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Borough Planning Officer
London Borough of Barnet
Development and Regulatory Services
Barnet House
1255 High Road
Whetstone
London N20 0EJ

8 August 2016

Dear Sirs

Address: Former St Margaret's Care Home, 84 West Heath Road, London, NW3 7UN

Proposal: Application under S192 of the Town & Country Planning Act 1990 (as amended) for the Certificate of Lawfulness for the Proposed Use of the Former St Margaret's Care Home (Class C2) as a Boarding School

We write on behalf of my client, Heathside School as the leaseholder of the above property, and their proposal for the use of the above property, a former nursing home, as a boarding school (Heathside Boarding School).

The scheme, as currently proposed, comprises the following:

- Internal conversion and use of the existing property to provide education and boarding accommodation (C2).

No material external alterations are proposed as shown on the enclosed illustrative drawings, prepared by Harper Downie Architects.

1) The Site and Surrounding Area

The site which extends to 0.88 hectares comprises a former residential care home on the eastern side of West Heath Road. The site is located adjacent to an access to Eden Close to the north and has a side access which runs along the side of no. 74 West Heath Road, and properties on Westover Hill. The existing property, a former care home, consists of the original building, which is of late Victorian construction, and a two storey modern extension to the rear accommodating the primary residential accommodation.

The site is subject to a blanket tree preservation order and is located in an area of Special Archaeological Significance. The existing property, which extends to three storeys plus basement, is not listed and does not lie within a conservation area.

The last use comprised a care home, for approximately 44 residents with associated on site staff accommodation, falling within Class C2 (Residential Institutions) of the Use Classes Order. This is considered to comprise the lawful use of the property.

The facility was operated by the LB Camden, who took the strategic decision to decommission the care home as the property was no longer fit for purpose and presented significant challenges to bring it up to the National Minimum Standards. The LB Camden has recently sought to dispose of the care home on the open market, hence it now being available for alternative uses.

2) Planning History

The site has some limited planning history, which can be summarised as follows (excluding tree applications):

Reference	Description	Decision	Date
C04794D	Alterations to elderly persons home including the erection of a new two-storey rear extension to replace existing rear wing	Withdrawn	June 1997
C04794C	Alterations to elderly persons home including the erection of a new two-storey rear extension to replace existing rear wing	Refused	July 1996
C04794B	Alterations to elevations, front entrance ramp, fire escape staircases and general refurbishment of elderly persons home	Approved	November 1995
C04794A	Fire escape	Approved	April 1974
C04794	Erection of extension of staff room	Approved	March 1974

As part of the disposal strategy LB of Camden employed Alan Camp Architects to look at alternative residential use options and to engage with LB of Barnet through a formal Pre-Application consultation. The formal written pre-app response from the Council identified that:-

- Main building is recognised as being of some historical interest, but given substantial and insensitive later additions and alterations no in principle objection to demolition;
- The Council acknowledge Camden's estate strategy and the reasoned justification to close the care home and accept that the existing accommodation is dated in contribution and offers relatively poor quality of accommodation. Whilst identifying that alternative residential use would need to be further justified in any planning submission, the pre-app appears to support the loss of the existing facility;
- Barnet has an over-supply of such facilities, and there is a focus in the Borough towards providing different types of residential accommodation for the elderly;
- Whilst questions raised over the design and number of proposed residential units, the Council recommend and suggest that a 6 house scheme might be explored and secure the 'in principle' support.

3) The Proposal

Heathside Preparatory School is a highly respected specialist private school located in Hampstead. The School is an established co-educational, non-denominational school for boys and girls aged from three to 11 years. It is a small and friendly local school housed in two historic buildings a few minutes' walk from Hampstead Heath.

The Lower School takes students from Reception to Year 2 (ages 4 to 7). The Upper School takes students from Year 3 to Year 6 (ages 7 to 11). There are currently 249 pupils on the roll. Of these, 34 attend part time. The school population reflects the ethnic diversity of the local community.

The existing Heathside Preparatory School is split between two sites:

- 16 New End, Hampstead (Upper School); and
- 86A Heath Street, Hampstead (Lower School)

Breakfast Clubs and after school care are offered to all pupils and a play scheme operates during school holidays. The school uses nearby Hampstead Heath for outdoor play/learning provision and local leisure centres for sports activities.

The school maintains an informal atmosphere whilst fostering a high level of individual responsibility and self-motivation, whilst encouraging the development of the whole person. As a result, Heathside School's academic standards are exceptionally high - with the recent OFSTED report giving the School 'outstanding' ratings in all seven areas of teaching, results and pastoral care. The

School provides a broad curriculum and an exceptional mix of extra curricular activities. Heathside is a strong and successful school that is at the heart of the local community.

As a result of this success of the day school and significant registered demand by prospective and existing parents, the School is now looking to expand its education offer to provide a new boarding School for older children aged 9-13 years. It is intended that the new facility at St Margaret's will operate as a self-contained entity and generally independently of the School's existing sites at Heath Street and New End.

Following acquisition of the building, all necessary building and occupational approvals are now underway with a view to accommodating the first phase of the boarding school operation in September 2016.

An indicative layout from the school's architect identifies the amount and layout of the boarding accommodation and classroom configuration/use within the existing building.

- the modern rear residential care home wing easily converts to provide 33 twin boarding rooms for the pupils, with 2 common rooms and ancillary accommodation i.e. en-suite toilet, washroom, showers, common rooms, linen and storage areas;
- 6 rooms for boarding staff at 2nd floor level of main house;
- the original building at the front of the site, will be used for the school's education and administration requirements, including reception/admin and staff rooms, standard classrooms, specialist science, IT, music/drama, design and technology rooms, library/reading room, dining room and sanatorium. The basement will be used as currently found to provide the main kitchen, prep and storage areas, plant/boiler rooms and other ancillary education requirements.

A set of drawings from Harper Downie are attached for reference. The drawings have been annotated to illustrate the amount of the existing floorspace that will be provided for boarding, teaching and circulation space respectively, and is summarised in the following table:

Floor/Type of Floorspace (sqm)	Boarding	Teaching	Circulation (Amenity)
Basement	-	-	188
Ground	337	146	264
First	337	288	93
Second	168	-	-
Total	842 (46%)	434 (24%)	545 (30%)

The ratio of space allocated to boarding provision against that of teaching space (and excluding circulation space) is approximately 66% to 34% reflecting the significant boarding element.

Once fully operational, the school is envisaged as accommodating up to 66 boarding pupils with a mix of term, weekly and day boarders. Whilst the school is being set up and run as a dedicated boarding school, the school will also allow for a reasonable number of day pupils. The total number of pupils within the school is capable of as accommodating up to 130 pupils from Year 5 to Year 8.

Whilst the boarding school will have all necessary facilities, and it is intended that it will operate as a self-contained entity, there will be some limited movement of students and staff between sites. As a result of the ownership and close proximity of the two schools, it is intended to share some of the specialist accommodation at the respective schools, i.e. 86 Heath Street has a substantial sports hall. In such cases and as necessary suitable coach transport will be laid on between the schools.

During the school holiday periods, when pupils will not be present, it is intended that continued use will be made of the facilities, offering holiday activity courses for children on a residential basis.

The School will have a full time Head, Deputy, House Parent, and other essential house staff, charged with the overall school

management, wellbeing and welfare of the boarders. The essential on-site staff will be provided with accommodation on all floors of the main building.

4) Planning Considerations

On the basis that the lawful use of the existing building is unfettered Class C2 (Residential Institutions) use, it is considered that Heathside Preparatory School are able to establish and run a new boarding school, as a complimentary establishment to their existing day schools at Heath Street and New End, Hampstead without requiring any planning permission or change of use.

Counsel's opinion from James Strachan QC has been sought on the issue of whether the proposed use of the care home would involve development in the form of a material change of use. He has concluded as follows:

"As to operational development, I understand from my instructions that the architect envisages that it would be possible to achieve a change to the Care Home building by internal alterations only. Section 55(2)(a) of the 1990 Act identifies that the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building, or do not materially affect the external appearance of the building, will not constitute development. Accordingly, if the necessary alterations to the Care Home can be achieved for the intended use without external works in this way, no requirement for planning permission will be triggered under this provision."

Following on from this, Counsel has provided further advice as to whether the intended use of the Care Home as a Boarding School, would involve development in the form of a material change of use. He states that:

"In this respect, section 55(2)(f) is relevant, as it empowers the making and operation of the Town and Country Planning (Use Classes) Order 1987 ("the Use Classes Order"). Section 55(2)(f) provides:

"(2) The following operations or uses or land shall not be taken for the purposes of this Act to involve development of the land –

...

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class;"

This means that change of use of buildings or other land from one use to another will not constitute development requirement planning permission if both those uses fall within the same class set out in the Use Classes Order.

This point is reflected in Article 3 of the Use Classes Order itself which provides:

"(1) Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land.

(2) References in paragraph (1) to a building include references to land occupied with the building and used for the same purposes."

Part C to the Schedule to the Use Classes Order includes Class C2 'Residential Institutions' as follows:

"Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre."

Counsel concludes on this particular point that,

"In light of this, if the Care Home's existing permitted use remains that of an unfettered Class C2 use (as I am instructed to assume), then changing its use to use as a residential school would not constitute development in accordance with the Use Classes Order and section 55(2)(f) of the 1990 Act. No planning permission for such change of use will be required."

His conclusion is based upon the principle that the intended use of the Care Home would be properly characterised as a residential school, which itself depends upon the proper identification of the primary use of the land, rather than any ancillary use. Counsel notes that the existing parts of the School at Heath Street and New End do not operate as a boarding school and are hence Class D1 uses. He has therefore considered whether using the Care Home as part of the existing school in the form outlined above, would be treated as:

- (a) bringing the Care Home site into a single planning unit operated by the school with one primary use;*
- (b) bringing the Care Home site into a single planning unit, but in mixed use; or*
- (c) the operation of a separate planning unit distinct from the other elements of the school, with its own primary use, albeit it is operated by the same operator operating the D1 use from the other sites.*

Counsel concludes that,

*"In my opinion, it is unlikely that it would be appropriate to treat the situation that would arise as falling within either (a) or (b). Although deciding on the relevant planning unit is a matter of fact and degree, helpful guidance on this point can be found from the High Court in *Duffy v Secretary of State for the Environment* [1981] JPL 811."*

He goes on to comment that,

"Based on my understanding of the location of the existing school buildings, they are some distance from the Care Home. Indeed, as it happens, they are so separated that they lie within different local authority areas (the existing school buildings being in the London Borough of Camden whereas the Care Home is in Barnet Council's area). In these circumstances, it seems to me that the geographical separation is likely to be seen as the main factor in deciding that these sites would not be functioning as a single planning unit, even though owned and operated by the same school. In my view, the most likely analysis is that the Care Home site should be viewed as a planning unit in its own right, even if owned and used by the school.

