Ministry of Housing, Communities & Local Government

Our ref: APP/M5450/W/18/3208434
Your ref: P/1940/16

Mr Richard Holland
Rivington Street Studio
28 Navigation Road
LONDON E3 3TG

31 October 2019

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY THE KEEPERS AND GOVERNORS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON (HARROW SCHOOL)
LAND AT HARROW SCHOOL, 5 HIGH STREET, HARROW, HA1 3HP
APPLICATION REF: P/1940/16

1. I am directed by the Secretary of State to say that consideration has been given to the report of by Cullum J A Parker BA(Hons) MA MRTPI IHBC, who held a public local inquiry between 30th April and 16th May 2019 into your appeal against the decision of the London Borough of Harrow Council (LBH) (under direction from the Mayor of London) to refuse your application for planning permission for the demolition of existing buildings: existing sports building, Peel House, Museum Cottage, gardeners compound, Boyer Webb Pavilion, pavilion next to the athletics track; and the construction of a new sports building over 3 levels (7269 sqm); new science building over 3 levels (3675 sqm); new landscaping core from existing chapel terrace to the athletics track at the base of hill; new visitors car parking on Football Lane adjacent to maths and physics school buildings; rerouting and regrading of private access road; alterations to landscaping and servicing for dining hall; relocation of multi-use games area for Moretons Boarding House to south west of dining hall, in accordance with application ref: P/1940/16, dated 20th April 2016.

2. On 9th October 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to allow the appeal

Ministry of Housing, Communities & Local Government
Jean Nowak, Decision Officer
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and grant planning permission. A copy of the Inspector's Report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Application for costs

5. An application for a full award of costs was made by the Keepers and Governors of the free grammar school of John Lyon (Harrow School) against the Mayor of London (IR7). This application is the subject of a separate decision letter, also being issued today.

Policy and statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

7. In this case the development plan consists of the Harrow Core Strategy 2012 (CS), the Harrow Development Management Policies DPD 2013 (DMDPD) and The London Plan 2016 (LDNP). The Secretary of State considers that relevant development plan policies include those set out at IR13 and Policies 3.16 - 3.19 Open Space and 7.8 Heritage Assets of the LDNP, DMDPD policies DM6 and DM7 Heritage Assets.

8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Harrow School Conservation Area Appraisal (dated December 2007), Harrow School Supplementary Planning Document (dated July 2015) & Harrow on the Hill Conservation Area Supplementary Planning Document (dated January 2008). The revised Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

10. In accordance with section 72(1) of the LBCA Act, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

11. The Secretary of State notes that the emerging plan comprises the draft New London Plan 2018 (NLP) and is relevant to this case. It concluded examination hearings on 22nd May 2019. The Secretary of State considers that relevant emerging policies include those set out at IR14 and Policies HC1 Heritage and Culture and G4 Open Spaces.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in

the Framework. Overall, the Secretary of State agrees with main parties and with the Inspector at IR14 that the emerging policies carry limited weight.

Main issues

Metropolitan Open Land (MOL)

13. For the reasons given at IR40 - 44, the Secretary of State agrees with the Inspector that the proposal represents inappropriate development in the MOL, which is by definition harmful. He further agrees with the Inspector (IR49 – 62) that the proposed location within the MOL is broadly in keeping with the Council's adopted SPD; that the proposal would not result in harm to openness in visual impact terms; but there would remain harm to openness through the erosion of the MOL. The Secretary of State, like the Inspector, attaches substantial weight to these harms (IR143).

14. The Secretary of State also agrees with the Inspector's conclusions at IR45 - 48 that the proposed extension of the MOL to restrict any further development in this area is a pragmatic and reasonable approach, but that this should carry minimal weight in this case as it also depends on a number of other factors.

15. The Secretary of State has considered carefully the very special circumstances (VSC) put forward by the appellant and reported by the Inspector (IR96 – 141). The Secretary of State agrees with the Inspector's conclusions and weight attached to each VSC and further agrees that, overall, and looking at the case as a whole, these factors amount to VSCs that clearly outweigh the harm to the MOL and are sufficient to justify the development.

Heritage impacts

16. For the reasons given at IR126 - 128, the Secretary of State agrees with the Inspector that the proposal would generate some potential heritage benefits, However, having carefully considered the inspector's reasoning at IR126 - 128 in relation to the opinion of Historic England (IR77), the Secretary of State concludes that the impact of the development by reason of its location, scale and position within the site would result in 'less than substantial' harm to the setting of the relevant heritage assets in conflict with Development Plan policies policy 7.8 of the LDNP, DM6 and DM7 of the Harrow DMDPD. The Secretary of State agrees with the Inspector at IR103 that the proposed use would enable the school to provide its sports facilities to other local schools and clubs, community groups, and individuals at market, low or cost price, or for free for roughly two-thirds of the available user time through the Community Use Agreement. The Secretary of State therefore concludes that, overall, significant public benefits exist to outweigh the harm in line with the heritage test in paragraph 196 of the Framework.

Other matters

Protected species

17. For the reasons given at IR133 - 135, the Secretary of State agrees with the Inspector at IR136 that the net biodiversity gains of the proposal merit substantial weight as the proposal provides a significant opportunity to provide a tangible net biodiversity gain for a multitude of bird, mammal and invertebrate species on and near to the site.

Highway matters

18. For the reasons given at IR132 and IR137 - 140 the Secretary of State agrees with the Inspector that moderate weight should be given to the proposed landscaping and safety improvements designed to reduce conflicts between students and vehicles.

Planning conditions

19. The Secretary of State has given consideration to the Inspector's analysis at IR28 - 30, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

20. Having had regard to the Inspector's analysis at IR28-36, the planning obligation dated 16 May 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR36 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

21. The Secretary of State considers that, given the VSCs applying in this case, the appeal scheme is not in conflict with the development plan in respect of MOL, but that it is not in accordance with the heritage policies of the development plan. Nevertheless, the Secretary of State concludes that, in view of the significant public benefits outweighing the harm in line with the heritage test in paragraph 196 of the Framework, the proposal accords with the adopted development plan when considered as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

22. The Secretary of State also concludes that, although the proposed sports building would constitute inappropriate development within MOL and would harm openness through the erosion of the MOL, this harm is outweighed by the VSCs identified above which, when taken individually and as a whole, outweigh the harm identified.

23. Overall, the Secretary of State considers that there are no material considerations which indicate that the proposals should be determined other than in accordance with the development plan.

Formal decision

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex A of this decision letter for the demolition of existing buildings: existing sports building, Peel House, Museum Cottage, gardeners compound, Boyer Webb Pavilion, pavilion next to the athletics track; and the construction of a new sports building over 3 levels (7269 sqm); new science building over 3 levels (3675 sqm); new landscaping core from existing chapel terrace to the athletics

track at the base of hill; new visitors car parking on Football Lane adjacent to maths and physics school buildings; rerouting and regrading of private access road; alterations to landscaping and servicing for dining hall; relocation of multiuse games area for Moretons Boarding House to south west of dining hall, in accordance with application ref: P/1940/16, dated 20th April 2016.

25. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

27. A copy of this letter has been sent to London Borough of Harrow, Rule 6 party (Harrow Hill Trust) and the Greater London Authority (GLA). Notification has also been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak
Authorised by the Secretary of State to sign in that behalf

Annex A: List of conditions

1.The development hereby approved shall be begun before the expiration of three years from the date of this planning permission.

2. Unless otherwise agreed in writing by the local planning authority, the development shall be carried out in accordance with the approved drawings:
P.05.01 ; P.05.02; P.5.10; P.10.02; P.10.11; P.10.14; P.10.17; P.10.25; P.11.01; P.12.01 B; P.12.02 B; P.12.10 B; P.12.11 B; P.12.12 B; P.12.13 B; P.12.14 B; P.12.20 B; P.12.21 B; P.12.22 B; P.12.23 B; P.12.24 B; P.12.25 B; P.12.26 B; P.12.27 B; P.12.30 A; P.12.31 A; P.12.32 A; P.12.33 A; P.13.01B; P.13.04 B; P.13.20 A; P.13.21 A; P.13.22 A; P.13.23 B; P.13.24 A; P.13.25 A; P.13.30 A; P.13.31 A; P.13.32 A; P.13.33 A; P.13.35 A; P.13.50A; P.13.51 A; P.13.52 A; P.13.53 A; P.13.54 A; P.14.01 B; P.14.10 B ; P.14.15 B; P.14.16 B; P.14.17B; P.14.18 A; P.14.25 B; P.14.26 B; P.14.31 A; P.14.32 A; P.14.33 A; P.14.34 B; P.14.35 B; P.14.40 B; P.14.41 B; P.14.42 B; P.14.43 B; P.14.44 B; P.14.45 B; P.14.46 A; P.14.47 B; P.14.48 A; P.14.49 B; P.14.50 A; P.14.51 A; P.14.52 A; P.14.53 A; P.14.54 A; P.14.55 A; P.14.60 A; P.14.65 A; P.14.70 A; P.28.10 B; P.28.11 A; P.28.12 B; P.28.13 B; P.28.14 B; P.28.15 A; P.28.16 B; P.28.17 A; P.28.22 A; P.28.30 A; P.28.31 A; P.28.32 A; P.28.33 A; P.28.35 A; P.28.36 A; P.90.10; P.90.11; P.90.12; P.90.20; P.90.21; P.90.22; P.90.25; P.90.26; P.90.27; P.90.28; P.90.30; P.90.32; P.110.01 A; P.110.02 A; P.110.03 B; P.110.04 B; P.110.05 B; P.110.06 B; P.110.07 A; P.110.08 B; P.110.09 B; P.110.10 A; P.110.11 A; P.110.12 B; P.110.13 A; P.110.14 B; P.110.15; P.110.22; P.110.23 A; P.110.24 A; P.110.25 A; P.110.26 A; P.110.28 A; P.110.30; P.110.31; P.110.32 A; P.110.41; P.110.42; P.110.43; P.110.44; P.110.45; P.110.46; P.110.47; 90.20 A; 90.21 A; 90.30 A; 90.31 A; 90.40 A; 90.41 A; and 90.50 A; 90.51 A.

3. No development shall take place, including any works of demolition, until a dust, noise and vibration management plan has been submitted to, and agreed in writing by, the Local Planning Authority. The plan shall detail measures for the control and reduction of dust emissions, noise and vibration impacts associated with demolition, earthworks, construction and track out, and arrangements for monitoring air quality during construction. The development shall be carried out in accordance with the plan so agreed.

4. No development shall take place, including any works of demolition, until a demolition and construction waste management plan, setting out arrangements for the handling of excavation, demolition and construction waste arising from the development, and to make provision for the recovery and re-use of salvaged materials wherever possible, has been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed plan or any amendment or variation to it as may be agreed in writing by the local planning authority.

5. No development shall take place, including any works of demolition, until a revised construction and logistics plan, to include details on temporary access from Watford Road, detailed construction drawings and a traffic management plan, has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed plan or any amendment or variation to it as may be agreed in writing by the local planning authority.

6. The development hereby approved shall not be commence until details of the means of protection of the trees, hedgerows and other existing planting to be retained within the site, and adjacent trees within adjoining sites, have been submitted to, and agreed in writing by, the local planning authority. The details shall include:

a) arrangements for audited arboricultural monitoring of the site during the construction works;
b) identification of root protection areas;
c) the method of any excavation proposed within the root protection areas;
d) the type, height and location of protective fencing; and
e) measures for the prevention of soil compaction within the root protection areas.

The tree protection measures shall be put in place prior to the commencement of the development, including demolition/site clearance, and remain in place throughout the development. The construction of the development shall be carried out in accordance with the details so agreed or any amendment or variation to them as may be agreed in writing by the local planning authority.

7. Notwithstanding the approved plans, prior to the commencement of the development hereby permitted, details for a scheme for works for the disposal of sewage, surface water and surface water attenuation and storage works on site as a result of the approved development shall be submitted to the local planning authority to be approved in writing. The development shall be completed in accordance with the approved details and shall thereafter be retained.

8. The development hereby permitted shall not commence beyond damp proof course level until a plan for the on-going maintenance of the sustainable drainage measures to be implemented across the development shall be submitted to, and agreed in writing by, the local planning authority. The plan shall thereafter be implemented for the lifetime of the development, or any amendment or variation to the plan as may be agreed in writing by the Local Planning Authority.

9. Any telecommunications apparatus, extraction plant, air conditioning units and other plant or equipment that is required to be installed on the exterior of the buildings hereby approved shall be carried out in accordance with details that shall first have been submitted to, and agreed in writing by, the local planning authority, and shall be permanently retained as such thereafter. The details shall include siting, appearance, any arrangements for minimising the visual and (if relevant) odour impacts and any arrangements for mitigating potential noise or vibration.

10. Notwithstanding the approved plans, prior to the commencement of development hereby permitted the following specifications shall be submitted to, and agreed in writing by, the local planning authority:

a) the detailed design of all ramps, steps and pathways within the external areas of the development;
b) the thresholds, door opening widths and landing areas at all entrances between the external areas of the development and the approved buildings; and
c) the levels and layout of pedestrian route(s) between the parking areas within the site and the entrances of the approved buildings.

The development shall be carried out in accordance with the specifications so agreed, or any amendment or variation to them as may be agreed in writing by the local planning authority, and shall be permanently retained as such thereafter.

11. Notwithstanding the plans and supporting documents hereby approved, prior to the commencement of the development beyond damp proof course level, details of the palette of materials and/or colours for all of the external surfaces have been submitted to, and approved in writing by, the Local Planning Authority. Details to be provided shall include two sample panels of approximately 2 metres by 2 metres to be provided on site, of typical parts of the building, showing the material finishes of all external surfaces including a sample window/s and door/s. The development shall be built in accordance with the approved details and shall thereafter be retained.

12. Notwithstanding the approved plans the development shall not commence beyond damp proof course level, until details to show additional secure cycle parking facilities on site shall be submitted to, and agreed in writing by, the local planning authority. The development shall be carried out in accordance with the details so agreed or any amendment or variation to them as may be agreed in writing by the local planning authority.

13. Before the hard surfacing hereby permitted is brought into use the surfacing shall EITHER be constructed from porous materials, for example, gravel, permeable block paving or porous asphalt, OR provision shall be made to direct run-off water from the hard surfacing to a permeable or porous area or surface within the curtilage of the site.

14. Before any landscaping is carried out within the site, including any works preparatory to such landscaping, a scheme for the hard and soft landscaping of the whole site shall be submitted to, and agreed in writing by, the local planning authority. Details shall include:
a) planting plans (at a scale not less than 1:100), written specification of planting and cultivation works to be undertaken and schedules of plants, noting species, plant sizes and proposed numbers / densities and an implementation programme;
b) existing and proposed site levels, clearly identifying changes to landform;
c) details of hard surface materials;
d) details of all boundary treatment, including fences, means of enclosure and gates;
e) detailed drawings and specifications of all levels, both existing and proposed; and
f) detailed drawings and specifications of any proposed external lighting and flood lighting.

The approved hard and soft landscaping shall be carried out in accordance with the approved details agreed prior to occupation of the new sports building save that all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following first occupation of the sports building. Any existing or new trees or shrubs which, within a period of 5 years from the completion of the development, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season, with others of a similar size and species and the approved hard and soft landscaping shall thereafter be retained.

15. A landscape management plan, including species numbers/locations, long term design objectives, management responsibilities and maintenance schedules for all communal landscape areas shall be submitted to, and approved in writing by, the local planning authority prior to the occupation of the development. The landscape management plan shall be carried out as approved.

16. No impact piling shall take place until a piling method statement has been submitted to, and agreed in writing by, the local planning authority. The statement shall detail the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface

sewerage infrastructure and the programme for works. All piling activities on the site shall be undertaken in accordance with the statement so agreed.

17. Notwithstanding the approved plans the development shall not commence beyond damp proof course level, until details of the provision of appropriate bird nesting boxes, bat roosting boxes/tubes and invertebrate habitat for the enhancement of biodiversity within the design of the buildings hereby permitted and the wider development area have been submitted to, and agreed in writing by, the local planning authority. The details shall comprise:
a) species catered for, number, location, orientation and type of bird boxes incorporated into or affixed to new buildings;
b) number, location, orientation and type of bat boxes/tubes incorporated into or affixed to new buildings;
c) number, location, orientation and type of bird and bat boxes affixed to appropriate trees; and
d) location and form of invertebrate habitat, and for example may include log piles and stag beetle loggeries.

The development shall not be first used until the details so agreed have been implemented, and shall thereafter be retained.

18. Notwithstanding the details within the submitted Geotechnical and Geoenvironmental Investigation Report (March 2016), in the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared which is subject to the approval in writing of the Local Planning Authority.
Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority

19. Prior to the occupation of the development hereby permitted, a full Delivery and Service Plan demonstrating safe vehicular access to and from the school dining hall, shall be submitted to and approved in writing by the Local Planning Authority. The Delivery and Service Plan thereby approved shall be adhered to thereafter.

20. The site wide heating system boiler(s) shall be installed and thereafter retained in accordance with a specification that shall first have been submitted to, and agreed in writing by, the local planning authority.

21. The refuse and waste bins shall be stored at all times, other than on collection days, within the designated refuse storage areas as shown on the approved plans.

22. Prior to the sports building being brought into use, a management and maintenance scheme for the sports building - including management responsibilities, a maintenance schedule and a mechanism for review, shall be submitted to and approved in writing by the local planning authority. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the sports building.

23. The development hereby approved shall not be used until details of the measures to make efficient use of mains water within the science building and sports building have been

submitted to, and agreed in writing by, the local planning authority. The measures shall be implemented in accordance with the details so agreed or any amendment or variation to them as may be agreed in writing by the local planning authority.

24. Within 3 months (or other such period agreed in writing by the Local Planning Authority) of the first occupation of the development a post construction assessment shall be undertaken for each phase demonstrating compliance with the approved Energy Strategy and Sustainability Strategy (including the Sustainability Development - Energy: Response to the GLA, September 2016) which thereafter shall be submitted to the Local Planning Authority for written approval.

25. The sports building hereby permitted shall not be first used until photo voltaic panels have been installed in accordance with a drawing showing the location, orientation and pitch of the photo voltaic panels that shall first have been submitted to, and agreed in writing by, the local planning authority. The panels shall thereafter be retained.

26. Unless otherwise agreed in writing by the Local Planning Authority, the development hereby approved shall be carried out in accordance with the proposals for emissions savings that are documented in the approved Planning Energy Statement - 033761 - Revision 01 (March 2016) and the Sustainability Development - Energy: Response to the GLA (September 2016).

27. No external lighting shall be installed anywhere on the site until details of such lighting has been submitted and, and agreed in writing by, the local planning authority. Such details shall include:

a) the siting, height and appearance of the proposed lighting and any associated mounting structures;
b) the type and strength of luminance of the luminaires;
c) isoline (lux) diagrams;
d) times and controls of illumination;
e) the measures proposed to reduce light pollution; and
f) the measures proposed to ensure minimal UV light emittance of luminaires.

The external lighting shall be installed and thereafter retained in accordance with the details so agreed in writing by the Local Planning Authority.

28. The development hereby permitted shall not be occupied until a full overheating analysis has been to, and agreed in writing by, the Local Planning Authority and the development shall only be completed and operated in accordance with any approval.

29. Prior to the commencement of development, a strategy shall be submitted to and approved by the Local Planning Authority demonstrating that it would be technically feasible to connect the proposed heating network to any future district heating network in the vicinity of the development, should one become available. The strategy shall include details that ensure the provision of sufficient space within the energy centre for future plant, heat exchanges, connection points to generate, export and take heat, cooling and/or electricity, and details of how the development would connect to a future district heat network (including an agreed safeguarded route for infrastructure).

The development shall be carried out in accordance with the details so agreed and shall be retained as such thereafter.

30. The development hereby approved shall be used for education and sports use only, and shall not be used for any other purpose, including any other use that would fall within Classes D1 or D2 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to those classes in any statutory instrument revoking and re-enacting that order with or without modification).

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Date: 22 July 2019

Town and Country Planning Act 1990

The London Borough of Harrow

Appeal by The Keepers and Governors of the Free Grammar School of John Lyon (Harrow School)

Mayor of London (Direction)

Harrow Hill Trust (Rule 6)

Inquiry Held on 30 April to 16 May 2019

Harrow School, 5 High Street, Harrow, HA1 3HP

File Ref: APP/M5450/W/18/3208434

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File Ref: APP/M5450/W/18/3208434
Harrow School, 5 High Street, Harrow, HA1 3HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by The Keepers and Governors of the Free Grammar School of John Lyon (Harrow School) against the decision of the Council of the London Borough of Harrow (under Direction from the Mayor of London).
- The application Ref P/1940/16, dated 20 April 2016, was refused by notice dated 13 February 2018.
- The development proposed is *demolition of existing buildings: existing sports building, peel house, museum cottage, gardeners compound, boyer webb pavilion, pavilion next to the athletics track; construction of new sports building over 3 levels (7269 sqm); new science building over 3 levels (3675 sqm); new landscaping core from existing chapel terrace to the athletics track at the base of hill; new visitors car parking on football lane adjacent to maths and physics school buildings; rerouting and regrading of private access road; alterations to landscaping and servicing for dining hall; relocation of multi use games area for moretons boarding house to south west of dining hall* (Updated Metropolitan Open Land Approach Statement and Revised Community Uses Agreement submitted).

Summary of Recommendation:

That the appeal be **Allowed** and planning permission granted subject to conditions.

Preliminary Matters

Reason for refusal

1. The planning application was received by Harrow Council on 20 April 2016. The planning application was resolved to be granted conditional planning permission by Harrow Council's Planning Committee at its meeting of 6 September 2017. Following a Direction from the Mayor of London, issued to the Council on 29 January 2018, the Council refused planning permission by Decision Notice dated 13 February 2018, citing the following reason for refusal:

   (i) *The proposed sports building is inappropriate development within Metropolitan Open Land and causes substantial harm to the openness of the Metropolitan Open Land – by reason of its excessive footprint and its location. The harm to the Metropolitan Open Land by reason of the proposed inappropriate development, and the harm to openness, to which substantial weight is attached, is not clearly outweighed by other considerations. Very special circumstances do not exist. The proposed sports building is contrary to London Plan Policy 7.17, Policy G3 of the draft London Plan, Core Policy 1 of the Harrow Core Strategy, Policy DM16 of the Harrow Development Management Policies DPD and the National Planning Policy Framework.*

Determination of the appeal

2. The Secretary of State has directed that he shall determine the appeal as the appeal relates to development in Metropolitan Open Land (MOL), to which London Plan Policy 7.17 affords the same level of protection as Green Belt. As there is no recovery criterion applicable directly to MOL the appeal is being recovered due to the particular circumstances.

Main Issues

3. Prior to opening the Inquiry, a pre-inquiry note was issued[1]. This set out what I considered to be the main issues at that stage on the basis of the evidence before me. These main issues were repeated orally at the opening of the Inquiry. The main parties agreed these were the salient main matters in dispute. The main issues in this case are therefore considered to be:

   (i) Whether the proposed development is inappropriate development in Metropolitan Open Land (MOL) for the purposes of the adopted Development Plan, London Plan, the National Planning Policy Framework, and any other relevant document[2], and;

   (ii) The effect of the proposal on the openness of the MOL, and;

   (iii) Whether the proposed development would preserve the setting of nearby designated heritage assets, and preserve or enhance the character or appearance of the Harrow School Conservation Area, and if not whether any public benefits would outweigh any harm, and;

   (iv) If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify it.

4. This Report primarily focusses upon addressing these issues.

Site visits

5. On Monday 29 April 2019 I undertook an unaccompanied site visit to the site and the surrounding areas.

6. On Tuesday 7 May 2019 I made an accompanied site inspection, with all main parties, which lasted around three-and-a-half hours. During which I saw the existing science and sports facilities internally, and externally I was able to see the appeal site from a variety views and viewpoints; including from nearby public footpaths.

Costs

7. At the Inquiry an application for costs was made by Harrow School against the Mayor of London. This application is the subject of a separate Report.

The Site and Surroundings

8. The site and its context are described in greater detail within the submitted cases. To summarise, Harrow School is located on the slopes and towards the crest of the settlement of Harrow-on-the-Hill. The school buildings are set within fairly open areas, with landscaped grounds around and between them. The school buildings include a variety of buildings from different eras; albeit the main phases appear to be Victorian and 20th Century. Towards the crest of the hill (to the

[1] Instead of pre-inquiry meeting, which I did not deem as necessary.
[2] At that stage, I saw no reason not to concur with the position set out in the SOCG that the proposal would represent 'inappropriate development' within the MOL. The first initial main issue is primarily included for completeness.

west) the concentration of buildings become denser; with a number of listed and non-listed school and private residential buildings occupying the hill to the north and west.

9. The appeal proposal would be located roughly to the east of the hill. Beyond the appeal site are outdoor sports facilities; such as athletics track and other athletics facilities, rugby and football pitches, tennis courts, hockey and football astro-pitches. Beyond these to the east and south east are open fields mainly used for pasture, with Pebworth and Watford Roads forming distinct and defined boundaries beyond to the south and east.

10. The hill is visible from the surrounding area, with some buildings or their roofs towards the top of the hill visible from the rear of some dwellings on Pebworth Road. Watford Road (the A404) is a fairly busy road leading to the junction with the A4006/A409 to the north and generally devoid of development along most of its length adjacent to the Harrow School Playing Fields. Between Watford Road and the school 'campus' are two footpaths – FP58 and FP59[3], from which views of the school and hill are appreciated from. Part of the wider Capital Ring footpath is also located in this area. These footpaths broadly concentrate to a point at the bottom of Football Lane (adjacent to the existing sports building).

11. FP57 is located on a more southerly axis, between the hockey and football artificial pitches and leading in the direction to or from Pebworth Road to the bottom of Football Lane. There are also some permissive footpaths. All the various footpaths across the site are not fenced off. To varying degrees, and not necessarily from all points, the appeal site and the hill are visible from these footpaths.

12. To the south there is a small serpentine lake, with a golf course to the west. This area forms a part of the Grade II Harrow Park Registered Park and Garden. This is characterised by a fairly open sloped landscaped, enclosed by a tree line. Although documentary evidence is limited, it is clear that it was initially a Capability Brown designed 'landscape'. It is unclear as to how much its current form reflects its original design. Nonetheless, the main parties agreed that the characteristics it exhibits; with a serpentine lake, use of trees and landscaping for example, strongly suggest that the original Capability Brown influence continues to be visible even today. From what I saw during my site inspection, I concur.

Planning policy and relevant statutory duties

13. The development plan for the appeal site area comprises *Harrow Core Strategy 2012* (CS), the *Harrow Development Management Policies DPD* 2013 (DMDPD) and *The London Plan 2016* (LDNP). The policies referred to include[4]:-

    (a) Core Policy 1 – Overarching Policy, of the CS;

    The quantity and quality of the Green Belt, Metropolitan Open Land, and existing open space shall not be eroded by inappropriate uses or insensitive development. The reconfiguration of existing open space may be permitted

[3] For plans of the footpath routes, see for example Compendium of CGIs, Page 3, 'Image of viewpoint locations'
[4] Policy extracts provided in *'italics'*

where qualitative improvements and/or improved access can be secured without reducing the quantity of the open space.

(b) Policy DM16: Maintaining the Openness of the Green Belt and Metropolitan Open Land, of the DMDPD (extract) –

A. The redevelopment or infilling of previously developed sites within the Green Belt and Metropolitan Open Land will be supported where the proposal would not have a greater impact on the openness of the Green Belt and Metropolitan Open Land, and the purposes of including land within it, than the existing development, having regard to: a. the height of existing buildings on site, b. the proportion of the site that is already developed, c. the footprint, distribution and character of existing buildings on site; and, d. the relationship of the proposal with any development on the site that is to be retained…

B. Proposals for the redevelopment or infilling of previously-developed sites in the Green Belt and Metropolitan Open Land will also be required to have regard to the visual amenity and character of the Green Belt and Metropolitan Open Land…

C. Partial infilling or redevelopment…

D. Proposals for inappropriate redevelopment or which, for other reasons, would harm the Green Belt or Metropolitan Open Land will be refused in the absence of clearly demonstrated very special circumstances.

