school could not operate without additional buildings in the future. The withdrawn application reveals

¹ TP3 – Mr Homan's Appendix JH5

² TP3 – Mr Homan's Appendix JH7

³ TP3 – Mr Homan's Appendix JH8

the extent of the plans for new buildings and extensions. This is the wrong location for a secondary school. If it were to proceed, the noise would not only have a severe impact on the lives of those living nearby but the school would change the character of the village. It would additionally create a potentially dangerous situation for pupils and villagers by virtue of the traffic generated.

9.3 **Mr Paul Wright – Local Resident**¹

The material points are:

- 9.3.1 The use of subsidised coaches to transport pupils is unenforceable. Parents will drive their children to school. There is no way of preventing them from doing so, especially as public transport options are minimal.
- 9.3.2 The resulting increase in traffic would pose a safety risk to local children that currently walk to local schools. Stoke Poges has a strong walking ethos but that has its challenges, given the absence of streetlights, single track lanes and some roads without pavements. Increase in traffic on Wexham Street could cause delays and hold ups for ambulances going to and from Wexham Park Hospital.
- 9.3.3 There is no need for the school in South Bucks. The need is in Slough and there are a number of more suitable locations in Slough to meet those needs. Hollybush Hill is the wrong location. The proposal would increase journey times and carbon emissions.

9.4 **Mrs Trudi Wicks – Local Resident**²

The material points are:

- 9.4.1 The school is clearly aimed at families and children from a Sikh background, as confirmed in the entry questionnaire on the website. Despite the admissions policy, the ethos of the school would exclude a vast majority of local residents. The issue is having a negative impact on Mrs Wicks' daughter, as she wishes to attend a school with her siblings and friends. Transport costs to another school would have an impact on the family budget.

9.5 **Mr Jonathan Dodd – Local Resident**³

- 9.5.1 In response to local residents Lord Nash wrote that "*South Bucks District Council...will determine whether Pioneer House is a suitable location for a school.*"⁴ Since issuing that assurance, planning has been circumnavigated by virtue of: 1) withdrawal of the application for extensions; 2) relying on the GPDO amendments (Class C and Class K), and 3) launching an appeal. All of which fly in the face of the assurance given.

¹ TP4 – Mr Wright's written statement

² TP5 – Mrs Wicks' written statement

³ TP6 – Mr Dodd's written statement

⁴ Letter attached to TP6

9.5.2 If allowed to proceed, the Khalsa Academy would become the nearest school for a large portion of South Bucks. As such, the choice will be removed for many families who will no longer be offered places for their children at well-established and highly regarded schools at Chalfonts, Beaconsfield and Burnham. Imposing a Faith School outside the authority campaigning for it and on another community as their 'nearest school' is not right.

9.6 **Mrs Catherine Briggs - Local Resident**¹

9.6.1 The family was attracted to Stoke Poges by the semi-rural nature of the area and the peaceful nature of the vicinity around their property². They were also attracted by the excellent schools in South Bucks. In time Mrs Briggs is hoping to practice as a psychotherapist from her home.

Noise

9.6.2 When Pioneer House was occupied by offices there were no issues of noise disturbance. The building and area used as a playground are between 10m and 25m from the house. Since the school has been operating on the site, there have been daily incidents of noise that have impacted on the family's quality of life. The baby has to sleep in the room furthest away from the site boundary and Mr Briggs is unable to work from home.

9.6.3 Some days the pupils are outdoors for most of the school day. As the summer approaches their arrival can start as early as 07:10 and build up increasingly until 08:00. The noise starts with their arrival and includes children shouting at or to each other, ball bouncing and screaming that is part of play. The ban imposed on play outdoors before 07:40 has had little effect. The noise is repeated at mid-morning break and again during the lunch break from 12:50 until 13:30. Some days a group returns outdoors after lunch to play sport to about 14:40. Further play takes place until 15:30, and from 16:10 until 16:45 when the whistle is blown. After school events also take place until around 17:15. This pattern is not repeated every weekday, but for a school with only 90 pupils the children are outdoors creating an impact for in excess of 5 hours per day.

9.6.4 The noise is audible from indoors with windows closed. Use of the garden is limited to the times when children are indoors but the outdoor play is regular and frequent. Even the family routine indoors is disrupted. On some occasions it is easier to leave home altogether to escape the noise. Complaints have been made directly to the school on four occasions, for anti-social behaviour, swearing and disregarding out of bound areas³.

¹ TP7 – Mrs Briggs written statement

² The property adjoins the eastern boundary of the appeal site

³ Details of the nature of the complaints are set out in the written statement

- 9.6.5 The Cole Jarman Noise Assessment (DFE8) focuses mainly on average decibel levels. However, it is not just the loudness of the noise that is problematic but the nature of it, which is intrusive and unpleasant. The duration of it is another contributory disruptive factor. There is little background noise to mask the sounds and with the site's elevated position the noise from the school carries long distances. The Noise Management Strategy cannot even begin to address these issues.
- 9.6.6 Given the ways in which the family's behaviour has changed and their amenity compromised, the situation falls under the 'Significant Adverse Effect' category. The position would worsen with 840 pupils at the school.
- 9.6.7 The Cole Jarman Noise Assessment assumes that a small class of PE lessons of 30 pupils at a time would not be disruptive. However, the family's experience of disturbances suggests that is not the case. Noise levels as high as 80dBA have been recorded.
- 9.6.8 Under the term time schedule¹, pupils would be outdoors for a total of 3 hours 35 minutes a day (not including PE). In practice though they will be arriving as early as 07:10 and not leave until 17:15 and the total time rises to 4 hours 25 minutes (not including PE).
- 9.6.9 The school would need to provide around 80 hours of PE a week for the whole school of 840 pupils. Some 20 hours would be on-site but there is no indication of where the 60 hours would take place. This has implications for traffic. What is more, the bulk of the 20 hours would be outdoors, adding another 3 hours of outdoor play.
- 9.6.10 The Noise Management Plan is neither sustainable nor enforceable. Even if it were enforced by the school, the concerns about loss of amenity remain.

9.7 **Mr Keith Finan – Local Resident**²

The material points are:

- 9.7.1 The arguments in this case are not about faith but about the wrong location for a school. It affects many people in many different ways, including 'travel to school' subsidies. Mr Finan and his wife would incur high transport costs by sending their children to a non-faith based school.
- 9.7.2 Residents of School Lane and Hockley Lane have had their lives affected by the school. The traffic likely to be generated by the dropping off and picking up of pupils in an area without paths or street lights is unacceptable. Parents want the best for their children and the most sustainable and cost effective location for the school is at Slough, where the vast majority of students live.