On this basis, if treated as a separate planning unit in this way and the Care Home site is operated as a residential school with boarding pupils (and staff residing there), then it would fall within the existing Class C2 use. By contrast, if it were to be used for day school purposes only (now or in the future) then such use would not fall within Class C2."

It is clear from the operational details provided above, that the School will operate as an independent boarding school entity from the existing sites at New End and Heath Street, albeit as part of the Heathside group, and hence will comprise a separate planning unit and use Class C2.

As noted above, the proposed use of the Care Home will, once fully converted and occupied, comprise a boarding school with a mix of boarding and day pupils. Counsel's advice has also been sought in respect of the matter of the proportion of boarding to day pupils and the implications of this associated with the lawful use Class C2 use of the building. His advice is based on the acceptance of the fact that the Care Home site is treated as a separate planning unit in its own right. Whilst Counsel is unable to provide a definitive answer in respect of the overall mix of day pupils and boarders as such matters will be a matter of planning judgement based upon the day to day operational details of the proposal, he helpfully identifies that,

"In this respect, it seems to me that the comparative percentage of boarding to day pupils will be a relevant factor, although not determinative. As a matter of logic, it becomes easier to predict that a school which has more than 50% of its pupils attending as boarders would be more readily be categorised as principally in use as a residential institution (eg a boarding school), albeit that not all pupils attending are boarders. Where the majority of those attending the school are boarders, it naturally becomes easier to describe it as a boarding school. The larger the majority of boarders, the stronger this inference becomes.

Accordingly, if the Care Home is to operate as a school in its own right, with both boarding and day pupils, there will be a stronger case that it is operating as a C2 use if the majority of pupils are boarders and/or the majority of the school (in physical floor space terms) is given over to boarding school use."

Applying this approach to the overall assessment of the use, the building is currently being converted with the specific intention of establishing a new boarding school, reflected both in terms of operational use and floor area/configuration.

Applying this to the overall floorspace (GIA) of the proposed use in the building, the layout shows a ratio of 66:34 boarding provision against that of teaching space (as already noted above).

Whilst there will be a reasonable number of day pupils as part of the overall boarding school year groups (as found with many well established boarding schools), the fully subscribed school is based on 50% of pupils being boarders. Given this operational position with more than 50% of the floorspace dedicated for boarding purposes, Counsel is clearly of the opinion that the relevant tests support the use as falling within the C2 use class.

On the basis of the above information, assessment and Counsel's advice, it is considered that the use of the Care Home, as currently proposed, will comprise a Class C2 use and will fall within the established lawful use of the property. It is therefore respectfully requested that a Certificate of Lawfulness for the proposed use is issued in accordance with S192 of the Town & Country Planning Act 1990 (as amended).

Should you have any further queries, or require any additional information, please do not hesitate to contact my colleague [REDACTED] on [REDACTED].

Yours sincerely

[REDACTED]

Senior Director

Enc.

From: [REDACTED]
Sent: 07 September 2016 16:26
To: Cohen, Cllr Jack
Cc: Members Enquiries; Re-MembersEnquiries
Subject: RE: New school 84 west Heath rd nw37un

Dear Cllr,

Thank you for the recent emails from your constituents. I should say that there is no planning application to comment on only an application for a certificate of lawfulness. Nevertheless some of the comments will help with our determination as to whether the use is better regarded as a day school or a boarding school or a hybrid of both.

I visited the site today and had a long discussion with the head teacher. The school will open tomorrow with around 90-100 pupils expected. All will be day pupils at first. Over the coming term the character of the use will change with more of the day pupils becoming boarders. In the long run the school is expecting around 150 pupils in total of which 30-60 will be boarders. Exact numbers will change year on year.

I understand that the reason for the haste and the change in use over time is that there is development adjacent to the main school site in Camden that means that the building there will be unusable at least until October. The school, I was given to understand, was therefore forced to speed ahead with plans for this site and has been unable to provide the expected facilities for boarders.

I have been told to expect a degree of chaos tomorrow on opening day as the majority of pupils are expected to arrive by car. Thereafter the school hopes that the use of a school bus will be the norm for most pupils and have been encouraging its uptake over the summer. The travel plan was explained to me and it is clear that some thought has gone into it but of course it is the parents that ultimately determine how their child gets to school.

Having heard of the schools plans for the long term and the short I am afraid that I am not yet able to determine whether or not a breach of control should be expected. In the short term, however, I do not believe that Barnet Council is in a position to demand that the school opening be prevented. There is of course a practical aspect to this given that opening day is tomorrow but also a balancing of harms. I am inclined to believe that tomorrow will be a challenging day and that the school's confidence in their travel plan will likely prove a little misplaced, at least in the short term. However, this harm must be balanced against the harm to the education of the pupils if the council intervenes at this stage. If it is true that the main campus is unusable I would not be confident that the children could be educated elsewhere. For this reason I would not recommend that immediate action be taken. Of course by delaying any possible action Barnet will be in a stronger position to properly assess the lawfulness of the proposals and of the harm caused which will largely be then be apparent.

Regards,

[REDACTED]
Planning Enforcement Manager
Development & Regulatory Services (DRS)

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel [REDACTED] | Barnet Online: www.barnet.gov.uk

NB: A Planning Duty Officer is available at the 2nd floor reception at Barnet House, 1255 High Road, Whetstone, N20 on Monday, Wednesday & Friday mornings from 9am to 1pm



Please consider the environment - do you really need to print this email?



From: Cohen, Cllr Jack
Sent: 07 September 2016 15:47
To: [REDACTED]
Cc: Members Enquiries
Subject: Fwd: New school 84 west Heath rd nw37un

Please will you record this as an objection
Thanks
J

Sent from my iPad

Begin forwarded message:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

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DELEGATED REPORT

ENFORCEMENT NOTICE

LOCATION:	Land at: St Margarets 84 West Heath Road London NW3 7UN	REFERENCE:	ENF/01143/16
		OFFICER:	
		WARD:	Childs Hill

CONTRAVENTION:

Without planning permission the change of use of the property to a day school (Use class D1)

RECOMMENDATION:

To issue an ENFORCEMENT NOTICE and to serve copies thereof on the owners and occupiers of the premises, in respect of which the planning contravention has taken place requiring:-

- 1 Cease the use of the property as a day school (D1)

Within a period of 6 Months from the date on which the Notice takes effect. That the Notice shall take effect on a date to be specified therein not being less than 34 days from the date of issue.

That the Head of Legal Services to be instructed to take such action as may be necessary, including legal proceedings, to secure compliance with the Notice.

CONSTRAINTS:

None

REPRESENTATIONS:

No formal public consultation has been carried out by the Council. However, the use of the site as a school has been reported to the Council's planning enforcement team. The following issues have been raised by objectors:

- o Noise arising from school playground which may last into the evenings and weekends because of boarding principles.
- o The scheme would/does cause significant and harmful traffic problems.
- o The use will be a mixed boarding and day attendance school and will bring about a range of issues.
- o There are too many schools in the area.
- o There should be more resident only parking bays in the area to prevent parking in association with the school.
- o The (day) school use has already commenced.

- o Loss of valuable residential accommodation in the area
- o Loss of care home accommodation in the area.
- o Air pollution generation would be harmful.
- o School facilities are let out to external organisations and weekends and evenings, continuing harm out-of-hours

EQUALITIES AND DIVERSITY ISSUES

Section 149(7) of The Equality Act 2010 sets out the relevant protected characteristics for the purposes of s.149(1)(b) and (c): it includes reference to age. The school children share a protected characteristic. This report bears in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

SITE VISITS:

As officer report

OFFICER REPORT:

Site Description

The site is accessed from West Heath Road between Eden Close and Westover Hill. The existing building was originally built in the Victorian style but has been heavily extended in a more utilitarian fashion to the rear. The property was previously in the ownership of the London Borough of Camden as a Care Home (use class C2) known as St Margaret's. The building was disposed by the London Borough of Camden and was acquired by Heathside Preparatory School. Heathside is a pre-existing school spread over several sites in nearby Highgate, the main 'campus' being at New End NW3. It is understood that during its time as a care home the communal rooms were generally at the front of the site with the majority of the private residential rooms being in the extension.

The site has car parking to the front which is accessible from West Heath Road and open space around the footprint of the building. Heavy screening prevents all but glimpsed views of the site from West Heath Road.

The area in characterised by large residences. It is within a Controlled Parking Zone.

There are no planning designations of note.

Legislative Position

The Use Classes Order 1987 sets out that Class C2 (Residential Institutions) consists of the use of or provision of residential accommodation and care to people in need of care (other than a use within class C3) (dwelling house), use as a hospital or nursing home, or use as a residential school, college or training centre.

Day schools are within class D1 (non-residential institution) of the Use Classes Order.

Site History

The London Borough of Camden operated a care home for the elderly for a period of many years until 2015/2016. In early 2016, the London Borough of Camden voted to dispose of the building and their interest in the site. The site was acquired for use by the Heathside Preparatory School.

Discussions with the Head teacher in September 2016 revealed that the school had acquired the site in order, apparently, to open up a boarding school to complement the existing day school in Highgate. The exact proposed relationship between the elements was not made clear during the discussions. However, it was clear from the inspection that the intention was to refurbish some or all of the flats of the care home to provide the boarding accommodation and to use the balance (if any) as classrooms or similar. The old communal rooms to the front were to be used as a library, studios and classrooms. The school would be serviced as before with the kitchen, laundry and medical room to be retained in their former locations.

The head teacher has claimed/confirmed that the original plan for the site was deflected by significant construction work taking place at a site adjoining the main school building. The school considered that the health and safety of the pupils at the school was being/would be compromised by this work. Consequently it was considered necessary for some pupils to be educated elsewhere. As a result a number of day-students were decanted from the main site into the building in question in time for the start of the 2016/17 school year.