(c) London Plan Policy 7.17 Metropolitan Open Land, of the LDNP (extract) -

The strongest protection should be given to London's Metropolitan Open Land and inappropriate development refused, except in very special circumstances, giving the same level of protection as in the Green Belt. Essential ancillary facilities for appropriate uses will only be acceptable where they maintain the openness of MOL.

14. The main parties agree that the *draft New London Plan 2018* (NLP) is also relevant but should be afforded limited weight in view of their state of advancement and the ongoing Examination in Public process[5]. The policies referred to include[6]:-

(d) Policy G3 Metropolitan Open Land, of the NLP:

A. Metropolitan Open Land (MOL) should be protected from inappropriate development:

(i) development proposals that would harm MOL should be refused

(ii) boroughs should work with partners to enhance the quality and range of uses of MOL.

B. The extension of MOL designations should be supported where appropriate.

[5] Agreed SOCG, page 10, Para. 4.3
[6] Policy extracts provided in *'italics'*

C. *Any alterations to the boundary of MOL should be undertaken through the Local Plan process, in consultation with the Mayor and adjoining boroughs.*

15. The Secretary of State will be aware that the *National Planning Policy Framework*[7] (the Framework) is a material consideration in planning decisions. Whilst specific paragraphs are not cited within the reason for refusal, the following Chapters and Paragraphs are considered of most relevance to the appeal here: Chapter 8: Promoting healthy and safe communities[8], Chapter 13: Protecting Green Belt land[9], and Chapter 16: Conserving and enhancing the historic environment[10].

16. Sections 66(1) and 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended (PLBCA) requires having special regard to the desirability of preserving listed buildings or their settings and special attention being paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

17. Section 38(6) of the *Planning and Compulsory Purchase Act 2004,* as amended (PCPA) requires that determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The Proposal

18. Put simply, the proposal seeks the demolition of existing sports buildings including a swimming pool and sports hall (and some smaller buildings such as the Boyer Webb Pavilion) and their replacement with a multi-sport building and science block in a different location to these. There would also be the creation of a central axial route between the Chapel downwards towards the proposed sports building and further soft and hard landscaping.

19. The proposed science block would not be built upon MOL but would be located within the Harrow School Conservation Area.

20. The proposed multi-sports building would be located within MOL but is not in the Harrow School Conservation Area.

The cases of the main parties

21. The cases of the main parties are set out within the Closing Submissions (including shortened summaries for the Mayor and Harrow School)[11]. To avoid repetition I have not sought to replicate such matters here.

22. Nevertheless, the summaries and closing submissions of all four main parties have been taken into account in reaching a recommendation.

[7] The February 2019 version for the purposes of this appeal
[8] Paragraphs 91-101
[9] Paragraphs 133-147
[10] Paragraphs 184-202
[11] Accessible within Folder L, 0400, https://www.dropbox.com/sh/sj4c32184zin2sn/AACFkYh2pqfhPK1M1zK40ZYOa/L%20-%20NEW%20INFO%20ISSUED%20DURING%20INQUIRY/APP-L-0400%20Closing%20Statements?dl=0&subfolder_nav_tracking=1

Other Agreed Facts/Matters

23. A number of matters were agreed between the Mayor, Harrow Council and the Appellant[12]. Of particular interest, those parties agreed that:

(i) The current sports centre building and biology and chemistry facilities are inadequate (in quality, quantum and functionality terms);

(ii) The current sports centre building is located within MOL;

(iii) The science building development as proposed falls outside of MOL and as part of the appeal scheme is not objectionable in itself;

(iv) The new sports building is 'inappropriate development' on MOL; by definition, inappropriate development is harmful to MOL in line with Development Plan policy harm to MOL should be afforded substantial weight;

(v) In addition to harm through inappropriateness, the new sports building causes harm to the openness of MOL by reason of its siting, footprint and scale and to MOL purposes. In line with Development Plan policy such harm should be afforded substantial weight;

(vi) The Mayor of London considers the proposed sports building could be located on the site of the existing sports hall;

(vii) The Mayor of London does not consider that there are very special circumstances to outweigh the harm to MOL. The Appellant disagrees.

(viii) There are no objections on access, transportation or highways grounds to the proposed development;

(ix) The Sustainable Travel Plan for non-school users of the new Sports building facilities is acceptable to both the Mayor of London and the Appellant;

(x) There are no objections on grounds of residential amenity or building sustainability grounds to the proposed development;

(xi) Sustainable drainage and surface water is to be managed utilising the full extent of the school's land ownership on the eastern side of Harrow Hill.

Matters in dispute[13]

24. The main matters in dispute between the Mayor and the Appellant are:

(i) Whether the benefits of the proposal, individually or in combination, constitute 'Very Special Circumstances' (VSC) so as to outweigh the harm by reason of 'inappropriateness' and harm to the openness of MOL and to MOL purposes caused by the proposed development, as alleged in the reason for refusal.

[12] See the agreed Statement of Common Ground (SOCG), page 12-15, Section 5
[13] See agreed SOCG, page 15, Section 6

(ii) The suitability and acceptability of the proposed 'land swap' as mitigation for the loss of and impact on MOL resulting from the proposed development;

(iii) The robustness of the 'alternative site selection' exercise and discounting of other potential suitable sites within the School's ownership that could result in less harm to MOL; and,

(iv) The weight attached to the other VSC advanced by the appellant, notably the proposed Community Use Agreement (CUA).

(v) The Mayor of London considers that less than substantial harm to the significance of heritage assets is caused by the proposal; the Mayor does not seek dismissal of the appeal on heritage grounds and the Mayor's case in respect of heritage assets is set out para.53 of the Stage II report. The Appellant considers that the proposed development would not cause any harm to the special interest, significance, setting or identified views of any historic asset.

Written and Oral Representations

25. Written representations were submitted at both the planning application and appeal stages. This includes a petition submitted through the change.org website consisting in excess of 1400+ signatures entitled *'Save our Metropolitan Open Land and beautiful views from London's Capital Ring Footpath'.*

26. Written representations were also received by public bodies such as Historic England, Highways England, the Harrow Hill Trust, Sport England, CPRE London, and also from a number of local residents.

27. At the Inquiry, oral representations were made by; a historian and researcher for the London Parks and Gardens Trust; a local resident (and retired Solicitor) who was also assisting Harrow Hill Trust with specific regard to the Community Use Agreement; and a Councillor and ward member from the adjoining London Borough of Brent. Where possible, these interested parties submitted written material, in addition to their oral submissions. I have taken all of these submissions and representations into account.

Conditions and Obligations

Planning Conditions

28. The main parties have agreed, without prejudice following a round table discussion at the Inquiry, the thirty suggested conditions set out in Annex A of this Report. I have considered these planning conditions in light of Paragraph 55 of the Framework which sets out that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

29. Paragraph 55 also sets out that agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification. The guidance set out in the national *Planning Practice Guidance* (the Guidance) and the use of planning conditions is also of

relevance and I have taken it into account in considering both the suggested conditions and the reasons agreed between the main parties (in this case the Mayor, the Council as local planning authority and the Appellant).

30. Having considered the suggested conditions against Paragraph 55 of the Framework, I find that these conditions would all meet the tests set out in this Paragraph and would conform with the Guidance. Were the Secretary of State minded to agree with the recommendation of this Report to grant planning permission, it is recommended that the thirty suggested conditions listed in Annex A are imposed for the reasons set out in the Annex. For the avoidance of doubt, the relevant planning condition itself is proceeded by the condition number and ends before the word 'REASON' for each condition.

Planning Obligations

31. The Framework and Community Infrastructure Levy (CIL) Regulations set out that planning obligations must only be sought and be considered as a reason for granting planning permission where they meet the following tests:

    a) necessary to make the development acceptable in planning terms;

    b) directly related to the development; and

    c) fairly and reasonably related in scale and kind to the development.[14]

32. A completed Unilateral Undertaking under Section 106 of the TCPA was signed and dated on 16 May 2019 by the Appellant to The London Borough of Harrow. The Appellant and the local planning authority were content with its content, which secures; additional trees and land for the trees, a community use agreement, an employment contribution of £15,000 to identify local residents for construction jobs arising from the development, an employment and training plan, a local goods and services commitment strategy, an area of land identified as MOL Extension Land (wherein MOL policies would apply until designated as MOL in the development plan process), and a sustainable travel plan.

33. Concerns were raised by Harrow Hill Trust (the Rule 6 Party) and an Interested Party, Ms Lloyd, over the content and practical operability of the Community Use Agreement (CUA). Principally, this concerned the number of specific hours the CUA would secure for community use – an additional 1300 hours free use by local schools and around 500 hours at a discounted rate for permitted users – and the operation of the management committee for the sports facilities.

34. Time was provided outside of the Inquiry itself for those parties to discuss and resolve these concerns, which led to some alterations to the CUA creating its final, agreed, form.

35. The final agreed CUA is an agreement between the Council and the School. It provides up to 1800 hours of community use including 1300 hours of free use by local state schools and would be managed by a committee made up of members of the local community, the School and the Council. In this respect, I find that this obligation would meet the tests set out in the CIL Regulations and the Framework.

[14] Framework, Paragraph 56

36. Moreover, having carefully considered the obligations sought and secured by the S106, including the justification set out by the Council and its confirmation as set out in its Closings[15], I am content that the obligations sought and secured by means of a unilateral undertaking would satisfy the tests set out in the CIL Regulations and Paragraph 56 of the Framework, and in doing so should be taken into account as a reason for granting planning permission.

Inspector's Considerations

37. The references in square brackets *[x]* refer to the various paragraphs of this report of the information from where my considerations are drawn.

The main considerations

38. It is not disputed between any party that that part of the site lies within the established Metropolitan Open Land (MOL) designation. This is afforded similar protection to Green Belt designated land within London. The Council, Mayor of London and the Appellant agree in the SOCG that the new sports building would be 'inappropriate development' within MOL and would cause harm to the openness of the MOL by reason of its siting, footprint and scale and to MOL purposes.

39. The Appellant and Mayor of London dispute the following matters:

    (i) Whether Very Special Circumstances (VSC) outweigh the harm of inappropriate development and to openness[16].

    (ii) The Mayor of London also considers that there would be less than substantial harm to the significance of heritage assets caused by the proposal; but does not seek dismissal of the appeal on heritage grounds.

Whether inappropriate development in Metropolitan Open Land

40. All parties agree that part of the proposed development (the sports building) lies within the MOL as defined within Policy DM16 of the *Harrow Development Management Policies 2013,* Policy CS1 of the CS and London Plan Policy 7.17 of the LDNP.

41. The supporting paragraphs to Policy 7.17 set out that *'the policy guidance of paragraphs 79-92 of the NPPF on Green Belt applies equally to Metropolitan Open Land (MOL)'*. Whilst this refers to the 2012 NPPF[17] all parties agreed that this reference should now be paragraphs 133-147 of the Framework 2019 dealing with Green Belt. This is a pragmatic and logical approach which I also adopt in this case.

42. I was not directed to any other policy document which detailed what is meant by 'inappropriate development' within MOL beyond the Framework. In such circumstances it is reasonable to use the Framework to define the nature of the proposal in this case, even though it technically applies to Green Belt and not MOL.

[15] LPA3, dated 16 May 2019
[16] See Section 6 of the SOCG for further details
[17] Replaced for planning decision-making by the February 2019 Framework

43. Paragraph 143 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt. The construction of new buildings in the Green Belt is inappropriate unless they fall within certain exceptions set out at Paragraph 145. Certain other forms of development are also not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. None of these exceptions applies here.

44. The proposal would therefore constitute inappropriate development within MOL when assessed against the criteria set out in national planning policy.

MOL 'land swap'

45. The Appellant has submitted a Unilateral Undertaking (under Section 106 of the TCPA). One of the Planning Obligations this secures is that an area of land under the control of the Appellant would be subject to MOL policies until such time that that area is formally designated as MOL [32]. This has inaccurately been described as a 'land swap', whereas in practical terms it would extend the MOL were the area formally incorporated at the local plan examination stage. Such an idea was proposed in planning policy terms through the *Harrow School Supplementary Planning Document July 2015*.

46. Concerns have been raised by the Rule 6 Party that this is not the correct way in which to extend the area of the MOL. For example, Paragraph 135 of the Framework sets out that Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. In this they are correct. However, the important distinction here is that any decision on the appeal proposal does not inhibit the ability of any local plan examination to designate or not designate the land swap, or the local planning authority from suggesting the same.

47. What it does do is restrict the Appellant from developing such land by imposing MOL policies as essentially a 'material consideration' that a planning decision-maker would have to take into account. In this respect the 'land swap' is a pragmatic and reasonably robust way in which the Appellant restricts development in this area, and goes some way to alleviate concerns of concerned parties that it would be developed in the near future.

48. At the same time, this land is subject to other designations – such as being within a Conservation Area – which require statutory duties to be exercised. This may also act as an inhibiter to development irrespective of whether MOL policies are applied in that area. The key point is the degree of weight, if any, that this specific obligation should be afforded in any planning balance. In this respect, this obligation should be taken into account as a positive benefit of the proposal [36]. However, it should only be afforded minimal weight given that it relies upon the realistic likelihood of the land being developed, the failure of other statutory duties to prevent or mitigate harm, and the formal extension of the MOL at a development plan stage.

Effect on openness

49. Openness is not specifically defined within the Framework, nor was the Inquiry directed to any local plan definition. Typically, in Green Belt cases, the concept of openness can be expressed as a 'lack of built form'.

50. The High Court[18] found that 'any construction harms openness quite irrespective of its impact in terms of its obtrusiveness or its aesthetic attractions or qualities' but that 'there is a clear conceptual distinction between openness and visual impact' and that 'it is wrong in principle to arrive at a specific conclusion as to openness by reference to its visual impact'. Recent caselaw[19] from the Court of Appeal indicates that impact on openness in Green Belt terms can also have visual dimension. The more recent judgement of *Turner* confirms that the openness of Green Belt has a spatial as well as a visual impact, and assessing openness was found not to be limited to measuring the volume of the existing and proposed structures on site[20].

51. The relevance here is that the reason for refusal is relatively plain and simple in form. This states that the proposal is unacceptable as it '*causes substantial harm to the openness of the Metropolitan Open Land – by reason of its excessive footprint and its location'* [1]. It logically follows that the concerns of the Mayor as the decision-maker with regard to openness centred on the footprint and location only; a point emphasised by the phraseology 'by reason of' which indicates the unacceptable factors, the visual dimension was not considered a matter of such relevance requiring specific reference to it.

52. To be clear, there is no indication as to the unacceptability or otherwise of the proposal in terms of visual impact within the reason for refusal beyond excessive footprint and its location. For example, the reason for refusal does not cite bulk, scale, mass, appearance, design, materials, or indeed any other number of adjectives which may hint towards concerns over the unacceptable visual impact of a proposal. This is further compounded by the fact that the policies referred to are not specifically ones that deal with visual impact in terms of design, character or appearance.

53. The advancement of the point by the Mayor at the Inquiry itself that the excessive footprint should be considered as a 3D-concept rather than a 2D-concept in terms of openness is therefore rather surprising. More so when the established statutory requirements are clear in the DMPO 2015: '*where planning permission is refused, the notice must state* ***clearly*** *and* ***precisely*** *their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision'*[21] (emphasis mine).

54. Nonetheless, recent caselaw departs somewhat from the distinction made in *Timmins* between openness and visual impact. The fact remains that a building of the size proposed here; including the height, width and depth of the proposed sports building, will erode the openness of MOL as there will be built form where there is currently relatively undeveloped land. As such the proposal would result in development which would, by logical definition, erode the openness of the MOL by fact of its size and siting. Put another way, in terms of openness and visual impact as an element of such an assessment.

[18] Timmins v Gedling Borough Council [2014] EWHC 654 (Admin)
[19] Turner V SSCLG [2016] EWCA Civ 466
[20] This was further confirmed in the judgement of Samuel Smith Old Brewery (Tadcaster) & Oxton Farm v North Yorkshire CC & Darrington Quarries Ltd [2018] EWCA Civ 489
[21] Town and Country Planning (Development Management Procedure)(England) Order 2015, Article 35(1)(b)

55. However, visual impact as a concept is not limited to what something looks like, but inherently relies upon the context in which it is enjoyed. In this respect, views to the ridge line along Harrow-on-the-Hill would still be possible even with the proposed sports building (as can be seen from the various CGIs submitted), no issue is taken with the materials proposed or colour palette, and no specific issues have been raised with regard to the overall shape and form of the proposed building in design terms. What is more, the proposed sports building would be viewed within the context of the main school campus to the north and west, and outdoor sports facilities to the east and south; including the tennis courts, running track, astro-pitches and associated fencing. It would not be seen as an isolated building standing alone in a field.

56. The Mayor pointed me to the fact that the agreed SOCG indicates that harm is caused to openness by reason of its 'scale'[22] as well as its siting and footprint. These words clearly differ from those given on the decision notice, and neither of the main parties departed from this agreed position at the Inquiry. However, when read plainly, the context of this appears to be little more than agreeing the scale of the building, in terms of the size of the footprint, is contested which is indeed the case. However, in this respect no issue is taken with the broad principle of the size of the building in terms of the sports needs of the school and the level of multi-facility provision that needs to be delivered.

57. I note that the Mayor has suggested alternate locations where, through various means including stacking, a similar sports provision may be provided. However, these schemes are no more than concepts at extremely early stages of thought. Indeed, as an example, it was evident at the Inquiry that for one of the schemes (being located on the area of the proposed science building which the Mayor takes no issue within the Conservation Area) may involve the removal or works to a Wellingtonia tree[23] planted in memory of the late former Prime Minister and pupil of Harrow School, Sir Winston Churchill.

58. What is more, some of the concept schemes require stacking the facilities on top of each other so as to reduce the footprint. However, the result of such stacking (in the absence of engineering plans and the consideration of the sewer close to the existing swimming pool) the building would most likely expand upwards in height so as to deliver the two sports halls, 25 metre swimming pool, training pool, judo dojo, classrooms and changing facilities. It is clear that to deliver the agreed need for the school, somewhere compromise is required.

59. The Appellant's approach, which both the written and oral evidence demonstrates has been carefully planned over a number of years, moving from a concept stage where a number of sites and various layouts were considered, and which was based upon the Council's adopted SPD[24] for the school, appears to be a pragmatic, detailed, thoughtful and well-designed scheme. Indeed, with the use of materials, the axial route providing a central link between the upper and lower hill to the Chapel in one direction and proposed science and sports building and sports fields,

[22] SOCG, page 13, paragraph 5.1.7
[23] Shown as tree T107 on the submitted drawings. Mr Pryke (for the Mayor) suggested under Evidence in Chief, that the Mayor would work on retaining this tree. But the point is that it is unclear as to how the Mayor properly understood the context of this significant tree within the conservation area; and this is before factoring in the statutory requirements of s197 of the TCPA and s72 of the PLBCA for example.
[24] Supplementary Planning Document, Harrow School July 2015

with views of the London skyline beyond in the other direction would appear as an epitome of high-quality buildings and places. National policy emphasises that this is fundamental to what the planning and development process should achieve[25].

60. The proposal would result in the erosion of the openness of MOL by the fact that it would represent built form where currently there is very little. The proposal would see the restoration of some MOL openness through the removal of existing sports building and its replacement with tree planting to create a woodland-style walk from Football Lane. It would also secure an area of land – the 'land swap' -which would be subjected to MOL policies as a material consideration until incorporated into an adopted development plan [32, 45]. However, neither of these factors overcome the fundamental point that the proposal would still result in the erosion of MOL openness. This is harm that weighs substantially against the proposal.

61. However, it is important to note that I do not find that the proposal would have an adverse impact in respect of its visual impact. The footprint is not 'excessive' when one considers that there is a certain level of need that the sports building will have to provide. This is need that no main party argues is not required to be provided. The alternative concepts, which were suggested by the Mayor in the Proofs of Evidence, literally do not stack up even under the rudimentary assessment – whether in practical terms with the potential loss of trees and/or considerations such as sewers and required ground works, or in detailed consideration against policy requirements; for example, an assessment in heritage impact terms.

62. As a result, the only logical conclusion I can come to is that the proposed location within the MOL for the sports building, which is broadly in keeping with the Council's adopted SPD, is acceptable in terms of the reason for refusal. As such, and taking into account the agreed position in respect of the visual appearance of the proposed sports building, I do not consider that the proposal would result in harm to openness, or indeed any other harm, in visual impact terms. However, there would remain harm to openness through its erosion which should be afforded substantial weight.

MOL purposes

63. At the Inquiry, my attention was drawn to the concept of 'MOL purposes' by the Mayor. This was in part due to its inclusion within the agreed SOCG rather than expressed in the reason for refusal[26]. Green Belt clearly serves five purposes as set out in the Framework[27]. Policy DM16 of the DMDPD, Core Policy 1 of the CS and Policy 7.17 of the London Plan do not clearly set out what the purposes of MOL are in the same way.

64. Policy DM17 of the DMDPD indicates that '*proposals for the beneficial use of land in the Green Belt and Metropolitan Open Land will be supported where the use would not have a greater impact on the openness of the Green Belt and MOL, and the purposes of including land within it'.* But again, this policy does not set out what is specifically meant by MOL purposes.

[25] Section: Achieving well-designed places, Paragraph 124, National Planning Policy Framework
[26] Agreed SOCG, page 13, paragraph 5.1.7
[27] See Paragraph 134 of the Framework.

65. The supporting paragraph[28] to Policy 7.17 of the London Plan indicates that *'the policy guidance of paragraphs 79-92 of the NPPF[29] on Green Belts applies equally to MOL'* [41]. Setting aside the fact that the Framework is policy rather than guidance as the London Plan suggests, the purposes of Green Belt are clearly set out in the Framework can only be the logical 'purposes' the MOL designation serves – even though this is not expressed clearly within MOL policy itself.

66. In respect of the five purposes set out in Paragraph 134 of the Framework, the proposal would not result in unrestricted sprawl of a large built up area, it would not result in neighbouring towns merging into one another, it would not encroach into the countryside, and urban regeneration and the recycling of derelict and other urban land is not at issue here.

67. The only potential purpose that the proposal may infringe is the purpose *'to preserve the setting and special character of historic towns'*. This was suggested by the Mayor to Mr Paterson (planning witness for the Appellant) to be infringed due to the harm to heritage assets. This specific matter is considered in greater detail in the next section of this Report.

68. However, I have found that the proposal would not result in harm to heritage assets; including their settings [88]. As a result, following a logical thread, the proposal does not conflict with the five purposes set out in Paragraph 134 of the Framework. Whilst I acknowledge the position between the main parties contained within the agreed SOCG, after careful consideration of this specific point I can only conclude that the evidence submitted to the Inquiry proposal suggests that this agreed position within the SOCG is incorrect and that the proposal would not deviate from the purposes which MOL serves. I do not, therefore, find that the proposal would result in harm to MOL purposes as suggested in the SOCG.

Heritage assets

69. There are a number of designated heritage assets on or near to the appeal site including:

    i. St Marys Church (Grade I);

    ii. Vaughan Library (Grade II*);

    iii. The Chapel (Grade II*);

    iv. New Schools (Grade II);

    v. Butler Building including Biology and Chemistry (Grade II);

    vi. Music Building (Grade II);

    vii. Harrow School Conservation Area;

    viii. Harrow Park Registered Park and Garden (Grade II) and Conservation Area.

70. Although not cited as a specific reason for refusal, and an absence of references to the statutory duty imposed by parliament on decision-makers under

[28] Core Document APP-D-0105 - London Plan 2016, Page 313, Paragraph 7.56
[29] Now Paragraphs 133 to 147 of the Framework 2019

Sections 66(1) and 72(1) of the PLBCA within the Mayor's Stage 1 and Stage 2 responses, the Secretary of State will need to exercise such duties [16].

71. Within the *GLA Stage 1 Consultation Response Report*, there is an absence of any considerations of heritage matters, with the focus on matters such as flood risk, MOL and access. In the *GLA Stage 2 Letter and Report* of January 2018, consideration of heritage matters is contained within Paragraphs 52 and 53, which relies upon harm identified by Historic England. This states that *'…When considered in conjunction with the proposed public benefits of the community use arrangements (discussed in paragraph 59 below), GLA officers are satisfied that this less than substantial harm to heritage assets does not warrant a reason for refusal…'*

72. By the Inquiry stage, the Mayor's heritage witness, Dr Barker-Mills, confirmed that the sports building element of the proposal would, in his view, fail to preserve the setting of these nearby listed buildings and would fail to preserve or enhance the character or appearance of the Harrow School Conservation Area. Accordingly, he considered that the proposal would fail to preserve the special interest of these heritage assets, the preservation of which should be given special regard under Sections 66(1) and 72(1) of the PLBCA respectively.

73. As a result, in the view of the Mayor's heritage expert witness the proposal would result in less than substantial harm to the significance of the heritage assets; harm which would need to be considered against public benefits under Paragraph 196 of the Framework. With regard to any such balance, I was referred to Ms Flight[30] to have carried this out. She indicated that she was surprised that there was no specific reason for refusal on heritage grounds put forward by the Mayor.

74. More surprising to me is the absence of any detailed reference or assessment of any harm to heritage within her submitted Proof of Evidence, wherein reference to heritage matters is primarily constrained to paragraphs 7.22 to 7.25 under the section 'Any other relevant material considerations'. All this section of the Proof does is re-iterate the points made by Dr Barker-Mills without any explanation of whether public benefits outweigh the less than substantial harm.

75. It should also be noted that the Mayor and Dr Barker-Mills did not identify any harm to the Harrow School Conservation Area or setting to the listed buildings or other heritage assets arising from the proposed science building. I re-iterated my observation at the Inquiry and the position of the Mayor did not alter. This is of some interest given that the location of the proposed science building is not only within the Conservation Area, but it would also be situated physically and visually closer to the aforesaid listed buildings.

76. The position of the Appellant's heritage expert witness[31] differs from the Mayor's in that whilst it is acknowledged that there would be a change in the context of settings of heritage assets, this does not amount to a negative impact. As such, the proposal would not result in any harm to heritage assets including their significance. Accordingly, in his view the proposal would not fail to preserve the setting of listed buildings as set out in the PLBCA, and similarly Paragraph 196 of

[30] Mayor's Planning witness
[31] Mr Pugh

the Framework is not relevant. What is more, Mr Pugh clarified at the Inquiry that if it was considered to be the case that less than substantial harm did exist, there are substantial public benefits which would outweigh this harm.

77. Historic England, the government's statutory advisers on heritage, were consulted at both pre-application and application stages[32] providing responses from November 2015 to February 2017. Their most recent response indicates that they identify 'some harm' through inserting a structure of the broad massing and height proposed in the specific location. However, it is for the determining authority (at that point the Council) to be convinced that the harm has been clearly and convincingly justified.

78. Incidentally, both the local planning authority and the Mayor must have carried out such requirement as set out in national policy and the statutory duties imposed by the PLBCA. This is presumably borne in Paragraphs 52 and 53 of the Mayor's Stage II Report, albeit not well expressed.

79. I concur with the expert witnesses from both main parties that the significance of the heritage assets derives in part from their architectural and artistic interest of the purpose-built school buildings which is both individual, as examples of varying styles over the C19 and early C20 including High Victorian Gothic Revival and Queen Anne Revival. The organic evolution of the school, dictated originally by the topography of the site, has informed the architecture, requiring terracing, which provides for basements and lower storeys, or in the case of the Chapel a crypt.[33]

80. The lack of overall architectural formality and unity at Harrow School is an interesting and distinct feature in the context of the foundation and design of public schools and their expansion in the C19 as a building type. The more organic evolution of Harrow with its intimate and entwined relationship with the town is thus distinctive within this building type and a key element of both its architectural and historic interest.[34]

81. In particular, it is being able to appreciate and experience the hill top/side nature of the school (which includes the listed buildings and the conservation area) which contributes to the historic significance of both the individual heritage assets and their combined visual appearance. Being able to appreciate that the school has grown and evolved since the 1500s on the hill, whilst a sizeable residential population has also continued to grow.

