

## KIRKLEES METROPOLITAN COUNCIL

### PLANNING SERVICE

#### UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY STRATEGIC PLANNING COMMITTEE

3 AUGUST 2023

---

Planning Application 2023/91092

Item 9 – Page 9

**Demolition of existing school and erection of new school; improvements to existing access and formation of internal access road and turning head; formation of car park, children's outdoor play areas and associated landscaping**

**St Peters Ce Va Junior Infant and Early Years School, Field Head Lane, Birstall, Batley, WF17 9HN**

#### Correction

Paragraph 10.8 in the main report states:

*In terms of the proposed hard informal social outdoor area, this is to be located on existing outdoor play space within the school grounds, and in effect represents an enhancement to the existing outdoor play area provision rather than part replacement for the existing school playing field. Furthermore, the hard informal social area is proposed to be 432sqm in size; again, taken together with the proposed new all-weather pitch, these are significantly smaller in size than the playing field proposed to be replaced.*

The hard informal social area (i.e., playground(s)) figure reported above is incorrect. The correct figure is 1,365sqm. This is compared to the existing 974sqm, thus representing a net increase of 391sqm. This should also be considered alongside the hard outdoor PE (enclosed all-weather pitch), which would increase from the existing 442sqm to 683sqm (241sqm increase).

As such, the hard outdoor areas would increase in size, not decrease as reported in paragraph 10.8.

The error should be noted, however officers consider that the correction does not materially affect the assessment undertaken thereafter in the main report. While the increase in hard surfaced play areas is noted, the proposal remains a notable net loss of grassed area and would represent a departure from Policy LP61 (Urban Green Space). However, the conclusion remains that the proposal's educational benefits remain substantial and outweigh the harm caused through a breach in LP61.

### Further details on internal turning arrangements

Paragraphs 10.99 – 10.101 discuss on-site turning of larger vehicles, such as a refuse vehicle. At the time the main report was published the applicant's swept path plan for refuse vehicle turning showed the vehicle, when reversing, would go into and overhang a pedestrian area by a notable margin. The vehicle would also brush past the extent of a parking bay, thereby conflicting with a parked vehicle should it overhang the bay by a small margin.

In paragraph 10.100 it was stated:

*The applicant considers the arrangements to be acceptable. Furthermore, they highlight that the overlap is nominal and a vast improvement over the current arrangements. However, they have stated it may be feasible to accommodate turning and intends to provide an updated swept path plan, but it would likely reduce the size of the play area and is not their preference. An alternative that officers would consider appropriate would be a condition for a refuse collection plan, to ensure refuse collection takes place in a way that ensures no risk to pedestrians / students. Further details shall be provided in the update to members.*

The applicant has since provided two plans. The first is the current layout that includes a note about bollards (outside of the swept path of the vehicle, thereby not stopping it reversing onto the pedestrian area) to help manage safety. This does not address officer's fundamental concern of a substantial sized refuse vehicle reversing onto a pedestrian area, partially with young children potentially present.

The second plan shows the turning area enlarged which enable turning to take place wholly within the carriageway. This would reduce the size of the children's play area by 58sqm and, in the applicant's opinion, result in a "loss generally of visual amenity given the large area required for the Kirklees style bin waggons". The applicant has also cited construction and phasing difficulties with delivering the enlarged turning area.

Officers consider the need to deliver safe turning to be of paramount importance at a school. While the loss in the play area's size is noted, 58sqm is overall nominal and the harm through its loss is considered outweighed by the benefit of securing safe highway arrangements. Matters relating to construction and phasing, while adding challenge, are not understood to be unsurmountable and officers consider securing long-term safety provisions to outweigh short term challenges.

Officers therefore propose an additional condition, requiring that the turning area be provided in accordance with the plan showing the enlarged turning area. This condition would need to be worded to allow for the applicants cited construction and phasing difficulties.