By the time of a second site visit in September, the use of the building as a school had commenced with lessons taking place in a number of predominantly ground floor rooms. During this visit a number of rooms particularly to the rear of, and within the upper floors of the building, were seen to have been repainted and earmarked for conversion to student bedrooms.

The school has so far been unwilling or unable to confirm exact student numbers or ages to the LPA. However, it is understood that up to 100 pupils are educated at the school. It is unclear if any of these are over the age of 11 but the possibility of students of up to 13 years of age should not be discounted. At present all of the pupils are day students.

The school claim to have a travel plan in place but this has not as yet been provided to the Council. It is, however, evident that some thought has been given to travel. Most notable of the travel arrangements is the provision of a coach service that shuttles pupils between the school and destinations to the South.

It is understood that rooms within the school are let out to external groups outside of school hours. At present the Council is aware of a stage school that hosts classes at the site but details are likely to change and develop over time.

Planning History

Of the application previously submitted in respect of the site only that relating to a certificate of lawfulness (16/5298/192) is of immediate relevance. In its original form this application sought clarification that the described use constituted a boarding school within the C2 (Residential Institutions) use class of the Use Classes Order (1987) and therefore that planning permission was not required for the change to this use from the previous care home use.

Documents provided with the application stated that the school in its final form would accommodate up to 130 pupils with 64 of these being boarders, accommodated specifically in 842sq.m of floor space. It also stated that 434sq.m of the internal floorspace would be for teaching space (irrespective of the status of the pupil) and that approximately 545sq.m would be circulation and other amenity space. The original application also stated that there would also be boarding staff in the site at second floor level.

The submission documents suggested that there would be a staged progression from day to boarding school and that full capacity could only be reached at the start of the 2017/18 school year.

Roughly 50% of the building would be dedicated to residential accommodation and 50% to teaching.

Legal advice obtained during consideration of the application confirmed that the description of the use was of a day school.

PLANNING APPRAISAL:

Planning Considerations

The main considerations in this case concern the impact of the development on the following: highway safety and the free flow of traffic; levels of noise and disturbance caused to the occupiers of neighbouring properties; the impact of the patterns activity associated with the use on the character of the area; the community benefit arising from the provision of additional school places in the South of the Borough; and any fall-back position as may be established.

Appraisal

The fall-back position.

Legal advice confirms that a school for approximately 130 children, half of which are boarders is a 'residential institution' within the understanding of C2 of the Use classes order. As it is the stated intention of the school to provide such a facility would appear reasonable to conclude that if the day school is required to close a school approximate to that described in the above application will, in time, take its place. As such the day school must be assessed against this fall-back position as well as in relation to the previous use of the land.

In the absence of any controls over the future evolution of the use and the site consideration must also be made as to the possibility of the day school expanding and the implications of such an expansion. It is also reasonable to conclude from the proportions of the school currently earmarked for residential accommodation that up to if not more than 200 children could be placed at the school.

The need for school places

The National Planning Policy Framework (NPPF) states that planning should "take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs" (para 17) and that Local planning authorities 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." (para 72). At a local level this demand translates into policy contained within chapter 15 of the local plan Core Strategy

development plan document (2012); chapter 14 of the Development Management policies Document (DMPD) (2012) and policy 3.18 of the London Plan (2015). These policy documents recognise the growth of Barnet's population and the demographic changes that are reasonably expected in the future and state Barnet's commitment to providing suitable school places to meet present and future change.

Furthermore, a report to the council's 'Children, Education, Libraries and Safeguarding' Committee confirmed the need for school expansion in the South of the Borough (<https://barnet.moderngov.co.uk/documents/s34658/Planning%20for%20new%20school%20places%20201718%20to%20201920.pdf>).

There is little within the adopted planning policies to suggest that they should be not be equally applied to both state and private sector developments.

Given the demand for school places in the South of the Borough and the general policy context considerable weight should be given to the provision of a modest but important number of school places.

Conversely, Education officers within the London Borough of Barnet have confirmed that robust plans are already in place to meet expected future demand for school places and that, in extremis, children displaced from this school could be provided with spaces nearby.

Noise and disturbance

Policy DM12 of the DMPD states that "New community or educational uses will be expected to protect the amenity of residential properties". Policy DM04 continues "proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted".

It is not considered that a formal noise assessment in line with British Standard 4142:2014 Methods for rating and assessing industrial and commercial sound or BS8233:2014 Guidance on sound insulation and noise reduction from buildings would be of great assistance in the current considerations. The former is not intended for use in the rating and assessment of sound from people (para 1.3 [f]) whilst the latter does not provide guidance on assessing the effects of changes in the external noise levels to occupants of an existing building, as is the required here.

The school is surrounded on each side by residential developments. The site entrance is to the South West onto the predominately residential West Heath Road. Although there is no evidence that such a use is made the land lying on the other sides of the site could be pressed into use as school playground thus bringing noise generating activity into close proximity of houses in Eden Close and Westover Hill. The building itself is set close to other dwellings but the class rooms are currently set away from the site edges.

It is considered that there are four primary sources of noise (current and potential) that require consideration: from children either at play in school grounds or on the way to play elsewhere (Teachers currently escort children to the nearby Golders Park during break times); from children arriving at and leaving the school; from vehicles collecting or dropping pupils off at site; and from activities within the school itself.

Evidence obtained during visits at school opening and closing times suggests that access and egress is generally well-managed and orderly. However, the observations were made during periods when the school will have been aware of the planning interest in the site and may not be reflective of ordinary activity, current or future.

West Heath Road is a residential road that, whilst busy at peak periods, is generally quiet. In this location, background noise levels are likely to be dominated by sound from passing traffic. However, ambient noise level is reduced off-peak, during the evenings or early mornings or at weekends when the street is likely to be less busy.

Local residents have complained about the impact of the building's intensified use on their quality of life and have, in particular cited the noise and disturbance caused by the vehicles, particularly the coaches that bring children to and from school. Although some neighbours are supportive of the school these supporters have not sought to argue that the school has had a negligible effect on noise levels.

The potential for noise emanating from within the building cannot be disregarded but does not currently appear to cause such harm to amenity as to warrant further action at this time. It is considered that the imposition of appropriate conditions on any future planning permission would likely provide an adequate means of mitigating the impact of internal noise should a problem arise. There is also little evidence that the break time arrangements currently cause detriment to neighbouring occupiers or that any impact cannot be successfully mitigated through the expeditious use of planning conditions and obligations. However, it is also considered that the use of the site as a school, however well managed, is likely to increase noise levels at the start and end of the school day by a significant amount. If the school is allowed to grow a corresponding increase in noise levels is likely to follow.

A number of neighbours have complained about noise and activity associated with the out-of-hours use of the site but external organisations. Whilst in principle such uses may or may not be appropriate without proper control of the type that can be exercised in conditions and legal agreements the Council cannot be certain that the activity will remain at a level appropriate to the circumstances.

On balance it is considered that the use of the site as a day school has a detrimental effect upon neighbours' standard of life and that there exists the potential to increase the level of general disturbance and cause considerable angst and harm to nearby residents

Character

As well as causing noise and disturbance to nearby residents the introduction into a previously quiet residential area of the incongruous patterns of activity associated with the school and, in particular, the increased comings and goings at either end of the school day has resulted in detriment to that character.

Highway Safety

Policy CS9 of the Core Strategy states the Council's strategic objectives as regards travel and transport in the borough and, pertinently, states the commitment of the Council to improving highway safety and the free flow of traffic. Policy DM17 of the DMPD provides further detail and states that "The council will ensure that the safety of all road users is taken into account when considering development proposals, and will refuse proposals that unacceptably increase conflicting movements on the road network or increase the risk to vulnerable users.

No details of a travel plan have been provided to the Council. However, it is apparent that some thought has been put to travel arrangements. A coach service comprising two 'standard size' single deck coaches ferries children to destinations south of the site. It is understood, but remains unconfirmed, that the coach picks up / drops off close to the main school site in New End, NW3 and the nearby tube stop.

Council highway officers have visited the site and have provided comments to assist in determining the expediency of planning enforcement action.

The Highway officer's assessment based on observations suggests that at present there are no urgent safety concerns. In collecting or dropping pupils off most parents/guardians tend to park in safe and sensible places. A few drivers were observed making inappropriate decisions as regards parking or manoeuvres but these were determined to be very much in the minority. However, it was also observed that the morning 'drop-off window' was unusually long. It is opinion of the highways officer that if this window were to be reduced or if numbers of children arriving by car were to increase (for instance due to an increase in school size or the withdrawal of the coach service) there would be reason to think that potentially unsafe behaviour might arise.

Planning obligations designed to secure funding for highway improvements might provide some mitigation against potential safety concerns but a lack of certainty prevents further consideration at this stage.

The empirical data required to assess the change in traffic flow resulting from the school does not exist and therefore it has not been possible to examine the contribution of the journeys to and from the school towards traffic on local roads. However, the road has been observed as congested during the morning peak, a situation it seems sensible to assume was exacerbated if not caused by school traffic. Furthermore, given comments above and the observations about the coach service it seems likely that even if the school is currently neutral in terms of its contribution to congestion there is no reason to suppose that this will remain the case.

It is recognised that a boarding school providing education for approximately 60 boarders and 60 day pupils will also generate a number of journeys. Those generated in relation to the boarding school will likely be confined mainly to weekends and term ends whereas those generated by day visits will follow similar patterns to those now observed. The above notwithstanding it is considered that traffic generated by the day school, over and above that which might reasonably be associated with the fall-back position, likely reduces the free flow of traffic on local roads and that any increase in journey generation, whether resulting from a change in travel behaviour or an increase in the size of the school, will exacerbate the situation. Furthermore, any increase will also likely lead to an unacceptable risk to local highway safety.