82. The proposal would continue the growth of the school, with the proposed buildings – both science and sports – clearly built for school use and purposes to further and continue education on this site. Views of the ridgeline along the hill top, which includes listed buildings such as the Chapel, Vaughan Library and St Mary's Church would continue. For example, looking at the Compendium of CGIs at various views[35], including those from public footpaths, it is clear that the

[32] See Core Document F-0103, Correspondence with Historic England
[33] POE Nigel Barker-Mills, page 12, paragraph 3.10
[34] POE Nigel Barker-Mills, page 13, paragraph 3.13
[35] Compendium of CGIs:
View FP4: From Capital Ring/Footpath 58, Appeal Scheme – winter young landscaping, page 24;
View E: from far side of all-weather pitches looking northwest (Footpath 57), Appeal scheme – winter young landscaping, page 40;

important views (in terms of heritage significance) of the ridgeline of the listed buildings would be retained. Moreover, it would continue to be visible from both private and public vantage points. Viewers from various viewpoints would continue to experience a setting where the hill context with a school campus running down the side would remain. In this respect, the various settings would, at the very least, be preserved.

83. What is more, the axial route would enable viewers expansive views from the terrace outside the Chapel towards London, whilst the Chapel and its tower would provide a focal point looking up towards the mount of the hill[36]. Views from the Harrow Park Registered Park and Garden (Grade II) and Conservation Area would also alter[37]. However, the park itself including its important Capability Brown designed/inspired landscape would remain unaltered by the proposal [12]. Moreover, the settings described in the above paragraph would continue to be appreciated in its current form when looking out and into Harrow Park.

84. I note the comments made at the Inquiry by the *London Gardens and Parks Trust* (the LGP Trust) who explained that in their view the significance of the Harrow Park derives from the fact it is one of limited examples of a Capability Brown landscape within London and contains features such as the serpentine style lake and trees and shrubs set out in a typical Capability Brown manner. An important feature is considered to be the feeling of openness[38] into and out of the park into the wider landscape. The proposal, with the construction of a large building adjacent to the park, is considered to have a significant negative impact, with the park seemingly 'hemmed in'.

85. Whilst I concur with many of the observations made by the LGP Trust in terms of significance, I disagree that the proposed sports building in particular would 'hem in' the park. From my site inspection I was able to see that Harrow Park is used recreationally for activities such as golf and fishing, and it is possible to see that on its northern and western edges there is built form which is visually softened by tree and other planting. The proposal would continue this prevailing visual experience both from and to Harrow Park.

86. Moreover, the key features contributing to the significance of the Park itself would remain – the landscape setting, verdant views to the south and east (although these change to the east with the sports fields and track), and the established built form of the school to the north retained. In this respect, whilst there would be some changes to the context of the Registered Park and Garden, its

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View 01: From far corner of athletics track looking west, Appeal Scheme – at night, page 78;
View D: From far side of athletics tack looking northwest, Appeal Scheme – Winter young landscaping, page 83;
View B: Long view from southern edge of Harrow Park looking north, Appeal scheme winter young landscaping, page 88,

[36] See for example Compendium of CGIs:
View 6: Up the new axial route to the Chapel, Appeal Scheme – Winter young landscaping, page 95
View A: Chapel Terrace looking east, Appeal Scheme – Winter, page 108

[37] Compendium of CGIs:
View B: Long view from southern edge of Harrow Park looking north, Appeal Scheme – Winter young landscaping, page 88
View B: long view from southern edge of Harrow Park looking north, Appeal scheme – summer mature landscaping on winter base photo, page 89

[38] In terms of 'openness' as open, not MOL/Green Belt context

significance would continue to be preserved and would not be negatively affected by the proposal.

87. It is important to note that views and the visual impact are not the only considerations one must take into account when assessing the impact of a proposal on settings and/or significance. In this respect, I have considered factors such as the relationship between the school campus and the hill, the historic evolution and growth of the school and wider community on Harrow-on-the-Hill, the relationship between the built and natural form, and also how the various heritage assets are experienced both currently and as a potential result of the proposal.

88. Taking all these factors in the round, I find that the proposal would not cause any harm to the historic environment. The proposal would preserve the setting of listed buildings in accordance with statutory duty set out in s66(1) of the PLBCA. It would also conserve heritage assets in a manner appropriate to their significance in policy terms; including the settings of designated heritage assets not covered by s66(1) PLBCA. In this respect, I do not consider that there are any conservation or heritage related reasons as to why permission should be refused.

Other matters/considerations

89. Other matters were raised at the Inquiry by interested parties, and those not covered elsewhere in this Report are considered here.

90. In terms of ecology and protected species such as birds, bats, badgers, and other such species protected by various national and international legislation, no main party to the Inquiry raised similar concerns. I am content that the surveys undertaken by the Appellant, and the response to concerns raised by an interested party[39] demonstrate that due consideration has been given to any protected species on or near to the appeal site.

91. Concerns relating to highway safety on Watford Road and the hospital service road were raised by a Councillor of the adjoining London Borough of Brent. In the main, these revolved around against using the hospital service road to access the site. It is important to note - and this point was clarified orally at the Inquiry - that this represented the views of the Councillor only, and there was not a formal objection from the London Borough of Brent.

92. The highways consultant for the Appellant provided a response to the concerns raised by the Brent Councillor[40]. The concerns appear to relate to technical information and how accidents and/or incidents have been calculated. It is of very limited relevance in this specific case. No doubt the local planning and highways authorities will together with any developer give it consideration when determining how the proposal could be built out if approved.

93. I do not find, whether alone or in combination, these other matters provide justification for the refusal of planning permission.

[39] Core Documents, L Folder – New Info issued during Inquiry, Representations Folder, documents; APP-L-0071 and APP-L-0072
[40] See Core Documents, Folder App-L-0070

Consideration of potential 'Very Special Circumstances'

94. Put simply, both local and London-wide development plan policy require that proposals that amount to 'inappropriate development' in MOL, as is the case here, should be refused in the absence of clearly demonstrated very special circumstances (VSC) [13, 44].

95. The Appellant considers that there are a number of material considerations amounting to VSC which justify the MOL element of the proposal[41]. I consider each of these in turn before coming to an overall conclusion on VSC.

(a) *educational need*;

96. No party at the Inquiry disputed the need for the science and sports buildings proposed. From my site inspection it was clear that the internal facilities and layouts of both the existing science and sports buildings are less than satisfactory. For example, for chemistry various substances, including those covered by COSHH[42], have to be wheeled from preparatory labs to classrooms on different floors using dumb-waiter style lifts, and a lift platform – in one instance the delivery of chemicals requires lab technicians to cross the front of a classroom, potentially whilst lessons take place. This is demonstrative of issues over the general layout of these listed buildings, which encompass narrow staircases, a lack of lobby or waiting areas and in one instance the 'emergency' chemical spill shower located in a stairwell.

97. The existing sports building, whilst extended to provide a gym and weights room in recent years, lacks any formal seated teaching space; with a break-out space used for teaching and activities such as yoga or ping pong. The swimming pool lacks a teaching pool, meaning that learning to swim has to compete with activities such as lane swimming and water polo.

98. What is more, the pool itself suffers from issues such as water overspill and has very limited spectator viewing from a high balcony for swimming galas without fixed seating. I saw that the sports hall (which was being used for exams at the time of my site visit) was limited in size, meaning that wall climbing could not take place at the same time as badminton, basketball, or indoor hockey for example.

99. There are both dry and wet changing rooms within the existing sports building. I heard at the Inquiry that normally students at Harrow will change in the boarding houses before taking part in sports. However, there is still a need for changing rooms for 'wet' sports and also for when the school hosts other schools for inter-sports games or for when non-boarding schools use the facilities.

100. The proposal would not only meet the various existing and predicted needs of the school, but also provide capacity and facilities for local community (which I consider under point (b) below). Moreover, this need would be met to various club, national or international standards. The evidence of Mr Ploszajski[43], which in the main is not disputed by the main parties, identifies that the proposal

[41] *Closing Submissions on behalf of Harrow School* dated 16 May 2019, Annex 1, Summary Policy Analysis, page 68, paragraph 7
[42] COSHH – Control of Substances Hazardous to Health
[43] Sports Provision expert witness for the Appellant

would meet needs of various competitive bodies such as Badminton England, Basketball England, British Gymnastics, British Judo, England Netball, Swim England, Table Tennis England, Triathlon England and Volleyball England[44]. This will allow pupils to continue to undertake various sporting activities at the school from entry-level through to GCSE and A-levels[45].

101. The ability of the proposal to meet both existing and future educational needs of the school for science and sports should be afforded significant weight.

(b) *community need and the 22,000 hours use which the facility will provide*;

102. The indicative timetable for the proposed sports building indicates that there are just under 34,000 hours of user time available for the sports building[46]. This is aggregated from roughly 11,000 hours Harrow School use, 1,345 hours for partner schools as per the Community Use Agreement (CUA) and 10,043 hours for other third parties (roughly 11,388 hours in this category), and around 11,440 hours for the Harrow School Fitness Club, which currently provides public access to the school's sports facilities.

103. Put another way, the proposed sports building will enable the school to provide its sports facilities to other local schools and clubs, community groups, and individuals at market, low, or cost price, or for free for roughly two-thirds of its available user time. The other third of the time it will be used by Harrow School.

104. I note the point made by the Harrow Hill Trust at the Inquiry that more time could be provided for users other than the school. However, it is hard to fault Harrow School on this point when it would be funding the erection and ongoing costs of the building, and for around 66% of its total time the building would be accessible to various public users, including other schools or the general public through the Harrow School Fitness Club.

105. These are facilities which, as identified elsewhere in this Report, would meet national standards for various sports. This is clearly a public benefit to the local community for both public and private bodies, families and individuals: with state-of-the-art sports facilities provided for a wide range of age groups, and for both the public and private sector.

106. This is a benefit directly accruing from the proposal which should be afforded very substantial weight.

(c) *provision of 1300 hours free access to state maintained local schools and a 400 further hours at a significantly discounted rate to deserving community groups proposed by LBH;*

107. The agreed submitted s106 contains the Community Use Agreement (CUA), which is agreed between Harrow School and the London Borough of Harrow [32 to 35]. The final agreed version increased the number of free hours for local schools to 1300 hours, with an 'at cost' rate for 500 hours[47] for local community groups within the Harrow and nearby Brent local authority areas.

[44] See Paragraph 16 POE
[45] Mr Shyrane, School Bursar's Oral evidence to Inquiry
[46] POE Ms Mason, Appendix wm/G, page 121 of 208
[47] The total increased from 400 to 500 hours as a result of negotiations between the Appellant and Harrow Council. For the avoidance of doubt, the final Community Use Agreement contained within The

108. I note the concerns raised by the Harrow Hill Trust when cross-examining Mr Shyrane (the School's Bursar), that the 1300 hours would represent around 4% of the total number of available hours. However, Mr Shyrane[48] made clear that this is 1300 hours in addition to circa 10,000 hours already provided for third parties; and importantly this would be a minimum of 1300 hours of free access of the facilities. These hours would equate to roughly 33 to 34 hours per week during the normal yearly opening of 39 weeks for state schools.

109. The further 500 hours for other community groups or 'nominated permitted users' at cost rate would be managed by a management committee, as set out in the CUA itself. This committee would be made up of a mix of local residents to ensure that this is provided. This is also in addition to the roughly 11,000 hours for which the Harrow School Fitness Club has access to sports facilities.

110. I accept that providing even more than 1300 hours to local schools could have the appearance of being even more generous. The same can also be said of the 500 hours 'at cost' for nominated permitted users as per the CUA. Moreover, it is clear that relative to the time for other users, 1300 hours is a fairly small number of hours against the 11,000 hours Harrow School may use the facilities. However, there is a difference between how an all-boys boarding-only school operates and a state school, where children return home each evening. For example, the sports facilities can provide part of the extra-curricular activities outside of lessons as music, drama, and other clubs operating at Harrow School do.

111. The 1300 or so hours of free access by state-funded schools should also be calibrated by when state schools are able to use the facilities during term time. The ability to access the proposed facilities during school term time for around 34 hours a week provides flexibility to local state schools to arrange timetables that can better meet the needs of their students as much as those attending Harrow School.

112. Put another way, setting aside the free nature of the total of 1300 hours in relative terms, it would also be at times that would work in practical terms for local state schools. I was not directed to any detailed evidence where local state schools had objected to the provision of these hours on practical grounds. These are facilities and hours which would be provided to state schools and nominated permitted users with the initial capital cost borne by Harrow School rather than the public purse. Whilst this latter point may not necessarily be a planning matter per se, it is relevant to take into account that the significant benefits of the proposal as a result of the private investment of the school are not limited to Harrow School.

113. I consider the provision of around 1300 hours free access and 500 hours at cost rate access, as per the CUA, to be a manifest benefit which should be afforded significant weight.

Second Schedule of the completed S106 secures 500 hours for Nominated Permitted Users and 1300 hours for primary or secondary state schools within Harrow or Brent (see the submitted CUA, paragraphs 4.1, 4.2 and 4.3, page 7).

[48] In answering the points concerning the hourly break down set out in Ms Mason's Appendix wm/G, page 121 of 208.

(d) The MOL extension;

114. I have considered the MOL extension or land swap within the MOL section of this Report [45 to 48]. For the reasons given therein, I considered that this benefit should be afforded no more than minimal weight.

(e) lack of alternative sites;

115. The Closing Submissions of the Appellant reflects on the lawfulness of considering 'alternatives' in caselaw and planning policy terms[49]. The purpose of the planning Inquiry process is to test the competing evidence of main and interested parties, so as to arrive at a reasonable, considered and justified decision or recommendation. In this case, where the proposal will result in harm to MOL which has a heightened level of protection through planning policy, it is only proper that if alternative sites or locations are suggested these are considered: to not do so would be unfair.

116. That said, in this case I have found that the alternative locations suggested by the Mayor's concept schemes submitted to the Inquiry to be fraught with unknowns which diminish and undermine their realistic implementation [57 to 59]. Put another way, in the absence of sufficient evidence to the contrary, I do not consider that they are realistic alternatives which would meet the identified and agreed need of the school.

117. The Appellant has undertaken a relatively rigorous review of other sites prior to the submission of the appeal scheme[50]. This has included the master planning to inform the *Harrow School SPD* (which was subsequently adopted following public consultation; including with the Greater London Authority), the assessment set out in the submitted *Design and Access Statement* dated April 2016[51], the assessment conducted following Harrow Council's planning committee deferral[52], and a further review following Harrow Council's resolution to grant planning permission and prior to the Stage II response of the Mayor[5354].

118. It is clear that through these various reviews, assessments and considerations by a number of different parties, the proposed location of the sports building in MOL and the proposed science building within the Conservation Area are the most favourable locations. What is more the alternatives, whether considered by the Mayor, the local planning authority or the Appellant, are more unlikely to be feasible in either technical or planning policy terms.

119. The lack of realistic and feasible alternative locations to deliver the identified sports and science need of Harrow School weigh significantly in favour of the proposal.

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[49] See *Closing Submissions on behalf of Harrow School* dated 16 May 2019, pages 8 to 19, Paragraphs 17 to 44
[50] See Mr Paterson's POE, pages 44 to 47, Paragraphs 6.28 to 6.37
[51] APP Drop box, Folder E, Document 106
[52] APP Drop box, Folder E, Document 203
[53] APP Drop box, Folder F, Document 301
[54] All references from *Closing Submissions on behalf of Harrow School* dated 16 May 2019, page 15, paragraph 36

(f) compliance with the SPD which specifically proposes the location of the sports building in the location of the appeal scheme;

120. The Harrow School Supplementary Planning Document (the SPD) was adopted in July 2015 in order to *'help Harrow School strengthen its role as a world-class education institution by outlining an agreed masterplan for the development and change of the School Estate over the next 20 years. Such an approach is consistent with the School's site allocation in the Harrow Local Plan.'*[55]

121. The document goes on to identify potential issues with highway safety, needing to consider various heritage assets such as eight conservation areas and listed buildings, the significance of Harrow's skyline, and that the School is a major employer and contributes greatly to the local economy and community.

122. It is clear that as a supplementary planning document, the SPD is not a planning policy or the development plan. However, the document recognises that it is a material consideration which will be used by the Council when determining future planning applications for the School[56]. What is more, it is clear even were someone to only skim read the document that the SPD seeks to act as a masterplan for the future development of the School site over the next 20 or so years. Put another way, the SPD is a clear result of the local planning authority engaging with the School, the local community and other bodies to consider how the school site could be developed in the coming years.

123. Nowhere is this clearer than the diagram on page 25 labelled Figure 6: Indicative Proposal Areas. This clearly identifies Polygon 2 as an area for a sports building and Polygon 3 as an area for a science building. Both of these are areas that directly correlate to proposed locations of the appeal scheme. I acknowledge that this drawing is indicative – that is an indication rather than a definitive location: it does not bind a decision-maker to a specific outcome. It is also clear that the SPD is nothing more than a material consideration.

124. However, the purpose of master planning is to provide a broad direction and indication for where development may be acceptable, and for this to then be studied in greater detail. This greater study has been undertaken since 2015 as detailed in (e) above and found after careful consideration that the locations set out in the SPD were the most feasible and realistic to deliver the agreed need required by the School for science and sports buildings.

125. In such circumstances, the compliance with the Council's site-specific adopted SPD should be afforded substantial weight in this instance.

(g) heritage benefits;

126. The heritage benefits considered by the Appellant to weigh in favour of the proposal include: the opening up of views of the historic ridge and out over greater London; the re-planting of the boundary to Harrow Park[57]; the removal of the gardeners compound[58]; the demolition of the existing sports buildings with

[55] Harrow School SPD, Page 2, Paragraph 1.1
[56] Ibid, page 4, Paragraph 1.15
[57] *Closing Submissions on behalf of Harrow School* dated 16 May 2019, page 27, paragraph 60, subsection e) vi)
[58] Ibid, page 42, Paragraph 99, subsection e)

the area returned to open landscaping to enhance the setting of the Grade II listed Music Schools and setting of the conservation area; the provision of access into the historic environment allowing them to be appreciated in terms of the significance of the listed buildings and conservation area; and ensuring the continuance of the institution of Harrow School, which is a protector of numerous heritage assets[59].

127. I acknowledge that some of these potential 'heritage benefits' are not necessarily reliant upon the delivery of the proposed scheme. For example, it would be possible for the Appellant to re-plant trees along the boundary to Harrow Park. That said, it is clear that these benefits, if the Secretary of State concurs with my findings in respect of heritage matters elsewhere in this Report [88] will enable current and future generations to experience, understand, see, and appreciate the plethora of designated heritage assets on or near to the appeal site including their significance.

128. In this respect, the heritage benefits of the proposal should be afforded modest weight in favour of the proposal.

(h) landscaping benefits;

129. The Appellant suggests that the proposal would result in a number of potential landscaping benefits including; substantial tree planting - including along Harrow Park; the opening up of panoramic views from and to the Chapel; the provision of well-designed building sitting within the sports zone of the school; ensuring that none of the protected views as set out in Core Document App-D-205 are intruded upon, the that the zone of theoretical visibility is extremely limited and ensuring that views where the sports building are prominent the area is currently already experienced as part of a sports zone, where it is entirely appropriate to see a sports building adjacent to facilities such as the running track[60].

130. Similar to my findings in respect of heritage benefits, some of these 'benefits' do not necessarily rely upon the delivery of the appeal scheme. However, the only points where any significant objection was raised in respect of landscaping was whether trees would obscure the axial path views when fully matured given their potential canopies and whether the new planting near to Harrow Park would respect the historical evolution of that heritage asset[61].

131. In both respects, it is clear from the variously submitted CGIs, even allowing for some creative enthusiasm by the CGI-drawer[62], that the proposed landscaping would be part of a wider scheme for the eastern side of the hill – allowing students, visitors, and members of the public using the various rights of way, to appreciate what is a school campus set within fairly visually open landscaped grounds. Put another way, the landscaping scheme demonstrates the Appellant's commitment to the long-term landscaping of the school site, and its contribution to the wider landscape in which it sits.

[59] Ibid, Annex 1, Summary Policy Analysis, Page 73, paragraph 19
[60] Ibid, Pages 37 to 38, paragraph 90
[61] Raised by the London Parks and Gardens Trust at the Inquiry
[62] For example, in some cases new trees had been put directly in front of the view point on the CGI where they did not exist on the ground at the time of the site inspection.

132. In this respect, the landscaping benefit identified should be afforded moderate weight in favour of the proposal.

(i) biodiversity benefits;

133. The ecological surveys[63] carried out by the Appellant's consultants indicate that the site is not considered to currently have any material ecological value. With little evidence to the contrary, I see no reason to disagree. Whilst the proposal would result in the loss of around 92 trees, none of these are category A trees, and those to be removed would be replaced on a 3:1 basis[64].

134. In this respect, the proposal would accord with the aims of paragraph 170 of the Framework, which seeks to provide net gains for biodiversity. For example, the ability to provide new or different habitats for various species – including the woodland walk area adjacent to Football Lane. Exercising the duty under s40 of the *Natural Environment and Rural Communities Act 2006*, I have carefully considered the purpose of conserving biodiversity. It is evident from the various surveys submitted and the ability to use conditions such as Condition 17; which would require the provision of bird boxes for nesting, bat boxes and invertebrate habitats, enables the appeal site to provide specific and suitable habitats for a number of animal species where currently such provision is limited.

135. Moreover, the proposal would also require consideration under s197 of the *Town and Country Planning Act 1990*, as amended, which seeks to include appropriate provision for the preservation and planting of trees. In the provision of trees at a ratio of 3:1 for each lost tree, the proposal provides a significant opportunity for the appeal site to provide a tangible net biodiversity gain for a multitude of bird, mammal and invertebrate species on and near to the appeal site.

136. The net biodiversity gains of the proposal should be afforded substantial weight in favour of the proposal.

(j) benefits to pupil safety;

137. The school campus sits astride the ridge of Harrow-on-the-Hill with the highway called High Street running along the ridge. This requires pupils to using the zebra crossings on High Street and/or the narrow footpaths either side, to access various school buildings. Added to this, pupils also use the public right of way, which is partially shared with motorised vehicles along Football Lane without footpaths to access various school buildings. Vehicles use the uppermost part of Football Lane in order to access the buildings such as the Shepherd Churchill Dining Room and the groundsman's building.

138. The proposal would reduce some areas of potential conflict between students and vehicles by re-routing these and/or making the axial route primarily for pedestrians. For example, pupils would be encouraged to use the axial route to access the science, modern languages and sports buildings rather than Football Lane as is presently the case. The Appellant suggests that the enhancement of pupil and visitor safety should weigh heavily in favour of the scheme[65].

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[63] Core Documents; APP-E-0120, APP-H-0201-0211
[64] *Closing Submissions on behalf of Harrow School* dated 16 May 2019, Annex 1, pages 62 and 63, paragraphs 153 and 154
[65] *Closing Submissions on behalf of Harrow School* dated 16 May 2019, Annex 1, page 62, paragraph 152

139. However, it may also be possible for the school to deliver such safety improvements by other means. For example, placing a gate to discourage vehicles from entering down Football Lane – though this in itself may be fraught with difficulties over access rights. In any case, pupils and staff would still need to cross High Street in order to access the various classrooms and/or boarding houses on the other side of the highway. The provision of the axial route is unlikely to result in any significant benefits in respect of this matter.

140. In this respect, whilst this benefit would reduce the potential for conflict on, at or around Football Lane – where access to the science buildings is currently made from – any issue with access along or across the High Street is likely to remain. This factor should therefore be afforded no more than moderate weight in favour of the proposal.

(k) compliance with all other policies set out in the Closing Submissions of the Appellant.

141. I have found that the proposal in this case would comply with the policies of the adopted development plan for the area [147, 150]. However, I am unconvinced that this is a benefit as such. Compliance with adopted development plan policy is a consideration under s38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended. Although if a development complies with the adopted development plan realistically there is a greater potential for it to be granted planning permission; material considerations still require consideration. However, for the purposes of other considerations in this report, I do not consider that this should be afforded anything more than neutral weight in this instance.

Conclusion on whether Very Special Circumstances outweigh harm

142. I find that the other considerations in this case clearly outweigh the harm to MOL that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

Overall Conclusions and The Planning Balance

143. The proposed development would result in harm to MOL through being inappropriate development and resulting in the erosion of openness of MOL. Such harm should be afforded substantial weight against the proposal.

144. I have found that the proposal would not result in any other harm, nor would it result in any harm to the settings of nearby listed buildings or other designated heritage assets. As such, this factor has no weight against the grant of planning permission in this case.

145. In respect of MOL, I have found that the other considerations put forward in this case would clearly outweigh the harm to MOL I have identified.

146. Section 38(6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

147. It is my view, following careful consideration of the written, oral and visual evidence submitted by all parties to the Inquiry, that the proposal in this case would accord with Policy DM16 of the DMDPD, Core Policy 1 of the CS, and Policy 7.17 of the London Plan, which seek the aforesaid aims, which include the inappropriate development in MOL should be '*refused in the absence of clearly demonstrated very special circumstances'.* [13].

148. For similar reasons, I find that the proposal would accord with the Policies of the Framework, including those relating to heritage assets and Green Belts[66].

149. I note the reference to Policy G3 of the draft London Plan within the reason for refusal. However, given the unadopted status of this policy I afford it limited weight as a material consideration, as do the main parties in the agreed SOCG [14]. What is more, it does not alter my considerations of the acceptability and conformity of the proposal when considered against the adopted development plan for the area.

150. Accordingly, I conclude that the proposed development would accord with the adopted development plan for the area when considered as a whole and that there are no material considerations which indicate a decision otherwise than in accordance with it.

Inspector's Recommendation

151. I recommend that the appeal be allowed and planning permission granted subject to the suggested conditions listed in Annex A of this report.

152. However, the Secretary of State may find that the other considerations suggested by the Appellant do not amount to the very special circumstances required justifying inappropriate development in MOL. He may also conclude that these very special circumstances also do not overcome the other harm identified to the heritage assets by the Mayor.

153. Unlike the Appellant and I, he may also conclude that the proposal fails to preserve the setting of nearby listed buildings, as required by the PLBCA, and that this harm to heritage assets; being less than substantial, is not outweighed by the public benefits cited in accordance with Paragraph 196 of the Framework.

154. If the Secretary of State is minded to disagree with my recommendation the appeal should be dismissed and planning permission not granted.

Cullum J A Parker

INSPECTOR

[66] Although not Green Belt per se, local planning policy suggests that developments involving MOL designated land should be dealt with in a similar way.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant, Barrister	Instructed by the Solicitor of Harrow Council
Callum Sayers, BRP (Hons)	Policy Officer (for S106/CUA element only)

FOR THE MAYOR OF LONDON:

Douglas Edwards QC and Sarah Sackman	Instructed by Steen Smedegaard, LARTPI (Transport for London)
He called	
Nigel Barker-Mills, BA(Hons), PHD, DIP Cons AA, IHBC, FSA	Heritage
Ben Wright, BA(Hons), DIP LA, CMLI	Landscape
Andrew Pryke, BA(Hons), Dip. Arch, RIBA	Architect
Alison Flight, BA(Hons) MRTPI	Planning

FOR THE RULE 6 PARTY – HARROW HILL TRUST (HHT):

Paul Catherall	Accountant acting as advocate and witness for the HHT

FOR THE APPELLANT:

John Steel QC and Victoria Hutton	Instructed by Harrow School
He called	
Paddy Pugh, BSc(Hons), PG Dip BC, PG Dip TP, MRTPI	Heritage
Mike Luszczak, BSc(Sp. Hons, MA)	Landscape
Nick Shyrane, MBE, BA (Oxon), MPhil (Cantab)	School Bursar
Tony Ploszajski, MA (Cantab), PGDip. Planning for Leisure	Sports provision
Wendy Mason, BA, Dip Arch RIBA	Architect
Matthew Paterson, BSc, MRRP	Planning
Christine Hereward	Solicitor (for S106/CUA element only)

INTERESTED PERSONS:

Ms E G Lloyd	Retired solicitor and local resident
Sophie Seifalian	Historian and researcher for the London Parks and Gardens Trust
Councillor Keith Perrin	Councillor for Brent Council and local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

A number of documents were submitted at the Inquiry. The listed in the first table below are those submitted in paper form.