### Concerns from the applicant regarding three proposed conditions

The applicant disputes three of the proposed conditions. The applicant's full commentary on these conditions, and the exact nature of their concerns, may be found in appendix 1 of this committee update. The conditions disputed by the applicant are:

#### *14. Review of noise mitigation measures after 12 months*

**Note:** Discussed within paragraphs 10.76 – 10.81 of the main report.

#### *17. Staff and student maximum numbers*

**Note:** Discussed within paragraphs 10.89, 10.92, and 10.94 – 10.95 of the main report.

#### *18. HW survey of local road network and parent parking habits. If necessary, mitigation to be implemented*

**Note:** Discussed within paragraphs 10.93 – 10.95 of the main report.

In summary, the applicant is of the view that each of the above conditions would fail one or more of the NPPF's six tests for planning conditions and that their imposition threatens the deliverability of the proposal. The six tests relate to whether a condition is:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

For the reasons given within the committee report, officers remain of the opinion that the conditions are required. In terms of the six tests, to assist members these are considered and broken down as follows:

#### *14. Review of noise mitigation measures after 12 months*

- necessary;
- relevant to planning;
- reasonable in all other respects.

**Commentary:** Noise pollution is a well-established material planning consideration. The applicant's own noise impact assessment submitted to support the application identifies that the northern playground would, in the worst-case scenario, result in a 10dB higher than existing typical playground sound levels at the nearest noise sensitive receptors. The relevant British Standard (Methods for rating and assessing industrial and commercial sound) states:

*A difference of around +5 dB is likely to be an indication of an adverse impact (depending on the context) and a difference of around +10 dB or more is likely to be an indication of a significant adverse impact (depending on the context).*

Therefore, there is a clear potential for notably greater than existing noise pollution impacting upon nearby residents, and it is reasonable for the applicant to be required to address it. However, it is accepted that the 10dB is worst-case and that, as a playground, use will be sporadic through the work-week daytime only. Therefore the 12-month period prior to review is to give the applicant reasonable time to demonstrate their non-physical mitigation measures (i.e., management of the children) are effective, while having a fall-back position of such measures fail.

- relevant to the development to be permitted;

**Commentary:** The noise is to be created by the proposed development and is therefore directly relevant.

- enforceable;

**Commentary:** This approach is deemed to be enforceable, and the applicant has not challenged this.

- precise;

**Commentary:** The time triggers for when details are required will be a set period of 12 months, therefore precise.

It is accepted that no definitive mitigation would be defined at this time. However, this is not unusual when considering mitigation, as the impact must first be identified and considered, and then typically various options for mitigation may be explored. Officers do not wish to stipulate acoustic fencing currently, again to give flexibility in method of mitigation if feasible.

#### *17. Staff and student maximum numbers*

- necessary;
- relevant to planning;
- reasonable in all other respects.

**Commentary:** The concern relates to highways, which is a material planning consideration. The applicant's Highway Statement states that staff and student numbers are to remain as existing. Therefore, they have not undertaken an assessment of the proposal's impact on the local highway, citing it would remain as existing. Furthermore, as outlined in the report, the school's staff parking and student drop-off arrangements are substandard, so a material increase in students would be a cause for concern, particularly if not assessed and justified and/or mitigated for.

The applicant has stated that school student numbers fluctuate, as do staff, and may be higher than the number provided. However, they have provided no solid details on potential maximum numbers: it is understood that the school would have a maximum theoretical occupancy number. If this is provided and an assessment of impacts undertaken, or if the increase is agreed to be minimal, the condition could be amended to allow for additional numbers over the numbers the applicant has previously provided.

Based on the submitted details held at this time (being what the applicant has provided in their own assessment), officers consider the condition to be reasonable and necessary.

- relevant to the development to be permitted;

**Commentary:** The condition directly relates to the occupancy of the building and the traffic impacts it would generate.

- enforceable;

**Commentary:** In the event of staff/students numbers exceeding those upon which the assessment of this application was based, Planning Enforcement would consider whether the additional numbers give rise to material harm and would determine whether enforcement action would be expedient. One option available to the council would be the serving of a Breach of Condition Notice.