¹ DFE8 - Cole Jarman Noise Assessment, Term Time Schedule attached before Appendix

² TP8 – Mr Finan's written statement

9.8 Mrs J Brar – Local Resident¹

The material points are:

- 9.8.1 The peaceful surroundings of the neighbourhood at School Lane were the family's reason for moving to the village where they have lived for 10 years. However, since last September that peaceful amenity has been severely damaged by arrival of the secondary school. The school is not needed in this location. There are more appropriate and sustainable locations including the former Arbor Vale School adjoining the Khalsa Primary School in Slough.
- 9.8.2 Residents' amenities have been steadily eroded. So far the family has experienced: gritting lorries at 04:00, leaf blowers at 07:00, delivery vehicles at 07:15, children shouting in the rear car park as early as 07:30 and other times during the school day and anti-social language. Mr Brar is a shift worker and is unable to sleep during the day. It is impossible to keep a window open.
- 9.8.3 The Noise Management Strategy would not stop 840 pupils from shouting and yelling. Noise barriers are not suitable for a rural Green Belt location. PE lessons would take place throughout the day.
- 9.8.4 Residents were sufficiently concerned about the traffic implications to carry out their own vehicle movement counts. The counts revealed that between 30 and 40 vehicles enter and exit the site between 06:45 and 08:15 (with 90 pupils), which means that 840 pupils would generate between 280 and 370 vehicle movements twice a day.
- 9.8.5 The school would neither serve the local community nor increase choice. Local community in this case means Sikhs living within the Slough, West London and the South Bucks areas. By far the largest proportion of Sikhs lives in Slough and West London. So locating the school in South Bucks would not be serving the local community. The choice would be further restricted for parents who do not want their children to follow a strict vegetarian diet. A family that chooses not to send a child to the Khalsa Academy would incur additional travel costs, thus reducing choice further.

9.9 Ms Nancy Moran – Local Resident²

The material points are:

- 9.9.1 The Co-operative supermarket opened in the village in 2012 with re-instatement of the local post office and pharmacy within a new development on Bells Hill just south of the junction with Hollybush Hill. The development includes a new doctor's surgery and 21 flats. These facilities account for the increase in traffic flows that emerge from the surveys carried out by Transport for Buckinghamshire in February 2014³.

¹ TP9 – Mrs Brar's written statement

² TP10 – Ms Moran's written observation

³ DFE11 – Traffic Note 2, Table 1

9.10 **Lee Duncombe – Member of the Parish Council**¹

The material points are:

- 9.10.1 The appellant and Trustees have failed to involve or consult the village and cannot be trusted in the light of their conduct to date².

Transport and Highways

- 9.10.2 The 70% to travel by coach is an aspiration that would be led by demand. The s106 provides no guarantee that parents would not resort to transporting their children by car. There is no measure for compelling parents to do otherwise. In time the aspirations could change with changes in the present group of Trustees and a new head teacher. Only 2% would walk/cycle to school, which suggests that this is not a sustainable location.
- 9.10.3 Based on the evidence to date, SPPC firmly believes that the additional traffic generated would adversely affect the safety and flow of traffic in the area.

Noise

- 9.10.4 Current noise levels at the Academy already cause annoyance, sleep disturbance and residents' ability to use their gardens or work from home. They are changing their behaviour. The noise restriction condition imposed in the 1993 Pioneer House permission was imposed because neighbours' amenity was considered to be important. Demographic and employment changes that have seen more people working from home, renders that condition even more important.
- 9.10.5 The noise barrier is being offered, but only after SBDC objected on noise grounds. However, they would be confined to the rear car park area, while the field would remain exposed.
- 9.10.6 The proposal would intensify use of the site, increase noise levels with outdoor sport spread over a long period of the day, in addition to the noise generated at pre-school, break and lunch time periods. Noise is a serious issue. People's lives are already affected. It would get a lot worse when the school is fully occupied.

9.11 **Mr Trevor Egleton – District and County Councillor for Stoke Poges**³

The material points are:

- 9.11.1 This proposal has generated an unprecedented volume of opposition with an extremely high number of residents actively engaged in various campaigning roles. Even the Pioneer House 1991 application generated two public meetings and was approved by one vote. Due

¹ TP11 – Lee Duncombe's written statement

² The written statement lists the reasons for this claim

³ TP13 – Mr Egleton's written statement

to the prominent, sensitive nature of the Green Belt site within a residential area, the committee refused to allow delegated authority for approval of external works and lighting. Conditions controlling noise and number of employees were also imposed.

Highways and Transport

- 9.11.2 Introduction of dedicated coach services must have an impact on the local road network. The Travel Plan states that the number of coaches would be adjusted to allow for fluctuations in demand; this indicates that they are anticipating a varied response to the take-up of coach usage. The Travel Plan does not address the situation of parents choosing to drive children to school instead of to the coach pick-up points. The coaches would only be used if they are affordable and convenient to parents.
- 9.11.3 The school is also assuming that sixth formers would not travel by car or that a ticketing system would limit the numbers. The system would not work effectively and cars would be parked on nearby streets.
- 9.11.4 Wexham Street has a number of pinch points and is already a busy route. Wexham Park Hospital attracts a large volume of accident and emergency traffic. The range of services at the hospital and its capacity is likely to increase. Increase in traffic to and from the proposed school would have an impact on the hospital's ability to cope with the challenging traffic situation that already exists.

Noise

- 9.11.5 The current one-year entry school is causing noise levels to increase above acceptable levels and would increase further as the school reaches capacity. The full complement of students could not be accommodated in the existing building and a hot desking arrangement would have to be adopted. This would result in external sport and other activity for the majority of the school day. Local residents would be subjected to unreasonable noise levels for a prolonged period each day.
- 9.11.6 There is no indication of the frequency of use of the grounds and building for sport, social, fund raising or religious events outside normal school hours. If unconstrained, such events would further impact on the local area.

Contamination

- 9.11.7 Contamination of the site due to previous uses and disposal of material on the land raises a number of concerns. Very recently 'hot spots' of contaminated material have been removed and topsoil and subsoil replaced with clean inert material. It is normal practice, and important to ensure, removal of all surface soil and grassed areas to ensure all contaminants have been removed.

Need for the School

- 9.11.8 The intention of the Free School legislation is to provide an opportunity for schools to be started where there is a local demand and for children to receive an education outside local authority control. The requirement for additional schools is in Slough; there is no local demand for the Khalsa Academy. BCC has adequate secondary school places in the south of the County. The demand is essentially from Slough and the school should be located within Slough and in a sustainable location.