Those listed in the *Document Register and Issue Sheet* on the following two pages were submitted electronically at the Inquiry (via 'Dropbox' software) which was found at the following link, and was referred to by the main parties at the Inquiry: https://www.dropbox.com/sh/sj4c32184zin2sn/AAA4qFsf35DehyyiBUf58Tkla?dl=0

For the avoidance of doubt, all of these documents were considered in reaching my recommendation.

Paper submitted documents:

LPA1	List of appearances for LBH
LPA2	Opening Statement by LBH
LPA3	Closing Submissions by LBH
MAYOR1	List of Appearances for the Mayor of London
MAYOR2	Opening statement for the Mayor of London
MAYOR3	Summary of the submissions for the Mayor of London
MAYOR4	Submissions for the Mayor of London
APP1	List of Appearances on behalf of Harrow School
APP2	Opening statement on behalf of Harrow School
APP3	Drawing HSS_RSS_00_ZZ_DR_A_0570 – Planning Appeal Inquiry Site Visit - Route
APP4	Excerpt from webpage – About – Harrow Hill Trust, dated 07/05/2019
APP5	Drawing HSS_RSS_00_ZZ_DR_A_0570 – Planning Appeal Inquiry Site Visit – Route (A3 version used at the site inspection and shared with all parties at the inspection)
R6-1	Excerpt from webpage – Remove signature from petition (how to on change.org)
R6-2	Excerpt from Agenda Item – Reference from Special Cabinet held on 6 June 2013 – petition in relation to John Lyon Sports Centre
IP1	Written submission from Sophie Seifalian on behalf of the London Parks and Gardens Trust
IP2	Response to the rebuttal by David Tucker Associates (APP-H-0303 pages 159-161) in response to Councillor Keith Perrin's comments made October 2018
IP3	Email from William Ellis, local resident, dated 2 May 2019
IP4	Document entitled 'Community Use Agreement' from Ms E G Lloyd
IP5	Photograph entitled 'Back of No. 4 Pebworth Road'
IP6	Photograph entitled '1st Floor of 16 Pebworth '

DOCUMENT REGISTER & ISSUE SHEET

JOB TITLE	**HARROW SCHOOL SPORTS & SCIENCE APPEAL**
PROJECT	**HSS**
ELEMENT	Information Submitted During Inquiry

	Vol	No.	Document
APP	L	0001	Erratum to Compendium of CGIs
APP	L	0002	Rebuttal to PoE of AP - Wendy Mason
APP	L	0003	Rebuttal to PoE of AP - Wendy Mason - drawings only
APP	L	0004	Harrow Park (Harrow School) London Parks & Gardens Trust
APP	L	0005	Extract from HHT website
APP	L	0006	Extract from Harrow School 2017 ACS
APP	L	0007	Chrononolgy of Planning Events
APP	L	0008	Email Correspondence between Historic England and P Pugh
APP	L	0009	Capital Ring Section 9 v2
APP	L	0010	APP-L-0010 Shell-Curriculum-2019_V3
APP	L	0011	Correspondence between LBH and GLA re SPD
APP	L	0012	DRAFT Harrow School Strategic Estates Masterplan
APP	L	0013	HE Decisions: Legal Requirements for Listed Building and Other
APP	L	0014	Rebuttal of Andrew Pryke's Evidence with AP response
APP	L	0015	Extract from Russ Canning CMP for Harrow Park - Fig 10.8
APP	L	0016	Harrow School - List of Sports
APP	L	0017	Addendum to Personal Profile of Rule 6 Party
APP	L	0018	Area of Special character Harrow on the Hill
			Written Reps received during course of Inquiry
APP	L	0050	Response to the rebuttal by David Tucker Associates in response to Councillor Keith Perrin
APP	L	0051	Keith Barker 2019.05.06
APP	L	0052	William Ellis
APP	L	0053	Ms G Lloyd 2019.05.13
APP	L	0054	Further response from Cllr Perrin
			Appellant response to Written Reps
APP	L	0070	Response to K Perrin
APP	L	0071	Harrow School Appeal - Ecology Rebuttal
APP	L	0072	Response to points raised by Ms Lloyd re badgers
			Other Docs
APP	L	0100	Costs Application
APP	L	0101	Costs Application - Response

DOCUMENT REGISTER & ISSUE SHEET

JOB TITLE	**HARROW SCHOOL SPORTS & SCIENCE APPEAL**
PROJECT	**HSS**
ELEMENT	Information Submitted During Inquiry

	Vol	No.	Document
			Cost Application
APP	L	0100	Costs Application
APP	L	0101	Costs Application - Mayor of London Response
APP	L	0102	Brief Response to Mayor Rebuttal to Costs Application
			Draft Planning Conditions
APP	L	0200	Draft Planning Conditions
APP	L	0201	Pre-commencement Conditions
			S106
APP	L	0300	S106 including CUA
APP	L	0301	Addendum to Local Planning Authority
APP	L	0302	Updated Sustainable Travel Statement (Fourth Schedule to S106)
			Closing Statements
APP	L	0401	Mayor of London Summary Closing
APP	L	0402	Mayor of London Full Closing
APP	L	0404	LBH Full Closing
APP	L	0406	HHT Full Closing
APP	L	0407	Harrow School Summary Closing
APP	L	0408	Harrow School Full Closing

DOCUMENTS SUBMITTED RELATING TO APPLICATION FOR COSTS

(Note these may replicate those already listed above)

Title	Dated
Costs Application on behalf of Harrow School	12 May 2019
(Draft) Skeleton costs on behalf of Harrow School	Undated
Derbyshire Dales DC V SoS CLG [2009] EWHC 1729 (Admin)	17 July 2009
Regina (Mount Cook Land Ltd and another) v Westminster City Council [2003] EWCA Civ 1346	May and October 2003
Trusthouse Forte Hotels Ltd v SoS for Environment	June 1986
Westerleigh Group Limited v SoS CLG, Blaby District Council, Memoria Limited [2014] EWHC 4313 (Admin) 2014 WL 6862827	18 December 2014
Mayor of London's Written Response to Harrow School's Application for Costs	15 May 2019

Annex A – List of suggested conditions to impose

1.The development hereby approved shall be begun before the expiration of three years from the date of this planning permission. REASON : To comply with the provisions of section 91 of the Town and Country Planning Act 1990.
2. Unless otherwise agreed in writing by the local planning authority, the development shall be carried out in accordance with the approved drawings: P.05.01 ; P.05.02; P.5.10; P.10.02; P.10.11; P.10.14; P.10.17; P.10.25; P.11.01; P.12.01 B; P.12.02 B; P.12.10 B; P.12.11 B; P.12.12 B; P.12.13 B; P.12.14 B; P.12.20 B; P.12.21 B; P.12.22 B; P.12.23 B; P.12.24 B; P.12.25 B; P.12.26 B; P.12.27 B; P.12.30 A; P.12.31 A; P.12.32 A; P.12.33 A; P.13.01B; P.13.04 B; P.13.20 A; P.13.21 A; P.13.22 A; P.13.23 B; P.13.24 A; P.13.25 A; P.13.30 A; P.13.31 A; P.13.32 A; P.13.33 A; P.13.35 A; P.13.50A; P.13.51 A; P.13.52 A; P.13.53 A; P.13.54 A; P.14.01 B; P.14.10 B ; P.14.15 B; P.14.16 B; P.14.17B; P.14.18 A; P.14.25 B; P.14.26 B; P.14.31 A; P.14.32 A; P.14.33 A; P.14.34 B; P.14.35 B; P.14.40 B; P.14.41 B; P.14.42 B; P.14.43 B; P.14.44 B; P.14.45 B; P.14.46 A; P.14.47 B; P.14.48 A; P.14.49 B; P.14.50 A; P.14.51 A; P.14.52 A; P.14.53 A; P.14.54 A; P.14.55 A; P.14.60 A; P.14.65 A; P.14.70 A; P.28.10 B; P.28.11 A; P.28.12 B; P.28.13 B; P.28.14 B; P.28.15 A; P.28.16 B; P.28.17 A; P.28.22 A; P.28.30 A; P.28.31 A; P.28.32 A; P.28.33 A; P.28.35 A; P.28.36 A; P.90.10; P.90.11; P.90.12; P.90.20; P.90.21; P.90.22; P.90.25; P.90.26; P.90.27; P.90.28; P.90.30; P.90.32; P.110.01 A; P.110.02 A; P.110.03 B; P.110.04 B; P.110.05 B; P.110.06 B; P.110.07 A; P.110.08 B; P.110.09 B; P.110.10 A; P.110.11 A; P.110.12 B; P.110.13 A; P.110.14 B; P.110.15; P.110.22; P.110.23 A; P.110.24 A; P.110.25 A; P.110.26 A; P.110.28 A; P.110.30; P.110.31; P.110.32 A; P.110.41; P.110.42; P.110.43; P.110.44; P.110.45; P.110.46; P.110.47; 90.20 A; 90.21 A; 90.30 A; 90.31 A; 90.40 A; 90.41 A; and 90.50 A; 90.51 A. REASON : To ensure that the development is carried out in accordance with the details submitted in the planning application and to provide certainty.
3. No development shall take place, including any works of demolition, until a dust, noise and vibration management plan has been submitted to, and agreed in writing by, the Local Planning Authority. The plan shall detail measures for the control and reduction of dust emissions, noise and vibration impacts associated with demolition, earthworks, construction and track out, and arrangements for monitoring air quality during construction. The development shall be carried out in accordance with the plan so agreed. REASON : To ensure that measures are put in place to manage and reduce dust emissions, noise and vibration impacts during demolition and construction and to safeguard the amenity of neighbouring occupiers, in accordance with Policies 7.14 & 7.15 of the London Plan (2016), Policies SI1 and D13 of the Draft London Plan (2017) and Policy DM 1 of the Development Management Policies Local Plan (2013). To ensure that measures are agreed and in place to manage and reduce dust during the demolition and construction phases of the development, this condition is a PRE-COMMENCEMENT condition.
4. No development shall take place, including any works of demolition, until a demolition and construction waste management plan, setting out arrangements for the handling of excavation, demolition and construction waste arising from the development, and to make provision for the recovery and re-use of salvaged materials wherever possible, has been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed plan or any amendment or variation to it as may be agreed in writing by the local planning authority.

REASON : To ensure that waste management on the site is addressed from construction stage and to promote waste as a resource, in accordance with Policy CS1 X of the Core Strategy (2012). To ensure that measures are agreed and in place to manage and re-use waste arising during the demolition and construction phases of the development, this condition is a PRE-COMMENCEMENT condition

5. No development shall take place, including any works of demolition, until a revised construction and logistics plan, to include details on temporary access from Watford Road, detailed construction drawings and a traffic management plan, has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed plan or any amendment or variation to it as may be agreed in writing by the local planning authority.

REASON: To ensure that the transport network impact of demolition and construction work associated with the development is managed in accordance with Policy 6.3 of the London Plan (2016) and Policy T4 of the Draft London Plan (2017). To ensure that measures are agreed and in place to manage and access and egress during the construction phases of the development, this condition is a PRE-COMMENCEMENT condition.

6. The development hereby approved shall not be commence until details of the means of protection of the trees, hedgerows and other existing planting to be retained within the site, and adjacent trees within adjoining sites, have been submitted to, and agreed in writing by, the local planning authority. The details shall include:

a) arrangements for audited arboricultural monitoring of the site during the construction works;
b) identification of root protection areas;
c) the method of any excavation proposed within the root protection areas;
d) the type, height and location of protective fencing; and
e) measures for the prevention of soil compaction within the root protection areas.

The tree protection measures shall be put in place prior to the commencement of the development, including demolition/site clearance, and remain in place throughout the development. The construction of the development shall be carried out in accordance with the details so agreed or any amendment or variation to them as may be agreed in writing by the local planning authority.

REASON: To ensure that the retention and survival of trees, hedgerows and other planting of significant amenity value within the site that are to be retained, and trees within adjoining sites, are safeguarded during construction, in accordance with Policy DM 22 of the Development Management Policies Local Plan (2013). To ensure that measures are agreed for the protection of trees and tree roots during the demolition and construction phases of the development, this condition is a PRE-COMMENCEMENT condition.

7. Notwithstanding the approved plans, prior to the commencement of the development hereby permitted, details for a scheme for works for the disposal of sewage, surface water and surface water attenuation and storage works on site as a result of the approved development shall be submitted to the local planning authority to be approved in writing. The development shall be completed in accordance with the approved details and shall thereafter be retained.

REASON: To ensure that the development has adequate drainage facilities, to reduce and mitigate the effects of flood risk and would not impact the character and appearance of the development, in accordance the recommendations of Core Strategy (2012) policy CS1, the NPPF and policies DM1, DM9 & DM10 of the Harrow Development Management Local

Policies Plan (2013). Details are required prior to commencement of development to ensure a satisfactory form of development.
8. The development hereby permitted shall not commence beyond damp proof course level until a plan for the on-going maintenance of the sustainable drainage measures to be implemented across the development shall be submitted to, and agreed in writing by, the local planning authority. The plan shall thereafter be implemented for the lifetime of the development, or any amendment or variation to the plan as may be agreed in writing by the Local Planning Authority. REASON : To ensure that adequate measures for the control and disposal of surface water from the development are maintained on the site, in accordance with Policy 5.13 of the London Plan (2016), Policy SI13 of the Draft London Plan (2017) and Policy DM 10 of the Development Management Policies Local Plan (2013).
9. Any telecommunications apparatus, extraction plant, air conditioning units and other plant or equipment that is required to be installed on the exterior of the buildings hereby approved shall be carried out in accordance with details that shall first have been submitted to, and agreed in writing by, the local planning authority, and shall be permanently retained as such thereafter. The details shall include siting, appearance, any arrangements for minimising the visual and (if relevant) odour impacts and any arrangements for mitigating potential noise or vibration. REASON : To ensure that the development achieves a high standard of design and amenity; and to ensure that neighbouring occupiers are not exposed to unreasonable noise, disturbance and odour; in accordance with Policies 7.6 and 7.15 of the London Plan (2016), Policies D2 and D3 of Draft London Plan (2017) and Policy DM 1 of the Development Management Policies Local Plan (2013).
10. Notwithstanding the approved plans, prior to the commencement of development hereby permitted the following specifications shall be submitted to, and agreed in writing by, the local planning authority: a) the detailed design of all ramps, steps and pathways within the external areas of the development; b) the thresholds, door opening widths and landing areas at all entrances between the external areas of the development and the approved buildings; and c) the levels and layout of pedestrian route(s) between the parking areas within the site and the entrances of the approved buildings. The development shall be carried out in accordance with the specifications so agreed, or any amendment or variation to them as may be agreed in writing by the local planning authority, and shall be permanently retained as such thereafter. REASON : To ensure that the development contributes to the creation of a Lifetime Neighbourhood and an inclusive environment, in accordance with Policies 7.1 & 7.2 of the London Plan (2016), Policy GG1 of the Draft London Plan (2017) and Policy DM 2 of the Development Management Policies Local Plan (2013). To ensure that measures are agreed and in place in regard to the detailed design of internal and external areas prior to the demolition and construction phases of the development, this condition is a PRE-COMMENCEMENT condition.
11. Notwithstanding the plans and supporting documents hereby approved, prior to the commencement of the development beyond damp proof course level, details of the palette of materials and/or colours for all of the external surfaces have been submitted to, and approved in writing by, the Local Planning Authority. Details to be provided shall include two sample

panels of approximately 2 metres by 2 metres to be provided on site, of typical parts of the building, showing the material finishes of all external surfaces including a sample window/s and door/s. The development shall be built in accordance with the approved details and shall thereafter be retained.

REASON: In order to mitigate the harm to character and setting of the heritage assets affected and to ensure that the development achieves a high standard of design in accordance with Policies 7.6 and 7.8 of the London Plan (2016), Policies D2 and HC1 of the Draft London Plan (2017) and Policies DM 1 and DM7 of the Development Management Policies Local Plan (2013).

12. Notwithstanding the approved plans the development shall not commence beyond damp proof course level, until details to show additional secure cycle parking facilities on site shall be submitted to, and agreed in writing by, the local planning authority. The development shall be carried out in accordance with the details so agreed or any amendment or variation to them as may be agreed in writing by the local planning authority.

REASON : To ensure that the development achieves a high standard of design, and is safe & secure, in accordance with Policy 7.6 of the London Plan (2016), Policy D2 of the Draft London Plan (2017) and Policies DM 1 and DM 2 of the Development Management Policies Local Plan (2013).

13. Before the hard surfacing hereby permitted is brought into use the surfacing shall EITHER be constructed from porous materials, for example, gravel, permeable block paving or porous asphalt, OR provision shall be made to direct run-off water from the hard surfacing to a permeable or porous area or surface within the curtilage of the site.

REASON: To ensure that adequate and sustainable drainage facilities are provided, and to prevent any increased risk of flooding in accordance with policy DM22 of The Development Management Policies Local Plan 2013.

14. Before any landscaping is carried out within the site, including any works preparatory to such landscaping, a scheme for the hard and soft landscaping of the whole site shall be submitted to, and agreed in writing by, the local planning authority. Details shall include:
a) planting plans (at a scale not less than 1:100), written specification of planting and cultivation works to be undertaken and schedules of plants, noting species, plant sizes and proposed numbers / densities and an implementation programme;
b) existing and proposed site levels, clearly identifying changes to landform;
c) details of hard surface materials;
d) details of all boundary treatment, including fences, means of enclosure and gates;
e) detailed drawings and specifications of all levels, both existing and proposed; and
f) detailed drawings and specifications of any proposed external lighting and flood lighting.

The approved hard and soft landscaping shall be carried out in accordance with the approved details agreed prior to occupation of the new sports building save that all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following first occupation of the sports building. Any existing or new trees or shrubs which, within a period of 5 years from the completion of the development, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season, with others of a similar size and species and the approved hard and soft landscaping shall thereafter be retained.

REASON: To ensure that the development secures satisfactory hard and soft landscaping details for all parts of the site, in accordance with Policies DM 1 and DM 22 of the Development Management Policies Local Plan (2013).

15. A landscape management plan, including species numbers/locations, long term design objectives, management responsibilities and maintenance schedules for all communal landscape areas shall be submitted to, and approved in writing by, the local planning authority prior to the occupation of the development. The landscape management plan shall be carried out as approved. REASON: To safeguard the appearance and character of the area, and to enhance the appearance of the development in accordance with policy DM22 of The Development Management Policies Local Plan 2013.
16. No impact piling shall take place until a piling method statement has been submitted to, and agreed in writing by, the local planning authority. The statement shall detail the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure and the programme for works. All piling activities on the site shall be undertaken in accordance with the statement so agreed. REASON To ensure that measures are agreed and in place to manage and re-use waste arising during the demolition and construction phases of the development, this condition is a PRE-COMMENCEMENT condition. To ensure that sewerage infrastructure is safeguarded from potential damage in the interests of flood risk management and reduction, in accordance with Policy DM 9 of the Development Management Policies Local Plan (2013).
17. Notwithstanding the approved plans the development shall not commence beyond damp proof course level, until details of the provision of appropriate bird nesting boxes, bat roosting boxes/tubes and invertebrate habitat for the enhancement of biodiversity within the design of the buildings hereby permitted and the wider development area have been submitted to, and agreed in writing by, the local planning authority. The details shall comprise: a) species catered for, number, location, orientation and type of bird boxes incorporated into or affixed to new buildings; b) number, location, orientation and type of bat boxes/tubes incorporated into or affixed to new buildings; c) number, location, orientation and type of bird and bat boxes affixed to appropriate trees; and d) location and form of invertebrate habitat, and for example may include log piles and stag beetle loggeries. The development shall not be first used until the details so agreed have been implemented, and shall thereafter be retained. REASON : To ensure that the development appropriately protects and enhances the biodiversity value of the site in accordance with Policy 7.19 of the London Plan (2016), Policy G6 of the Draft London Plan (2017) and Policies DM 20 and DM 21 of the Development Management Policies Local Plan (2013).
18. Notwithstanding the details within the submitted Geotechnical and Geoenvironmental Investigation Report (March 2016), in the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy 5.21 of the London Plan 2016, and Policy DM 15 of the Harrow Development Policies Local Plan 2013

19. Prior to the occupation of the development hereby permitted, a full Delivery and Service Plan demonstrating safe vehicular access to and from the school dining hall, shall be submitted to and approved in writing by the Local Planning Authority. The Delivery and Service Plan thereby approved shall be adhered to thereafter.

REASON: To ensure that the development does not harm the safety and free flow of the routes within the development site, and safeguard the pupils from internal traffic movements, thereby according with policies DM1, DM42, DM43 and DM44 of the Harrow Development Management Policies Local Plan 2013. Details are required prior to occupation to ensure a satisfactory form of development.

20. The site wide heating system boiler(s) shall be installed and thereafter retained in accordance with a specification that shall first have been submitted to, and agreed in writing by, the local planning authority.

REASON : To ensure that the emissions from the combined heat and power system comply with the standards published at Appendix 7 of the Mayor of London's Sustainable Design & Construction supplementary planning document (2014) (or such appropriate standards as may supersede them) and that the development is consistent with the provisions of Policy 7.14 of the London Plan (2016), and Policy SI1 of the Draft London Plan (2017).

21. The refuse and waste bins shall be stored at all times, other than on collection days, within the designated refuse storage areas as shown on the approved plans.

REASON: To enhance the appearance of the development and safeguard the character and appearance of the area, in accordance with policies 7.4.B of The London Plan 2016, Policy D2 of the Draft London Plan (2017) and policy DM1 of The Development Management Policies Local Plan 2013.

22. Prior to the sports building being brought into use, a management and maintenance scheme for the sports building - including management responsibilities, a maintenance schedule and a mechanism for review, shall be submitted to and approved in writing by the local planning authority. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the sports building.

REASON : To ensure that a new facility is capable of being managed and maintained to deliver facilities which are fit for purpose, sustainable and to ensure sufficient benefit of the development to sport.

23. The development hereby approved shall not be used until details of the measures to make efficient use of mains water within the science building and sports building have been submitted to, and agreed in writing by, the local planning authority. The measures shall be implemented in accordance with the details so agreed or any amendment or variation to them as may be agreed in writing by the local planning authority.

REASON: To ensure that the development makes efficient use of mains water in accordance with Policy 5.15 of the London Plan (2016), Policy SI5 of the Draft London Plan (2017) and Policy DM 10 of the Development Management Policies Local Plan (2013).

24. Within 3 months (or other such period agreed in writing by the Local Planning Authority) of the first occupation of the development a post construction assessment shall be undertaken for each phase demonstrating compliance with the approved Energy Strategy and Sustainability Strategy (including the Sustainability Development - Energy: Response to the GLA, September 2016) which thereafter shall be submitted to the Local Planning Authority for written approval. REASON: To ensure the delivery of a sustainable development in accordance with National Planning Policy Framework, policies 5.2.B/C/D/E of The London Plan 2016, Policy SI2 of the Draft London Plan (2017) and Policy DM12 of the Harrow Development Management Policies Local Plan (2013).
25. The sports building hereby permitted shall not be first used until photo voltaic panels have been installed in accordance with a drawing showing the location, orientation and pitch of the photo voltaic panels that shall first have been submitted to, and agreed in writing by, the local planning authority. The panels shall thereafter be retained. REASON : To ensure that the development makes appropriate provision for the minimisation of carbon dioxide emissions in accordance with Policy 5.2 of the London Plan (2016), and Policy SI2 of the Draft London Plan (2017).
26. Unless otherwise agreed in writing by the Local Planning Authority, the development hereby approved shall be carried out in accordance with the proposals for emissions savings that are documented in the approved Planning Energy Statement - 033761 - Revision 01 (March 2016) and the Sustainability Development - Energy: Response to the GLA (September 2016). REASON : To ensure that the development makes appropriate provision for the minimisation of carbon dioxide emissions in accordance with Policy 5.2 of the London Plan (2016) and Policy SI2 of the Draft London Plan (2017).
27. No external lighting shall be installed anywhere on the site until details of such lighting has been submitted and, and agreed in writing by, the local planning authority. Such details shall include: a) the siting, height and appearance of the proposed lighting and any associated mounting structures; b) the type and strength of luminance of the luminaires; c) isoline (lux) diagrams; d) times and controls of illumination; e) the measures proposed to reduce light pollution; and f) the measures proposed to ensure minimal UV light emittance of luminaires. The external lighting shall be installed and thereafter retained in accordance with the details so agreed in writing by the Local Planning Authority. REASON: To ensure that the development achieves a high standard of amenity in accordance with Policy 7.6 of the London Plan (2016), Policy D2 of the Draft London Plan (2017) and Policy DM 1 of the Development Management Policies Local Plan (2013); to ensure that the development appropriately protects and enhances the biodiversity value of the site in accordance with London Plan (2016) Policy 7.19, Policy G6 of the Draft London Plan (2017) and Local Plan Policies DM 20 and DM 21.
28. The development hereby permitted shall not be occupied until a full overheating analysis has been to, and agreed in writing by, the Local Planning Authority and the development shall only be completed and operated in accordance with any approval.

REASON: To ensure that the development makes appropriate provision for the reduction in unwanted solar gains in accordance with Policy 5.9 of the London Plan (2016) and SI4 of the Draft London Plan (2017).
29. Prior to the commencement of development, a strategy shall be submitted to and approved by the Local Planning Authority demonstrating that it would be technically feasible to connect the proposed heating network to any future district heating network in the vicinity of the development, should one become available. The strategy shall include details that ensure the provision of sufficient space within the energy centre for future plant, heat exchanges, connection points to generate, export and take heat, cooling and/or electricity, and details of how the development would connect to a future district heat network (including an agreed safeguarded route for infrastructure). The development shall be carried out in accordance with the details so agreed and shall be retained as such thereafter. REASON : To ensure that the development is able to provide an on-site energy centre which is capable of connecting to a site wide combined heat and power network and any future district-wide decentralised energy network, in accordance with Policies 5.5 and 5.6 of The London Plan (2016), Policy SI3 of the Draft London Plan (2017), Policy CS1.T of the Harrow Core Strategy (2012), and Policy DM13 of the Development Management Policies Local Plan (2013).
30. The development hereby approved shall be used for education and sports use only, and shall not be used for any other purpose, including any other use that would fall within Classes D1 or D2 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to those classes in any statutory instrument revoking and re-enacting that order with or without modification). REASON: To ensure that the transport impacts of the development are satisfactorily mitigated, in accordance with Policy 6.3 A of the London Plan (2016), Policy T4 of the Draft London Plan (2017), and Policies DM 42 C and DM 44 C of the Harrow Development Management Policies Local Plan (2013), and in the interests of the amenities of the neighbouring occupiers in accordance with Policy DM 1 C & D of the Harrow Development Management Policies Local Plan (2013).