- precise

**Commentary:** The numbers as currently held are definitive and not open to interpretation. If a degree of flexibility is agreed, the wording of the final condition would need to be definitive (such as using percentages or an updated number).

*18. HW survey of local road network and parent parking habits. If necessary, mitigation to be implemented.*

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- reasonable in all other respects.

**Commentary:** Impacts on highway safety and efficiency are material planning considerations.

The applicant has stated that the impacts are an existing issue caused by the current school, and therefore not relevant to the current application. Case law has been cited, which states:

*"Although the planning authorities are given very wide powers to impose 'such conditions as they think fit,'; nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their power for an ulterior object, however desirable that object may seem to them to be in the public interest. If they mistake or misuse their powers, however bona fide, the court can interfere by declaration and injunction ..."*

Officers maintain that these impacts relate to the proposed development. Motives are not ulterior and intend to resolve impacts that would be directly caused by the development. Officers' perspective is that the proposed school would cause harm when it is completed. While the harm is existing, this simply evidences that the new replacement building would also cause harm.

If the existing school was closed, the harm would stop. By re-building the school, the harm would continue to be caused by the proposed development, contrary to the aims and objectives of policy. Therefore, the condition is not seeking to address un-associated impacts or harm via the application.

- enforceable;

**Commentary:** The applicant has cited the following advice from the PPG:

*Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability.*

This is a partial quote from a longer section, which continues:

*It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – ie prohibiting development authorised by the planning permission or other aspects linked to the planning permission (eg occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.*

Given that the existing school would continue to operate, the condition could be worded as a Grampian condition. The provision of mitigation, such as a TRO, would be a specified action as quoted above. While such a process would take time, this would be well within the time-limit imposed by the permission.

- precise

**Commentary:** The applicant has said that failing to identify the mitigation at this stage, and any potential costs, is imprecise. The council's Highway Safety have records of incidents. However, the first expectation of the condition is to undertake a survey of parent parking. Should issues be identified, mitigation of said issues would be required. Therefore, while the final mitigation is unknown, clear and precise steps to reach the conclusion will be set out. While cost is unknown, there is no reasonable grounds to expect any such cost to be excessive.

---

**Erection of 2 storey, 5 classroom teaching block including toilet facilities and staff / store rooms**

**North Huddersfield Trust School, Woodhouse Hall Road, Fartown, Huddersfield, HD2 1DJ**

Biodiversity and Net Gain

Consultation comments have been received from KC Ecology following receipt of the Biodiversity Net Gain Assessment document, received 21<sup>st</sup> July 2023. KC Ecology state that:

'Based on the submitted information I have no objection to the application; however, the following condition is recommended in order to ensure that the proposed net gain can be achieved over the long term at the site.

1. No development shall commence until a Biodiversity Enhancement and Management Plan (BEMP) has been submitted and approved in writing by the local planning authority. The plan shall demonstrate how a minimum of 0.55 habitat units and 0.04 hedgerow units are to be achieved post-development, and must include details of the following:
  - a. Description and evaluation of features to be managed and enhanced;
  - b. Extent and location/area of proposed enhancement works on appropriate scale maps and plans,
  - c. Ecological trends and constraints on site that might influence management;
  - d. Aims and Objectives of management;
  - e. Appropriate management Actions for achieving Aims and Objectives;
  - f. An annual work programme (to cover an initial 5 year period capable of being rolled forward over a period of 30 years);
  - g. Details of the management body or organisation responsible for implementation of the BEMP;
  - h. Ongoing monitoring programme and remedial measures; and
  - i. The BEMP will be reviewed and updated every 5 years and implemented for a minimum of 30 years

The BEMP shall include details of the legal and funding mechanisms by which the long-term implementation of the BEMP will be secured by the developer with the management body responsible for its delivery. The BEMP shall also set out (where the results from the monitoring show that the Aims and Objectives of the BEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved BEMP. The approved BEMP will be implemented in accordance with the approved details.