9.12 **Other Points Raised Orally at the Hearing**

- 9.12.1 A number of third parties contributed to discussions at the Hearing but did not submit anything in writing. The comments made include the following:
- Hollybush Hill is narrow and it would be difficult for two coaches to pass, with the prospect of queuing situation arising. Coaches would be passing one another every few minutes.
 - Experience of other schools confirms that sixth formers drive to school and this raises parking issues.
 - Acoustic screening and additional boundary landscaping would affect neighbours' daylighting.
 - Stoke Poges is not a rural idyll. It comprises residential areas and two industrial parks.

10. WRITTEN REPRESENTATIONS

- 10.1 The points raised in writing in the many letters sent in in response to the appeal have been largely covered at length in my reporting of the various parties' cases. I do not repeat them in any detail but record the gist in bulleted points.

10.2 **Objections to the Proposal (TP2)**

- 10.2.1 The objections are based on the following key matters
- Impact on highways.
 - Effect on road safety.
 - Insufficient parking.
 - Concerns about on-street parking, especially by sixth formers driving to the school.
 - Unsustainable location for a secondary school.
 - Impact of the additional traffic on the village environment.
 - Effects of noise on local residents.
 - Contamination risks arising from previous uses of the site.

- Impact on Green Belt and nearby Conservation Area.
- No demand or need for the school.
- Disregarding local views.

10.3 **Supporters of the Proposal (TP1)**

10.3.1 The written support includes a petition of 13,408 signatures, which was delivered to 10 Downing Street. The folder includes a list of reasons why the academy should be permanently located at Pioneer House. Briefly these are:

- The school can provide excellent education and improve the prospects of young people in Slough and South Bucks.
- The existing Khalsa Primary School has a very successful record and is rated as 'outstanding'. It is an asset in the community in which it is located, enjoying a strong relationship with it.
- There is an identified shortage of secondary school places in the area and a strong demand for a school on this site.
- Pioneer House is largely vacant and has been on the market for some time. It can provide a much needed school at minimal cost to the taxpayer.
- The building and site are ideally suited for use as a school providing the facilities to deliver an outstanding education. The grounds and building provide a unique opportunity to deliver an ambitious programme of diverse extra-curricular and sport activity.
- The education of students that started in September 2013 would be disrupted by changing locations partway through their education.

10.3.2 The main additional points expressed in letters supporting the proposal are:

- The school would benefit the local community from all faiths.
- The children should not have to endure temporary facilities
- The building and location are ideal for a school.
- The site is spacious.
- The building is well resourced.
- It is conveniently located for access by students.
- The students already attending the school are very happy and do not wish to be relocated. The search for a new school is likely to raise difficulties.
- Sufficient parking available on site.

11. PLANNING OBLIGATION AND CONDITIONS

11.1 Planning Obligation (HD23B)

- 11.1.1 Schedule 1 of the completed unilateral undertaking commits the parties to the following:
- Payment of a contribution to the county council for costs incurred in preparing and implementing a TRO to allow controlled parking on Hollybush Hill.
 - Payment of a contribution to the county council for costs incurred in planning and delivering highway signage.
 - Payment to the county council of a Travel Plan monitoring fee.
 - Submission of an annual Travel Plan progress report, and
 - Provision of a dedicated bus service throughout the time the property is occupied as a school.
- 11.1.2 The dedicated bus service provision additionally requires submission of a specification (the Bus Specification) to include the capacity, route, timing and frequency of the bus service which is to be updated annually. Essentially, the provision commits the school to providing buses to meet a calculated projected demand.
- 11.1.3 The Travel Plan is annexed to the planning obligation and contains measures, information and supporting initiatives aimed at reducing the number of single occupancy vehicle journeys. It is also designed to encourage the use of other modes of transport. The Travel Plan includes features such as bicycle promotional events, bicycle storage, a home-school agreement asking parents not to park on Hollybush Hill. Furthermore, if parking problems arise, the Academy will look into introducing an on-site parking permit scheme for sixth formers. An action plan and travel target plans also feature in the Plan.
- 11.1.4 Schedule 2 commits the school to submitting a Noise Management Plan along the lines of the Plan annexed to the s106 and to use reasonable endeavours to comply with it.
- 11.1.5 The Noise Management Plan sets out the school hours of operation. It outlines the scope of the extended external use. It recognises that noise is generated during break times and outdoor sports activities. The latter will take place between 15:45 and 16:45 and the school will endeavour to ensure that the sessions are supervised. Amplified sounds are not to be deployed and no whistle used after 16:45. Unless there are any special sporting tournaments or activities, outdoor activities are expected to end at 16:45. No activities are to be held at weekends, except one special annual event on a Saturday.
- 11.1.6 No-go zones are proposed around the residential areas. Designated play areas are to be separated from residential properties. Schedule 2 additionally commits the school to submitting an Acoustic Barrier Specification within one month of receipt of Prior Approval and a planning application to accord with the approved Specification within

a month of receiving approval for it. The barrier is to be erected within three months of the application being approved.

11.2 Conditions

- 11.2.1 At the Hearing the scope for imposing two conditions was discussed. One for protecting residential amenity from plant/machinery noises, along the lines of that imposed on the 1993 permission. The condition in Annex C is based on the numerical values of the 1993 permission but limits expressed in terms of $L_{Aeq15mins}$, as suggested in the Noise Statement of Common Ground¹. A landscaping condition was also suggested to further protect neighbours' amenities. The Conditions are listed in Annex C.

12. INSPECTOR'S CONCLUSIONS

(Numbers in square brackets refer to paragraph numbers in earlier sections of this Report)

12.1 Preliminary Matters

- 12.1.1 Many of the representations made in writing and orally refer to matters not related to the acceptability of a prior approval scheme under Class K.2(b) of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (GPDO). Having recorded them as part of the parties' cases, I make no further observations on the merits or otherwise of matters that fall outside the decision making process of this prior approval scheme. [6.1.5, 8.4.2, 8.4.3, 9.1.6, 9.2.3, 9.2.4, 9.3.3, 9.8.5, 9.11.8]
- 12.1.2 Paragraph N(8)(b) makes provision for the local planning authority (or the decision maker) to have regard to the NPPF but only in respect of issues subject to prior approval. In other words the NPPF is relevant only to matters pertaining to: i) transport and highways impacts; ii) noise impacts and iii) contamination risks on the site. [6.1.1, 6.1.2]
- 12.1.3 While the appellant points to paragraph 32 of the NPPF as the only relevant element to transport and highways impacts, there must also be some connection with paragraphs 29, 34 and 35 which aim to encourage sustainable patterns of development, reduce the need to travel and direct the location and design of developments. After all, these touch upon transport matters that could have a bearing on the impact of a development. [6.1.2, 8.2.1]
- 12.1.4 As for the development plan, the appeal does not involve an application for planning permission; s70(2) of the Town and Country Planning Act 1990, therefore, does not apply and s38(6) of the Planning and Compensation Act 2004 is not engaged. In other words, the decision maker is not required to have regard to the provisions of