****END OF CONDITIONS****

Informative:

The following documents have been submitted by the applicant, and considered as part of the planning application and subsequent appeal process;
P.05.01 ; P.05.02; P.5.10; P.10.02; P.10.11; P.10.14; P.10.17; P.10.25; P.11.01; P.12.01 B; P.12.02 B; P.12.10 B; P.12.11 B; P.12.12 B; P.12.13 B; P.12.14 B; P.12.20 B; P.12.21 B; P.12.22 B; P.12.23 B; P.12.24 B; P.12.25 B; P.12.26 B; P.12.27 B; P.12.30 A; P.12.31 A; P.12.32 A; P.12.33 A; P.13.01B; P.13.04 B; P.13.20 A; P.13.21 A; P.13.22 A; P.13.23 B; P.13.24 A; P.13.25 A; P.13.30 A; P.13.31 A; P.13.32 A; P.13.33 A; P.13.35 A; P.13.50A; P.13.51 A; P.13.52 A; P.13.53 A; P.13.54 A; P.14.01 B; P.14.10 B ; P.14.15 B; P.14.16 B; P.14.17B; P.14.18 A; P.14.25 B; P.14.26 B; P.14.31 A; P.14.32 A; P.14.33 A; P.14.34 B; P.14.35 B; P.14.40 B; P.14.41 B; P.14.42 B; P.14.43 B; P.14.44 B; P.14.45 B; P.14.46 A; P.14.47 B; P.14.48 A; P.14.49 B; P.14.50 A; P.14.51 A; P.14.52 A; P.14.53 A; P.14.54 A; P.14.55 A; P.14.60 A; P.14.65 A; P.14.70 A; P.28.10 B; P.28.11 A; P.28.12 B; P.28.13 B; P.28.14 B; P.28.15 A; P.28.16 B; P.28.17 A; P.28.22 A; P.28.30 A; P.28.31 A; P.28.32 A; P.28.33 A; P.28.35 A; P.28.36 A; P.90.10; P.90.11; P.90.12; P.90.20; P.90.21; P.90.22; P.90.25; P.90.26; P.90.27; P.90.28; P.90.30; P.90.32; P.110.01 A; P.110.02 A; P.110.03 B; P.110.04 B; P.110.05 B; P.110.06 B; P.110.07 A; P.110.08 B; P.110.09 B; P.110.10 A; P.110.11 A; P.110.12 B; P.110.13 A; P.110.14 B; P.110.15; P.110.22; P.110.23 A; P.110.24 A; P.110.25 A; P.110.26 A; P.110.28 A; P.110.30; P.110.31; P.110.32 A; P.110.41; P.110.42; P.110.43; P.110.44; P.110.45; P.110.46; P.110.47; 90.20 A; 90.21 A; 90.30 A; 90.31 A; 90.40 A; 90.41 A; 90.50 A; 90.51 A;
Planning Statement by Paterson Planning (April 2016), Design & Access Statement by Rivington Street Studio (April 2016), Landscape Report by Rivington Street Studio & Tyrens UK (March 2016), Visual Impact Assessment Rev A by Rivington Street Studio (September 2016), Arboricultural Report by Arbol Euroconsulting: (Updated April 2018), Transport and Servicing Assessment; Transport Assessment by David Tucker Associates (4 April 2016), Energy Statement by Buro Happold Engineering (22 March 2016), Sustainability Statement by Buro Happold Engineering (24 March 2016), Heritage Statement by Rivington Street Studio (April 2016), Archaeological Impact Assessment by Wessex Archaeology (March 2016), Archaeological Evaluation Report by Wessex Archaeology (July 2016), Flood Risk Assessment and Drainage Report (including surface water strategy) by JBA Consulting, (March 2016), Statement of Community Involvement; Included within Planning Statement, Paterson Planning (April 2016), Construction Logistics Plan by Keir; REV 0, (May 2018), BREEAM Pre-assessment Report by Ingleton Wood (March 2016), Sustainable Travel Statement by David Tucker Associates (25 October 2016), Planning Application – Update by Rivington Street Studio (September 2016) Harrow School Civil & Structural Engineering Documentation (March 2016), Geotechnical & Geoenvironmental Investigation Report (March 2016); Ecological Assessment (July 2018); ASW/HS/032/22/2018 (June 2018); ASW/HS/028/22/2018 (June 2018); ASW/HS/035/22/2018 (June 2018); ASW/HS/030/22/2018 (June 2018); ASW/HS/031/22/2018 (June 2018); ASW/HS/037/22/2018 (July 2018); ASW/HC/026/22/2018 (May 2018).

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

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

SECTION 2: ENFORCEMENT APPEALS

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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

Ministry of Housing, Communities & Local Government

31 October 2019

Mr Richard Holland
Rivington Street Studio Address 28
Navigation Road
LONDON E3 3TG

Our Ref: APP/M5450/W/3208434

Dear Sir/Madam

LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPEAL BY THE KEEPERS AND GOVERNORS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON (HARROW SCHOOL)
AT: HARROW SCHOOL, 5 HIGH STREET, HARROW, HA1 3HP
APPLICATION REF: P/1940/16

APPLICATION FOR AN AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying you of his decision on the above named appeal.

2. This letter deals with The Keepers and Governors of the Free Grammar School of John Lyon (herein Harrow School) application for a full award of costs against the Mayor of London. The application as submitted and the response of the Council are recorded in the Inspector's Costs Report (CR), a copy of which is enclosed.

3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.

4. The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR32-35. The Inspector recommended that a full award of costs is justified on the basis of that unreasonable behaviour resulting in

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unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

5. Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendations. Accordingly, he has decided that a full award of costs, as specified by the Inspector at paragraph CR36 is warranted on grounds of unreasonable behaviour on the part of the Mayor of London.

6. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that the Mayor of London shall pay to The Keepers and Governors of the Free Grammar School of John Lyon (herein Harrow School) its costs of the inquiry proceedings limited solely to the unnecessary or wasted expense incurred in the appeal process, such costs to be taxed in default of agreement as to the amount thereof.

7. You are invited to submit to the Mayor of London details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at http://tinyurl.com/ja46o7n

Right to challenge the decision

8. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.
9. A copy of this letter has been sent to the Mayor of London and the London Borough of Harrow.

Yours faithfully,

Jean Nowak
Authorised by the Secretary of State to sign in that behalf

The Planning Inspectorate

Costs Report to the Secretary of State for Housing, Communities and Local Government

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Date: 22 July 2019

Town and Country Planning Act 1990 and the Local Government Act 1972

Appeal by The Keepers and Governors of the Free Grammar School of John Lyon (Harrow School)

Mayor of London (Direction)

Inquiry Held on 30 April to 16 May 2019

The Inquiry sat for 10 days

Harrow School, 5 High Street, Harrow, HA1 3HP

File Ref: APP/M5450/W/3208434

File Ref: APP/M5450/W/3208434
Harrow School, 5 High Street, Harrow, HA1 3HP

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by The Keepers and Governors of the Free Grammar School of John Lyon (herein Harrow School) for a full award of costs against the Mayor of London.
- The inquiry was in connection with an appeal against the refusal of planning permission for *demolition of existing buildings: existing sports building, peel house, museum cottage, gardeners compound, boyer webb pavilion, pavilion next to the athletics track; construction of new sports building over 3 levels (7269 sqm); new science building over 3 levels (3675 sqm); new landscaping core from existing chapel terrace to the athletics track at the base of hill; new visitors car parking on football lane adjacent to maths and physics school buildings; rerouting and regrading of private access road; alterations to landscaping and servicing for dining hall; relocation of multi use games area for moretons boarding house to south west of dining hall* (Updated Metropolitan Open Land Approach Statement and Revised Community Uses Agreement submitted).

Summary of Recommendation:

The application for a full award of costs be allowed.

Background

1. The Applicant (Harrow School) did not indicate that it intended making any application for costs prior to the Inquiry. When asked to direct the Inquiry to where this had occurred within previously submitted documentation, the Applicant was unable to do so. Instead, an application for costs was submitted on Sunday 12 May 2019, after the Inquiry had already sat for two weeks. The application was rebutted by the Mayor of London on 15 May 2019.

2. Both parties refer to the promptness of the application and the stage it was made in the appeals process. Typically, one would expect an application for costs to be made both promptly and at or around the time the activities the application concerns arose. That has not necessarily occurred in this instance. Notwithstanding this, both parties had an opportunity to make and respond to any applications. As such, the promptness or otherwise of any application does not alter my recommendation.

3. Both the application and the rebuttal form the basis of this Report's recommendation. For the avoidance of doubt, the application for full costs was made against the Mayor of London only, as they had directed that permission be refused by the local planning authority.

The Submissions for Harrow School

4. Put simply, Harrow School considers that the Mayor of London's decision and 'Direction' was an error in law and carries no weight and accordingly the appeal was totally unnecessary. This is explored within four main grounds, summarised as:

   (i) The Mayor's Stage II decision and reason for refusal was unreasonable in light of the Mayor's Stage 1 Report;

   (ii) The Mayor's decision failed to follow established caselaw, gave unreasonable reasons for reducing weight to the extension of MOL and

failed to take into account and give due weight to the accordance of the scheme with the adopted Harrow SPD 2015;

(iii) The Mayor did not substantiate its reason for refusal and has pursued a different case at appeal;

(iv) The proposal ought clearly to have been permitted given the material considerations which include undisputed educational and boarding school need, undisputed community need, the community use agreement, the MOL extension, and the SPD and various policies encouraging the development of school and sports facilities.

The Response by the Mayor of London

5. Put simply, the Mayor of London contests the four main grounds above on the following summarised basis:

(i) The Applicant has misunderstood the two-stage process provided for under the *Town and Country Planning (Mayor of London) Order 2008,* the first part being a statement and the second part being an actual 'decision';

(ii) The Mayor contends they did follow established caselaw, that it was permissible to explore alternate potential locations for the proposal, and that the Applicant has mis-represented some of the oral evidence given at the Inquiry;

(iii) It was clear that the reason for refusal related to footprint and location; and that 'footprint' means more than footprint. The Mayor has made clear that they have not advanced impact on the significance of heritage assets as a freestanding reason for refusal as this lies under the context of 'other harm'. Landscape and visual impacts are elements relevant to openness. Lastly, matters of weight are rightly matters of exercise planning judgement which lie with the relevant decision-maker.

(iv) The Mayor exercised his powers to consider the proposal in light of the various considerations and came to the conclusion that the harm arising was not outweighed by very special circumstances. As such, he was permitted to direct the refusal of permission as it did not comply with planning policy and material considerations did not outweigh these.

Reasons and Conclusion

6. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. I consider the above four grounds in turn, before coming to an overall conclusion on this matter:

Ground (i)

7. The first ground revolves around the consistency of the Mayor's position through various pre-application and prior-to-determination stages. It is clear that it is not until the final stage that a decision is made; that is Stage 2. Moreover, it is clear

that the informal and formal advice of the Mayor's professional advisers does not bind the Mayor themselves to a specific decision.

8. However, it is incumbent upon all parties to work proactively and positively in order to ensure an effective planning system. When taken as a whole, it appears as though it was only at the Stage 2 (Direction) phase that a number of fundamental concerns were raised with the Applicant which led to its refusal. Had these matters been highlighted earlier, then the Applicant could have sought to address these.

9. For example, whilst alternative locations had already been considered at a significantly earlier stage of the process, the Mayor chose to bring further alternative concept schemes on other locations within the school grounds to the Inquiry. This is very late in proceedings and it is plainly unreasonable for any party to have worked for three to four years evaluating the preferred location to now have new alternatives put forward at such a late stage in the process.

10. In this respect, I find that the Mayor did act unreasonably by significantly altering its position between the early pre-application stage and Stage 1 - of being broadly supportive of the scheme - to then an almost *volte face* at Stage 2 when the scheme was not acceptable at all. This inconsistency meant that permission was refused. As indicated above, it is acceptable for a decision-maker to come to a different conclusion to those of its professional advisers. But in doing so this revised position must be based upon substantiated grounds (more on this below) and should not come as a surprise at such a late stage in the planning process.

11. This unreasonable behaviour caused wasted expense on the part of the Applicant having to engage in the appeals process when there is a strong likelihood the concerns of the Mayor at Stage 2 could have been addressed or more areas of common ground having been found. Such an outcome may have resulted in a shorter Inquiry period; or even that no inquiry or appeal was required at all.

Ground (ii)

12. The Mayor was entitled to suggest alternative locations for the proposed buildings. However, it was unreasonable to introduce them so late in the process as concepts. Furthermore, these appeared to pay little attention to site constraints. For example, Option 3 would place the sports facilities on the location of the existing swimming pool and sports hall building. Moreover, it would have been larger – both by footprint and height – and have covered more of the MOL than the existing sports building does.

13. This then leads to a number of hypothetical situations or assessments of whether a development in such a location would have resulted in the same harm to MOL in respect of it being inappropriate development and impact on MOL purposes and openness. These are questions which by their nature remain hypothetical until a decision is made. The issue here is that because the concepts were submitted late in the appeal stage, they required the Appellant to address them at the Inquiry. This resulted in unnecessary and wasted costs where such matters could, and typically should, be considered at the pre-application stages. What makes this curious in this case is that such an undertaking was done at the pre-application and planning application stages; yet the Mayor decided to wait until the appeal stage to engage unilaterally in such a process. This is unreasonable.

14. Whilst a party to a planning appeal has the ability to suggest alternate locations at the Inquiry stage, these must be realistic. It would also be reasonable to take into account whether such a process had already been undertaken. In the particular circumstances of this case, I consider that it was unreasonable that the alternative locations were not explored at either the pre-application stage or indeed at the SPD-adoption stage; especially as the Mayor of London was specifically involved in those stages.

15. With regard to the degree of weight afforded to the Harrow School SPD, it is clear that this is a matter of planning judgement for the decision-maker to exercise. That said, it is entirely reasonable that once such a document has been adopted following a rigorous and open process – and there is no suggestion by any party that this is not the case here – that it can be relied upon to both inform the development of schemes and the making of planning decisions.

16. The Mayor, as a planning decision-making body within London, and other statutory bodies were consulted on the SPD. The point relevant to the Costs application is that the location of the proposed sports building is exactly on the same location as it is suggested it be on in the adopted SPD. What is more the axial route proposed is in the location shown within the SPD.

17. Clearly, where a site or location specific SPD is adopted there is a legitimate expectation that it will be the starting point for devising a scheme to implement what the SPD seeks to provide. The Mayor failed to provide anything more than three concept locations for the facilities proposed, with little appreciation of the multitude of other considerations – such as, but not limited to, sewer locations, heritage including settings, connectivity and flow through the site, ground levels, construction needs, design and appearance. In the absence of consideration and assessment of these types of practical or technical details, the hypotheticality of these concepts, which do not adhere to the broad suggested locations within the SPD, cannot be reasonably taken into account as realistic and viable alternatives.

Ground (iii)

18. I have not been directed to anywhere within the Mayor's evidence that demonstrates that the Mayor exercised his statutory duty as a decision-maker under Section 66(1) of the *Planning Listed Buildings and Conservation Area Act 1990.* This is a well-established statutory duty that sets out that decision-makers shall '*…have special regard to the desirability of preserving the building or its setting…..'.* It has been the subject of some caselaw of note over recent years – for example the case of Barnwell Manor. There is thus a legitimate expectation that an experienced planning decision-maker will not only be aware of that statutory duty, but that it will be expressed explicitly within their reasoning. The clear absence of reference to this statutory duty and absence of evidence that it has been carried out within the decision (Direction) stage is unreasonable in this instance.

19. Furthermore, the Mayor's defence that heritage was not a standalone reason but instead is 'any other harm' under paragraph 144 of the Framework is not accepted. Having clearly set out the considerations under the duty imposed by Parliament on the decision-maker, and then having found harm it would of course be quite defensible to argue that this is 'any other harm'. However, this did not occur. Indeed, the only objective analysis on this matter is within the Stage 2 Report of the Mayor which states; '*When considered in conjunction with the*

proposed public benefits of the community use arrangements ~~(discussed in paragraph 59 below),~~ GLA officers are satisfied that this less than substantial harm to heritage assets does not warrant a reason for refusal'[1].

20. All that refences does is hint to the 'less than substantial harm versus public benefits' balance required in Paragraph 196 of the Framework. It does not indicate that considerable importance and weight has been given to the need to pay regard to the desirability of preserving the setting of listed buildings as a heritage asset. Indeed, it does not adequately demonstrate any careful consideration of the impact on heritage assets has been taken or how any impacts could be mitigated.

21. Had the statutory duty been exercised in the way set out in the legislation, and the less than substantial harm versus public benefits balance been carried out in a way that reflects the balance as set out in the text of the Framework, then there would have been other options available to the decision-maker.

22. Firstly; less than substantial harm is identified, but not outweighed by public benefits; equates to harm to heritage assets, a reason for refusal and any other harm consideration. Secondly, less than substantial harm is identified, but outweighed by public benefits; equates to harm being neutralised, ergo not reason for refusal; with heritage harm no longer present there is no longer 'any other harm'[2].

23. The Mayor failed to carry out the statutory duty, then to apply national policy in the manner set out, and then was unclear as to what residual harm there was, if identified. In doing so, and on account of the lack of clarity and reasoning on this subject, I find that the Mayor acted entirely unreasonably. As such, the Applicant incurred unnecessary and wasted expense by having to address heritage matters at the Inquiry.

24. With regard to landscape and visual matters it is clear that 'openness' in Green Belt terms has a visual dimension to it. Linked to this is the matter of footprint. I agree it is reasonable to consider the visual impact in openness terms. Landscape is a more technical focused discipline and whilst there is overlap with visual or character and appearance matters it is distinct. Nevertheless, the Mayor did not present or force a landscape issue at the Inquiry, and I do not see any unreasonable behaviour in this respect.

25. However, the reason for refusal was not as comprehensive as it should have been with regard to footprint if the Mayor was to later rely upon it. At the Inquiry, much was made that footprint must mean more than just a footprint on the ground in terms of openness and MOL matters. But were this the case, it is incumbent upon the decision-maker to be clear as to what elements of the proposal are unacceptable.

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[1] G006, GLA Stage 2 Letter and Report Page 10, Paragraph 53. Page 13/39 of the electronic pdf). To avoid confusion, I have struck a line through the reference to Paragraph 59 of that document.

[2] See the Framework Paragraph 196: no main party suggested anything greater than less the substantial harm, so I have focussed upon the policy requirements of that degree of potential heritage harm.

26. If there were concerns over the height, bulk, scale, mass as well as the footprint of the building, the reason for refusal should have stated these. I acknowledge that reasons for refusal should seek to be concise, but at the same time if the scale of the building is so worrying that it is something that needs to change, then one would justifiably expect it to be stated within the reason for refusal.

27. To then advance an argument that footprint is more than a 2-dimensional consideration is not sustainable when it is entirely open to the decision-maker to be concise and precise in why the proposal is unacceptable. It is unreasonable to set out that *'the proposal is unacceptable by reason of…'* give those reasons, then a few months later try and add further words because you didn't quite use the full suite at the right time. This is plainly unreasonable, and the Applicant was right to highlight this point. When they receive a decision notice there is a legitimate expectation that they can understand what is wrong with a scheme and how they might address this.

28. Lastly, on this ground, I agree matters of weight are entirely for the planning decision-maker to consider and make. In exercising professional planning judgement, a decision-maker will need to weigh competing factors in order to come to a balanced and reasoned decision. However, the difficulty here, as considered above, is that before ascribing weight one has to properly know what should be in the 'planning mix'. Part of this is achieved through the application or exercise of statutory duties so that any elements with pre-set weights – such as Green Belt 'substantial' weight or the great weight ascribed to a (heritage) assets conservation – are given their appropriate weight. This is the skilled element of planning decision-making and exercising planning judgement.

29. In respect of heritage matters, I am unconvinced that the Mayor did this first step correctly. In failing to do so, I cannot be sure that weight attributed to this specific matter was in a manner envisaged by the statutory duty. Accordingly, I cannot be certain that the elements contributing to the exercising of Section 38(6) of the *Planning and Compulsory Purchase Act* 2004 were all there at that stage. To be clear, that is not to say that the Mayor did not exercise his requirements in a legal sense and in no way do I seek to advance this point in a legal manner. That is properly a matter for the Courts. However, the importance here is this, if the Mayor did not carry out the appropriate statutory duty, how can the Applicant be certain or clear in terms of what matters they actually needed to address?

30. If heritage matters were important then the Mayor should have highlighted these in the reasons for refusal. If scale or mass or bulk were important then these should have been referred to in the reasons for refusal. In failing to do so, I find that the Mayor did act unreasonably and that this caused unnecessary and wasted expense.

Ground (iv)

31. The last ground weaves into concerns expressed by the Applicant on the first three grounds. The Applicant is incorrect to assert that permission should have been forthcoming. The Mayor's case was presented in a professional manner that sought to articulate its concerns. Even though I consider that there are serious flaws in elements of the reason for refusal, which have led to greater emphasis on matters that were straightforward – for example footprint versus scale/bulk/mass – this does not detract from the point that the Mayor refused

permission and then explained why he felt it was unacceptable. This is a reasonable position for the Mayor to have held. I do not find that the Mayor was unreasonable on this ground.

Conclusion

32. The application was for full costs. I have found some areas where I consider that the behaviour of the Mayor was unreasonable and that in some cases this has resulted in unnecessary or wasted expense on the part of the Applicant. This does not necessarily extend across all four grounds put forward.

33. Nevertheless, their occurrence is of a frequency and spread across the appeal that when taken as a whole I find that there is a strong likelihood that either the appeal may not have needed to have taken place and/or matters would have narrowed further so that any remaining issues could have been dealt with otherwise than by means of an Inquiry.

34. In particular, I am extremely concerned by the lack of detailed analysis and/or reference to heritage matters within the reason for refusal; especially given the statutory requirements. Had this been carried out in an appropriate manner this may well have altered the cases presented, and/or altered the various planning balances involved resulting in a different outcome.

35. Overall, I conclude that the Mayor did act unreasonably which caused unnecessary and wasted expense, and that this was to an extent that the full costs of the appeal process should be awarded to the Applicant.

Recommendation

36. I consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and I therefore conclude that a full award of costs is justified in this instance. An example of text issuing a Cost Order is provided in Annex A of this Report.

37. However, the Secretary of State may find that the unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. In which case a full award of costs would not be justified. The Secretary of State may alternatively find that a partial awards of costs may have been demonstrated.

Cullum J A Parker

INSPECTOR

DOCUMENTS SUBMITTED RELATING TO APPLICATION FOR COSTS

Title	Dated
Costs Application on behalf of Harrow School	12 May 2019
(Draft) Skeleton costs on behalf of Harrow School	Undated
Derbyshire Dales DC V SoS CLG [2009] EWHC 1729 (Admin)	17 July 2009
Regina (Mount Cook Land Ltd and another) v Westminster City Council [2003] EWCA Civ 1346	May and October 2003
Trusthouse Forte Hotels Ltd v SoS for Environment	June 1986
Westerleigh Group Limited v SoS CLG, Blaby District Council, Memoria Limited [2014] EWHC 4313 (Admin) 2014 WL 6862827	18 December 2014
Mayor of London's Written Response to Harrow School's Application for Costs	15 May 2019

Annex A – Example Costs Order

1. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Mayor of London shall pay to The Keepers and Governors of the Free Grammar School of John Lyon (Harrow School), the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

2. The applicant is now invited to submit to the Mayor of London, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Neutral Citation Number: **[2020] EWHC 1176 (Admin)**

Case No: CO/4849/2019 & CO/4851/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/05/2020

Before :

THE HON. MR JUSTICE HOLGATE

- -

Between :

THE MAYOR OF LONDON	**Claimant**
- and -	
(1) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**First Defendant**
(2) THE KEEPERS AND GOVERNORS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON (HARROW SCHOOL)	**Second Defendant**
(3) THE LONDON BOROUGH OF HARROW	**Third Defendant**

- -
- -

Mr Douglas Edwards QC and Ms Sarah Sackman (instructed by **Transport for London**) for the **Claimant**
Mr Richard Turney (instructed by **Government Legal Department**) for the **First Defendant**
Mr John Steel QC and Ms Victoria Hutton (instructed by **Sharpe Pritchard**) for the **Second Defendant**
The Third Defendant did not appear and was not represented

Hearing dates: 22nd – 23rd April 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 14:00 on the 12th May 2020

Mr Justice Holgate :

Introduction

1. The Mayor of London ("the Mayor") challenges by statutory review under s.288 of the Town and Country Planning Act 1990 ("TCPA 1990") two decisions of the First Defendant, the Secretary of State for Housing, Communities and Local Government ("the Secretary of State") issued on 31 October 2019: (a) allowing the appeal of the Second Defendant ("the School") against a refusal of planning permission by the local planning authority, the London Borough of Harrow ("LBH") on the direction of the Mayor and (b) ordering the Mayor to pay to the School its costs of the inquiry proceedings (pursuant to s.250(5) of the Local Government Act 1972 and ss.78 and 320 pf TCPA 1990). The proposal related to substantial development at Harrow School.

2. The School is located on the slopes and on the crest of the settlement of Harrow-on-the-Hill. The School's estate occupies a substantial part of Harrow Hill, about 122 ha. The School's buildings are set within relatively open areas and landscaped grounds. They comprise buildings from different eras, but in the main the architecture is Victorian and Twentieth Century. The concentration of buildings becomes more dense towards the crest of the hill. A number of listed and non-listed school and other buildings occupy the hill to the north and west of the appeal site.

3. The appeal site, 4.7 ha in area, lies on the eastern side of the hill on its lower slopes. It contains the existing sports building (footprint 1,515 sqm and floorspace 3,095 sqm), a science building, office accommodation, a sports pavilion and grassed areas. The levels drop across the site from west to east, representing a step incline of 1 in 7, and a vertical difference of about 36m.

4. To the east of the appeal site there are outdoor sports facilities. To the south lies Harrow Park, which contains the School's golf course. These areas form part of a Registered Historic Park and Garden and the Harrow Park Conservation Area. To the west, north and north-west of the appeal site lies the Harrow School Conservation Area.

5. In summary, the proposed development comprises the demolition of a number of buildings within the appeal site, including the existing sports building, and the construction of a new sports building (footprint 4,923 sqm and floor area 7,269 sqm on 3 levels) and a new science building (floor area 3,675 sqm on 3 levels), a new landscaping core, new visitor car parking and various alterations to and relocations of facilities.

6. The eastern part of the appeal site and the surrounding open land to the east and south is designated Metropolitan Open Land ("MOL"), to which Green Belt development control policies are applicable. The new sports building is proposed to be cut into the slope of the Hill. It would lie within the MOL. The science building proposed to be located just to the west would lie outside that designation.

7. The only part of the proposal to which the Mayor objected was the sports building.

8. In his report to the Secretary of State the Inspector identified a number of heritage assets affected by the proposal. They comprised listed buildings: St Mary's Church, the Vaughan Library, the Chapel, New Schools, the Butler Building, and the Music

Building; the Harrow School Conservation Area; and the Harrow Park Registered Park and Garden and Conservation Area (IR 69). The only element of the proposal which was said to be harmful to the setting or to the character and appearance of these assets was the proposed sports building.

9. The Inspector identified what he considered to be the main issues in the appeal. It is important to note that he had previously set these out for the parties in his "pre-inquiry note" and repeated them orally at the beginning of the inquiry. He recorded that the main parties agreed that these were "the salient main matters in dispute". The Mayor confirmed that he does not challenge IR 3 which defined the main issues as follows: -

> "(i) Whether the proposed development is inappropriate development in Metropolitan Open Land (MOL) for the purposes of the adopted Development Plan, London Plan, the National Planning Policy Framework, and any other relevant document, and;
>
> (ii) The effect of the proposal on the openness of the MOL, and;
>
> (iii) Whether the proposed development would preserve the setting of nearby designated heritage assets, and preserve or enhance the character or appearance of the Harrow School Conservation Area, and if not whether any public benefits would outweigh any harm, and;
>
> (iv) If the proposal is inappropriate development, whether the harm by reason of inappropriateness, *and any other harm*, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify it" (emphasis added).

