

Hendon Area Planning Committee 9th February
Addendum to Officers Report

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Montford House, 54 Parson Street

Ref: 16/6366/FUL

Amend report:

Additional Consultation Responses:

Letters of support have been received from the following:

- Jayne Franklin - Headteacher Great Ormond Street Hospital For Children NHS Foundation Trust London WC1N 3JH
- (Prof) David R Katz Division Of Infection And Immunity - University College London Gower St. London WC1E 6BT
- Ambitious about Autism organisation
- Lynda Walker - Headteacher National Leader in Education Oak Lodge School, Heath View, East Finchley. London N2 OQY
- Professor Ann Lewis - The University of Birmingham
- Professor Lord Winston – Imperial College London
- Lord Kestenbaum of Foxcote
- Lord Mendelsohn
- Dr David Roth
- Jenny Gridley – Headteacher Oakleigh School
- John Ayres – Eden Academy
- Partnerships for Jewish Schools
- Tuffkid Nursery
- Steve Carroll – Mapledown School
- InTouch

A letter of support has been sent to the chairman of the committee from Oliver Hazell – On behalf of Kisharon

E-mail correspondence from Mike Freer MP as below:

I write in support of the Planning Application submitted by Kisharon School to be considered 9/2/17, accessed by families in my constituency.

I understand their current facility is unsuitable due to no off-street parking, too little outdoor space and housed in a building unfit for purpose to adequately cater for the numbers of children, nor for their special education needs.

Their desire to provide outstanding education is recognised. The School currently struggles financially as with 35 students, to cover its fixed overheads and the opportunity for expansion to double the number of pupils, offers financial viability.

There has been a significant increase in the demand for special needs places in the Borough and demand is rapidly outweighing the supply of places. Expansion of Kisharon will help to mitigate this. There is also a demand for the growing numbers of Jewish families seeking a special needs school with Jewish Orthodox faith ethos and for this reason, I believe the application should be approved.

E-mail correspondence from Councillor Finn was received as follows:

'I am unable to attend the planning meeting on Thursday as I am in Israel. I hope therefore that you do not mind if I ask you to convey to the meeting my thoughts on the proposal.

Whilst I appreciate the position taken by the planners with regard to the listed building, I am concerned that they state that the public benefit has not been demonstrated sufficiently to outweigh the change.

Surely over 200 letters of support of all section of the local community and in particular from Matthew Offord and Andrew Dismore i.e. from both sides of the political spectrum show the concern of the people who have their ear to the ground as to what the local public want. Their opinion with great respect to the planners must weigh more than that of the officers who don't live in and are not that familiar with the local peoples desires and aspirations.

I will leave it to others to tell you about the fantastic achievements of Kisharon and how much it means to the community.

I therefore implore you to grant the application'

Correspondence from Agent:

A letter was received from the agent and this reads as follows:

Flawed balancing exercise: Heritage versus Educational Needs and benefits, and the wider public interest

*1. The predominant focus of the Officers' Report is on the assessed harm to the historic fabric of the Grade II listed building and its setting, to the point where Officers might be thought to have applied the "substantial harm" test in para 133 of the NPPF – a standard which requires that this is an "**exceptional case**" where the benefits have a very limited ability to balance the harm.*

*It is agreed by all parties that the harm caused by the proposal is **less than substantial**, the requirement therefore is actually to show that the harm should be weighed against the **public benefits of the proposal** (NPPF para 134) and not as the report says in several places that this would need to be an "**exceptional case**". It is highly regrettable that the report makes no mention, as it should of the following fundamental planning policy matters that were drawn to its attention:*

□ The requirements of Article 3(1) of the United Nations Convention on the Rights of the Child, which provides that the best interests of children shall be a **primary consideration** in all actions by public authorities concerning children.

The Secretary of State has applied this policy in a recent successful planning decision for a school, in the context of the requirement to prove very special circumstances in the Green Belt.

- Paragraph 72 of the NPPF is not mentioned. This is a surprising omission, because para 72 provides as follows: The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:
- Give great weight to the need to create, expand or alter schools; and
- Work with schools' promoters to identify and resolve key planning issues before applications are submitted.