¹ HD9 – paragraph 8.2

the development plan in this case nor determine the appeal in accordance with it. [6.1.3, 0]

- 12.1.5 That is not to suggest that the local policy framework is of no relevance whatsoever. It is as much to be regarded as a material consideration as the guidance documents referred to in the evidence, and is not prevented as such by virtue of paragraph N(8)(b) of the GPDO. [7.1.1, 8.1.2]
- 12.1.6 All of that said, the local policies referred to in this case add little to the arguments relevant to the three issues. The considerations are more usefully covered in the NPPF and the technical supporting material relied upon by the parties. Therefore, while local policies have been touched upon by SPPC they are not determinants in any way. I draw the Secretary of State's attention to the relevant development plan policies in Section 5, but I do not refer to them further in these conclusions. [5.3, 5.4, 7.1.3, 8.1.3, 8.1.4]
- 12.1.7 Turning to the matters of substance relating to the three criteria identified in Class K of the GPDO, the main areas for consideration are:
- The highways and transport impacts of the proposal.
 - Impact on local residents in respect of noise.
 - Contamination risks on the site.
- 12.1.8 Neither SBDC nor SPPC raised any issues with regard to contamination. However, a number of third parties have brought the matter to my attention and I deal with it in these conclusions. [6.4.2, 8.4.1]

12.2 Highways and Transport Impacts of the Proposal

- 12.2.1 This raises three sub-issues, all of which would bear on the highways and transport impacts of the Academy when it is fully operational by 2018 with 840 pupils and 70 members of staff. I deal with each one in turn.

Impact on the Highway Network and Safety of Highway Users

Traffic Survey

- 12.2.2 The effect on the highway network is dependent on the extent to which the Academy would add to the traffic already on the network. A number of traffic counts have been undertaken to establish existing and predict future traffic flows, including residents' count of vehicular movements in and out of Pioneer House with the current school in occupation. [9.2.5, 9.8.4]
- 12.2.3 The appellant's case relies on manual and ATC traffic counts carried out in January 2013 at three locations: 1) access points into Pioneer House; 2) the Hollybush Hill/Framewood Road junction, and 3) Hollybush Hill/Gerrards Cross Road junction. The survey is criticised for a number of reasons, not least because it was not undertaken in a

representative month. Additionally the results do not correspond with the Transport for Buckinghamshire's February 2014 traffic count which by comparison showed an increase of 892 (two-way) flows on Hollybush Hill on an average weekday. [6.2.2, 6.2.3, 8.2.9]

- 12.2.4 On the first point, BCC did not query the validity of the traffic count when presented with the TA and subsequent information. Furthermore, there is no evidence to suggest that flows in the months of April, May, June September or October would differ so substantially from the observed flows in January as to materially affect the outcome. The 892 additional flows resulting from the February 2014 traffic counts can be explained by a number of factors, including road closures/flooding during that period and is itself therefore unlikely to be representative. The magnitude of increase cannot be accounted for by traffic growth nor would it arise from the 90 pupils and 16 staff members attending the Academy at Pioneer House since September 2013. The appellant did not update the traffic counts, given the evidence and concerns of sabotage. The January 2013 count therefore remains the only realistic evidence base on which to assess existing flows. [6.2.3, 8.2.8, 8.2.9]

Traffic Generation

- 12.2.5 NPPF expects development to be prevented or refused on transport grounds only where the residual cumulative impacts of development are severe. An assessment of residual impact would mean giving consideration to the potential use of Pioneer House for B1 offices. The building has only ever operated at a maximum of 50% capacity and the application for its development in 1991 only envisaged 175 employees. However, by then the Council had already accepted the principle of a development capable of accommodating 400 employees, and nothing in the permission granted by SBDC in 1993 or the accompanying planning obligation limits the number of employees on site. It could conceivably operate at full capacity, should it be occupied for B1 purposes. [3.1, 6.2.1]
- 12.2.6 Establishing residual impact in this case therefore cannot be based on the historic pattern of usage at Pioneer House, but must take account of trips which might realistically be generated by the extant permission or permitted use. The DfT Guidance on Transport Assessment current at the time the survey results were interrogated advised the use of such an approach where a site is vacant. The new Guidance (February 2014) expects the scope of any transport assessment to be agreed with the highway authority. That is the basis on which the TA was developed and the TRICS sites were also agreed with the highway authority. [6.2.4, 6.2.5, 8.2.11, 8.2.12]
- 12.2.7 Assessing traffic generation as a result of the appeal proposal is a much more complex issue and one that relies on predicted assumptions of modal split. Public transport choices serving the site are negligible. By far the largest share (70%) of mode of transport is accorded to school buses or coaches. The reality of this is questioned by objectors. However, the figure is based on a survey of current

modes of transport used by the 90 children and 16 staff members travelling to and from the school. These reveal that just over 68% use the minibuses provided by the school and there is a degree of car sharing. Given that the Academy will attract pupils from similar post code areas and possibly beyond, it is likely that the coaches laid on by the school would continue to be used at levels at least at those currently surveyed, if not higher. The 70% figure is regarded as realistic and was used for assessment purposes, instead of the long term 80% target aspired to in the Travel Plan. [6.2.7-6.2.10, 8.2.13-8.2.17, 9.3.1]

- 12.2.8 The Travel Plan does not provide a mechanism for enforcing that objective, but is an additional measure relied upon by the Academy and would go some way towards encouraging use of the school coaches with less reliance on private cars. Equally, the Travel Plan provides a basis for the school to encourage car sharing and other modes of transport. [6.2.10, 8.2.5, 9.3.1, 9.10.2, 9.11.2, 11.1.1-11.1.3]
- 12.2.9 None of the current pupils walks or cycles to school, but none lives locally. On the evidence of next year's intake, plus the fact that Sikhs comprise some 10% of the local population and the admissions policy allowing 50% non-Sikh or any faith based entrants, there is every likelihood that of the 840 attending some would be local, albeit a small number. The 2% walking and 2% cycling to the Academy is therefore not a fanciful assumption, but in any case are unlikely to alter the figures to any great extent. Equally, the number of sixth formers likely to use their own private transport would not materially add to the traffic flows, given the opportunities for car sharing, provision of school buses and on-site parking limitations likely to be imposed by the school. [6.2.8, 6.2.9, 8.2.2, 8.2.16, 9.10.2, 9.11.3]
- 12.2.10 Overall, I believe that the current evidence from surveys, combined with the measures and initiatives in the Travel Plan, provides sufficient confidence that the appellant's figures on trip generation based on the modal share assumptions are realistic and achievable. They are not very different to the assumptions arising from traffic counts undertaken by local residents. [9.2.5, 9.8.4]
- 12.2.11 In the light of the figures presented, the Academy would generate an additional 18 two-way trips per day (or 1.7% increase) over an average weekday above that predicted for a fully occupied Pioneer House for B1 purposes. The Academy generated traffic would lead to an increase during the morning peak but would generate less traffic than a B1 use during the evening peak period. The differences would not be discernible. There would be a noticeable increase in traffic flows and movements in and out of the school premises during the school peak periods in comparison with the previous Class B1 use of Pioneer House; a situation villagers have grown accustomed to. But for the purposes of a realistic assessment, comparison with a fully occupied building is the correct approach for reasons explained earlier. [6.2.11, 6.2.12]