It is significant that in issue (iv) the Inspector correctly described the planning balance which had to be struck when applying MOL policy.

10. However, a good deal of the Mayor's challenge to the decision on the planning appeal related to a part of his case at the inquiry which had raised a subject falling outside those main issues, namely whether the proposal would cause harm to heritage assets and thereby harm to one of the purposes of the MOL.

11. This judgment is structured in the following way (with paragraph numbers): -

Planning Policies	12 – 23
The statutory framework	24 – 28
A summary of the process leading to the inquiry	29 – 51
The decision on the planning appeal	52 – 68
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The challenge to the decision on the planning appeal	70

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Ground 3	104 – 134
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The decision on the application for costs	136 – 145
The challenge to the costs decision	146
Ground 3	147 – 150
Ground 1	151 – 155
Ground 2	156 -157
Paragraphs 31 and 33 of the Inspector's report on costs	158 -160
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Planning policies

12. The statutory development plan for the purposes of s.70(2) of TCPA 1990 and s.38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") comprises the London Plan 2016 ("LP"), the Harrow Core Strategy 2012 ("CS") and the Harrow Development Management Policies DPD 2013 ("DMDPD").

The London Plan 2016

13. By s.38(1) and (2) of PCPA 2004 the development plan for a London Borough includes the "spatial development strategy", produced and published under s.334 of the Greater London Authority Act 1999. The LP is that strategy. The statutory scheme requires the plan to include the Mayor's "policies" for the development and use of land in Greater London and a "reasoned justification" for the strategy. That reasoned justification is relevant to the interpretation of the policy, but is not itself policy. It does not therefore have the force of policy, nor can it "trump policy". Accordingly, as Mr. Edwards QC pointed out for the Mayor, a development proposal cannot be said to fail to accord with the development plan simply because it breached a criterion contained solely in the reasoned justification (R (Cherkley Campaign Limited) v Mole Valley District Council [2014] EWCA Civ 567 at [16]).

14. Policy 7.17 of the LP states: -

"**Strategic**

A. The Mayor strongly supports the current extent of Metropolitan Open Land (MOL), its extension in appropriate circumstances and its protection from development having an adverse impact on the openness of MOL.

Planning decisions

B. The strongest protection should be given to London's Metropolitan Open Land and inappropriate development refused, except in very special circumstances, giving the same level of protection as in the Green Belt. Essential ancillary facilities for appropriate uses will only be acceptable where they maintain the openness of MOL.

LDF preparation

C. Any alterations to the boundary of MOL should be undertaken by Boroughs through the LDF process, in consultation with the Mayor and adjoining authorities.

D. To designate land as MOL boroughs need to establish that the land meets at least one of the following criteria:

   a. it contributes to the physical structure of London by being clearly distinguishable from the built up area

   b. it includes open air facilities, especially for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London

   c. it contains features or landscapes (historic, recreational, biodiversity) of either national or metropolitan value

   d. it forms part of a Green Chain or a link in the network of green infrastructure and meets one of the above criteria."

15. Thus, the strategic policy in 7.17A protects the MOL against development having an adverse impact on its *openness*. Policy 7.17B gives the same level of protection to the MOL as land in the Green Belt, by requiring that "inappropriate development" in the MOL should be refused except in "very special circumstances" ("VSC"). "Inappropriate development" and VSC are both terms of art used in Green Belt policy. They are not defined in the LP. Not surprisingly therefore, paragraph 7.56 of the reasoned justification states that "the policy guidance of paragraphs 79-92 of the NPPF applies *equally* to MOL" (emphasis added). That reference to the 2012 version of the National Planning Policy Framework ("NPPF") now translates to paragraphs 133 to 147 of the 2019 edition (see paragraphs 20 to 22 below).

16. The policy in the London Plan therefore depends upon the NPPF for the definition of inappropriate development (paragraphs 145 to 147 of the 2019 edition) and for development control policy (paragraphs 143 to 144).

17. When designating an area as MOL, policy 7.17D requires that that land should meet at least one of the 4 criteria there set out. These are referred to as "MOL purposes". The policy recognises that land included in the MOL may not serve all of those potential purposes. But the Mayor contends that MOL purposes do not go beyond those 4 criteria. However, paragraph 7.56 makes it plain that Green Belt purposes, as set out in

paragraphs 133-4 of the NPPF are also relevant, although plainly, an area of MOL may not serve all or any of those additional purposes. Whether it does so will depend on the circumstances of each case. Once the relevant MOL/Green Belt purposes served by a particular area of MOL have been identified, harm that a proposal would cause to one of more of those purposes is a material consideration in the application of development control policy for MOL, along with harm by reason of development being inappropriate and any harm to openness, just as it is for Green Belt (Doncaster Metropolitan Borough Council Secretary of State for Environment, Transport and the Regions [2002] JPL 1509 at [67]). I cannot accept the Mayor's suggestion that the purposes of MOL designation are restricted to those set out in policy 7.17D, which would be inconsistent with the local development plan. In any event, Mr. Edwards QC confirmed that the legality of the decision on the planning appeal is not affected by this point.

The Harrow Core Strategy 2012

18. The "overarching policy objectives" of the CS include safeguarding and enhancing MOL (Core Policy 1). Policy CS1F provides that the quantity and quality of MOL should not be eroded by inappropriate uses or insensitive developments.

The Harrow Development Management Policies DPD 2013

19. Policy DM16 is entitled "Maintaining the Openness of the Green Belt and Metropolitan Open Land". Policy DM16D states: -

> "A. The redevelopment or infilling of previously developed sites in the Green Belt and Metropolitan Open Land will be supported where the proposal would not have a greater impact on the openness of the Green Belt and Metropolitan Open Land, and the purposes of including land within it, than the existing development, having regard to:
>
> a. the height of existing buildings on the site;
>
> b. the proportion of the site that is already developed;
>
> c. the footprint, distribution and character of existing buildings on the site; and
>
> d. the relationship of the proposal with any development on the site that is to be retained."

Paragraph 5.7 (which precedes policy DM16) states: -

> "When applying the following policies, the purposes of including land within the relevant designation refers to the purposes set out at paragraph 80 of the National Planning Policy Framework (2012) in respect of the Green Belt, and the criteria set out at Policy 7.17 (D) in respect of Metropolitan Open Land."

The reference to paragraph 80 of the NPPF 2012 should now be treated as referring to paragraph 134 of NPPF 2019. Thus, the DMDPD confirms that, at least within Harrow Borough, "the purposes" of the MOL is to be understood in the same way as I have explained in relation to the LP.

NPPF

20. Paragraphs 133 to 134 address the purposes of Green Belt policy: -

> "133. The government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently

> open; the essential characteristics of Green Belts are their openness and their permanence.
>
> 134. Green Belt serves 5 purposes:
>
> (a) to check the unrestricted sprawl of large built-up areas;
>
> (b) to prevent neighbouring towns merging into one another;
>
> (c) to assist in safeguarding the countryside from encroachment;
>
> (d) to preserve the setting and special character of historic towns; and
>
> (e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land."

21. "Inappropriate development" is defined in paragraphs 145 to 147 of the NPPF. There was no dispute that the School's proposal constituted "inappropriate development".

22. Paragraphs 143 to 144 of the NPPF state: -

> "143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

23. Paragraphs 184 to 202 of the NPPF set out policies for conserving and enhancing the historic environment in the context of the duties in sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990 ("the Listed Building Act 1990"). Paragraph 193 requires great weight to be given to the conservation of a historic asset when considering the impact of a proposed development on the significance of that asset, whether that harm amounts to total loss of, or substantial harm or less than substantial harm to its significance. Such harm requires "clear and convincing justification" (paragraph 194). Paragraph 196 applies where such harm would be "less than substantial":-

> "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."

The Statutory Framework

24. The Town and Country Planning (Mayor of London) Order (SI 2008 No. 580) applied to the School's proposal as "an application of potential strategic importance" (a "PSI Application"). LBH was required to send the application to the Mayor as soon as reasonably practicable after its receipt (Article 4 (1)). The Mayor was required within 6 weeks to provide LBH with a statement setting out whether he considered the

application to comply with the spatial development strategy (i.e. the LP) and his reasons for taking that view (Article 4(2)). That statement is referred to as a "stage 1 report".

25. Under Article 5(1) where a local planning authority is ready to issue its decision on the application, it must send to the Mayor a copy of any representations it has received, a copy of the officer's report on the application and the decision it proposes to take, so that the Mayor can decide whether to intervene under Articles 6 or 7 of the 2008 Order (unless he has previously notified the LPA in writing under Article 5(2) that he does not wish to be consulted under Article 5). This is referred to as "stage 2".

26. Under Article 6 (1) the Mayor may give a direction to the LPA to refuse the application if he considers that to grant permission would be either contrary to the spatial development strategy or prejudicial to its implementation, or otherwise contrary to good strategic planning in Greater London. Article 6 (4) requires that any such direction must also set out the Mayor's reasons for that direction. Under Article 6 (7) the LPA must then refuse the application and include within its decision notice a copy of the direction given by the Mayor. Instead of directing a refusal of the application under Article 7, the Mayor may give to the LPA a direction under section 2A of the TCPA 1990 that he will determine the application in place of the LPA, provided that the requirements set out in Article 7(1) are met.

27. In practice the reasons for the direction are expressed by the Mayor as if they were formal reasons for the refusal of planning permission. Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015 No 595) requires an LPA giving a decision notice on an application for planning permission to "state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision". It is common ground that in order that the LPA may discharge that requirement, in practice the reason for refusal directed by the Mayor should comply with it. In addition, the direction containing the formal reason for refusal is normally accompanied by an officer's report, referred to as a stage 2 report. That document explains in greater detail the justification for the stance taken by the Mayor and may be referred to in order to elucidate the purpose, scope and meaning of the reason for refusal.

28. A refusal directed by the Mayor gives rise to a right of appeal. The LPA may participate in that appeal, but in practice the main responsibility for justifying the reasons for refusal is borne by the Mayor. The principal parties in an appeal are therefore the appellant developer and the Mayor.

A summary of the process leading to the inquiry

The Harrow School Supplementary Planning Document July 2015

29. In 2015 LBH in partnership with the School developed a Supplementary Planning Document ("SPD"), following consultation with the Mayor and Historic England. LBH adopted the SPD in July 2015. The Inspector found that the School's application had been carefully planned and based upon the SPD (IR 59). He also found that the proposed location within the MOL for the sports building was broadly in keeping with the adopted SPD (IR 62).

Stage 1

30. The School submitted its application for planning permission to LBH on 20 April 2016. The application included a proposal to swap MOL land by subjecting part of the School's estate to MOL polices, resulting in a net gain of MOL land. LBH notified the Mayor of the application on 16 May 2016.

31. On 27 June 2016 the Mayor issued his stage 1 decision. Under the heading "Strategic Issues Summary" the Mayor stated on "land use principle" that "whilst the School redevelopment on MOL is 'inappropriate development', the proposed MOL swap, resulting in a net gain of MOL combined with the pressing academic needs and enhanced community use, are accepted as very special circumstances justifying the proposal…".

32. The document also advised LBH that while the application was generally acceptable in strategic planning terms, it did not fully comply with the LP for the reasons set out in paragraph 86. However, the remedies set out in that paragraph could lead to the application becoming fully compliant with the Plan. LBH was required to refer the application back to the Mayor in the event of deciding that planning permission should be granted.

33. Paragraph 86 of the report advised the School that it should continue to engage with the local community in the production of a plan to demonstrate the extent of the proposed community use of the facilities in a form that could be used by LBH to secure delivery; officers were satisfied that the proposals utilised the natural slope, would appear as an integral feature of the wider school campus and would have "limited impact on its open character as a result", but key details on matters such as window reveals, material samples and the treatment of roofs remained to be addressed; the savings in carbon dioxide emissions were welcomed but certain detailed concerns remained to be addressed. Other matters were said to be capable of being dealt by the imposition of conditions on the grant of any planning permission.

34. Paragraph 59 of the report stated that the proposals for both the science building and the sports building would not have a cumulative visual impact greater than a 2-storey building, given the use of the site's 36 m natural slope and that they would be "built deep into the hill and staggered down the hill". Accordingly, "the impact on the openness of the MOL is very limited". Officers of the Greater London Authority ("the GLA") stated that they were supportive of the proposals and welcomed "the sensitive design approach undertaken which successfully balances site constraints with the need to address relevant" educational standards (paragraph 60).

35. The report contained nothing to suggest that the proposal conflicted with any of the purposes of this part of the MOL, or would cause harm to heritage assets, or would have an adverse effect on the setting of the historic settlement on Harrow Hill.

36. There then followed formal consultations by LBH on the application, which included Historic England (see paragraph 100 below). The School made amendments to its planning application, but Mr. Edwards QC confirmed that these did not involve increasing the scale or bulk of the proposed sports building.

Decision by London Borough of Harrow

37. On 16 November 2016 LBH considered the application at a meeting of their planning committee. It decided to defer the matter to allow (inter alia) the School to consider re-siting the proposed sports building outside the MOL, alternatively to locate the new building on the site of the existing sports hall; to improve the detailed design of the proposal and to develop the terms of the proposed community use agreement in more detail. The application came back before LBH's planning committee on 21 June 2017 and 6 September 2017, as a result of which the committee resolved to approve the application subject to the conclusion of a section 106 legal agreement and, of course, referral to the Mayor.

38. Officers from the GLA then held four workshops with the School's consultants in September and October 2017. This is said to have involved a more detailed exploration with the School's consultants of the feasibility of alternative locations for the sports building. Ultimately the officers concluded that the proposed building could be located on the site of the existing sports hall, which they considered to be preferable to the School's proposal.

Stage 2 decision

39. On 16 January 2018 LBH referred the matter to the Mayor under Article 5 of the 2008 Order. On 29 January 2018 the Mayor issued his direction to LBH that they should refuse planning permission for the proposal, accompanied by his stage 2 report. The single reason given for the direction was as follows: -

> "**i. Inappropriate development on Metropolitan Open Land**
>
> The proposed sports building is inappropriate development within Metropolitan Open Land and causes substantial harm to the openness of the Metropolitan Open Land - by reason of its excessive footprint and its location. The harm to Metropolitan Open Land by reason of the proposed inappropriate development, and the harm to openness, to which substantial weight is attached, is not clearly outweighed by other considerations. Very special circumstances do not exist. The proposed sports building is contrary to London Plan Policy 7.17, Policy G3 of the draft London Plan, Core Policy 1 of the Harrow Core Strategy, Policy DM16 of the Harrow Development Management Policies DPD and the National Planning Policy Framework."

This has been referred to, particularly by the School, as the Mayor's *volte face*.

40. The report's summary of "strategic issues" stated that because the proposed sports building is "inappropriate development within the MOL" it was harmful "by definition". Moreover, the building would cause harm to "the openness of the MOL" by virtue of "its excessive footprint and location". Neither the reason for refusal nor this explanation referred to any objection to the bulk or massing of the sports building. In terms of specific harm to the MOL it is apparent that the report focused on "harm to the openness of the MOL". The report did not suggest that there would be any harm caused to other purposes of the MOL. In particular, it was not suggested that any effect of the proposal on heritage assets would represent harm to MOL purposes.

41. Paragraphs 52 and 53 of the report dealt with impact on the historic environment under the heading "other harm". The report noted that Historic England had identified that the proposal would cause some harm to heritage assets. The report treated this as "less than substantial harm" to heritage assets for the purposes of paragraph 196 of the NPPF. However, the report was satisfied that because of the public benefits of the proposed community use arrangements, this harm did not in itself warrant a reason for refusal. The only other issue raised on this subject was the view of GLA officers that the impact upon the open and green setting of nearby heritage assets could be reduced by relocating the sports building in a more compact form on the existing sports hall site. Mr. Steel QC pointed out on behalf of the School an important paragraph at the end of the Mayor's letter dated 29 January 2018 in which it was stated that he would be minded to withdraw the direction if the School were to revise its application by locating the new sports building on the site of the existing sports hall with a significantly reduced *footprint* to that currently proposed.

42. Paragraphs 29-35 of the report concluded that the net gain in MOL land under the proposed "land swap" would be small because most of the "new" land was subject to various heritage designations in any event and therefore was unlikely to be developable, irrespective of whether it became subject to MOL development control policies.

43. Paragraphs 36-38 of the report placed considerable emphasis on the consideration of alternative sites for the proposed sports building. Paragraph 38 made it clear that the Mayor's objective was not to reduce the overall floorspace within the sports hall, but instead to reduce footprint by inter alia "stacking" the facilities. Paragraph 50 of the report stated that the impact of the proposed sports building on the openness of the MOL was increased by its layout and positioning. It pointed out that existing buildings on the lower slopes of the hill are set out in a linear pattern from east to west and screened by vegetation. By contrast the proposed new building would be located in a predominantly green and open space and would contribute to "unacceptable sprawl of development across a significantly wider area of MOL."

44. On 13 February 2018 LBH issued a decision notice refusing planning permission on the single ground directed by the Mayor.

The appeal process

45. The School appealed against the refusal of permission. On 9 October 2018 the Secretary of State recovered the appeal for his own determination.

46. In his Statement of Case at paragraph 4.16 the Mayor referred to the siting and excessive footprint on the sports building as causing harm to the openness to the MOL. No conflict was indicated with any of the purposes of the MOL, other than the protection of openness. In essence, the Mayor's position on impact on the historic environment was the same as had previously been set out in the stage 2 report.

47. A Statement of Common Ground ("SOCG") was agreed between the Mayor, LBH and the School on 6 March 2019. Section 5 of the document was entitled "matters not in dispute". Paragraph 5.1.6 read: -

> "That the new sports building is 'inappropriate development' on MOL; by definition, inappropriate development is harmful to MOL in line with Development Plan policy and harm to MOL should be afforded substantial weight."

48. Paragraph 5.1.7 stated: -

> "In addition to harm through inappropriateness, the new sports building causes harm to the openness of MOL by reason of its siting, footprint and scale and to MOL purposes. In line with Development Plan policy such harm should be afforded substantial weight."

For the first time this paragraph introduced an objection to the sports building in terms of its *scale* as well as its siting and footprint. It also referred for the first time to the building causing harm to "MOL purposes", but without stating what was meant by that. Nothing was said about what purposes were served by this part of the MOL and how they would be harmed by that building. Given that this was the first time that the Mayor had formally raised these matters, he ought to have spelt out in writing exactly what he had in mind. As we shall see, the failure to do this gave rise to a substantial issue at the public inquiry.

49. Mr. Steel QC referred the court to paragraphs 33 and 34 of the School's closing submissions to the inquiry, to show how the School's consultants had sought to clarify the scope of the Mayor's reason for refusal in advance of the inquiry. The School's architect explained that "footprint" is a well understood concept used by planning professionals and does not include scale, height or massing. That accords with my experience of the way in which the term is invariably used in the planning context. Accordingly, the School's team "specifically asked the Mayor why they weren't considering mass, height and footprint". They were told that the Deputy Mayor's direction had been concerned solely with reducing the size of the footprint of the sports building, even though the consequence would be an increase in the height of the building, as evidenced by the reference in the Mayor's stage 2 report to "stacking". Paragraph 34 of the submissions went on to point out that, by contrast, none of the alternative schemes presented upon behalf of the Mayor to the public inquiry involved a reduced footprint or stacking. The Mayor's expert responsible for presenting alternatives confirmed that it had not been part of his brief to ensure that the alternatives secured a reduced footprint. Another expert stated that he could not have supported taller alternatives.

50. The Mayor's stage 2 report and case put to the public inquiry appears to have been muddled, to say the least, about the ambit of his objection to the School's proposal and his stance on how that objection could be overcome. Given the change in the Mayor's position on the application from provisional support to outright opposition, focused solely on an objection to the proposed sports building, and given also the likelihood that the direction would result in an appeal and public inquiry, this lack of clarity was lamentable.

51. The inquiry began on 30 April and lasted some 10 days. The Inspector produced his reports on the appeal and the application for costs on the 22nd July 2019. The Secretary of State issued his decision letters on 31 October 2019.

The decision on the planning appeal

52. In IR 21 the Inspector referred to the closing submissions for the Mayor and for the School. He produced them as a link and stated that he would not replicate them in his report. Plainly, they were before the Secretary of State. At paragraphs 23 and 24 he reproduced the matters in the SOCG which were either agreed or remaining in dispute between the main parties. At IR 41 he noted that it was agreed that the supporting text to policy 7.17 of the LP referred to paragraphs 133-147 of the NPPF 2019. He concluded that the proposal constituted inappropriate development (see IR 43-44).

53. At IR 45-48 the Inspector concluded that although the proposed MOL land swap was a positive benefit of the proposal, it should nonetheless be given only "minimal weight" given that, as the Mayor had stated, pre-existing designations of the land made it unlikely that it would be developed in any event.

54. The Inspector considered the effect of the proposal on the openness of the MOL at IR 49-62. No challenge is made to this part of the report. The Inspector considered that the concept of openness in this case had both a spatial and a visual aspect (IR 50). On the spatial aspect the Inspector concluded at IR 60:-

> "The proposal would result in the erosion of the openness of MOL by the fact that it would represent built form where currently there is very little. The proposal would see the restoration of some MOL openness through the removal of existing sports building and its replacement with tree planting to create a woodland-style walk from Football Lane. It would also secure an area of land – the 'land swap' - which would be subjected to MOL policies as a material consideration until incorporated into an adopted development plan [32, 45]. However, neither of these factors overcome the fundamental point that the proposal would still result in the erosion of MOL openness. This is harm that weighs substantially against the proposal."

55. Turning to visual impact, at IR 55 the inspector said this about the effect of the proposed development:-

> "However, visual impact as a concept is not limited to what something looks like, but inherently relies upon the context in which it is enjoyed. In this respect, views to the ridge line along Harrow-on-the-Hill would still be possible even with the proposed sports building (as can be seen from the various CGIs submitted), no issue is taken with the materials proposed or colour palette, and no specific issues have been raised with regard to the overall shape and form of the proposed building in design terms. What is more, the proposed sports building would be viewed within the context of the main school campus to the north and west, and outdoor sports facilities to the east and south; including the tennis courts, running track, astro-pitches and associated fencing. It would not be seen as an isolated building standing alone in a field."

56. The Inspector set out his overall conclusions on visual impact at IR 61 and 62:-

> "61. However, it is important to note that I do not find that the proposal would have an adverse impact in respect of its visual impact. The footprint is not 'excessive' when one considers that there is a certain level of need that the sports building will

> have to provide. This is need that no main party argues is not required to be provided. The alternative concepts, which were suggested by the Mayor in the Proofs of Evidence, literally do not stack up even under the rudimentary assessment – whether in practical terms with the potential loss of trees and/or considerations such as sewers and required ground works, or in detailed consideration against policy requirements; for example, an assessment in heritage impact terms.
>
> 62. As a result, the only logical conclusion I can come to is that the proposed location within the MOL for the sports building, which is broadly in keeping with the Council's adopted SPD, is acceptable in terms of the reason for refusal. As such, and taking into account the agreed position in respect of the visual appearance of the proposed sports building, I do not consider that the proposal would result in harm to openness, or indeed any other harm, in visual impact terms. However, there would remain harm to openness through its erosion which should be afforded substantial weight."

So, the Inspector concluded that although the proposed sports building would cause harm through erosion of the openness of the MOL, there would be no visual impact.

57. The Inspector dealt with "MOL purposes" at IR 63-68. He concluded that regard should be had to the purposes of Green Belt designation (see IR 65). At IR 66-67 the Inspector concluded: -

> "66. In respect of the five purposes set out in Paragraph 134 of the Framework, the proposal would not result in unrestricted sprawl of a large built up area, it would not result in neighbouring towns merging into one another, it would not encroach into the countryside, and urban regeneration and the recycling of derelict and other urban land is not at issue here.
>
> 67. The only potential purpose that the proposal may infringe is the purpose *'to preserve the setting and special character of historic towns'*. This was suggested by the Mayor to Mr Paterson (planning witness for the Appellant) to be infringed due to the harm to heritage assets. This specific matter is considered in greater detail in the next section of this Report."

58. In IR 68 the Inspector noted that, for reasons set out in the following section of his report, he concluded that the proposal would not result in any harm to heritage assets including their settings. It therefore followed that the proposal did not conflict with any of the five purposes in paragraph 134 of the NPPF. It was for that reason that he went on to say: -

> "Whilst I acknowledge the position between the main parties contained within the agreed SOCG, after careful consideration of this specific point I can only conclude that the evidence submitted to the Inquiry proposal suggests that this agreed position within the SOCG is incorrect and that the proposal would not deviate from the purposes which MOL serves. I do not, therefore, find that the proposal would result in harm to MOL purposes as suggested in the SOCG."

59. The Inspector addressed the impact of the proposal on heritage assets between IR 69-88. He summarised the positions adopted by the Mayor, the School and Historic England before going on to give his own assessment. He referred to the organic

evolution of the School's buildings dictated by the topography of the site (IR 79) and "the lack of overall architectural formality and unity", the buildings having an "entwined relationship with the town" (IR 80).

60. At IR 83 the Inspector praised the "axial route" which would create "expansive views" from the terrace outside the School's chapel and a view up the hill towards that building. In IR 84-86 the Inspector explained why he did not think that the proposal would adversely impact upon the Registered Park Garden lying to the south of the appeal site.

61. At IR 87-88, drawing the strings together, the Inspector concluded:-

> "87. It is important to note that views and the visual impact are not the only considerations one must take into account when assessing the impact of a proposal on settings and/or significance. In this respect, I have considered factors such as the relationship between the school campus and the hill, the historic evolution and growth of the school and wider community on Harrow-on-the-Hill, the relationship between the built and natural form, and also how the various heritage assets are experienced both currently and as a potential result of the proposal.
>
> 88. Taking all these factors in the round, I find that the proposal would not cause any harm to the historic environment. The proposal would preserve the setting of listed buildings in accordance with statutory duty set out in s66(1) of the PLBCA. It would also conserve heritage assets in a manner appropriate to their significance in policy terms; including the settings of designated heritage assets not covered by s66(1) PLBCA. In this respect, I do not consider that there are any conservation or heritage related reasons as to why permission should be refused."

62. At IR 94-142 there followed a very lengthy section in which the Inspector dealt with the benefits of the proposal which fell to be considered under the rubric of VSC. A summary in a judgment cannot do full justice to those benefits and is no substitute for reading the Inspector's detailed consideration of the subject.

63. At IR 96-101 the Inspector considered educational need. He stated that nobody at the inquiry had disputed the need for the proposed sites and sports buildings. He explained how the existing facilities were unsatisfactory. He concluded that this factor should be given "significant weight". The Inspector addressed community need and uses of the sports building at IR 102-105. The proposal would provide 22,000 hours a year of community use. He described this benefit as "having very substantial weight". IR 107-113 dealt with the provision of 1,300 hours a year of free access to state maintained local schools and a further 400 hours a year at substantially discounted rates to community groups proposed by LBH. The Inspector considered this "to be a manifest benefit which should be afforded significant weight". At IR 114 the Inspector repeated his earlier conclusion that the MOL land swap should be given no more than "minimal weight". At IR 115-119 the Inspector returned to the subject of alternative sites and concluded that "the lack of realistic and feasible alternative locations to deliver the identified sports and science need of Harrow School weighed significantly in favour of proposal." The Inspector addressed compliance with the SPD at IR 120-125. He praised the SPD as a masterplan for the future development of the School over a period of 20 years or more, a clear result of the LPA engaging with the School, the local community and other bodies. He found that the locations proposed for the new science building and new sports building accorded with the SPD and that "the compliance with the Council's

site-specific adopted SPD should be afforded substantial weight". The Inspector dealt with heritage benefits at IR 126-128. They included the "opening up of views of the historic ridge and out over Greater London" and "the demolition of the existing sports buildings with the area returned to open landscaping to enhance the setting of the Grade II listed Music Schools and setting of the conservation area." He concluded that the heritage benefits should be afforded "modest weight in favour of the proposal." At IR 129-132 the Inspector addressed landscaping benefits and concluded they should be given "moderate weight". In IR 133-136 the Inspector considered that the net biodiversity gains of the proposal should be given "substantial weight". For the reasons given in IR 137-140 the Inspector concluded that benefits to pupil safety in relation to highways should be given "no more than moderate weight."