JUSTIFICATION:

- 1 The introduction into a previously quiet residential area of the incongruous patterns of activity associated with the school and, in particular, the increased comings and goings at either end of the school day has resulted in detriment to that character, contrary to policy CS5 of the adopted Barnet Core Strategy DPD (2012) and to policies DM01 and DM13 of the Development Management Polices DPD (2012)
- 2 Traffic generated by the day school, over and above that which might reasonably be associated with any fall-back position, likely reduces the free flow of traffic on local roads. Any increase in journey generation, whether resulting from a change in travel behaviour or an increase in the size of the school, will exacerbate the situation. Furthermore, any increase will also likely lead to an unacceptable risk to local highway safety, contrary to policy

CS9 of the adopted Barnet Core Strategy DPD (2012) and policies DM17 and DM13 of the Development Management Policies DPD (2012)

- 3 By virtue of the noise and disturbance associated with access and egress the use of the site as a day school has a detrimental effect upon neighbours' standard of life and there exists the potential for an increase in level of general disturbance, contrary to policies DM04 and DM13 of the adopted Development Management Policies development plan document (DPD) (2012)

Planner (ENF)



Date: 17/11/17

Acting for
Planning Performance
and Business Development Manager



Date: 17/11/17

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT, 1990
(as amended by the Planning and Compensation Action, 1991)**

ENFORCEMENT NOTICE

ENF/01143/16

ISSUED BY THE Council of the London Borough of Barnet (“the Council”)

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important addition information.

2. THE LAND TO WHICH THIS NOTICE RELATES

Land at St Margarets 84 West Heath Road London NW3 7UN , shown edged and hatched black on the attached plan (hereinafter called “the Property”).

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission the change of use of the property to a day school (Use class D1)

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last ten years.

- 1 The introduction into a previously quiet residential area of the incongruous patterns of activity associated with the school and, in particular, the increased comings and goings at either end of the school day has resulted in detriment to that character, contrary to policy CS5 of the

adopted Barnet Core Strategy DPD (2012) and to policies DM01 and DM13 of the Development Management Policies DPD (2012)

- 2 Traffic generated by the day school, over and above that which might reasonably be associated with any fall-back position, likely reduces the free flow of traffic on local roads. Any increase in journey generation, whether resulting from a change in travel behaviour or an increase in the size of the school, will exacerbate the situation. Furthermore, any increase will also likely lead to an unacceptable risk to local highway safety, contrary to policy CS9 of the adopted Barnet Core Strategy DPD (2012) and policies DM17 and DM13 of the Development Management Policies DPD (2012)
- 3 By virtue of the noise and disturbance associated with access and egress the use of the site as a day school has a detrimental effect upon neighbours' standard of life and there exists the potential for an increase in level of general disturbance, contrary to policies DM04 and DM13 of the adopted Development Management Policies development plan document (DPD) (2012)

5. WHAT YOU ARE REQUIRED TO DO

- 1 Cease the use of the property as a day school (D1)

6. TIME FOR COMPLIANCE

6 Months after this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 21st February 2017, unless an appeal is made against it beforehand.

DATED: 17th January 2017

Signed:



Fabien Gaudin

Planning Performance and Business Development Manager

Barnet House, 1255 High Road, Whetstone, N20 0EJ

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Secretary of State **before** 21st February 2017. The enclosed information sheet from The Planning Inspectorate explains the appeal process and advises on appeal-making procedures. Read it carefully.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on 21st February 2017 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the Notice. Failure to comply with an Enforcement Notice which has taken effect can result in prosecution and/or remedial action by the Council.

Carter, Richard

From: [REDACTED]
Sent: 13 April 2017 10:09
To: Cohen, Cllr Jack; [REDACTED]
Cc: Ryde, Cllr Shimon; Zinkin, Cllr Peter
Subject: RE: Planning Inspectorate APP/N5090/C/17/3169952: Heathside High, NW3 7UN

Dear Cllr,

For further detail, I have attached the appellants appeal form and appeal statement

My [REDACTED] is correct in that they (the appellant) are only appealing against ground (g)

"The time given to comply with the notice is too short"

If you have any further queries please do not hesitate to contact me,

Yours Sincerely,

[REDACTED]
Specialist Technician

Development and Regulatory Services (DRS), London Borough of Barnet,
Barnet House, 1255 High Road, Whetstone, London N20 0EJ

Tel: [REDACTED] Barnet Online: www.barnet.gov.uk

please consider the environment - do you really need to print this email?

Re (Regional Enterprise) Ltd is a joint venture between Capita plc and The London Borough of Barnet.
Registered Office: 17 Rochester Row, London, England SW1P 1QT. Registered in England 08615172.

From: Cohen, Cllr Jack
Sent: 12 April 2017 19:46
To: [REDACTED]; [REDACTED]
Cc: Ryde, Cllr Shimon; Zinkin, Cllr Peter
Subject: Re: Planning Inspectorate APP/N5090/C/17/3169952: Heathside High, NW3 7UN

Thank you the attached letter does not indicate the school is ,as informed by [REDACTED] , only appealing against the length of time for compliance.

J

Sent from my iPad

On 11 Apr 2017, at 11:16, [REDACTED] [@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)> wrote:

Dear Cllrs,

Please find attached Appeal Consultation letters relating to the above site.

If you have any queries please do not hesitate to contact me,

Yours Sincerely,

[REDACTED]
Specialist Technician

Development and Regulatory Services (DRS), London Borough of Barnet,
Barnet House, 1255 High Road, Whetstone, London N20 0EJ

Tel [REDACTED] Barnet Online: www.barnet.gov.uk

please consider the environment - do you really need to print this email?

Re (Regional Enterprise) Ltd is a joint venture between Capita plc and The London Borough of Barnet.
Registered Office: 17 Rochester Row, London, England SW1P 1QT. Registered in England 08615172.

From: Planning Appeals

Sent: 28 March 2017 12:13

To: [REDACTED]

Subject: FW: Planning Inspectorate APP/N5090/C/17/3169952: Heathside High, NW3 7UN

From: teame1@pins.gsi.gov.uk [<mailto:teame1@pins.gsi.gov.uk>]

Sent: 28 March 2017 11:24

To: Planning Appeals

Subject: Planning Inspectorate APP/N5090/C/17/3169952: Heathside High, NW3 7UN

The Planning Inspectorate (England)
Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

The Planning Inspectorate (Wales)
Crown Buildings, Cathays Park, Cardiff, CF10 3NQ

<http://www.planningportal.gov.uk/planninginspectorate>

Twitter: [@PINSgov](https://twitter.com/PINSgov)

This communication does not constitute legal advice.

Please view our [Information Charter](#) before sending information to the Planning Inspectorate.

Correspondents should note that all communications to or from the Planning Inspectorate may be automatically logged, monitored and/or recorded for lawful purposes.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.

This footnote also confirms that this email message has been scanned by Websense Email Security Gateway for the presence of computer viruses.

<appeal cons letter.doc>

The Planning Inspectorate

ENFORCEMENT NOTICE APPEAL FORM (Online Version)

WARNING: The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

Appeal Reference: APP/N5090/C/17/3169952

A. APPELLANT DETAILS

Name Mrs Melissa Remus Elliot

Company/Group Name Headmistress

Address Heathside High
84 West Heath Road
LONDON
NW3 7UN

Email melissa@seethinkdo.com

Preferred contact method

Email ☒ Post ☐

A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice?

Yes ☐ No ☒

B. AGENT DETAILS

Do you have an Agent acting on your behalf?

Yes ☒ No ☐

Name

Company/Group Name

Address

Planning Resolution Ltd
The Manser, Thorncroft Manor, Thorncroft Drive
LEATHERHEAD
KT22 8JB

Phone number

Email ptaylor@planningresolution.co.uk

Preferred contact method

Email ☒ Post ☐

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

London Borough of Barnet

LPA reference number (if applicable)

ENF/01143/16

Date of issue of enforcement notice

17/01/2017

Effective date of enforcement notice

21/02/2017

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?

Yes

☒ No

☐

Address

Heathside High
84 West Heath Road
LONDON
NW3 7UN

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?

Yes

☐ No

☒

What is your/the appellant's interest in the land/building?

Owner

☐

Tenant

☐

Mortgagee

☒

None of the above

☐

E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?

Yes

☐ No

☒

(a) That planning permission should be granted for what is alleged in the notice.

☐

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

☐

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").

☐

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

☐

(e) The notice was not properly served on everyone with an interest in the land.

☐

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

☐

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

☒

The facts are set out in

☒ see 'Appeal Documents' section

F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations



(a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land?

Yes

☐ No



(b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts?

Yes

☐ No



2. Hearing



3. Inquiry



G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice?

Yes

☐ No



2. Are there any planning reasons why a fee should not be paid for this appeal?

Yes

☒ No



☐ the box below

☒ [see 'Appeal Documents' section](#)

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided?

Yes

☐ No



I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

☒ [see 'Appeal Documents' section](#)

02. Plan:

☒ [see 'Appeal Documents' section](#)

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature

[Redacted Signature]

Date

20/02/2017 16:02:29

Name

[Redacted Name]

On behalf of

Mrs Melissa Remus Elliot

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 1998. Further information about our Data Protection policy can be found on our website under Privacy Statement.

K. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@pins.gsi.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below were uploaded with this form:

Relates to Section:	GROUPS AND FACTS
Document Description:	Facts to support why the time given to comply with the notice is too short. Also state what you consider to be a reasonable compliance period, and why.
File name:	Appeal Statement - FINAL.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	01. The Enforcement Notice.
File name:	Enforcement Notice.docx
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	02. The Plan.
File name:	16_5298_192-THE_LOCATION_PLAN-3457746.pdf

The documents listed below were already attached elsewhere with this form:

Relates to Section:	FEE FOR THE DEEMED PLANNING APPLICATION
Document Description:	Any planning reasons why a fee should not be paid for this appeal.
File name:	statement

PLEASE ENSURE THAT A COPY OF THIS SHEET IS ENCLOSED WHEN POSTING THE ABOVE DOCUMENTS TO US

Completed by

[REDACTED]

Date

20/02/2017 16:02:29

Appeal Statement

84 West Heath Road, London, NW3 7UN

On behalf of Heathside High Boarding School



CONTENTS

- 1.0 Introduction
- 2.0 Site Description
- 3.0 Description of the Breach of Planning Control
- 4.0 Grounds of Appeal
- 5.0 Conclusion

1.0 Introduction

- 1.1 This statement has been prepared in support of an appeal against the Enforcement Notice served by the London Borough of Barnet upon the owners and occupiers of No.84 West Heath Road, London, NW3 7UN.
- 1.2 The Enforcement Notice alleges that a breach of planning control has taken place specifically that without planning permission the change of use of the property to a day school has occurred.
- 1.3 The Enforcement Notice is dated 17th January 2017 and is understood to have been served on the 20th January 2017 via post.
- 1.4 The Council's stated reasons for issuing the Notice are:

a) The introduction into a previously quiet residential area of the incongruous patterns of activity associated with the school and, in particular, the increased comings and goings at either end of the school day has resulted in detriment to that character, contrary to policy CS5 of the adopted Barnet Core Strategy DPD (2012) and to policies DM01 and DM13 of the Development Management Policies DPD (2012)

b) Traffic generated by the day school, over and above that which might reasonably be associated with any fall-back position, likely reduces the free flow of traffic on local roads. Any increase in journey generation, whether resulting from a change in travel behaviour or an increase in the size of the school, will exacerbate the situation. Furthermore, any increase will also likely lead to an unacceptable risk to local highway safety, contrary to policy CS9 of the adopted Barnet Core Strategy DPD (2012) and policies DM17 and DM13 of the Development Management Policies DPD (2012)

c) By virtue of the noise and disturbance associated with access and egress the use of the site as a day school has a detrimental effect upon neighbours' standard of life and there exists the potential for an increase in level of general disturbance, contrary to policies DM04 and DM13 of the adopted Development Management Policies development plan document (DPD) (2012)

- 1.5 The Enforcement Notice requires the cessation of the use of the property as a day school (Use Class D1).
- 1.6 The Enforcement Notice takes effect on the 21st February 2016. The time for compliance is set at 6 months after the effective date of the notice (21st August 2017)
- 1.7 The appeal is made on **ground (g)** on the basis that the time given to comply with the Enforcement Notice is too short.