- 12.2.12 It terms of traffic impact, the results are presented for the years 2014 and the 2024 showing the predicted position at AM and PM peak periods with a fully occupied Academy. All of the junctions modelled and assessed have been shown to operate within capacity. At worst the site access would operate at 0.60 RFC in 2024; all other junctions would also operate within acceptable capacity ranges. [6.2.16, 6.2.17]
- 12.2.13 While I agree that the appellant's predictions of traffic generation, flows and impact are mostly based on robust assumptions, some areas of the modelling are questionable. For instance, the absence of sixth formers using their own private vehicles and the surveys failing to capture the first 30 minutes of the development peak hour. The appellant's highway witness was unable to confirm whether the coaches were modelled as HGVs or not. Given the degree to which the tested junctions would operate within their respective capacity, the concerns raised are unlikely to alter the impact on the highway network to such an extent as to fall into the 'severe' category. [8.2.18, 8.2.20, 10.2.1]
- 12.2.14 The increase in coach numbers travelling to and from the site has raised issues of congestion on the narrow street in the area and the potential for emergency vehicles at the Wexham Park Hospital experiencing delays. However, the traffic generated by the Academy (including the coaches) would be spread over the wider network and not necessarily concentrated around the Wexham Street area. [8.2.19, 9.3.2, 9.11.4, 9.12.1]
- 12.2.15 Absence of footways at the eastern end of Hollybush Hill would deter pupils travelling from that direction to walk to the Academy or use the bus service on Framewood Road. The route from the western end (and where the village centre lies) has footways extending the length of Hollybush Hill on its southern side. The gradient change in the road reduces visibility for pedestrians crossing from the northern footway, which finishes partway along the road. However, the residual scale of traffic increase is unlikely to alter what is an existing situation and which local pupils or pedestrians would be familiar with. [6.2.15, 8.2.14, 9.2.7, 9.3.2]
- 12.2.16 The matters raised by third parties in questioning the basis of the TA or updated analysis do not either individually or cumulatively give sufficient cause for rejecting the conclusions on the effect the Academy would have on the highway network. It follows that highway users would not be subjected to undue inconvenience through congestion nor would their safety be compromised. BCC and SBDC came to similar conclusions. [6.2.1, 7.2.1]

Adequacy of the pick-up, drop-off and parking arrangements

- 12.2.17 The Pioneer House site has the advantage of a large amount of hardsurfaced, marked out parking areas, to the front and rear of the building and in the north western corner of the site. There are a total of 201 car parking spaces; more than enough to meet the Council's

standards and the predicted maximum demand for 84 spaces.
[6.2.20, 6.2.21, 8.2.21, 8.2.22, 10.2.1]

- 12.2.18 Equally, there is sufficient space on the site, with good circulation routes to allow for coaches to park and for children to be picked up or dropped off without drivers having to park on the road. With proper management of the site, there is no reason to suppose that vehicles would park on the highways or that pupil safety on site would be compromised. The rear car park doubles up as play area, but that is not an uncommon occurrence with schools and more importantly is unlikely to be used for that purpose during the peak periods at the start and end of the school day. [6.2.13-6.2.15, 6.2.21, 8.2.23, 9.2.7]
- 12.2.19 The Travel Plan makes provision for the Academy to explore the option of introducing a parking permit scheme for sixth formers that live more than 3 miles from the premises. The approach would provide an incentive to park on-site. The Working Group is intended to comprise of a broad representation of members from the Academy and local community including SPPC. The process would provide the local community with an opportunity to work with the school to pre-empt or manage uncontrolled on-street parking. With such arrangements in place, the number and frequency of vehicles being parked on Hollybush Hill and local streets is unlikely to occur to the point of causing severe conditions. [9.11.3, 9.12.1, 11.1.3]

Promoting Sustainable Transport

- 12.2.20 The appeal site is situated in an area of Stoke Poges not easily accessible by public transport, although there is scope for pupils to walk and cycle to it. A large proportion of students, however, attending the school is likely to travel from outside the village, given the admissions policy. Furthermore, representations made at the Hearing and in writing lead one to conclude that a Sikh faith based school is unlikely to attract many pupils from non-Sikh families or those with no faith. I have no doubt that the Academy does and will provide the high quality of education rated as outstanding at the Khalsa Primary School. Nevertheless, a significant proportion of its catchment is likely to fall outside Stoke Poges. [6.2.22, 8.2.2, 9.1.6, 9.1.7, 9.2.4, 10.3.1]
- 12.2.21 The likely increase in journey times and the potential for reliance on private vehicles for journeys to and from the site do not resonate well with the NPPF's promotion of sustainable patterns of development. In terms of impacts, the increase in journeys and private vehicle use would add to the highway network and the accessibility of the site is therefore a relevant consideration in this appeal. [8.2.1, 8.2.2, 8.2.6, 9.3.3, 10.2.1]
- 12.2.22 On the other hand, regard must be had to the Academy's intention to secure a bespoke bus service for the pupils and initiatives in the Travel Plan to encourage non-car modes of transport. In other words, the Academy is taking up the opportunities for sustainable transport modes. It may be creating its own infrastructure, but the

evidence and arrangements put in place through the s106 point to the likelihood of a high percentage of pupils journeying to and from the school by a sustainable transport mode. The proposal therefore accords with paragraph 32 of the NPPF.

Conclusions on Highways and Transport Impacts

- 12.2.23 For reasons explained above, the residual impact resulting from traffic generated by the Academy, even when fully occupied, would not be severe. Safety would not be compromised either by flows on the network or by the Academy's parking demands.
- 12.2.24 The arrangements in place to secure the use of buses to transport pupils to and from the site and other initiatives provide opportunities for increasing the Academy's sustainability credentials. Neither the site's remoteness in relation to a large section of its likely catchment, nor questions about the appellant's assessment of traffic flows, render the proposal unacceptable because of the severity of its impact on highways or transport.