64. In IR 142 the Inspector struck the overall balance for the purposes of MOL policy: -

> "I find that the other considerations in this case clearly outweigh the harm to MOL that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development."

65. The Inspector then expressed his overall conclusions on the planning balance in IR 143-150. The Inspector found that the proposed development would harm the MOL by virtue of being inappropriate development and through "the erosion of openness of the MOL." He gave substantial weight to those factors. On the other hand, he did not consider that there would be harm to openness in terms of visual impact. In addition, the Inspector concluded that the proposal would not result in any other harm, in particular harm to heritage assets. He then concluded that the benefits of the proposal he had identified clearly outweighed the harm to the MOL. At IR 146-150 the Inspector explained why, applying s. 38(6) of PCPA 2004, he considered the proposal to accord with the development plan for the area read as a whole and that there were no material considerations which indicated that a decision should be made otherwise than in accordance with that plan.

66. In his decision letter the Secretary of State agreed with the Inspector's conclusions and with his recommendation that planning permission be granted. At DL 13-15 the Secretary of State considered that the benefits of the proposal amounted to very special circumstances and "that, overall, and *looking at the case as a whole*, these factors amount to VSCs that clearly outweigh the harm to the MOL and are sufficient to justify the development." (emphasis added).

67. At DL 16 the Secretary of State dealt with heritage impacts. He agreed with the Inspector's conclusions at IR 126-128 that the proposal would generate some heritage benefits. However, having considered those matters in relation to the opinion of Historic England (which had been summarised at IR 77) the Secretary of State concluded that the impact of the development by reason of its "location, scale and position within the site would result in less than substantial harm to the setting of the relevant heritage assets". The Secretary of State agreed with the Inspector's conclusion at IR 103 that the proposed agreement providing for community use of the sports building represented a significant public benefit. Then, applying the test in paragraph 196 of the NPPF, he concluded that that benefit outweighed the heritage harm he had identified.

68. The Secretary of State addressed the planning balance and gave his overall conclusions at DL 21-23. He considered that because of the very special circumstances in this case the proposal did not conflict with the development plan as regards the "MOL", but that it did not accord with heritage policies. Nonetheless, because of the significant public benefits outweighing heritage harm, he concluded that the proposal accorded with the development plan when considered as a whole. He then went on to consider whether there were material considerations indicating that the proposal should be determined otherwise than in accordance with the development plan. In DL 22 he considered that the harm to the MOL would be outweighed by the very special circumstances previously identified, "when taken individually and as a whole." He therefore decided that the appeal should be allowed and planning permission granted.

General legal principles for statutory review

69. The general principles upon which the court may be asked to intervene under s. 288 of the TCPA 1990 have been summarised in, for example, Seddon Properties Limited v Secretary of State for the Environment (1981) 42 P & CR 26, 28 and Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government [2017] PTSR 1283 at [19]. The basis upon which the court may review the legal adequacy of the reasons given in a decision has been explained more fully in Save Britain's Heritage v Number 1 Poultry Limited [1991] 1 WLR 153 and South Bucks District Council v Porter (No. 2) [2004] 1 WLR 1953.

The challenge to the decision on the planning appeal

Ground 1

70. The Mayor submits that the Secretary of State acted unfairly by departing from the agreed approach laid down in paragraph 5.1.7 of the SOCG without giving the parties any notice that he had it mind to do this and giving them an opportunity to make representations on the matter. Had the Secretary of State given such notice, the Mayor would have made further representations on the application of MOL policy and submitted further evidence on the subject.

71. Mr. Edwards QC submits that in paragraph 5.1.7 of the SOCG it was agreed (inter alia) that the proposed sports building would cause harm "to MOL purposes" and that such harm should carry "substantial weight." He says that the Mayor's case at the inquiry (including the proofs of evidence submitted about a month after the SOCG) was advanced on the basis of that agreement. The Inspector set out key parts of the SOCG in his report (IR 23, 24 and 38). Mr. Edwards QC submits that the School did not resile from this agreed position during the inquiry and the Inspector did not indicate that he was thinking of taking a different approach.

72. Mr. Ben Wright, a landscape consultant instructed by the Mayor, gave very brief evidence on the harm which the sports building would cause to MOL purposes (see his proof of evidence at paragraph 3.29 and Table 3).

73. The Inspector dealt with harm to MOL purposes at IR 63 to 68. He considered that the only potential purpose that the proposed building might be said to infringe was the preservation of "the setting and special character of historic towns" (referring to paragraph 134(d) of the NPPF – see paragraph 20 above). He pointed out that this point

was put on behalf of the Mayor in cross-examination of the School's planning consultant, Mr. Paterson. Mr. Edwards QC notes that Mr. Wright had identified MOL purposes by reference to Policy 7.17D of LP, and not the NPPF, but he did not seek to raise any legal challenge in relation to that point.

74. Instead, Mr. Edwards QC criticised the Inspector for concluding in IR 68 that, on the evidence before the inquiry, the parties had been "incorrect" to agree in the SOCG that the sports building would cause harm to MOL purposes. That conclusion was based on his finding that the proposal would not cause any harm to heritage assets, including their settings (referring to IR 88).

75. The Secretary of State adopted the Inspector's conclusions in relation to MOL issues set out in IR 40 to 62 (DL 13 to 14), but he did not refer to or adopt the Inspector's conclusions in IR 63 to 68. Instead, he took a different view to the Inspector on heritage impacts, in that he concluded, for the reasons given by Historic England, that the proposal would cause "less than substantial harm" to the setting of the relevant heritage assets (DL 16). The Mayor's complaint is that the Secretary of State did not remedy the unfairness resulting from the Inspector's report by giving the parties an opportunity to address the departure in that report from paragraph 5.1.7 of the SOCG.

Analysis

76. It was common ground that the relevant legal test for determining ground 1 is whether "there has been procedural unfairness which materially prejudiced the [claimant]" (Hopkins Developments Limited v Secretary of State for Communities and Local Government [2014] PTSR 1145 at [49]). This reflects the principle previously stated by Lord Denning MR in George v Secretary of State for the Environment (1979) 77 LGR 689 that:-

> "there is no such thing as a 'technical breach of natural justice'… One should not find a breach of natural justice unless there has been substantial prejudice to the applicant as the result of the mistake or error that has been made."

and by Lord Wilberforce in Malloch v Aberdeen Corporation [1971] 1 WLR 1578, 1595 that:-

> "A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in the courts unless behind it there is something of substance which has been lost by the failure."

This principle accords with the requirement in s.288(5)(b) of the TCPA 1990 that it must be shown that breach of a "relevant requirement", or unfairness, has caused "substantial prejudice" to the claimant (Fairmount Investments Limited v Secretary of State for the Environment [1976] 1 WLR 1255, 1263).

77. Counsel referred to the following authorities which apply those fundamental principles to departures from a SOCG: R (Poole) v Secretary of State for Communities and Local Government [2008] J.P.L. 1774 at [17 to 47]; R (Gates Hydraulics Limited) v Secretary of State for Communities and Local Government [2009] EWHC 2187 (Admin) at [20-30]; and Secretary of State for Communities and Local Government v Engbers [2017] J.P.L. 489 at [6], [39] and [43-4].

78. These cases raised the question whether an Inspector had acted unfairly by dismissing an appeal by reference to a matter which the main parties had agreed in a SOCG *not to be objectionable*. But in my judgment, the same principles are also applicable to a challenge by a local authority or objector where the decision-maker has materially departed from an agreement in, for example, a SOCG or a concession made in evidence, that the appeal proposal would give rise to a particular harm or disbenefit.

79. In Poole Sullivan J (as he then was) held (paragraph 39) that an Inspector is not bound by a SOCG and is entitled to form his own view, so long as the relevant party has a fair opportunity to comment. The emphasis of the modern procedural rules for inquiries is that the parties should focus their evidence on matters in dispute and so unfairness may sometimes arise where an Inspector does not raise during the inquiry an issue which has been agreed. A key consideration is whether the party could reasonably have anticipated that the Inspector might deal with the issue in his decision (Poole paras. 40-41). So, for example, if the matter is raised in third party representations, the main parties are expected to deal with it (notwithstanding the contents of an SOCG or a concession from a main party) unless the Inspector should say otherwise (Hopkins at [62] and Engbers).

80. Likewise, a party may reasonably be expected to deal with an issue which has been agreed in a SOCG where another party has resiled from that agreement at the inquiry. But in that situation, they should be given a reasonable opportunity to deal with it (Hopkins at [62]). That may include granting an adjournment so that they may call an appropriate expert to address the point (see Poole).

81. A further consideration is the degree of importance to the issues in the appeal of the agreed matter from which the Inspector departs (see Poole at paragraph 45).

82. In my judgment ground 1 must be rejected for the following reasons, taken both individually and in combination:-

    (i) Harm to MOL purposes was not relied upon by the Mayor (or otherwise identified) as a substantial matter in the appeal;

    (ii) The School did "resile" from paragraph 5.1.7 of the SOCG in relation to harm to MOL purposes and so the Mayor ought reasonably to have anticipated that the Inspector might depart from the SOCG in that respect;

    (iii) The Mayor has not demonstrated that the unfairness alleged caused substantial prejudice in relation to his case;

    (iv) Any breach by the Inspector of the duty to act fairly did not taint the Secretary of State's decision.

83. First, I accept the submissions of Mr. Turney on behalf of the Secretary of State that the "harm to MOL purposes" point was not developed by the Mayor to any meaningful extent. The subject was not raised in the directed reason for refusal or in the stage 1 or stage 2 reports, or in the Mayor's Statement of Case for the inquiry. It first appeared in paragraph 5.1.7 of the SOCG. The only harm resulting from the sports building which was expressly identified in that paragraph was "harm through inappropriateness" and "harm to the openness of MOL by means of its siting, footprint, and scale." The SOCG

simply referred to harm "to MOL purposes" without more. Certainly, on one reading the harm which was expressly mentioned was sufficient to explain the reference to harm to MOL purposes. The SOCG also stated that "substantial weight" should be given to "such harm", but that was referable to *all* of the harm previously mentioned and not specifically to the "MOL purposes" aspect. This is a significant point because there is no complaint about the way in which the Inspector and the Secretary of State dealt with "harm through inappropriateness" or "harm to the openness of the MOL." On any fair reading of paragraph 5.1.7 of the SOCG, "harm to MOL purposes" was not given any prominence or treated as a point adding anything of substance to the harm that was expressly identified.

84. This is also borne out by the superficial treatment of the subject in the proofs of evidence on behalf of the Mayor. The four page planning assessment given by the planning witness contained sparse references such as harm "to MOL, its openness and purposes." Nothing specific was said about any such purpose or purposes.

85. Paragraph 3.29 of the landscape proof by Mr. Wright paraphrased the purposes stated in Policy 7.17D of the LP. The proof did not suggest that the MOL area to be developed is currently "accessible to the public" (Mr. Wright's paraphrase of 7.17D(b)). Other evidence on MOL purposes focused on "openness" and "green infrastructure", about which no complaint is made. Instead, the scope of this challenge was restricted to heritage value, arising from Mr. Wright's paraphrase of 7.17D(c) as "localities which offer sporting, leisure, heritage and biodiversity value ….". But that attracted only the following brief comments in table 3 of Mr. Wright's proof:-

> "Whilst heritage matters are dealt with in detail in Mr Nigel Barker Mills' proof, I consider that the harm to the traditional settlement pattern, associated within the Harrow School Conservation Area, will reduce the public's appreciation of this culturally significant location within the Borough of Harrow, which perceived from the wider MOL setting of the School's recreation grounds"
>
> "Reduce the prominence of the positive hill top settlement pattern, when perceived from the wider School recreation grounds, from users accessing the surrounding PRoW network within the open recreation ground setting"

86. Even then, these comments must be seen in context. The Mayor's case on heritage assets was that there would be "less than substantial harm", but that was outweighed by public benefits. It was accepted by Mr. Edwards QC that the School's case was that the proposal would not harm heritage assets at all. It is not surprising, therefore, that the only harm explicitly identified in paragraphs 5.1.7 of the SOCG was "harm through inappropriateness" and "harm to openness" and that the reference to "MOL purposes" was not further explained. It has not been shown that harm to MOL purposes was raised as a *substantial* matter in the appeal over and above harm to the MOL through the inappropriateness of development and harm to openness.

87. The second flaw in ground 1 is that the Mayor ought reasonably to have anticipated that the Inspector might depart from this part of the SOCG because the School did in fact resile from it during the inquiry. That is plain from the closing submissions made to the Inspector. Paragraph 20 of the Mayor's submissions record that the School's planning consultant, Mr. Paterson, had accepted in cross-examination that the SOCG referred to harm to the purpose in policy 7.17D(c) of the LP, namely harm to a landscape of

national or metropolitan value and to the setting of the hilltop settlement on Harrow Hill. But then paragraph 21 recorded that the same witness resiled from that position. The matter is further explained in paragraphs 73 to 77 of the School's submissions. Mr. Paterson believed that the discussions with GLA officers on the drafting of the SOCG were confined to impact on openness, and that was what paragraph 5.1.7 was dealing with. The School added that even if policy 7.17D(c) of the LP or paragraph 134(d) of the NPPF were thought to be relevant, there would be no harm to heritage matters (paragraphs 75 to 77 of its closing submissions).

88. It is therefore plain that, even if I were to assume that the Mayor's interpretation of paragraph 5.1.7 is correct, the School's case was that there was no relevant harm. It had therefore resiled from what the Mayor's team thought the agreement with the School to be. The Inspector's conclusion that there was no harm to any heritage purpose of this part of the MOL (IR 67-8) fell squarely within the scope of the issue which the School's case at the inquiry had opened up.

89. Having reached this position, it is worth re-emphasising what was said by Lewison LJ in Engbers at [53], referring to Hopkins at [62(4)] :-

> "… the inspector is not required to give the parties regular updates about his thinking. Indeed he may not have reached any conclusion at all on a particular issue before the end of the inquiry. Nor is the inspector required to give advance notice that he proposes to reject one party's evidence in favour of another party. The decision letter is the appropriate place for the inspector to explain why he has reached the factual conclusions that he has."

90. In these circumstances, it was open to the Mayor, if he thought it advisable, to apply to the Inspector during the inquiry to recall witnesses with a view to adding some flesh to the skeletal material on which he had been relying. But no such application was made. The allegation that the Inspector acted unfairly is completely hollow.

91. That last consideration is also relevant to the third flaw in ground 1: the Mayor has failed to demonstrate any substantial prejudice. He contends that if he had known that the Inspector might depart from the SOCG he would have sought to call more evidence and make further submissions. Paragraph 64 of the Mayor's skeleton reveals nothing of substance. It amounts to no more than assertion. I also accept Mr. Turney's submission that the Mayor has failed to set out in any witness statement even the gist of the evidence that he would have called and has been unable to call. This point was raised fairly and squarely in paragraph 44 of the School's Summary Grounds of Defence and has not been refuted. I adopt the approach taken by, for example, Ouseley J in R (Midcounties Co-operative Limited) v Wyre Forest District Council [2009] EWHC 964 (Admin) at [104-116]. Once again, the allegation of unfairness is entirely hollow.

92. Fourth, and in any event, the Secretary of State did not adopt the reasoning of the Inspector which is criticised under ground 1. The Inspector's decision to treat paragraph 5.1.7 of the SOCG as "incorrect" has not impacted on the Secretary of State's reasoning in his decision letter. The allegation against the Secretary of State under ground 2 is that he failed to take into account harm to MOL purposes, in particular by applying his finding that there would be "less than substantial harm" to heritage assets. Plainly, the Secretary of State did not rely upon his Inspector's reasoning that there would be "no

harm" to heritage assets and therefore, for that reason, no harm to MOL purposes. The Mayor's real challenge in this part of the case lies in ground 2 to which ground 1 adds nothing.

93. For these reasons, as I have said both individually and in combination, ground 1 must be rejected.

Ground 2

94. Ground 2 arises from DL 16 which states:-

> "For the reasons given at IR126 - 128, the Secretary of State agrees with the Inspector that the proposal would generate some potential heritage benefits, However, having carefully considered the inspector's reasoning at IR126 - 128 in relation to the opinion of Historic England (IR77), the Secretary of State concludes that the impact of the development by reason of its location, scale and position within the site would result in 'less than substantial' harm to the setting of the relevant heritage assets in conflict with Development Plan policies policy 7.8 of the LDNP, DM6 and DM7 of the Harrow DMDPD. The Secretary of State agrees with the Inspector at IR103 that the proposed use would enable the school to provide its sports facilities to other local schools and clubs, community groups, and individuals at market, low or cost price, or for free for roughly two-thirds of the available user time through the Community Use Agreement. The Secretary of State therefore concludes that, overall, significant public benefits exist to outweigh the harm in line with the heritage test in paragraph 196 of the Framework."

Thus, whereas the Inspector had found that the proposal would cause no harm at all to the identified heritage assets, the Secretary of State disagreed and concluded that there would be "less than substantial harm" to those assets. He then went on to decide that that harm was outweighed by public benefits.

95. The Mayor submits that the Secretary of State, in agreeing with the views of Historic England, was bound also to have found that there would be some harm to the setting and special character of the historic town of Harrow-on-the-Hill, applying paragraph 134(d) of the NPPF and thus harm to a purpose of this part of the MOL (paragraph 68 of the Mayor's skeleton). The complaint is that the Secretary of State did not take into account this harm as "harm to MOL purposes". Mr. Edwards QC confirmed that this ground is not based on any other type of harm to MOL purposes and does not depend upon any issue at the inquiry as to whether MOL purposes are confined to those stated in Policy 7.17D of the LP, or whether they may also include the purposes set out in paragraph 134 of the NPPF. Indeed, the Mayor's argument relies in part upon the proposition put in cross-examination for the Mayor to the School's planning consultant that there would be harm in terms of paragraph 134(d) of the NPPF, which was referred to in the Mayor's closing submissions (paragraph 20) and by the Inspector (IR 67). Those submissions relied upon harm to "the hilltop settlement on Harrow Hill" as harm to the setting and special character of an historic *town*.

Analysis

96. It is necessary to put this complaint into context. The existing and proposed sports building both lie just within the western boundary of the MOL which lies to the south-

east of Harrow Hill. The proposed science building and land to the north west of the sports building, rising up towards the crest where a number of listed buildings are located, lie outside the MOL. As Mr. Steel QC pointed out, in addition to the two Conservation Areas previously mentioned, there is also the Harrow on the Hill Village Conservation Area. There is no evidence that anyone suggested at the inquiry either that the grounds of Harrow School should themselves be treated as a "historic town", or that there would be harm to the Village Conservation Area.

97. Policy 7.17D(c) of the LP refers to historic features contained within the MOL. The historic features to which Mr. Wright referred (see paragraph 85 above), the hilltop settlement pattern associated with the Harrow School Conservation Area, lie outside the MOL. It is therefore understandable that the Inspector turned instead to paragraph 134(d) of the NPPF to consider whether the proposal would harm the MOL in so far as it preserves the setting and special character of a historic town. Even then, the Inspector referred to this as only a "potential purpose" of this area of MOL, after having made it plain that he did not accept that it served any of the other purposes in paragraph 134 of the NPPF (IR 66). I have also noted that the *agreed* list of "main issues" for the appeal (IR 3) did not include harm to MOL purposes.

98. The Mayor's criticism of the way in which the Secretary of State is said to have dealt with harm to this particular Green Belt/MOL purpose depends entirely on the latter's conclusions in the decision letter dealing with harm to heritage assets. The only heritage assets identified by the Inspector were those listed in IR 69, which the Mayor does not criticise. The Secretary of State's decision letter proceeds on the same basis. Although the list included the Harrow School Conservation Area, it did not refer to the Harrow on the Hill Village Conservation Area or to "the hilltop settlement of Harrow Hill."

99. In any event, Mr. Edwards QC accepted that the Secretary of State's decision to disagree with the Inspector's conclusion that there would be no harm at all to heritage assets rested entirely on the views of Historic England. That conclusion did not involve accepting any part of the Mayor's case on MOL purposes. None of the consultation correspondence from Historic England states or even suggests that the proposal would harm the setting or special character of an "historic town".

100. The Mayor's skeleton and submissions relied upon passages drawn from the letter from Historic England dated 27 July 2016 (pp. 750-1 of the trial bundle) which stated:-

> "Harrow School is a sensitive historic site, and the introduction of two large new buildings near to its historic heart will have an impact on the conservation area and the setting of listed buildings, concealing the appropriate landscape setting and drawing the eye from the prominence of the significant row of listed structures. This will cause some harm, which will need to be justified and weighed against the public benefits of the scheme."

And then under "Impact of the Scheme":-

> "This proposal is for a new sports building and science building for Harrow School in response to identified needs and the structural failure of the current sports hall. The tall two-storey sports building and three-storey science block are proposed for the south east of the historic heart of the school complex, set partially into the hillside. The floor plan of the new buildings is very large in comparison with other

> buildings on the school site. Because of the topography of the site they would sit considerably below the listed buildings, but due to their size and location would be prominent in the foreground in views up the hill."

Subsequent correspondence from Historic England commented favourably on certain amendments made to the School's proposals whilst adhering to this assessment of the proposed science and sports buildings. However, at no stage did Historic England refer to any harm to the setting or special character of an historic town.

101. There is therefore no basis for the Mayor's assertion that because of the Secretary of State's agreement with Historic England, he was bound to have found harm to a historic town. Historic England did not suggest that the School, or the Conservation Area based upon the School, should be equated to an "historic town". As Mr. Turney correctly submitted, the conclusion for which the Mayor contends does not flow from the findings made by the Secretary of State on harm to heritage assets. There was no need for him to address harm to MOL purposes, given the way in which the point was put by the Mayor during the inquiry.

102. In paragraph 70c of his skeleton the Mayor plainly states that his complaint under ground 2 is about the flawed reasons actually given by the Secretary of State and not about inadequacy or lack of reasoning. Nevertheless, I have also considered that further aspect for completeness. I do not think that the Secretary of State's reasoning gives rise to any doubt, let alone a substantial doubt, as to whether a public law error has been committed. His reasoning was not legally inadequate.

103. Ground 2 must fail. But the Mayor goes on to rely again on the Secretary of State's conclusion in DL 16 regarding harm to heritage assets in a different way under ground 3.

Ground 3

104. The VSC balance which had to be applied under MOL policy required the Secretary of State to weigh against VSC not only harm to the MOL but also any other harm that would result from the proposal. Mr. Edwards QC points out that the Secretary of State found that the proposal would cause "less than substantial harm" to heritage assets, based on the view of Historic England (DL 16). The Secretary of State decided under the balancing exercise required by paragraph 196 of the NPPF, that that harm was outweighed by the public benefits of the proposal, specifically those identified in IR 103. Mr. Edwards QC rightly submits that that conclusion did not mean that there was no "heritage harm", simply that there was no justification to dismiss the appeal by treating that harm as a freestanding reason for refusal. The Mayor's complaint is that the Secretary of State failed to put that harm into the VSC balance, as required by paragraph 144 of the NPPF (and see also Redhill Aerodrome Limited v Secretary of State for Communities and Local Government [2015] PTSR 274). He therefore failed to take into account that material consideration in the application of MOL policy.

105. Two issues arise from the parties' submissions on ground 3:-

(i) Did the Secretary of State fail to take into account harm to heritage assets as "other harm" in the overall VSC balance? If the answer is no, then ground 3 fails;

(ii) If the answer is yes, should the Court refuse to quash the decision on the planning appeal on the basis that it is inevitable that the Secretary of State's decision would have been the same absent that error?

106. Mr. Edwards QC said that the Mayor relied upon "heritage harm" as "other harm" for the purposes of the VSC balance in paragraph 39 of his closing submissions to the inquiry. He submits that it was necessary to balance the totality of the harm resulting from the proposal against its benefits or other VSC, to see whether the latter clearly outweighed the former, and that it can be seen from the terms and the structure of the decision letter that the Secretary of State did not do this.

107. The Secretary of State dealt with MOL policy at DL 13-15. In DL 13 he agreed with the Inspector's conclusions that the proposal involved inappropriate development in the MOL which by definition was harmful, as well as harm to openness through the erosion of the MOL, but he found that there would be no harm to openness in terms of visual impact. Mr. Edwards QC points out that DL 13 does not contain any express language referring to heritage harm. In DL 14 the Secretary of State agreed with the Inspector that only minimal weight should be given to the MOL land swap. In DL 15 the Secretary of State accepted the Inspector's conclusions on each VSC and the weight to be given to them, and decided that "overall, and looking at the case as a whole, these factors amount to VSCs that clearly outweigh the harm to the MOL and are sufficient to justify the development." Mr. Edwards QC relies on the absence of any explicit reference to the phrase "other harm" and upon the fact that harm to heritage assets was only dealt with subsequently in DL 16 (quoted in paragraph 94 above).

108. Mr. Edwards QC also submits that the alleged failure to take into account heritage harm as "other harm" in the VSC balance struck in DL 15 was not remedied by what was said under the heading "Planning balance and overall conclusion" in DL 21 to 23:-

> "21. The Secretary of State considers that, given the VSCs applying in this case, the appeal scheme is not in conflict with the development plan in respect of MOL, but that it is not in accordance with the heritage policies of the development plan. Nevertheless, the Secretary of State concludes that, in view of the significant public benefits outweighing the harm in line with the heritage test in paragraph 196 of the Framework, the proposal accords with the adopted development plan when considered as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
>
> 22. The Secretary of State also concludes that, although the proposed sports building would constitute inappropriate development within MOL and would harm openness through the erosion of the MOL, this harm is outweighed by the VSCs identified above which, when taken individually and as a whole, outweigh the harm identified.
>
> 23. Overall, the Secretary of State considers that there are no material considerations which indicate that the proposals should be determined other than in accordance with the development plan."

Analysis

109. The courts should respect the expertise of specialist inspectors, and indeed those taking decisions within the Department, and start at least with the presumption that they will have understood policies in the development plan and NPPF correctly. They have primary responsibility for the resolution of disputes over the application of policy, and the courts should be cautious to avoid undue intervention in policy judgments within their areas of specialist competence (Hopkins Homes Limited v Secretary of State for Communities and Local Government [2017] 1 WLR 407 at [25]).

110. These principles drawn from Hopkins are particularly relevant to the application of the Secretary of State's own policy in paragraph 144 of the NPPF. It was after all the Secretary of State who successfully appealed in Redhill to establish the correct interpretation of this policy upon which the Mayor relies.

111. In addition an analogy may be drawn with the decision of the Court of Appeal in Mordue v Secretary of State of Communities and Local Government [2016] 1 WLR 2682 dealing with the application of policies now to be found in paragraphs 189 to 196 of the NPPF. An explicit reference by a decision-maker to one of that group of policies is sufficient to show that he has taken them all into account (so far as relevant) "absent some positive contrary indication in other parts of the text of his reasons" [26-28] (and see also R (Palmer) Herefordshire Council [2017] 1 WLR 411 at [7]).

112. In this case the VSC test, including its reference to "other harm", was correctly set out in IR 3. The Secretary of State must have had regard to the whole of that report, including IR 3. In DL 15 the words "outweigh the harm to the MOL" should not be taken as indicating that "other harm" was disregarded at that point. I also note that in the same sentence the Secretary of State made it plain that he was "looking at the case as a whole". There is no positive indication in the decision letter that he left "other harm", namely heritage harm, out of account. The drafting of the decision letter is no more to be criticised in this respect than sections 5 and 6 of the SOCG, which did not explicitly refer to heritage harm as "other harm" for the purposes of the VSC balance. No doubt the parties regarded the point as being so obvious that it did not need to be mentioned in that important document. This case exemplifies the need for the Claimant, as well as the court, to read the decision letter in "a reasonably flexible way", bearing in mind also that it is addressed to the parties who are well aware of all the issues involved and the arguments deployed at the inquiry (Seddon Properties and Bloor).