**Reason:** In order to ensure the development provides ecological enhancement and creation measures sufficient to provide a biodiversity net gain in accordance with Policy LP30 of the Kirklees Local Plan and the National Planning Policy Framework. This pre-commencement condition is necessary to ensure details relating to the required biodiversity net gain are devised and agreed at an appropriate stage of the development process.'

It is recommended that the above condition be applied.

#### Section 106 Contributions

The council has also received confirmation from the applicant/agent that the increased contributions of £50,000 requested to go towards the proposed off-site highway works for junction improvements to Woodhouse Hill junction is acceptable.

---

**Planning Application 2023/91093**

**Item 11 – Page 63**

#### **Construction of permanent vehicular access track and the erection of fencing (within a site of special scientific interest)**

**Land adj, March Haigh Reservoir, Off Blake Lea Lane, Marsden, Huddersfield, HD7 6NJ**

#### Ward councillors

Ward councillors have been notified of the application. No objections have been raised.

#### Stock fencing

In paragraph 3.4 of the committee report, it is stated that the stock fencing would be 2.1m in height, however, it has been confirmed by the agent that only 1.1m would be visible above ground level.

#### Biodiversity net gain

In paragraph 10.53 of the committee report, the Biodiversity Net Gain (BNG) has been recorded as 18.72%. However, this has been superseded by the applicant's updated BNG assessment, whereby the final figure would be 10.14%. This would still be satisfactory and would accord with the council's Biodiversity Net Gain Technical Advice Note.

#### Updated information – Biodiversity Mitigation and Management Plan

Following the publication of the committee report, a Biodiversity Mitigation and Management Plan has been submitted. This has been reviewed by KC Ecology, and the officer has confirmed that there are happy with the mitigation and management proposed.

As such, condition 12 is now proposed to be updated to a compliance condition. This being: “the development shall not be carried out other than in strict accordance with the Biodiversity Mitigation and Management Plan. All relevant measures including (but not limited to) the creation of acid grassland along the track edge and the inclusion of suitable seed mix for twite in acid grassland creation areas and their management, should be strictly adhered to at the site”.

---

**Appendix 1 – Text of applicant’s letter dated 01/08/2023 raising concerns to proposed conditions 14, 17, 18 (re: application 2023/91092)**

The proposal is to replace the existing school buildings to provide up to date accommodation for primary aged children some of which have special educational needs. There is no proposed increase in floor area, or capacity for pupils or staff when compared to the existing primary school.

Whilst all school’s identified as being in condition need are considered important, the specific needs of the children at this school given the educational and support provided for SEND pupils makes it even more important that we can replace the school as quickly as possible to ensure that the best possible school environment is provided as quickly as possible to meet the need for SEND school places. \*\* SEND – Special Educational Needs and Disabilities

The National Planning Policy Framework (2021) at paragraph 95 states:

*“It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education.”*

In addition, it notes that great weight should be given *“to the need to create, expand or alter schools through.....decisions on applications”*.

We have been working closely with the LPA to respond to requests made throughout the determination of the application to change the appearance and design of the school and St Peters Primary school and the DfE are very grateful for the recommendation for approval at this week’s committee, however I’m writing to you both because there are some concerns relating to three of the proposed conditions (and accompanying text in the report) that we want to raise with you, because they are either (a) contrary to the tests for conditions; (b) are undeliverable through the D f E funding; and / or (c) could negatively affect how the Local Authority provides for SEND school places.

The school and the DfE wish to work with proactively the LPA to try to resolve these matters.

Due to strict project and funding timescales, we cannot under any circumstances afford to have the application deferred (so alternatively, we would suggest that the application be delegated back to officers if it becomes necessary during the meeting). Hopefully however, the suggestions are relatively minor therefore with some minor tweaks the to the highlighted conditions (if they can be made at this late stage) would really help us to deliver the improved school building.

The three suggested conditions are numbered 14, 17 and 18 in the committee report.

As you will be aware, [Paragraph 55](#) of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

Para 019 of the PPG (Use of Planning Conditions) outlines specific circumstances where conditions should not be used including:

- Conditions which unreasonably impact on the deliverability of a development.
- Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness.