12.3 Noise

Background

- 12.3.1 SPPC and objectors referred repeatedly to the condition imposed on the 1993 Pioneer House permission (and repeated in the planning agreement completed with the application) which secured noise levels on the boundary of the appeal site to 40dBA between 07:00 and 22:00 and 30dbA between 22:00 and 07:00. The condition and provisions of the s106 apply to the development authorised by the planning permission granted (in this case to application no: S/91/1022/FF) and do not extend to any future or indeed other extant permissions. [6.3.8, 9.1.5, 9.2.11, 9.10.4]
- 12.3.2 The noise consultants representing the three main parties (appellant, SBDC and SPPC) agreed that the condition is unenforceable because of the lack of details with respect to units L_{Aeq} , L_{max} or the L_{A90} . Furthermore, SBDC's legal team advised the Local Environmental Officer that the planning condition contained in the s106 is not applicable. In any case it is unenforceable for the same reason as the condition. The appellant's view is that the condition was not intended to relate to activity noise but to address the noise aspect of kitchen equipment and ventilation systems. [6.3.8]
- 12.3.3 The consultants further agreed that the impact of noise on residents arises not from any internal activities but from use of the car park to the south side of the building for external school activities. These range from informal outdoor activities during break and lunch periods as well as organised sports. During the summer months the latter would take place (as it does now) on the field to the south. [6.3.1]
- 12.3.4 The term time schedule confirms the arrival time between 07:30 and 08:00, though residents claim that that pupils can arrive as early as 07:10. The schedule includes a 20 minute morning break period when 600 pupils can be expected to be in the playground area (sixth

formers are expected to use internal common rooms). A staggered lunch period of between 12:50 and 13:30 could see up to 400 pupils outdoors. Up to 100 pupils are expected to take part in outdoor activities during the enrichment period between 15:45 and 16:45. Each class in years 7-11 would also undertake up to one period of PE per week, comprising a combination of internal and external lessons but no more than 30 pupils would be outdoors in any one period. Main sports lessons and sports for sixth formers would take place off site. No weekend activities are expected to take place, save for the single annual event. [4.2, 11.1.5]

Impact on Residents

- 12.3.5 Of the dwellings near to the eastern, west and northern boundaries of the appeal site, those most likely to be affected by the Academy's presence are situated on School Lane and Hockley Lane. Because of distances from the areas mostly used for outdoor activities, the noise levels experienced in the gardens and houses on Hollybush Hill would not unduly diminish the occupants' living conditions. [2.2]
- 12.3.6 To assess what impact the school and its operations would have on the neighbours at School Lane and Hockley Lane, the starting point must be an objective assessment of the predicted noise levels against the range of guidance referred to by the main parties. [6.3.5]
- 12.3.7 It was agreed that, with windows closed and the school external areas in use, noise levels within adjacent affected dwellings would achieve the recommended internal noise levels described in Table 4 of BS8233:2014. [6.3.1]
- 12.3.8 SBDC's noise consultant could not point to any guidance to support his use of the 5 and 10dBA noise reduction factors for partially open windows nor the 0-5dBA for patio doors. The BS and WHO guidelines recommend a factor of -15dBA. The appellant's reduction of 13dBA is to be preferred. With the school operating at full capacity, on the appellant's figures, the recommended internal noise levels would be exceeded by 4-9dBA¹ on a 1 hour average or 3dBA using a 16 hour average. [6.3.11, 6.3.15, 7.3.3]
- 12.3.9 Developments operating in day time working hours should not be expected to conform to night time guidelines, even in known instances of shift workers residing nearby. On the other hand, given the nature of the noise from pupils playing outdoors, the 16 hour period is not appropriate because the character of the noise from the school, which is and will be different from the normal diurnal fluctuations in external noise used in the guidelines, which goes on to suggest 1 hour as an example. [6.3.9, 7.3.4, 8.3.5, 9.8.2]
- 12.3.10 With these factors in mind, residents most likely to be affected by the school could experience close to a doubling of the recommended

¹ The figures could be adjusted to 3-8dB if the agreed +9dB factor is applied for the increase in pupil numbers from 90-840, instead of the +10dB used before the agreement was reached

internal noise levels¹. It was agreed that the L_{Amax} levels arising from playground noise would remain approximately the same with the pupil number rising to the expected 840. However, as confirmed by the term time schedule, the frequency of such events would increase. [6.3.1, 6.3.18, 9.6.8]

- 12.3.11 Externally, on the appellant's figures, residents are predicted to experience noise levels of $51dB_{LAeq16\text{ hour}}$ and $57dB_{LAeq1\text{ hour}}$, which exceed the external guidelines ranges of 50-55 dB_{LAeqT} . The WHO guidance even goes as far as recommending levels no higher than $50dB_{LAeq}$ and $55dB_{LAeq}$ in outdoor living areas to protect the majority of people from being 'moderately' or 'seriously' annoyed. While the BS guidance accepts that the values are not achievable in all circumstances, it also goes on to state that the value of 55dBA is regarded as acceptable in noisier environments. Stoke Poges contains pockets of busy areas, even two business parks; but the environment around School Lane and Hockley Lane cannot be described as noisy. The residents refer to it as tranquil and semi-rural. Ambient noise levels generally reflect those characterisations, and where the 55dBA and above would be out of place. [6.3.14, 7.3.5, 8.3.2, 8.3.4, 9.6.1, 9.8.1, 9.12.1]
- 12.3.12 From the evidence of people who actually live close to the school, the noise from just 90 pupils is bordering on the 'seriously' annoying. Residents describe the noise levels as noticeable and disruptive now. Whether that is the case or opposition to the Academy has generated these responses is difficult to say, given the paucity of complaints to the Council prior to March 2014. However, the objective analysis also shows that the levels are on the fringes of acceptability or below it. Either way, the empirical evidence of those living close to the school cannot be ignored. [6.3.3, 6.3.4, 7.3.6, 9.2.8, 9.2.9, 9.6.2-9.6.4, 9.6.6, 9.6.7, 9.8.2, 9.10.4, 9.11.5, 9.10.6]
- 12.3.13 Schools are often located in residential areas. But in the case of the appeal site the proximity of neighbouring properties to areas of the school where much of the outdoor activities would take place (with as many as 400-600 pupils concentrated in those areas) gives exceptional cause for concern. [6.3.2]
- 12.3.14 Neighbours describe how they are currently unable to use their gardens or live normal lives in their homes when even small groups of pupils play outdoors, even though the measured $L_{Aeq1\text{ hour}}$ level is 47dBA and below the recommended for outdoors. Their homes are close to the play areas concerned, and the way they use their homes is affected during periods that pupils are outdoors, often up to four hours during the school day. The character and range of noises experienced are intrusive and disruptive. That situation occurs with just 90 pupils attending the school. As the Academy reaches full capacity the numbers of pupils using the play areas would increase. Although not all 840 pupils would be outdoors at any given time, the