113. Mr. Edwards QC drew attention to paragraph 22 in the Inspector's Report ("CR") on the School's application for a costs order against the Mayor, in which the Inspector expressed the view that heritage harm outweighed by public benefits resulted in there being no heritage harm under the "other harm" limb of paragraph 144 of the NPPF (CR 22). I agree with Mr. Edwards QC that that was incorrect (see Redhill). But that error should not be read across to the decision on the planning appeal. First, that reasoning was gratuitous in relation to the Inspector's report on the planning appeal, because the Inspector found that there would be no harm to heritage assets and "as such, this factor has no weight against the grant of planning permission" (IR 144). Second, the Secretary of State's decision on the appeal involved disagreeing with the Inspector's view that there would be no such harm. Third, there is nothing in the decision to allow the appeal which indicates that he relied upon CR 22 from the report on the application for costs.

114. As Mr. Turney and Mr. Steel QC rightly submitted, the Mayor's criticism really turns on the structure of the decision letter on the planning appeal, in particular that the assessment of heritage impacts in DL 16 followed the VSC balancing exercise in DL 15 and therefore should be treated as having formed no part of the latter. In my judgment the correct approach is to consider whether as a matter of substance, not form, the VSC test was applied taking into account "other harm", that is heritage harm (see e.g. City of Edinburgh Council v Secretary of State for Scotland [1997] 1 WLR 1447, 1459-60; East Staffordshire Borough Council v Secretary of State for Communities and Local Government [2018] PTSR 88 at [50]; Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government [2020] EWHC 518 (Admin) at [106 to 110]).

115. Furthermore, reliance upon the structure of the decision letter does not assist the Mayor's case. It treats DL 13 to 15, in particular DL 15, as if they were contained in a hermetically sealed compartment which involved disregarding or excluding other reasoning contained in the same document. It wrongly treats the paragraphs in the decision letter as if they describe the sequence of steps which the Secretary of State actually took in order to reach his decision and therefore heritage harm in DL 16 was disregarded in DL 15. DL 13 to 16 do not contain any language to that effect.

116. Indeed, the suggestion is contradicted by other paragraphs which follow DL 15. In DL 17 the Secretary of State addressed protected species and biodiversity gains to which he gave substantial weight. In DL 18 he dealt with landscaping and road safety improvements (both under the heading "highway matters") to which he gave moderate weight. These benefits were also weighed in DL 15 as part of the VSC exercise. There is no reason to think that the benefits in DL 17 and 18 were taken into account in DL 15, but the intervening heritage harm in DL 16 was not. It is plain that these paragraphs overlap. They set out reasoning which represents part of an overall, not a compartmentalised, thought process.

117. It is plain that the decision-maker "assembled" (per Lord Clyde in City of Edinburgh Council), or took into account, all the relevant considerations and as a matter of form expressed separate conclusions under a list of separate policy headings and also s. 38(6) (see eg. the discussion in Gladman). The simple explanation for heritage matters being dealt with separately in DL 16 is that in this case that was necessary for the Secretary of State to discharge his obligations under ss.66(1) and 72(1) of the Listed Building Act 1990 through the application of paragraph 196 of the NPPF (Mordue). If he had not done so, there might well have been a different ground of challenge. But the sequencing of DL 15 and DL 16 does not permit any inference to be drawn that heritage harm was disregarded in DL 15.

118. In any event, by the time the Secretary of State came to consider the planning balance and his overall conclusion in DL 21 to 23, he had already expressed his conclusions on heritage harm in DL 16. There is no conceivable reason to think that he would have left that matter out of account in DL 21 to 23. That would be unrealistic. Indeed, heritage harm was expressly mentioned.

119. Mr. Edwards QC submitted that in DL 21 to 23 the Secretary of State was only applying s.38(6) of PCPA 2004. But that exercise involved not only the application of MOL policy but also conflict with the heritage policies in the development plan. Everything was weighed in the balance. DL 22 mentioned the only types of harm to the MOL which

the Secretary of State had accepted (conclusions which cannot be impugned). But it is impossible to infer that, in striking the overall VSC balance in DL 22, he left out of account or excluded the heritage harm referred to in DL 21. That artificial way of reading DL 22 is wholly unwarranted.

120. Furthermore, the fact that in this case the Secretary of State disagreed with his Inspector by finding that there would have been some harm to heritage assets is a powerful, additional reason as to why it is unrealistic to think that he either forgot about that harm, or misdirected himself by deliberately excluding it, in the VSC balancing exercise under MOL policy.

121. Although Mr. Edwards QC did not put the Mayor's case this way, I would add for completeness that I do not think that the Secretary of State's reasoning gives rise to any doubt, let alone a substantial doubt, as to whether a public law error has been committed. His reasoning was not legally inadequate.

122. For all these reasons ground 3 must fail and there is strictly no need for me to consider the second issue.

123. However, for completeness I will summarise my reasons why, even if I had taken the view that the Secretary of State failed to have regard to heritage harm when applying MOL policy, I agree with the First and Second Defendants that it is inevitable that he would still have granted planning permission absent that error, that is by taking heritage harm into account in the VSC balance (Simplex GE (Holdings) Limited v Secretary of State for the Environment [2017] PTSR 1041).

124. The burden lies on the SSCLG to show that if the legal error identified had not occurred the decision to refuse planning permission would inevitably have been the same. In Smith v North Eastern Derbyshire Primary Care Trust [2006] 1 WLR 3315 at [10] the Court of Appeal held that:-

> "the Court must not stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of the decision."

125. Similarly in SSCLG v South Gloucestershire Council [2016] EWCA Civ 74 Lindblom LJ held (at paragraph 25):-

> "If the court is to exercise its discretion not to grant relief where unlawfulness has been found, it must be satisfied that the decision-maker would necessarily have reached the same decision but for the legal error. That is, of course, a stringent test. It is not enough for the court to be persuaded that the decision probably would have been the same but for the decision-maker's error, or very likely would have been the same, or almost certainly would have been the same. It must be persuaded that the decision necessarily would have been the same. The authorities are clear on that proposition. It is consistent, as I see it, with perhaps the most elementary principle of planning law, that the exercise of planning judgment is a matter for the decision-maker and not for the court (see the classic statement to this effect in the speech of Lord Hoffmann in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, at p.780E-H)."

Nonetheless, the Court of Appeal held that the judge in that case should have exercised his discretion against quashing the decision by reference to findings made by the Inspector which were untainted by the legal error.

126. The court's decision must be based upon the decision-maker's findings and, even then, only in so far as they remain unaffected by the relevant legal error, to see whether it is inevitable that the decision would have been the same, absent that error.

127. In this case the error of law assumed to have occurred is that the Secretary of State failed to take heritage harm into account solely when carrying out the balancing exercise required by MOL policy, but not that he failed to take that harm into account altogether. The court is able to see clearly from the decision letter the Secretary of State's findings on that matter, in the context of all the material before him.

128. The present situation is dissimilar from those cases where the decision-maker took an immaterial consideration into account and it is necessary for the court to determine (1) whether any parts of the reasoning given by the decision-maker can be treated as untainted by the error and, if so, (2) whether, solely by reference to those parts, the decision would inevitably have been the same. Here Mr. Edwards QC accepts that no part of the decision letter falls to be disregarded because of the assumed legal error. In particular, having regard to the way in which this decision letter was expressed, there is no reason for the court to completely disregard the way in which the MOL balance was actually struck by the decision-maker. The benefits of the proposal were assessed as "clearly outweighing" all the harm it would give rise to other than the heritage harm identified by the Secretary of State. The very narrow question for the court in this particular case is whether the inclusion of that one additional factor could have made a difference, because it might have been decided that those same benefits did not clearly outweigh the overall harm including heritage harm.

129. There is no challenge to the Secretary of State's identification of the extent of the harm to heritage assets, or his decision to treat this as "less than substantial harm", based upon the views of Historic England (see above).

130. There is no challenge to the application by the Secretary of State of either ss.66(1) and 72(1) of the Listed Building Act 1990 or NPPF policy on heritage assets. It therefore follows that the Secretary of State was satisfied that there was a clear and convincing justification for the harm he identified (paragraph 194 of the NPPF). More importantly, he attached "great weight" to the conservation of the heritage assets (paragraph 193 of the NPPF) and gave special regard to the desirability of preserving the setting of the listed buildings and the character and appearances of the Conservation Areas affected. This was a "tilted balance", or a balanced weighted by those conservation objectives, against the grant of planning permission (R (Leckhampton Green Land Action Group Limited) v Tewkesbury Borough Council [2017] Env. L.R. 28 at [49]).

131. Nevertheless, the Secretary of State decided that just one of the benefits of the proposal identified by the Inspector in IR 96 to 141, namely the community use of the sports building (IR 103), was sufficient by itself to outweigh the titled balance favouring the protection of heritage assets against harm. That is in line with the way in which the Mayor too approached his decision to direct refusal and the appeal. He accepted that the harm did not give rise to a freestanding reason for refusal.

132. The other benefits or positive features of the proposal have been summarised in paragraph 63 above. They included two factors given substantial weight, three benefits given significant weight and three benefits given moderate or modest weight. They included the lack of realistic and feasible alternatives upon which the educational need and all the associated benefits could be met. Weighed together with the "very substantial weight" given to the community use agreement, these were sufficient to clearly outweigh the "substantial weight" given to the "inappropriateness" of the sports building in the MOL and the harm to openness through its erosion of the MOL.

133. In these circumstances, I am satisfied from the way in which the Secretary of State determined the weight to be given to all the relevant factors and how the VSC balance should be struck, that even with the addition of heritage harm to that balance the decision on the planning appeal would inevitably have been the same. The wide array of very substantial, substantial, significant and moderate benefits would, on the Secretary of States findings, have clearly outweighed the overall harm identified. It must also be borne in mind that the Secretary of State concluded that there would be no harm to the openness of the MOL in terms of visual impact, which must have taken into account (inter alia) IR 55 (see paragraph 55 above).

134. For the reasons given in paragraphs 109 to 122 above ground 3 must be rejected. If it had been necessary to do so, I would have rejected ground 3 for the alternative reasons given in paragraphs 123 to 133 above.

Conclusion on the challenge to the decision on the planning appeal

135. For these reasons the challenge to the Secretary of State's decision on the planning appeal must be dismissed. Not even the attractively presented submissions of Mr. Edwards QC can disguise the excessively legalistic and ultimately unsound nature of the Mayor's grounds of challenge.

The decision on the application for costs

136. Planning Practice Guidance ("PPG") sets out the principles applied by the Secretary of State and the Planning Inspectorate in deciding whether and how to exercise the power to order the costs of a planning appeal to be paid by one party to another. Paragraph 030 states that costs may be awarded where (1) where a party has behaved unreasonably and (2) that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. These criteria have essentially remained unchanged since the policy laid down in Circular 73/65 and subsequently in Circular 2/87. The PPG gives examples of unreasonable behaviour, both procedural and substantive, the latter relating to issues involving the merits of the appeal. One example of unreasonable behaviour on the part of an LPA is a failure to produce evidence to substantiate each reason for refusal on appeal (paragraph 049).

137. Paragraph 032 states that:-

> "an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process."

Where the unreasonable behaviour relates to a failure by the LPA to substantiate only one of several issues raised, a partial award of costs may be made limited to costs incurred in dealing with that one issue. In other words, it has been the consistent practice under the Secretary of State's policy on costs that the twin tests identified above determine whether any award of costs is made and, if so, whether it relates to the entire costs of the appeal process or the costs of an identified stage or issue in that process.

138. Paragraph 035 of the PPG requires an application for costs in respect of an inquiry or hearing to be made to the Inspector before he or she closes the inquiry or hearing. The objective is obvious and sensible, namely to enable the decision or recommendation on costs to be made by the person in the best position to evaluate whether there has been unreasonable behaviour and, if so, its effect on the appeal process. To have that assessment made by someone who has had no involvement in the process is inefficient, and in some circumstances could be disproportionately expensive.

139. In CR 4 the Inspector summarised the four main grounds on which the School sought costs against the Mayor:-

> "(i) The Mayor's Stage 2 decision and reason for refusal was unreasonable in light of the Mayor's Stage 1 Report;
>
> (ii) The Mayor's decision failed to follow established caselaw, gave unreasonable reasons for reducing weight to the extension of MOL and failed to take into account and give due weight to the accordance of the scheme with the adopted Harrow SPD 2015;
>
> (iii) The Mayor did not substantiate its reason for refusal and has pursued a different case at appeal;
>
> (iv) The proposal ought clearly to have been permitted given the material considerations which include undisputed educational and boarding school need, undisputed community need, the community use agreement, the MOL extension, and the SPD and various policies encouraging the development of school and sports facilities."

140. In CR 5 the Inspector summarised the Mayor's response resisting the application:-

> "(i) The Applicant has misunderstood the two-stage process provided for under the Town and Country Planning (Mayor of London) Order 2008, the first part being a statement and the second part being an actual 'decision';
>
> (ii) The Mayor contends they did follow established caselaw, that it was permissible to explore alternate potential locations for the proposal, and that the Applicant has mis-represented some of the oral evidence given at the Inquiry;
>
> (iii) It was clear that the reason for refusal related to footprint and location; and that 'footprint' means more than footprint. The Mayor has made clear that they have not advanced impact on the significance of heritage assets as a freestanding reason for refusal as this lies under the context of 'other harm'. Landscape and visual impacts are elements relevant to openness. Lastly, matters of weight are rightly matters of exercise planning judgement which lie with the relevant decision-maker.

> (iv) The Mayor exercised his powers to consider the proposal in light of the various considerations and came to the conclusion that the harm arising was not outweighed by very special circumstances. As such, he was permitted to direct the refusal of permission as it did not comply with planning policy and material considerations did not outweigh these."

141. The Inspector then dealt in turn with each of the four main grounds for seeking costs. He found aspects of unreasonable behaviour under each of grounds (i) (CR 7 to 11), (ii) (CR 12 to 17) and (iii) (CR 18 to 30).

142. However, he rejected the School's ground (iv), which was based on paragraph 049 of the PPG:-

> "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other national considerations"

His reason for doing so was expressed in CR 31:-

> "The last ground weaves into concerns expressed by the Applicant on the first three grounds. The Applicant is incorrect to assert that permission should have been forthcoming. The Mayor's case was presented in a professional manner that sought to articulate its concerns. Even though I consider that there are serious flaws in elements of the reason for refusal, which have led to greater emphasis on matters that were straightforward – for example footprint versus scale/bulk/mass – this does not detract from the point that the Mayor refused permission and then explained why he felt it was unacceptable. This is a reasonable position for the Mayor to have held. I do not find that the Mayor was unreasonable on this ground."

143. The Inspector's conclusions were set out in CR 32 to 35:-

> "32. The application was for full costs. I have found some areas where I consider that the behaviour of the Mayor was unreasonable and that in some cases this has resulted in unnecessary or wasted expense on the part of the Applicant. This does not necessarily extend across all four grounds put forward.
>
> 33. Nevertheless, their occurrence is of a frequency and spread across the appeal that when taken as a whole I find that there is a strong likelihood that either the appeal may not have needed to have taken place and/or matters would have narrowed further so that any remaining issues could have been dealt with otherwise than by means of an Inquiry.
>
> 34. In particular, I am extremely concerned by the lack of detailed analysis and/or reference to heritage matters within the reason for refusal; especially given the statutory requirements. Had this been carried out in an appropriate manner this may well have altered the cases presented, and/or altered the various planning balances involved resulting in a different outcome.
>
> 35. Overall, I conclude that the Mayor did act unreasonably which caused unnecessary and wasted expense, and that this was to an extent that the full costs of the appeal process should be awarded to the Applicant."

144. Accordingly, this was not a case where the Inspector found that one specific instance of unreasonable behaviour had caused an appeal to be brought which should not have been necessary. Instead, he treated the failures collectively as having unnecessarily caused the School to incur the costs of at least the public inquiry.

145. In his decision letter the Secretary of State accepted the Inspector's conclusions at CR 32 to 35. In DL 6 he made an order that the Mayor should pay to the School:-

> "its costs of the inquiry proceedings *limited solely to the unnecessary or wasted expense incurred in the appeal process*, such costs to be taxed in default of agreement as to the amount thereof." (emphasis added)

The challenge to the costs decision

146. The Mayor advances three grounds of challenge to the costs decision, the legal merits of which are not in any way affected by the outcome of the challenge to the decision on the planning appeal.

Ground 3

147. Under ground 3 the Mayor challenges the Inspector's conclusions on ground (i) of the costs application. The Inspector decided that it was not until the stage 2 report that a number of fundamental concerns were identified, which, had they been raised at an earlier stage, could have been addressed by the School. The Inspector suggested that if that had happened, the inquiry *might* have been shorter or not needed at all (CR 8 to 11).

148. The Inspector based that conclusion on two aspects. He identified the first, by way of example, as the Mayor's putting forward of alternative locations for the sports building very late in the day. At CR 12 to 17 the Inspector robustly criticised the Mayor's case on this topic under ground (ii) of the application for costs, holding (inter alia) that the alternatives put forward had been unrealistic. In effect, he decided that that part of the Mayor's case had not been substantiated. Mr. Edwards QC very properly accepted that CR 12 to 17 could not be impugned. But he correctly submitted that if that had been the only finding adverse to the Mayor, it could only have led to a partial award of costs. There was no finding by the Inspector that the Mayor's case was dependent on the existence of a suitable alternative.

149. The second aspect is to be found in CR 10. The Inspector criticised the Mayor's *volte face* from the School's scheme being broadly supported at stage 1 to it being completely unacceptable at stage 2. He recognised that a decision-maker could come to a different view from that of his officers, but the grounds for doing so would have to be substantiated. That reasoning could only have referred to ground (iii) of the costs application where the Inspector concluded that the Mayor had acted unreasonably by failing to substantiate the objections upon which he relied. The Inspector's conclusions on ground (iii) of the costs application are challenged by the Mayor under his grounds 1 and 2.

150. The upshot is that ground 3 of the costs challenge only has any legal effect if the court should accept either ground 1 or 2 as a basis for impugning the Inspector's reasoning on ground (iii) of the costs application.

Ground 1

151. Broadly speaking, the Inspector's reasoning on ground (iii) of the costs application fell into 3 parts. CR 24 addressed landscape and visual impact, where the Inspector concluded that the Mayor had not acted unreasonably. CR 18 to 23 and 28 to 30 addressed heritage issues where the Inspector found that the Mayor did act unreasonably. That is challenged by ground 1. In CR 25 to 27 and 30 the Inspector addressed the failure by the Mayor to refer to the height, bulk, scale or mass of the sports building in the directed reason for refusal at stage 2. That is the target of the Mayor's ground 2.

152. In relation to heritage matters the Inspector criticised the Mayor's behaviour as unreasonable because:-

(i) He failed to apply s.66(1) of the Listed Building Act 1990 (CR 18 and 20);

(ii) If he had applied the statutory duty and the balance under paragraph 196 of the NPPF "there would have been other options available to the decision-maker" (CR 21);

(iii) There was a lack of clarity and reasoning on any "residual harm" and so unnecessary expense was incurred "by having to address heritage matters at the inquiry" (CR 23);

(iv) Heritage matters were not identified in the reasons for refusal and it was unclear what matters the School needed to address, thus causing unnecessary expense (CR 29-30).

153. Notwithstanding the submissions advanced by the Secretary of State and the School, these conclusions are legally flawed. First, as Mr. Edwards QC submitted, it is clear from the material before the court that the Mayor did address himself to section 66(1) of the Listed Building Act 1990 and paragraph 196 of the NPPF from at least the stage 2 Report onwards. Indeed, the Inspector's criticism is contradicted by his conclusions in the main report at IR 72 and 78. In the same vein, the Mayor relied (in part) upon the views of Historic England. So did the Secretary of State in deciding that the sports building would result in "less than substantial harm", before going on to agree with the Mayor that that particular harm was outweighed by public benefit. I do not see any rational basis in the Report as to why that behaviour could be criticised as unreasonable. The Mayor made it plain that he was not advancing heritage matters as a freestanding reason for refusal, but as "other harm" under MOL policy (paragraphs 52 and 53 of the Stage 2 Report). That was a permissible approach applying Redhill (see above). Both the Mayor's Stage 2 Report and his closing submissions contradict CR 19, where the Inspector, having recognised that the "other harm" approach was permissible, then went on to assert that it had not been followed by the Mayor.

154. Understandably, the Inspector did not suggest that what he considered to be the unreasonable pursuit of heritage issues, had in itself resulted in the need for the School to appeal. That would have been untenable. Indeed, all the Inspector was able to conclude in this part of his Report was that the School had had to incur costs unnecessarily in having to address heritage matters at the inquiry (CR 23 and 29-30). As with ground 2, this leads to the important issue as to how the Inspector's findings

under ground (iii) of the costs application sit with his findings in DL 31 under ground (iv) (see below).

155. I uphold ground 1 to the extent indicated above. Those flaws vitiate the conclusions in CR 23 and 30 in relation to heritage matters.

Ground 2

156. In CR 25 to 27 and 30 the Inspector criticised the Mayor for raising concerns about the bulk, height and massing of the sports building which fell outside the scope of the reference to "footprint and location" in the reason for refusal. Bearing in mind the history of the application and appeal process which I have summarised (not least paragraph 49 above), I see no merit in the criticisms made by Mr. Edwards QC of the Inspector's findings on this aspect. The Inspector's conclusion that the Mayor's position on this aspect was unclear in the reason for refusal and that this amounted to unreasonable behaviour is unassailable.

157. However, the Inspector did not make any finding that this aspect itself caused the School to incur unnecessary costs, whether the costs of the whole appeal process or just the costs of the inquiry. That would have been untenable. The Inspector simply stated that this caused unnecessary and wasted expense. He failed to apply the guidance in the PPG by explaining what the nature of that expense was. That error can only be ignored if it is saved by the "wrapping up" conclusion in CR 33, but that cannot be considered without first addressing CR 31.

Paragraphs 31 and 33 of the Inspector's report on costs

158. The position we have reached so far is that the Inspector's reasoning could only have justified awards of costs in relation to alternative locations for the development, heritage matters and the raising of height, bulk and massing as an objection raised outside the reason for refusal.

159. At this point there is a yawning gap in the Inspector's reasoning. Even when all those three matters are combined together, that could not justify treating all the costs of the inquiry or the appeal process as wasted, which is what the Inspector purported to do at CR 35 and 36, and with which the Secretary of State agreed at DL 4 to 5. A substantial part of the appeal was concerned with the VSC balance which had to be struck under MOL policy. That involved assessing the extent of the harm to the MOL (along with any other harm) and whether the weight to be attached to the benefits of the proposal clearly outweighed that harm. The Inspector made no findings criticising the Mayor's case on that aspect which, of course, was central to his reason for refusal.

160. This analysis is confirmed by CR 31 (see paragraph 142 above). Here the Inspector rejected the School's contention that the Mayor had unreasonably prevented development which should clearly have been permitted. The Inspector found that the School was wrong to assert that permission should have been forthcoming. On that basis, it is impossible to see how an appeal could have been avoided. Then, the Inspector found that although there were serious flaws in "*elements* of the reason for refusal" (emphasis added), that did not detract from the point that the Mayor had explained why the development was unacceptable based on the reason for refusal, adding that that was "a reasonable position for the Mayor to have held." In effect, the Inspector found that

the Mayor had produced sufficient material to substantiate his reason for refusal, certainly in relation to the view he took on the harm to the MOL as against the benefits of the proposal. The conclusions in CR 33, 35 and 36 are therefore flawed. There is an internal contradiction and also legal errors in the report which are fundamental to the recommendation that a "full award" of costs be made and the Secretary of State's decision to accept that conclusion.

Conclusions on the challenge to the costs decision

161. It was faintly suggested by the Secretary of State and by the School that the decision on costs should nonetheless upheld applying the principle in Simplex. That is untenable. The flaws are so fundamental that it is impossible for the Court to say that the decision would inevitably have been the same if those errors had not been made. Indeed, in my judgment the untainted parts of the reasoning, in so far as they can be separated out, could only have justified a partial award in relation to alternative sites.

162. The legal consequence is that the decision on costs must be quashed. The Court has no power under s.288 of TCPA 1990 to revise or amend the order made in DL 6 so that it relates just to the issue of alternative sites. The decision needs to be retaken, preferably by a different decision-making team. The above reasons are sufficient to dispose of CO/4851/2019.

163. However, to assist in promoting future good practice, I should make some observations on the terms in which the costs order was made (see paragraph 145 above). In doing so, I wish to make it clear that my decision to allow the claim in CO/4851/2019 does not rely in any way upon the following paragraphs.

164. The order purported to give effect to the recommendation that a full award of costs be made by ordering the Mayor to pay the School's costs of the inquiry proceedings, but then "limited" its effect to "the unnecessary or wasted expense incurred in the appeal process." I have never come across such wording in an order of this kind and it has not been suggested that it has been used in any other full award of costs. It appears to be common ground that the addition of this wording departs from the standard text used for a full award. It imports into the order one of the two tests laid down in the PPG for the Secretary of State to decide two essential questions: (1) whether it is appropriate to make a costs order and (2) if so, the ambit of the order.

165. A paying party and a receiving party are both entitled to a decision from the Secretary of State on what he considers the nature of the wasted costs to be. Here the Inspector's conclusion accepted by the Secretary of State was that the unnecessary and wasted expenditure was the appeal process, which justified the making of a full award of costs. However, the insertion of the additional wording into the formal order requiring the costs of the inquiry to be paid implies that something less than that might turn out to be justified and payable. In the present case this additional wording is most unfortunate because it gives the impression that the decision-maker was uncertain as to how far the Inspector's reasoning went in identifying wasted or unnecessary expenditure.

166. Mr. Turney accepts that the additional wording refers to one of the two threshold tests for the making of an order, but he says on instructions that it was not intended to qualify the scope of this award of costs. It therefore follows that that wording served no useful

purpose and should not have been included in the order because it could lead to unnecessary confusion.

167. Furthermore, having been shown a specimen example, I do not see why the wording would need to be inserted into an order for a partial award of costs. I would therefore suggest that this additional text be omitted in future from orders for costs, unless a good reason can be given for its inclusion in a specific case.

168. Costs judges are well used to resolving issues on the quantification of costs applying the rules in the CPR (such as CPR 44.4) and to follow any direction by the trial judge on costs which should be disallowed. But here the effect of the additional wording, taken at face value, was to pass responsibility from the Secretary of State to a Costs Judge to determine what expenses, or types of expenses were "wasted or unnecessary" as the result of the Mayor's unreasonable behaviour on the merits of the proposal. If this style of drafting were to be repeated, it could give rise to a new form of satellite litigation far removed from the decision-makers on a planning appeal who are in the best position to decide, and ought to decide, that issue for themselves. It is contrary to the general approach taken in the PPG to ensure that, so far as possible, awards of costs are determined by the appropriate decision-makers.

Conclusions

169. I would like to express my gratitude for the way in which this case was presented and argued by Counsel and Solicitors on all sides and for the help which the court received. There was a good deal of co-operation in the production of electronic bundles, within a short space of time, to ensure that these complied with the various protocols and guidance on remote hearings. I would mention, by way of example, the core bundle which, although it comprised only 262 pages, provided virtually all the material needed for dealing with substantial challenges to two decisions of the Secretary of State following a lengthy public inquiry.

170. For the reasons set out above;-

(i) The claim in CO/4849/2019 is dismissed. There is no basis for the Court to intervene in relation to the decision on the planning appeal;

(ii) The claim in CO/4851/2019 is allowed and the Secretary of State's decision to order the Mayor to pay the School's costs is quashed.