2.0 Site Description

- 2.1 The site which extends to 0.88 hectares and comprises a former residential care home on the eastern side of West Heath Road which is in the process of being converted into a boarding school. The site is located adjacent to an access to Eden Close to the north and has a side access which runs along the side of no. 74 West Heath Road, and properties on Westover Hill. The existing property, a former care home, consists of the original building, which is of late Victorian construction, and a two-storey modern extension to the rear accommodating the primary residential accommodation.
- 2.2 The site is subject to a blanket tree preservation order and is located in an area of Special Archaeological Significance. The existing property, which extends to three storeys plus basement, is not listed and does not lie within a conservation area.
- 2.3 The last use comprised a care home, for approximately 44 residents with associated on site staff accommodation, falling within Class C2 (Residential Institutions) of the Town and Country Planning (Use Classes) Order 1987. (Order)
- 2.4 The building was acquired by the appellant in June 2017 with the intention of opening a boarding school – Heathside High – from the site.
- 2.5 Some initial conversion works have been undertaken to provide the teaching accommodation (classrooms and offices) for the boarding school, but the building works to provide the sleeping accommodation has only in the last month (January 2017) commenced, following the receipt of the Certificate of Lawfulness of Proposed Use or Development (CLOPUD) from the Council confirming that the boarding school use is lawful within the C2 Use Class.
- 2.6 At the time of writing, five student bedrooms have been completed, along with the creation of 'house parent' accommodation and school kitchens.
- 2.7 Presently 'day pupils' are being taught from the premises, in the areas of the school that are to be for teaching only when the boarding school opens and not within the area to be used for accommodation by boarders and a large proportion of these pupils will become boarding pupils as and when the boarding accommodation is completed and certified.
- 2.8 Of the current day pupils, a small body of younger pupils (year 5) have been attending the appeal site because of exceptional circumstances affecting the school's sister school site located on New End in Hampstead Village. Use and travel to that school has been substantially reduced on safety grounds while a substantial residential development is being undertaken on a site directly opposite the school and which involving demolition and a large volume of HGV movements and construction disturbance.
- 2.9 These displaced day pupils are due to return to the Hampstead school site at the start of the Easter term.

3.0 Planning History

3.1 The site has some limited planning history, which can be summarised as follows:

Reference	Description	Decision	Date
16/5298/192	Internal conversion and use of the existing property to provide education and boarding accommodation (C2) Certificate of Lawfulness (Proposed)	Grant LDC	27 th January 2017
C04794D	Alterations to elderly persons home including the erection of a new two-storey rear extension to replace existing rear wing	Withdrawn	June 1997
C04794C	Alterations to elderly persons home including the erection of a new two-storey rear extension to replace existing rear wing	Refused	July 1996
C04794B	Alterations to elevations, front entrance ramp, fire escape staircases and general refurbishment of elderly persons home	Approved	November 1995
C04794A	Fire escape	Approved	April 1974
C04794	Erection of extension of staff room	Approved	March 1974

4.0 Grounds of Appeal

Appeal Ground G

- 4.1 The Enforcement Notice was served on 17th of January 2017, and would have taken effect on 21st February 2017 had this appeal not been made. The enforcement notice has a compliance period of **6 months** – i.e. by 21st August 2017.
- 4.2 The appellant requests that the compliance period is extended to no earlier than **1 January 2018**.
- 4.3 An extended compliance period is considered reasonable given the delays the appellant has encountered in their attempts to establish the boarding school use of the building as lawful, securing funding for the proposed conversion works and then completion conversion and refurbishment works to provide this.
- 4.4 The appellant applied for a CLOPUD on 10th August 2016 to confirm that the operation of a boarding school at the appeal property – a former Care Home – would not be a material change of use where the former use and the latter use are within the same use class.
- 4.5 The statutory expiry date of the CLOPUD was 6th October 2016. However, following extended deliberation and consideration by LB Barnet, the decision to grant the Certificate was not made until 27th January 2017- over three months beyond the statutory determination date.
- 4.6 The grant of the CLOPUD on 27th January 2017 post-dated the Enforcement Notice being served on 17th January.
- 4.7 The three-month delay in granting the CLOPUD has had several negative consequential impacts, which has resulted in significant delays to the programme for the completion of the building's conversion to a boarding school. The delay has already and will continue to have a material impact on the ability of the appellant to deliver the boarding school, to a satisfaction of LB Barnet, within the compliance period set by the Enforcement Notice.
- 4.8 These impacts are expanded upon below:

Delay in Department for Education (DfE) Certification of the Boarding School

- 4.9 DfE certification is required for all new boarding schools and each school must comply with *the National Minimum Standards for Boarding Schools (April 2015)*. These standards are mandatory in all boarding schools and form the basis for the three early Ofsted inspection of boarding provision.
- 4.10 Furthermore, a new school must also comply with *The School Premises Regulations (March 2015)*. These standards relate to the quality of boarding facilities provided and are also part of the regulatory framework for boarding schools.
- 4.11 The process of obtaining certification could only be commenced upon the grant of the CLOPUD. While initial inspections have allowed only basic conversion works to progress for some of the accommodation, further inspections will be carried out throughout the build programme prior to the full opening of the boarding school.
- 4.12 The appellant's concern is that the 3-month delay already incurred has impacted upon the build programme and will holdup inspections by DfE and Ofsted in the crucial lead-in period

to opening the boarding school. Without full certification the boarding school cannot open and therefore the appellant risks prosecution for non-compliance with the August 21st date.

Delays to Funding

- 4.13 The delay in issuing the CLOPUD has also led to complications for the appellant in obtaining and securing finance to continue and complete conversion and refurbishment of the building. It is only upon receipt of the CLOPUD that this funding has finally been made available, but, as stated above, the delay will mean the completion of the building works will be very close to the compliance date of 21st August.

Uncertainty

- 4.14 The delay in issuing the CLOPUD has resulted in uncertainty for the management team of the boarding school – frustrating their ability to recruit new boarding school staff as well as hindering promotion of the proposed boarding school to the parent of prospective boarding pupils. As with all schools, Heathside High Boarding School seeks to attract new pupils for the start of a full academic year, so the Council's delay in granting the CLOPUD with consequential delay in securing DFE approval and works, has not only delayed the ability to attract and offer places and provide parents with the necessary certainty to join the School.

6.0 Conclusion

- 6.1 The appellant is presently working closely with LB Barnet to ensure that the boarding school is operational as soon as possible. However, owing to the delays incurred following deliberation by LB Barnet on the grant of the CLOPUD, the appellant has legitimate concerns that the 6-month compliance date set by the Enforcement Notice is not achievable. As such, the appellant seeks an extension to the compliance period to **1st January 2018**.

Carter, Richard

From: [REDACTED]
Sent: 23 May 2017 15:24
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road
Attachments: s173A - 84 West Heath Road.docx

[REDACTED]


We have to serve the variation notice in hard copy form and will arrange for this to happen as soon as possible but please see attached the electronic version. Let me know if there are any queries. If I don't hear from you I will assume that you are content with the notice and will send the withdrawal letter to PINS today.

[REDACTED]
**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

NB: A Planning Duty Officer is available at the 2nd floor reception at Barnet House, 1255 High Road, Whetstone, N20 on Monday, Wednesday & Friday mornings from 9am to 1pm

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Barnet online: www.barnet.gov.uk

www.re-ltd.co.uk



London Borough of Barnet is working with RE (Regional Enterprise) Ltd, a new joint venture between the council and Capita plc.



RTPI

Chartered Town Planners

From: [REDACTED]@planningresolution.co.uk]
Sent: 23 May 2017 14:35
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Hi [REDACTED]

A draft of the appeal withdrawal letter is attached - ready to send to PINs upon sight of the variation to the enforcement notice.

I look forward to hearing from you later this afternoon.

Kind regards,

[REDACTED]
[REDACTED]
Senior Associate

Office: [REDACTED]

Mobile: [REDACTED]

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From: [REDACTED]
Sent: 23 May 2017 11:23
To: [REDACTED]@barnet.gov.uk>
Cc: [REDACTED]@planningresolution.co.uk>
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Thanks [REDACTED]

We are both agreed that the extended compliance period will be to January 14th 2018?

If we aim to resolve this today, I will draft a letter to PINs notifying them that we wish to withdraw the appeal and will send it pending sight of the S.173a variation to the notice.

Kind regards,

[REDACTED]

[REDACTED]

Senior Associate

Office: [REDACTED]
Mobile: [REDACTED]

www.planningresolution.co.uk



From [REDACTED]@barnet.gov.uk]
Sent: 23 May 2017 10:51
To: [REDACTED]@planningresolution.co.uk>; [REDACTED]@planningresolution.co.uk>
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

It would not be a normal course of action but I think we might be able to justify it. Would you be in a position to withdraw the appeal today? I would need to know the date of withdrawal to calculate the number of days for compliance.

[REDACTED]

Planning Enforcement Manager

Development & Regulatory Services (DRS)

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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Re

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RTPI

Chartered Town Planners

From: [REDACTED]@planningresolution.co.uk]

Sent: 23 May 2017 09:27

To: [REDACTED]

Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Morning [REDACTED]

Further to [REDACTED] email on Wednesday, could you confirm if you would be willing to vary the Enforcement Notice, under delegated powers, prior to my client withdrawing the Appeal?