**Condition 18 – “HW survey of local road network and parent parking habits. If necessary, mitigation to be implemented”**

Para 10.94 of the committee report states: *At present student pick up / drop off takes places on local roads, principally Kings Drive to the site’s south where the school has a secondary pedestrian access. The Council’s Highway Safety do however have records of incidents caused by parents using Nova Lane, which is narrow and deemed unsuitable for such use, as well as on Kings Drive due to poor parking and conflicts with residents. Officers have raised concerns over this matter to the applicant, seeking measures to control parent parking on Kings Drive and Nova Lane. The applicant has refused, stating these are existing issued that would not be materially affected by the development, due to the number of students and staff remaining the same.*

As previously stated to Nick Hirst, the highway safety impacts of this development need to be viewed in the context of the lawful fallback position of the existing school, which already generates the same number of pedestrian and vehicle movements as those currently proposed. We are not therefore dealing with new impacts arising from this development – i.e. this is not a case of a brand new school on a previously undeveloped site with no pre-existing traffic generation. Given the absence of any increases in pupil or staff numbers, traffic will not increase. As such, the material improvements to the safety of the site access in terms of width, better visibility and widened footways are essentially betterments over and above the existing situation. Notwithstanding this, a further material highway safety and sustainability benefit arising from the development is the fact that the submitted Travel Plan aims to reduce the percentage of pupils arriving at the site by car to a maximum of 50.8%, and the percentage of staff arriving by car not to exceed 75.4%.

In addition, there are a number of specific problems with this condition in relation to the statutory tests for imposing conditions:

1. It seems likely that the Highways department are looking to solve a perceived pre-existing problem with the existing school. The proposals in front of the Council relate to a replacement school with the same capacity. There are no additional impacts on highways safety arising from the proposed development. Indeed, highway safety will be improved through the significant improvements to the access, pavements, parking and turning facilities, and traffic aims to be reduced through the proposed travel plan. In *Pyx Granite Co Ltd v Ministry of Housing and Local Government [1958] 1 Q.B. 554*, Lord Denning stated: "Although the planning authorities are given very wide powers to impose 'such conditions as they think fit,'; nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their power for an ulterior object, however desirable that object may seem to them to be in the public interest. If they mistake or misuse their powers, however bona fide, the court can interfere by declaration and injunction ..." The condition fails the tests of *necessity* and *relevance* to the development permitted in our opinion.
2. In this case, the committee report merely states: *The Council's Highway Safety do however have records of incidents caused by parents using Nova Lane, which is narrow and deemed unsuitable for such use, as well as on Kings Drive due to poor parking and conflicts with residents.* As such, it is confirmed that this is a pre-existing issue with the current school. Furthermore, the proposed condition is *unreasonable* in that it is entirely unclear what the applicant would be required to do to address these alleged matters. Moreover, if for example, we were hypothetically talking about a Traffic Regulation Order, Para 009 of the PPG states: *When can conditions be used relating to land not in control of the applicant? Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability.* As such, a TRO requires consultation with the public and a separate decision by the Local Highway Authority. It is therefore uncertain that mitigation measures could actually be implemented, and as the final decision would rest with the Highways Authority, this is outside the control of the applicant. Consequently, the condition is *unreasonable* and therefore unlawful in our opinion.
3. In *Andrews v Secretary of State for Environment, Transport and the Regions [2000] P.L.C.R. 366*, the court held that the Secretary of State in dismissing an appeal had failed to consider whether a condition put to the inspector in wide terms preventing taxis from stopping on the highway outside a mini-cab office for the purposes of collecting clients was valid and enforceable without determining whether such a condition would be enforceable. Again, there are two problems: (1) who would the Council be enforcing this condition against in the event a scheme is agreed and implemented and then parents don't comply with the scheme – the parents ? Clearly, this would be unenforceable through the

planning condition. (2) The committee report talks about “incidents caused by parents using Nova Lane”. It’s an obvious point to make, however Nova Lane is a public highway and enforcing the non-use of Nova Lane by members of the public is entirely unenforceable (again, a ground for concluding the condition is unlawful). Also, the applicants cannot be put in a position where they are at the mercy of the varied parking / driving habits of parents.