These should be included in the balancing exercise. We are firmly of the view that Officers have taken a wrong turning in approaching the Planning Balance, which reads very much as - **heritage harm versus heritage benefits** weighting exercise – which neuters a critical part of the material considerations in play here. The provision of the school in the face of identified need and growing population should have a much higher status in the balancing exercise.

The Public Benefits of the Proposal

2. Places at the expanded Kisharon School at Parson Street would be allocated by the local education authority, based on an assessment of pupil need. Increased provision is already factored into the Council's educational planning programme in the Barnet Education Plan.

Furthermore, as has been made clear, the intention is to proceed to designation of Kisharon with Free School status – a position which has been approved in principle by the Department for Education.

The Report concentrates on heritage harm to the building to a degree which makes it easy to overlook the two sentences which appear towards the foot of para 5.3: There is an identified need for SEN school accommodation in the area and the scheme has the support of the Childrens' Service. And: The proposals would provide social benefits insofar as they would contribute to SEN school accommodation within the borough and meet identified demand. This is clearly a notable benefit, albeit a localised one. Members are asked to read the Planning Balance section of the Report, and ask themselves whether, taken in the round, it can be said to bring all the material considerations into the analysis, and to keep the less than substantial harm to the building in proportion. The applicant is firmly of the view that this is not the case. The clear public benefits of the proposal have not been given the weight and importance necessary to arrive at a balanced conclusion in making the planning judgement here.

Inadequacies of the existing Kisharon School at 1011 Finchley Road

3. Some Members of the Planning Committee have had the opportunity to inspect the existing school in the past and will have seen that it suffers from significant shortcomings.

A very detailed assessment of the potential for carrying out improvements to the existing school was undertaken, and fully explained to Officers as part of the background to the current application but this is not explained in the Report. The current restrictions in terms of space and building condition at the existing facility heavily constrains opportunities to meet the growing need for this type of specialist educational provision. Members' attention is drawn to the paragraph headed "Commissioning Director, Children's Services" in section 4 under the heading "Consultation Responses". For ease of reference, this provides (in part): "As the number of children in Barnet grows, so does the number of children requiring the type of specialist educational provision offered by Kisharon. The school's ambition to expand its provision will assist in meeting the needs of Barnet's growing population and we have taken this in account in our forward planning, as reported to the Children's, Education, Libraries and Safeguarding Committee on 6 January 2016. However the school is currently restricted in terms of space and building condition. **To deliver additional SEND places for Barnet's children, both of these issues need to be addressed. Kisharon's ambition to do this supports a key part of our strategy in meeting future SEND needs in Barnet [emphasis added].**" This is another significant and disappointing omission. The applicant feels this should be given greater prominence in the balancing section as a major material factor to which careful regard should be paid.

The Search for Alternative Sites

4. The applicant considers it highly regrettable that, without seeking to engage constructively in the detail of the documents provided setting out the Charity's efforts to locate alternative sites, the view is expressed in the Report that:

In the opinion of Officers the document provided could not be described as robust. And: Officers are not persuaded that this Alternative Sites search document should be given significant weight in any decision making exercise.

The applicant firmly disputes this. This is made clear in separate correspondence from Knight Frank, a very detailed search has been undertaken for around twelve months, continuing up to the point the application was submitted in the late autumn of 2016. This work was undertaken by Knight Frank with assistance from Cushman & Wakefield who were acting for the Education Funding Agency. The catchment area selected, which is necessarily restricted by travel and journey times for pupils attending the school, was extensive, and included all sites which had been identified as realistically capable of meeting a new school's needs in terms of size, prospect of security and planning permission, and suitability for adaptation to meet the particular needs of the school. These matters could have been easily answered if the information had been requested in the application process. It is instructive to compare the views expressed by the Commissioning Director of Children's Services.

It seems improbable that Children's Services would have taken the school's plans into account in its forward planning, in the delivery of additional SEND places for

Barnet's children, if it felt that there were better and more likely sites elsewhere to meet this important need.

Modification of the Scheme in response to the Councils and third party requirements

5. A further deficiency in the Report in the applicant's view is the failure to analyse and explain to Members the very considerable efforts made prior to submission of the application in seeking to modify the building plans to take account of the views of the Planning Officers and third party consultees. The level of demolition was reduced as well as the size of the extension which meant a reduction in the proposed number of pupils. Various changes were made on works to the interior of the listed building and also revisions to the design of the extension where it joins the main building.