My client is rightly cautious of withdrawing their appeal without the comfort provided by confirmation of the varied notice.

Many thanks,

[REDACTED]

[REDACTED]

Senior Associate

Office: [REDACTED]

Mobile: [REDACTED]

www.planningresolution.co.uk



From: [REDACTED]

Sent: 17 May 2017 09:11

To: [REDACTED]@barnet.gov.uk>

Cc: [REDACTED]@planningresolution.co.uk>

Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Dear [REDACTED]

Many thanks for the suggested action. This sounds eminently sensible and assume that you have delegated officer powers to unilaterally change without the need to secure Members approval, as we do not want to withdraw appeal from PINS and then find residents/Members frustrating sensible solution.

If you can confirm, we shall seek client instructions and formally withdraw the appeal on this basis.

Kind regards

Senior Director

Mobile
Office
www.planningresolution.co.uk



From: [redacted]@barnet.gov.uk]
Sent: 15 May 2017 12:44
To: [redacted]@planningresolution.co.uk>
Cc: [redacted]@planningresolution.co.uk>; Melissa Remus [redacted]
mtrotman@heathsideprep.co.uk
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

[redacted]

I think that it might be best to extend the notice until 14 January. This will give everyone the comfort of knowing that the winter term will be the first as a boarding school proper.

In terms of next steps I will draft a formal variation under S.173A as soon as PINS have confirmed that the appeal is withdrawn. Obviously the sooner this can be done the better. I can confirm that if the appeal is withdrawn we will not be making any claim for costs.

I would be happy to meet to discuss the next steps. June is a busy month for me but I am sure that we can find time somewhere.

[redacted]
**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [redacted] | Barnet Online: www.barnet.gov.uk

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From: [redacted]@planningresolution.co.uk]
Sent: 11 May 2017 11:00
To: [redacted]
Cc: [redacted] Melissa Remus; mtrotman@heathsideprep.co.uk
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road
Importance: High

Dear [REDACTED]

Thank you for your email of 20th May.

We have discussed with our client your offer to modify the pending Enforcement Notice to extend the compliance date from the current 21st August date to a date (to be agreed) in January 2018 – potentially 15th of January, which would coincide with the first day of the winter term.

On that basis, my client would be willing to withdraw their 'ground g' appeal upon formal confirmation that the compliance date has been extended.

By way of general update the School are continuing with the final conversion works for the building to provide the boarding accommodation and has also carried out traffic surveys to help inform the earlier discussed Green Travel Plan, that might be submitted alongside a minor change application for the front parking area and separate pedestrian footpath onto West Heath Road. This will hopefully provide additional support and comfort for local residents and Officers, on the day to day operations and movements on and off site.

We hope to be in a position in in June/July to arrange a meeting with yourself (potentially on site) to discuss the emergence of the boarding school and this minor work application/draft Travel Plan and look forward to agreeing a date nearer the time.

If I can be of further assistance with your process for modifying the Enforcement Notice, otherwise please let us know your timing, so we can Inform PINs of the agreed action, allowing the formal withdrawal of the appeal once sorted.

Please call or email if there are any other queries or questions in the meantime.

Kind regards,

[REDACTED]

[REDACTED]

Office: [REDACTED]
Mobile: [REDACTED]

www.planningresolution.co.uk



From: [REDACTED] [@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)
Sent: 05 May 2017 12:21
To: [REDACTED] [@planningresolution.co.uk](mailto:[REDACTED]@planningresolution.co.uk)>
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

[REDACTED]

I wonder if you were able to get any further with this. We are holding off with the appeal administration for the time being but obviously if the offer made is not satisfactory we will need to begin soon.

**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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From: [REDACTED] [@planningresolution.co.uk](mailto:[REDACTED]@planningresolution.co.uk)

Sent: 21 April 2017 09:21

To: [REDACTED]

Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Thanks for your email [REDACTED]

Let me discuss your very reasonable offer with the client today and I'll come back to you this afternoon with their thoughts.

Kind regards,

[REDACTED]

[REDACTED]

Senior Associate

Office: [REDACTED]

Mobile: [REDACTED]

www.planningresolution.co.uk



From: [REDACTED] [@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)

Sent: 20 April 2017 15:08

To: [REDACTED] [>](mailto:[REDACTED]@planningresolution.co.uk)

Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

[REDACTED]

For reasons unknown to me we have just received notification of your appeal in respect of this school. After our meeting though it did not come as a surprise.

I have discussed your case with councillors and neighbours and it has been agreed that it would be sensible to agree to the extension you request rather than resist the appeal.

In terms of possible ways forward I would suggest that the easiest would be for the appeal to be withdrawn and for the council to issue a formal notice extending the period for compliance so that it expires on 1 January 2018 or the nearest convenient date thereafter. Alternatively we can ask the inspectorate to expedite a decision but this might prove more complicated for all involved.

Please let me know your thoughts.

Regards,

**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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Chartered Town Planners

From: [REDACTED] [\[REDACTED\]@planningresolution.co.uk](mailto:[REDACTED]@planningresolution.co.uk)

Sent: 20 January 2017 15:33

To: [REDACTED]

Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Afternoon [REDACTED]

I gather that the enforcement notice has been served. Are you able to email me a copy to review?

Thanks

[REDACTED]
Senior Associate

Office: [REDACTED]

Mobile: [REDACTED]

www.planningresolution.co.uk



From: [REDACTED] [\[REDACTED\]@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)

Sent: 17 January 2017 18:11

To: [REDACTED]@planningresolution.co.uk>; [REDACTED]@Barnet.gov.uk>
Cc: Melissa Remus <melissa@heathsideprep.co.uk>; [REDACTED]@planningresolution.co.uk>; [REDACTED]
[REDACTED]@newmarkpi.com>; Melissa Remus [REDACTED]
Subject: RE: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Dear [REDACTED],

As far as I know the certificate will be dispatched next week. The recommendation is that it be approved and I have seen nothing in the advice and correspondence that I have has sight of that casts doubt on this recommendation. I do stress though that nothing is determined until it is determined.

As we discussed over the phone some form of management plan would seem sensible and I agree that it would probably be appropriate to submit this with a more minor application, if only to provide some form of framework to work within.

In terms of a notice I am afraid that there really is not much I can do to stop service but the notice would be framed to make it clear that it is the day school that is the focus and that there is no objection to a boarding school. What we have already done is decided that the notice should come before the certificate, that way records will read that the certificate 'supersedes' the notice in as much as there could be any inconsistency between the two. I should also add that once a management plan is in place the notice might well be redundant and could be withdrawn, although obviously there are many discussions to be had before we reach this point.

I hope that this all makes sense.


Regards

[REDACTED]
**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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Chartered Town Planners

From: [REDACTED]@planningresolution.co.uk]

Sent: 13 January 2017 16:29

To: [REDACTED]; [REDACTED]s

Cc: Melissa Remus; [REDACTED]; [REDACTED]; Melissa Remus

Subject: CLOPUD ref: 16/5298/192 at St. Margaret's Care Home, 84 West Heath Road

Dear [REDACTED]

Further to our conversation on 4th January, we were encouraged to hear that the CLOPUD was close to being signed off before Christmas and is likely to happen early next week once Nick Linford is happy with the wording of the approval notice, to ensure that it captures the proposed boarding school use.

Following discussion with Melissa Remus, the Headmistress of the School, she has re-affirmed that matters are progressing with the boarding school fit-out and pupil registration, albeit awaiting the final DFE inspection early February, leading to formal boarding registration.

On this basis the first boarding pupils are being programmed as starting after Easter with the main cohort starting from September. In order to assist the DFE approvals, funding, works and parent certainty, the approval of the CLOPUD is clearly required and we see no reason why this should not be approved over the coming week.

The basis of the application and terms of the CLOPUD will also give local ward councillor and residents a further level of comfort that the relevant day school pupils will be returning to the upper/lower day school premises in Hampstead Village in the summer, as the sensitive construction works approach completion at the New End nurses home site.

In terms of the delegated report (to be presented to ward councillors), we have discussed the reasoning for this with the Headmistress and she is understanding but deeply concerned at the possible reputational impact and difficult position this will create with existing/proposed parents. We would therefore ask whether Enforcement Proceedings might be held in abeyance until final inspection/review at the beginning of September as the boarding school opens and day pupils have moved back to Hampstead.

Whilst writing, the Headmistress has also re-affirmed the School's desire to pursue some minor planning applications associated with the boarding school operation for changes to the entrance steps/ramp, a new pedestrian footpath (from the west side of the West Heath Road frontage) and minor alterations to parking (better turning head/bus parking).

On the basis that these would be subject to normal public consultation as part of an application, we could, as part of this, consider offering up an 'operational statement' that includes a Travel Plan etc. all of which would allow the School to further positively engage with residents and Councillors. Once the above strategy is agreed, we would be happy for this to be mentioned to residents and Ward Councillors as part of your ongoing discussions with them.

If you are able to discuss with Nick and respond on the above, it is hoped that this will offer a sensible way forward for all concerned. As my colleague Phillip Taylor has been in discussion with Nick on this matter, I shall ask him to follow-up as required over the coming days.

We thank you for your help and assistance on this matter.

Yours sincerely



www.planningresolution.co.uk

Sent from my iPhone

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IMPORTANT — THIS COMMUNICATION AFFECTS YOUR PROPERTY

NOTICE UNDER SECTION 173A TOWN AND COUNTRY PLANNING ACT 1990 (as amended by the Planning and Compensation Act, 1991)

ISSUED BY THE Council of the London Borough of Barnet (“the Council”)

To: Melissa Remus Elliott, RBE Investment Ltd and ‘The Owner/ Occupier’ 84 West Heath Road NW3 7UN

WHEREAS

1. On 19th January 2017, the Council issued an Enforcement Notice (“the Notice”) in respect of land at 84 West Heath Road, London, NW3 7UN , shown edged and hatched black on an attached plan (hereinafter called “the Property”).
- 2.
3. The Notice was served on 19th January 2017 under the Council reference number ENF/01143/16
4. The requirements of the Notice are:

“Cease the use of the property as a day school (D1)” within a period of 6 months after the notice take effect
5. The taking effect of the notice has been suspended pending the outcome of an appeal to the Secretary of State.