4. The condition proposed is currently wholly ambiguous in that the applicant and any third-party observer has no actual idea as to what the survey would reveal and what issues this would raise. Hence, it is entirely unclear what the applicant would be expected to do, and whether or not mitigation measures are actually possible / feasible. As such, the condition would be *imprecise, unreasonable, and most likely unenforceable*.
5. Our transport consultant states that simple TROs can be a up to a 12 to 18 month process and the other question then arises as to whether this process would then hold up the occupation of the school etc. ?
6. The cost of the currently unknown mitigation measures is unknown in itself. This project is subject to strict funding criteria and timing. An unknown sum of funding to be quoted at an unspecified point in the future, cannot be accounted for now in terms of contractor quotes, and hence funding through either the D f E or the contractors themselves. This creates a significant risk for the delivery of the project.
7. Finally, the project is subject to strict funding criteria, and the D f E will not, as a matter of fact on all these types of projects fund off-site works. In this regard, Mel Meggs (Strategic Director Children and Families at Kirklees Council) signed and returned the Memorandum of Understanding for this project which included the following: “SRP does not fund any land transactions (including acquisitions, sales, leases, etc.) required to deliver, or contribute funds for, the Scheme. Such transactions (and any necessary approvals) must be sought by the local parties. SRP also does not include funding, either directly or indirectly, for any works which may be required pursuant to the Highways Act 1980 (including section 278 works) or under the Town and Country Planning Act 1990 (including section 106 works). The cost of any such works will be met by Kirklees Council.”

As such, if this condition was imposed, it would *unreasonably impact on the deliverability of a development* as per the above quoted PPG.

\*\* SRP – School Rebuilding Programme

**Suggested solution:** The clients would like to inform you (and committee can be informed in turn) that the school is more than happy continue working with the local Highway authority to address genuine highway safety concerns where there may arise, however this would be outside of the planning process relating to this application.

#### **Condition 14 – “Review of noise mitigation measures after 12 months”**

*At 10.81, it states: Officers propose a condition which allows the school to operate for 12 months without dedicated physical mitigation measures. This is to demonstrate whether their source management measures are successful. If, after the 12 months, complaints and/or issues of nuisance have been identified then a further scheme of mitigation measures (which may or may not require acoustic fencing) would be sought. Officers consider this condition to be a reasonable compromise, balancing the needs of education and the children alongside reasonable protection for residents.*

Extensive discussions have taken place regarding this issue, which arose from the noise report which highlighted that by moving the early years / reception play areas further north in the site compared to the existing school position, some residents may experience more noise than they do currently. However, equally some residents may be better off. Either way, existing residents on surrounding streets are fully accustomed to living next door to the school, and therefore are accustomed to a degree of noise at certain times of the day during the school week.

There are two alternatives as we see it: (1) install an acoustic fence - the options for which have been discussed with Nick Hirst and essentially nobody wants to see installed - the school, the applicant, the DFE, and the case officer. (2) manage the play areas as set out on the attached spreadsheet which clarifies that:

- Only half an hour five days a week during term time would involve unstructured outdoor play for up to 39 pupils would occur. That means only 97 hours per year (39 weeks x 5 days x 30 mins, and during sociable daytime noise hours (as in not times of day /night that are classed as ‘unsociable hours’ by Environmental Services). The remainder of the outdoor time would comprise structured time in the form of educational play that is planned for and purposeful, and in smaller groups which would not in the opinion of the school cause excessive noise.

The fallback position of the existing school operation is also a material factor when comparing proposed versus current noise levels, and it is a fact that noise is therefore experienced currently by surrounding residents. In our view, the question is not one of assisting new impacts, but one of comparing existing versus new noise levels. In this case, the noise location will move further north in relation to the reception / nursery school children only, but the pre-existing character of the site is one of playground noise – i.e. again, this is not a case of developing a new site for a school from afresh.