¹ The consultants agreed that +10 dB is the equivalent of doubling noise levels

- frequency of the current L_{Amax} levels would increase, and add to the current adverse impacts experienced by residents. [7.3.6, 8.3.8, 9.2.8, 9.2.9, 9.6.2-9.6.4, 9.6.6, 9.6.7, 9.8.2, 9.10.4, 9.11.5, 9.10.6]
- 12.3.15 The acoustic fencing would be effective in attenuating the noise level from the rear car park area but would do little to mask the effects of sports or play on the field. Nor would it prevent the high spirited noise of pupils arriving or leaving on the coaches parked on the eastern access road. That there is no certainty that the fence would be granted planning permission, given the Green Belt location, reduces the weight that can be accorded to this sound reducing measure. [6.3.7, 6.3.21, 7.3.7, 8.3.12]
- 12.3.16 The Noise Management Strategy would be effective to the extent that amplified noises are controllable, and by virtue of measures such as no sporting activities on weekdays after 16:45 and not at all at weekends. The ability to police no-go zones in a school of the size intended is however questionable. While conditions could secure acceptable noise levels from plant and machinery, the nature of the noise from outdoor school activities on a daily basis is far less predictable. Single sound events would regularly breach the levels imposed by such a condition. Additional landscaping is also unlikely to attenuate noise levels, and neighbours could feel hemmed in by new planting. [6.3.7, 6.3.20, 8.3.11-8.3.13, 9.10.5, 10.2.1, 11.1.4-11.1.6]
- 12.3.17 Fully occupied offices would bring with it the movement of cars entering and leaving the premises 7 days a week. The Academy would similarly generate noise from cars and coaches entering, manoeuvring and leaving the site, albeit during weekdays only. The fact that the premises would be used for 39 weeks of the year does not diminish the magnitude of the impacts experienced by local residents during those 39 weeks. There would be a perceivable change in the acoustic character of the area, residents would avoid using their gardens during the day (as outdoor activities are likely to spread over much of the school day) and are highly likely to materially change the way they use their homes. In other words, they would be exposed to levels crossing the significant observed adverse effects category. [6.3.6, 6.3.8, 6.3.16, 8.3.8]
- 12.3.18 The Trustees of the Academy and the head teacher are genuinely willing to work with the community and introduce measures that safeguard neighbours' living conditions. However, there must be a question mark over the school's ability to deliver the vision and quality of education intended (including the ambitious programme of diverse extra-curricular and sports activities), given the limiting effect of measures that would be imposed on the school in an effort to safeguard the amenity of local residents. [10.3.1]
- 12.3.19 The significant adverse impact on the neighbours' quality of life that would occur needs to be balanced against three factors: benefits of the school, the Government's commitment to state-funded schools and the presumption in favour of such facilities applied in the NPPF.

The number of homes affected is small. As recognised in the NPPG, decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for exposure above significant observed adverse effects levels to be caused. The appeal proposal falls into the undesirable category for the reasons explained. It would make the homes affected unsatisfactory places to live in. [6.3.19, 7.3.6, 8.3.10]

12.4 Contamination

- 12.4.1 SBDC do not object to the proposal on ground contamination grounds. Before the Hearing SPPC informed the Planning Inspectorate that it would not pursue its contamination related objection. Nevertheless, the matter was raised by third parties, including one local resident (Mr Homan) who has seen the disposal of waste and demolition material on the site during development of the Pioneer House project in the 1990s. [3.4, 6.4.2, 8.4.1, 9.1.5, 9.2.12-9.2.15, 9.11.7, 10.2.1]
- 12.4.2 The proposal is for a change of use and the only likely operational development to take place is the acoustic barriers, if found to be necessary. By virtue of the validation report and evidence submitted on behalf of the appellant, it is clear that the mitigation works carried out (and validated) have removed the minor risks posed by contamination. The site is declared suitable for its intended use, and I can find no substantiating evidence to come to a different conclusion. [6.4.3, 6.4.4]
- 12.4.3 Any future operational works would be required to follow the normal process of investigation, risk assessment and remediation or decontamination as necessary. This is not an uncommon or unresolvable situation for previously developed land. All in all, there is insufficient evidence to refuse prior approval on contamination grounds. [6.4.4]

12.5 Planning Obligation and Conditions

- 12.5.1 The Travel Plan is a key element of the Academy's drive to reduce reliance on the private car and to encourage pupils and staff to use the school buses, cycle or walk. The commitment in the s106 to provide dedicated bus services and to provide regular updates on progress are necessary, reasonable and related to the prior approval sought. Financial contributions towards signage and the TRO would assist the highway authority to combat highways impacts of the proposal, albeit in small ways. [11.1.1-11.1.3]
- 12.5.2 I have questioned the overall effectiveness of the acoustic fencing and Noise Management Plan offered in the s106, but accept that they would provide some levels of attenuation or control and to that extent are necessary. The distance of the fencing from neighbours' boundaries would not lead to the loss of daylight as feared. On the whole, the planning obligation is necessary to make the development acceptable; it is directly related to the proposal and fairly related to it in scale and kind. [10.2.1, 11.1.4-11.1.6]

- 12.5.3 I do not believe the landscaping condition would serve a useful purpose and residents expressed concern about loss of light resulting from dense planting close to their boundaries. The condition controlling plant/machinery noise, however, is necessary and should be imposed. [10.2.1, 11.2.1]

13. CONCLUSIONS AND RECOMMENDATION

13.1 Conclusions

- 13.1.1 In terms of its impact on highways and transport, I have concluded that the proposal for prior approval would be acceptable. The evidence of the most up to date and reliable traffic surveys, the predicted trip generation, likely modal split and junction assessments demonstrate that the residual impact of the proposal would not lead to severe conditions. The evidence of contamination risks on the site also do not point to a rejection of the scheme. However, the analysis of existing and predicted noise levels, alongside residents' experience of the school, leads me to conclude that their living conditions would be materially harmed as the school develops to its full complement. The mitigation measures put forward would do little to alter that position. On the balance of considerations, the appeal should be rejected for the severity of impact on local residents from noise generated by the school.