TAKE NOTICE THAT:

In accordance with Section 173A(1) of the Town and Country Planning Act 1990 (as amended) the Council hereby varies the Notice as follows:

1. The deletion in section 6, time for compliance, of the number and text “6 months” and the substitution therefore of the following period of compliance: “7 months and 21 days”.

DATED

Signed



Planning Resolution Ltd.
Thorncroft Manor
Thorncroft Drive
Leatherhead
Surrey
KT22 8JB

The Planning Inspectorate
Team E2
Room 3/23
Temple Quay House
2 The Square
Bristol
BS1 6PN

23rd May 2017

Dear Sir

Town and Country Planning Act 1990
Appeal by Heathside High Boarding School ref: APP/N5090/C/17/3169952
Site Address: Heathside High, 84 West Heath Road, LONDON, NW3 7UN

Following discussions with the Local Planning Authority, the appellant has been able to agree a mutually satisfactory extension of the compliance date of the pending Enforcement Notice to 14th January 2018. The LPA were willing to agree this time extension conditional of the pending ground G appeal being withdrawn.

I have therefore been authorized by my client – Mrs Melissa Remus – to notify the Inspectorate of her request to withdraw the appeal forthwith.

Yours sincerely,

[Redacted Signature]
[Redacted Name]
Senior Associate

Tel: [Redacted]
Mob: [Redacted]

cc. [Redacted] – Planning Enforcement Manager, LB Barnet
Mrs Melissa Remus – Headteacher, Heathside High

Carter, Richard

From: [REDACTED]
Sent: 03 November 2017 17:15
To: Cohen, Cllr Jack; Zinkin, Cllr Peter; Ryde, Cllr Shimon
Subject: RE: Heath Side School, West Heath Road

Dear Cllrs,

Further to my email below I can confirm that I had a productive meeting with the school's advisors about the transition from day to boarding school.

I understand that physical works for the boarding school will be complete within a matter of weeks and can be occupied as soon as Ofsted approval is granted. I have been assured that the school anticipates no problem with the approval process and hopes that an inspection will be timetabled soon.

I have also been assured that there is significant interest in boarding. I am told that 20 boarders had already accepted places and that this number would likely rise swiftly once the Ofsted approval has been granted.

There are currently approximately 120 pupils in this school building. Some of these pupils have expressed an interest in becoming boarders, some have not. I made it clear to the school that the number of day students must be reduced regardless of boarding uptake. This requirement was understood and I was told that day students could be absorbed elsewhere on the estate if required. Furthermore, and as you may recall from the certificate of lawfulness, the Council expected there to be a balance between the two types of student. Some indicative numbers were also given on pupil numbers. I made it clear that if interest in boarding did not translate to firm bookings (now or at any point in the future) the council would not accept the number of day students rising to fill any vacant places. This message was understood.

We also discussed travel plans and refuse arrangements in order to reduce the level of concerns in the locality. We are likely to see some form of formal submissions on these two issues in the not too distant future. I trust that the message about these two issues is not lost in the technicalities of the others.

I left the meeting fairly confident in the school's intentions and their ability to comply with the notice. I remain to be convinced that full compliance will be achieved in January but it was clear that thought has been given to contingency planning for the worst case scenarios.

Time will, of course, tell if timely compliance is achieved but I shall continue to remind the school of its obligations.

If you have any further queries please do not hesitate to let me know.

Regards,

[REDACTED]
**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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Chartered Town Planners

From: [REDACTED]

Sent: 01 November 2017 11:24

To: Cohen, Cllr Jack; Zinkin, Cllr Peter; Ryde, Cllr Shimon

Subject: Heath Side School, West Heath Road

Dear Cllrs,

I have an appointment with Heath Side School's planning advisor about progress towards complying with the notice on Friday. Is there anything that you would like me to raise with him or are there questions that you would like asked?

After the meeting I will prepare a small brief of the type that can be disseminated.

Regards,

[REDACTED]

Planning Enforcement Manager

Development & Regulatory Services (DRS)

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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Chartered Town Planners



Department
for Education

Bishopsgate House
Feethams
Darlington
Co Durham
DL1 5 QE
www.gov.uk

Ms M Remus
Heathside Preparatory School
16 New End
Hampstead
London
NW3 1JA

Direct line [REDACTED]

Email: [REDACTED]@education.
gov.uk

Our ref: 202/6360

11 January 2018

Dear Ms Remus

I am pleased to inform you that your proposals to change the age range and maximum number of pupils at your school have been approved.

Your revised permitted maximum number is now 600 pupils, which has been noted on our records.

The school is now registered as a school providing for pupils aged 2 to 14.

I am also pleased to inform you that approval has been granted for the school to accept up to 26 boarding pupils with immediate effect.

Please ensure that you revise your 'fire risk assessment' of the workplace as required by the Regulatory Reform (Fire Safety) Order 2005 to reflect the current position at your school.

You should let us know in advance if you wish to make any changes to the age range or maximum number of pupils above the revised figures in order that we can determine whether the change should be approved.

Thank you for your co operation in these matters.

Yours sincerely

[REDACTED]

[REDACTED]

Independent Education and Boarding Team

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT, 1990
(as amended by the Planning and Compensation Action, 1991)

TEMPORARY STOP NOTICE **ENF/01143/16**

ISSUED BY THE Council of the London Borough of Barnet ("the Council")

- 1. IT APPEARS** to the Council that there has been a breach of planning control, under Section 171A of the above Act, at the land described below.
- 2. THIS TEMPORARY** stop notice is issued by the Council, in exercise of their power in section 171E of the 1990 Act, because they think that it is expedient that the activity specified in this notice should cease on the land described in paragraph 3 below. The Council now prohibits the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. THE LAND TO WHICH THIS NOTICE RELATES

Land at St Margarets 84 West Heath Road London NW3 7UN , shown edged and hatched black on the attached plan (hereinafter called "the Property").

4. ACTIVITY TO WHICH THIS NOTICE RELATES

Without planning permission the change of use of the property to a day school (Use class D1)

5. WHAT YOU ARE REQUIRED TO DO

Cease the use of the property as a day school (Use Class D1) and for purposes, including summer camps, ancillary to that unauthorised use,

For the avoidance of doubt a school will be considered as falling within use class D1 if the number of day pupils exceeds the number of boarders normally resident at the property.

6. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that it is expedient to issue this Notice for the following reasons:

- 1 The introduction into a previously quiet residential area of the incongruous patterns of activity associated with the school and, in particular, the increased comings and goings at either end of the school day has resulted in detriment to that character, contrary to policy CS5 of the adopted Barnet Core Strategy DPD (2012) and to policies DM01 and DM13 of the Development Management Policies DPD (2012)
- 2 Traffic generated by the day school, over and above that which might reasonably be associated with any fall-back position, likely reduces the free flow of traffic on local roads. Any increase in journey generation, whether resulting from a change in travel behaviour or an increase in the size of the school, will exacerbate the situation. Furthermore, any increase will also likely lead to an unacceptable risk to local highway safety, contrary to policy CS9 of the adopted Barnet Core Strategy DPD (2012) and policies DM17 and DM13 of the Development Management Policies DPD (2012)
- 3 By virtue of the noise and disturbance associated with access and egress the use of the site as a day school has a detrimental effect upon neighbours' standard of life and there exists the potential for an increase in level of general disturbance, contrary to policies DM04 and DM13 of the adopted Development Management Policies development plan document (DPD) (2012)

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 3rd August 2018 when all the activity specified in this notice must cease. This notice will cease to have effect on 17 August 2018.

DATED: 3rd August 2018

Signed:



Fabien Gaudin
Service Director – Planning and Building Control
Barnet House, 1255 High Road, Whetstone, N20 0EJ

ANNEX

WARNING

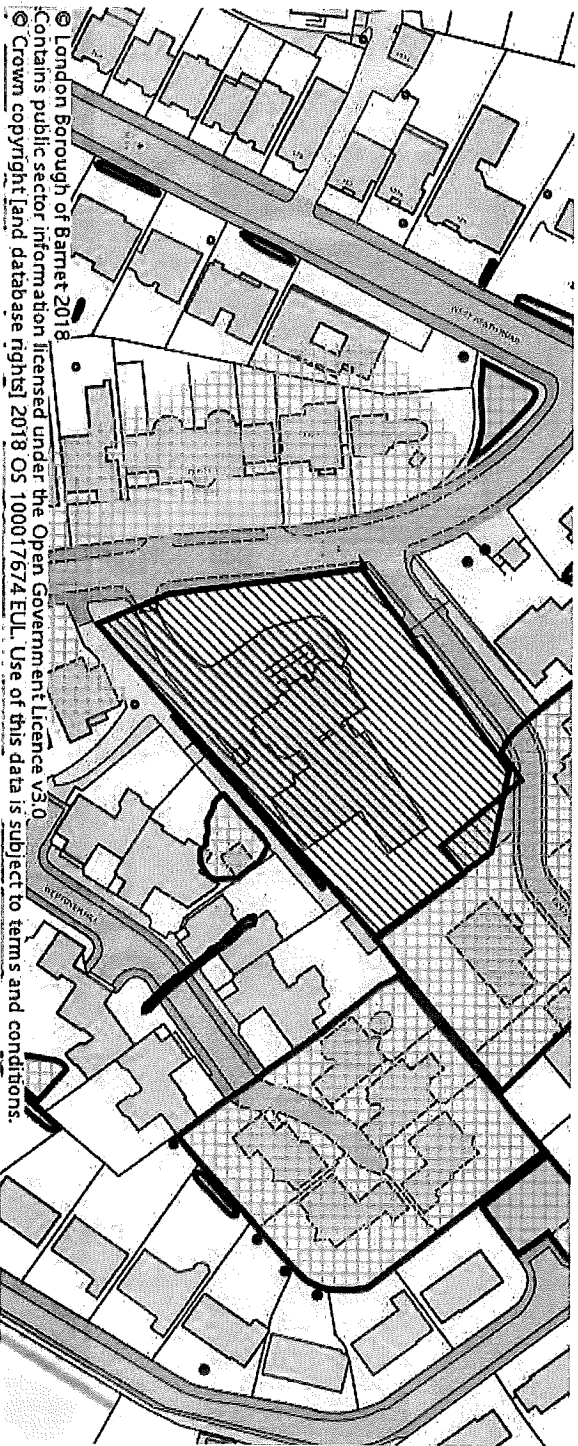
**THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 6.
THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE AGAINST
THIS NOTICE.**

It is an offence to contravene a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on you (section 171G of the 1990 Act). If you then fail to comply with the temporary stop notice you will be at risk of **prosecution** in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence.