In terms of the limited number of objections received to the development (6 in total), only two of those are from the eastern side of King’s Drive near to the proposed nursery / reception play area, and neither of those (or any of the other

objections) raise noise as an issue of concern. Indeed at the public consultation event (whereby overall support was at 95% with only one person saying they were 'unsure' about the scheme), a number of residents from Kings Drive and surrounding areas attended and the issue of noise was not mentioned, suggesting that residents are accustomed to, and accept, the existing noise climate that has been there for many decades.

As per our comments above on the post-occupation traffic survey matter, a condition requiring a post-occupation review would fail to comply with the tests for conditions in our opinion, in that the condition would be *imprecise* and *unreasonable* in that a post-occupation survey could potentially result in unknown and uncosted mitigation measures following that. It would arguably also be *unnecessary* because these issues are largely unrelated to the impacts of the new application versus the current situation (other than the issue of the school position moving north), in addition to our points raised above regarding the actual noise caused, its frequency, nature and duration.

Notwithstanding this, a condition requiring a mitigation scheme dependent on possible complaints (and who decides if a complaint is valid for instance?) would further fail the tests for conditions in our opinion due to imprecision and reasonableness.

Finally, as per the above suggested condition, an unknown sum of funding to be quoted at an unspecified point in the future, cannot be accounted for now in terms of contractor quotes, and hence funding through either the D f E or the contractors themselves. This creates a significant risk for the delivery of the project.

**Suggested solution:** We would however be agreeable to a condition worded to manage the early / reception area in accordance with the details set out (or an alternative / more detailed document if you prefer), and it should be noted that this would represent a material betterment to the current situation whereby there is no management of early years / reception outdoor spaces.

### **Conditions 17 – Staff and student maximum numbers**

The application has previously set out exact existing pupil and staff numbers (in a snapshot in time), and there is no current planned intention for these numbers to increase. Nevertheless, like all schools every year there are minor fluctuations up and down – within the safe capacity of the school as designed). This will inevitably occur according to different needs and demands of the Metropolitan Borough especially in the context of the SEND school places.

Notwithstanding this, in accordance with the statutory tests, such a condition would in any event be *unnecessary*, *unreasonable* and *unenforceable*.

It is *unnecessary*, because the plans set out before the Council are clear in terms of classroom numbers and sizes.

It is *unreasonable* because every school in the country has fluctuations in pupil and staff numbers for a variety of different reasons from year to year.

It is also *unenforceable* because ultimately, the LPA would be enforcing on the school, who could not realistically expel or remove students or staff as a result of a breach of such a condition.

The school manager has confirmed just one example where restricting staff / pupil numbers would be a problem (however there are obvious other factors such as birth rate fluctuations in the area etc):

*The school's headcount is not only determined by pupil numbers. We have an increasing number of pupils who have special educational needs and require 1 to 1 assistance in order to provide a safe learning environment. St Peter's is seen as a school that provides an excellent support package for these statemented children. We have no control over when these children come to the school and therefore no control on when we may have to employ additional staff members to provide the support that is unique to each child. Parents of these children can state which school their child will attend and the school then has to provide the resources to ensure their child is fully supported. This situation in itself results in it not being viable to restrict staffing numbers to a certain level.*

**Suggested solution:** As such, and given the proposals to significantly enhance the access, pavements and provide a turning head (and combined with the travel plan), we consider this condition should be deleted.

We wish to conclude by stating that our clients, the school and the DfE are keen to work with officers and the committee to ensure this project is successful. We would therefore be happy to hold further reasonable discussions about the above matters if this would assist in arriving at mutually acceptable solutions.

Therefore, once the committee is over, and subject to the recommendation being upheld by members, we respectfully request sight of the full wording of the proposed conditions to ensure that such wording aligns with the current operation of the school and its capability to provide SEND places and the ability to deliver the project in a timely and cost-effective manner.