13.2 Recommendation

- 13.2.1 I recommend that prior approval for change of use of the existing office space (Class B1) into a state funded school (Class D1) should be refused.
- 13.2.2 If the Secretary of State is minded to grant permission, Condition 1 suggested in Annex C should be imposed. Condition 2 should be imposed only if it is considered necessary.

Ava Wood
Inspector

ANNEX A**Appearances****For the Appellant**

Mr James Maurici QC	Instructed by Veale Wasbrough Vizards LLP
Mrs Lorna Randall MSc CMIHT CMILT	ADL Traffic Engineering Ltd
Mr Neil Jarman	Director, Cole Jarman
Mrs Rose Codling MA	Khalsa Academy Headteacher
Mr Guy Bransby MRTPI MRICS	Director, Jones Lang LaSalle
Mr Phil Crowcroft BEng MSC MICE, CEng SiLC	Director, ERM
Mr Tom Powling MSCI FGS	Director, Geosphere Environmental
Mr Paul Davis BSc(Hons) FGS	Director, Geosphere Environmental
Mr Nick Kandola BSc MA MBA	Chairman, Khalsa Academy Trust

For the Local Planning Authority:

Mrs Joanna Swift	Solicitor, Head of Legal and Democratic Services
Mr Stephen Ellis MOIA MIHE	Industrial Noise and Vibration Ltd.
Mr Richard Regan BA(Hons) MSC	Senior Planning Officer
Mr David Gilmour BSc(Hons)	Environmental Health Manager

For the Stoke Poges Parish Council:

Mr Guy Williams of counsel	Instructed by Leigh Day
Mrs Danielle Shadbolt BA(Hons) MSc CMILT MCIHT	Opus International Consultants (UK) Ltd
Mr James Adcock MCIHT MIE	Opus International Consultants (UK) Ltd
Mr Ned Johnson MSc MIOA MCIEH	Ned Johnson Acoustic Consultants

Interested persons that spoke and/or submitted written statements at the hearing¹

Rt Hon Dominic Grieve MP QC	MP for Beaconsfield
Mr Douglas Lee Duncombe	Supporter Stoke Poges Parish Council
Nancy Moran	Local Resident
Trudi Wicks	Local Resident

¹ The list includes only the names of those that spoke at length at the Hearing and/or submitted written statements. A number of other third parties raised observations or comments during the Hearing. Their names have not been recorded in this list.

Mr Trevor Egleton	District and County Councillor for Stoke Poges
Mr Jonathan Dodd	Local Resident
Mrs Catherin Briggs	Local Resident
Mr Keith Finan	Local Resident
Mr JP Homan FRICS	Local Resident
Mr Paul Wright	Local Resident
Mr Robinson	Local Resident
Mr Duncan Smith	Councillor
Mr Neil Wiseman	Local Resident

ANNEX B**Documents List****Documents Submitted at the Hearing**

HD1	Letter of notification of the Hearing and list of those notified
HD2	Application Plan
HD3	Planning Statement of Common Ground, dated July 2014
HD4	Validation report for remediation works
HD5	Extract Westlaw UK, Prior Approval 3B-2-79.1
HD6	Extract showing Council's parking standards
HD7	Extract policies from South Bucks District Local Plan
HD8	Core Policy 7, Core Strategy Development Plan Document
HD9	Noise Statement of Common Ground
HD10	Mr Ellis's amended Table 3, resulting from agreement
HD11	Site visit attendees
HD12	Suggested industrial areas to be visited
HD13	Plan showing complaints log
HD14	Plan showing boundary finishes to residential properties adjacent to Pioneer House
HD15	Statement of Common Ground, dated March 2014
HD16	Summary final submissions of the Parish Council
HD17	Legal submission by SBDC on the relevance of development plan policies
HD18	R.(on the application of Millgate Developments Ltd) v Wokingham BC
HD19	Submissions on behalf of the appellant
HD20	Statement by Mr Crowcroft regarding radioactivity at Pioneer House
HD21	Application for a partial award of costs on behalf of the appellant
HD22	Response to the award application on behalf of SBDC
HD23A	Draft s106 unilateral undertaking, including Travel Plan and Noise Management Strategy
HD23B	Completed s106 unilateral undertaking, including Travel Plan and Noise Management Strategy

Appellant's Documents

DFE1	Location Plan
DFE2	Grounds of Appeal
DFE3	Draft Statement of Common Ground, March 2014
DFE4	Statement on planning matters
DFE5	Statement on highway matters
DFE6	Statement of Common Ground on highway matters
DFE7	Core documents 1-23
DFE8	Noise assessment report
DFE9	ADL's comments on the Opus report of March 2014
DFE10	Rebuttal to Opus expert highways, traffic and transport report dated 15 May 2014
DFE11	Traffic note 2

SBDC Documents

SBDC1	SBDC appeal statement
SBDC2	Mr Ellis's Environmental Noise Assessment
SBDC3	SBDC response dated 20 June 2014 to pre-hearing letter

Stoke Poges Parish Council Documents

SPPC1	Parish Council's statement of objection with appendices
SPPC2	Expert report – Highways, Traffic and Transport Report (15 May 2014)
SPPC3	Rebuttal report to ADL Traffic Engineering Ltd., dated 20/6/14
SPPC4	Copy of the officer's report referred to in SPPC3
SPPC5	Review of the Cole Jarman Khalsa Academy Noise Report
SPPC6	S106 relating to Pioneer House planning application (S/91/1022/FF), dated 19 January 1993

Third Party Letters and Statements Submitted at the Hearing

TP1	Bundle of letters supporting the proposal
TP2	Bundles of letters objecting to the proposal
TP3	Statement by Mr Homan
TP4	Statement by Mr Wright
TP5	Statement by Trudi Wicks
TP6	Statement by Mr Dodds
TP7	Statement by Mrs Briggs
TP8	Statement by Mr Finan
TP9	Statement by Mrs J Brar
TP10	Statement by Mr Wright
TP11	Statement by Ms Moran
TP12	Statement by Lee Duncombe
TP13	Statement by Rt Hon Dominic Grieve QC MP
TP14	Statement by Cllr Egleton

Miscellaneous Documents

PINS1	Pre-Hearing letter to main parties
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ANNEX C**Suggested Conditions**

1. The level of noise emitted from the site shall not exceed 40 dB $L_{Aeq15mins}$ between 07:00 and 22:00 and 30dB $L_{Aeq15min}$ at any other time, as measured on the boundaries of the site at locations of monitoring points to be agreed with the local planning authority.
2. Within 3 months of grant of prior approval full details of soft landscape works shall be submitted to the local planning authority. These works shall be carried out as approved within 3 months or the next planting season, whichever is the sooner, following approval in writing by the local planning authority.



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). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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 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 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.

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