The application was the subject of very extensive consultation prior to submission and the final form reflects extensive changes made in response to views which have emerged. The view expressed on heritage by different bodies contradicts each other. Historic England has stated that the alterations to the front elevation are a "benefit". The Victorian Society disagrees. The Society has no issues with the scale of the extension or the demolition of the service wing unlike the Council and Historic England (the Society does take issue on the conservatory). This illustrates the subjective nature of such issues. A number of issues were resolved with the Victorian Society and this is not reported.

Heritage Benefits

6. In our Heritage Report, our consultant was previously employed by Historic England, we listed the heritage benefits and yet these are not contained in the Report even when it leans far too heavily towards heritage matters, in our view, as opposed to social and need issues. These should be presented at the Committee in full.

Conclusion

*7. In terms of the heritage issues and the weight to be assigned to any harm to the listed building, we have national policy saying that "**great weight**" should be applied to listed buildings but we also have national policy saying "**great weight**" should be applied to new schools.*

*8. It is our view that in the balancing exercise, taking into account the limited harm to the listed building: the retention/improvement of the tower/front elevation; no harmful impact from public areas; limited demolition and the future of the building secured while meeting identified need it should mean that the best interests of children should be the **primary consideration**. The level of harm to the listed building and its setting is not in our view sufficient to overcome the overriding and overarching issue of the best interests of children.*

Officers comment on this as follows:

It is acknowledged by officers that there is a balancing exercise to be done between the harm caused to the listed building and neighbouring amenity, against the public benefits provided by SEN accommodation.

Officers disagree that the test in paragraph 133 of the National Planning Policy Framework has been applied. Case law is clear that even where the harm caused is not substantial the decision maker must have regard to the provisions of section 66 of the Planning Listed Buildings and Conservation Areas Act 1990, in that it must have '*special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*'

It is agreed that harm caused by the proposal is less than substantial, however the level of harm caused is still at the higher end of what might be considered. The proposals

These impacts need to be weighed up against the public benefits of the scheme i.e. the provision of school special educational needs accommodation. In the planning balance the harm to neighbouring amenity must also be considered.

The requirements of Article 3(1) of the United Nations Convention on the Rights of the Child, are acknowledged and have been considered, in that officers have placed significant weight on the public benefits of the scheme.

It is ultimately for the committee to decide how much weight to give the public benefits of the scheme against the harm caused to the listed building and neighbouring amenity.

The poor quality of accommodation at the existing premises at 1011 Finchley Road is noted and is a material consideration.

It is noted that the applicant has set out the Heritage benefits of the scheme. Whilst there may be some benefits, there is considered to be a net harmful impact to the special character and setting of the building.

It is acknowledged that the applicant has provided a site search document in support of the application. Officers consider that the document does not demonstrate overwhelmingly that there are no preferable sites available.

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Montford House, 54 Parson Street

Ref: 16/6367/LBC

Amend Report to read:

Page 40:

5.3 Assessment of proposals

This application for **listed building consent** follows pre-application discussions with the local planning authority.

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104 Millway, NW7 3JJ

Ref: 16/8021/FUL

Additional representation received:

A letter of objection was received by Councillor John Hart, local ward member for Mill Hill (dated 07.02.2017). Letter of objection raised the following issues:

- The proposed outer wall of the redevelopment will be close to the neighbouring property at No 102 Millway and affect their privacy and amenity. A condition should be attached, If the application is successful, that the boundary between both properties be 3 (three) metres wide. This would afford the owner of No 102 Millway "breathing space" and lessen the sense of oppression that the proposed building would have on its smaller neighbour;
- Loss of trees and foliage. At present the trees and shrubbery of No 104 shield not only 104 but 102 and other neighbours from the traffic sounds and emissions of the A1/41 main road. Any redevelopment will require loss of this barrier of greenery;
- The proposed erection will extend deep to the rear and thereby dwarf and overwhelm the garden of No 102. Its owner will suffer loss of enjoyment of amenity and enjoyment of his rear garden; and
- The size and bulk of the proposal is out of keeping with the streetscape of Millway which comprises good quality suburban architecture where no house jars by its volume with the proportions and appearance of its neighbours. The new building would upset this harmony.