The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with the council's planning enforcement officers on 020 8359 2000

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters.

If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.



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Land at:

**St Margarets
84 West Heath Road
London
NW3 7UN**

Fabien Gaudin

**Service Director –
Planning and Building
Control, Barnet House,
1255 High Road, London,
N20 0EJ**

ENF/01143/16



Title: SITE PLAN.

SCALES 1 : 1250 Date: 03.08.2018

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Carter, Richard

From: [REDACTED]
Sent: 08 November 2018 16:34
To: FREER, Mike
Subject: RE: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear Mr Freer,

Thank you for your email. Unfortunately the school decided to ignore our offers and largely carried on this term as they ended the last. As a result we began to draw up papers for an injunction. The requested terms are largely as indicated below. That is to say a staged approach to full compliance before the end of the school year but with the interim stage to be achieved before the New Year rather than Halloween (the intention was originally to allow for a full term to elapse rather than cut the children's education at a half-term but we have clearly been overtaken by events in any case).

The injunction papers have been sealed by the court and have either been served on the school or are ready to be. I am afraid that from this point we are in the hands of the Court as to timetables and the final decision but we are confident that a decision will be made before Christmas.

Regards,

[REDACTED]
**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

NB: A Planning Duty Officer is available at the 2nd floor reception at Barnet House, 1255 High Road, Whetstone, N20 on Monday, Wednesday & Friday mornings from 9am to 1pm

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From: FREER, Mike [mailto:mike.freer.mp@parliament.uk]
Sent: 08 November 2018 13:29
To: [REDACTED]@Barnet.gov.uk>
Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear [REDACTED]

I wonder if there is any update you could share on this matter. I see we are now past the interim stage date of an injunction you mention below.

Any update you have would be very welcome.

Sincerely,

Mike

Mike Freer MP

Conservative Member of Parliament for Finchley and Golders Green
020 7219 7071 (Westminster)
020 8445 5875 (Finchley)
www.mikefreer.com

From [REDACTED] [\[REDACTED\]@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)

Sent: 06 September 2018 15:21

To: FREER, Mike <mike.freer.mp@parliament.uk>

Cc: [REDACTED] [\[REDACTED\]@parliament.uk](mailto:[REDACTED]@parliament.uk)

Subject: RE: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear Mr Freer,

The deadline for compliance has actually never changed from the January 2018 date that was set at appeal, so compliance is already approximately 9 months overdue.

If it turns out, as we suspect, that the school is not operating as a boarding school then we will consider a prosecution, subject to the evidence being available.

Regardless of the outcome of the consideration of a prosecution we have asked lawyers to make an application for an injunction. If it is granted in the form suggested then the school must bring the numbers of day pupils down in stages; full compliance being required by January 2019 and an interim stage achieved by 31 October 2018. If, without good reason, this is not done then the Headteacher could be imprisoned for the failure.

It is quite possible that we end up in a situation where we both prosecute for a failure to comply thus far and apply for an injunction to ensure that if we need to take further action the penalty is more severe.

Both potential actions would be subject to legal advice.

There was an 'offer' with us in mid-August that would have led to a drastic reduction in pupil numbers but I suspect, given what has been said by the Headteacher after the offer was made, that the terms of the offer and the reality of the situation are quite far apart.

If the lawyers advise that there is a good prospect of an injunction being granted I will share the details as soon as possible thereafter.

[REDACTED]
Planning Enforcement Manager

Development & Regulatory Services (DRS)

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From: FREER, Mike [<mailto:mike.freer.mp@parliament.uk>]

Sent: 06 September 2018 13:34

To: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)>

Cc: [REDACTED] [@parliament.uk](mailto:[REDACTED]@parliament.uk)>

Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear [REDACTED]

Are you able to update me on the below, please? Has the resolution plan progressed, now the deadline has passed?

Sincerely,

Mike

Mike Freer MP

Conservative Member of Parliament for Finchley and Golders Green

020 7219 7071 (Westminster)

020 8445 5875 (Finchley)

www.mikefreer.com

From: FREER, Mike

Sent: 30 August 2018 17:58

To: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)

Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear [REDACTED],

Many thanks for this and I look forward to your update next week.

Sincerely,

Mike

Mike Freer MP

Conservative Member of Parliament for Finchley and Golders Green

020 7219 7071 (Westminster)

020 8445 5875 (Finchley)

www.mikefreer.com

From: [REDACTED] @Barnet.gov.uk]
Sent: 24 August 2018 14:42
To: FREER, Mike <mike.freer.mp@parliament.uk>
Cc: Members Enquiries <members.enquiries@Barnet.gov.uk>
Subject: RE: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear Mr Freer,

We are working on a resolution plan with a deadline for agreement on Tuesday. Rather than reply now with hypothetical details I will respond more fully on either Tuesday or Wednesday.


We certainly do not expect the school to operate next academic year in the same manner it did in the last and nor would we tolerate it doing so.

[REDACTED]
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From: FREER, Mike [<mailto:mike.freer.mp@parliament.uk>]
Sent: 24 August 2018 12:30
To: [REDACTED] @Barnet.gov.uk>
Cc: Members Enquiries <members.enquiries@Barnet.gov.uk>
Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear [REDACTED]

I wrote to you 10 August regarding the below. I wonder if you are now in a position to respond.

Sincerely,

Mike

Mike Freer MP

Conservative Member of Parliament for Finchley and Golders Green
020 7219 7071 (Westminster)
020 8445 5875 (Finchley)

www.mikefreer.com

From: FREER, Mike

Sent: 10 August 2018 13:14

To: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)

Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear [REDACTED],

Please find below the recent emails that I have received from my constituent, [REDACTED] regarding the unlawful school at 84 West Heath Road. I understand the situation has still yet to be resolved, despite compliance deadlines passing as far back as April.

I would be most grateful for an update on what the Council intends to do and, ideally, a timescale for any action(s) that I can share with my constituent.

Sincerely,

Mike

Mike Freer MP

Conservative Member of Parliament for Finchley and Golders Green

020 7219 7071 (Westminster)

020 8445 5875 (Finchley)

www.mikefreer.com





From: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)

Sent: 18 April 2018 16:06

To: [REDACTED] [@parliament.uk](mailto:[REDACTED]@parliament.uk)>

Subject: RE: DUE TODAY at 11:57 : 84 West Heath Road - Heathside Unlawful School Your Ref: 101001487186
MEMEBERS ENQ

Dear [REDACTED]

It is for the School to comply or face the possibility being prosecuted. Whether or not it is considered to be in the public interest to prosecute will depend on how swiftly the school moves towards compliance. So far we have been of the view that the school is clearly putting effort in resolving the situation and therefore that we have not met the threshold for a prosecution but the longer the case remains open the harder it will be for the school to convince us to maintain this view.

I think it almost certain that the Council will prosecute for a failure to comply if the matter has not been resolved by the end of July with a realistic possibility that action will come much sooner. The next round of discussions between planning and legal officers will take place at the end of April/beginning of May when this question will be addressed again. We had hoped to be able to discuss the issue sooner but the prosecutor is currently involved in very drawn out litigation.

How quickly the school actually complies is a different question entirely but I would imagine that there are many logistical difficulties that it will need to overcome.

Regards,

[REDACTED]

**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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From: [REDACTED]@parliament.uk]

Sent: 18 April 2018 10:41

To: [REDACTED]

Subject: RE: DUE TODAY at 11:57 : 84 West Heath Road - Heathside Unlawful School Your Ref: 101001487186 MEMEBERS ENQ

Dear [REDACTED]

Thank you for getting back to me.

Can you please provide a confirmed timeframe for the council's proposed resolution, so that I can keep [REDACTED] informed.

Yours Sincerely,

[REDACTED]
Parliamentary Caseworker

Mike Freer, Member of Parliament for Finchley & Golders Green

House of Commons, London SW1A 0AA
[REDACTED]



Office of Mike Freer MP

Conservative Member of Parliament for Finchley & Golders Green

House of Commons

London SW1A 0AA

From: [REDACTED] [\[REDACTED\]@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)
Sent: 13 April 2018 12:09
To: [REDACTED] [\[REDACTED\]@parliament.uk](mailto:[REDACTED]@parliament.uk)>
Cc: [REDACTED] [\[REDACTED\]@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)>; Re-MembersEnquiries <Re-MembersEnquiries@Barnet.gov.uk>
Subject: RE: DUE TODAY at 11:57 : 84 West Heath Road - Heathside Unlawful School Your Ref: 101001487186
MEMEBERS ENQ

Dear [REDACTED]

Thank you for your email.

The short history of this planning enforcement investigation is that In September 2016 a Camden-based Junior school expanded into a former care home on West Heath Road. In its original form 100% of pupils were day students taken from the existing school population. The Council objected to the change from care home to day school and served notice upon those responsible for the change. The time period for compliance with the notice expired in January 2018.

The school has been consistent in its claim that they wish to use the West Heath Road building as a boarding school and details of what a future boarding school would look like have been agreed with the Council. Work to create the bedrooms and other domestic accommodation is now largely (if not wholly) complete but it does not seem as though the number of children taking up the boarding places has yet matched the approved details.

The next possible step for the Council is to prosecute for a failure to comply with the Notice. We have been in discussions with our legal service over this most drastic of measures. These discussions will continue whilst we work with the school to secure timely compliance.

The school has been quiet over the Easter holidays but we expect this attention to be given the school's proper attention from next week.

Regards,

[REDACTED]
**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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Mike Freer MP

Conservative Member of Parliament for Finchley and Golders Green
020 7219 7071 (Westminster)
020 8445 5875 (Finchley)
www.mikefreer.com

From: [REDACTED]@Barnet.gov.uk]

Sent: 06 September 2018 15:21

To: FREER, Mike <mike.freer.mp@parliament.uk>

Cc: [REDACTED]@parliament.uk>

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Dear Mr Freer,

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From: FREER, Mike [<mailto:mike.freer.mp@parliament.uk>]

Sent: 06 September 2018 13:34

To: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)

Cc: [REDACTED] [@parliament.uk](mailto:[REDACTED]@parliament.uk)

Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

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From: FREER, Mike

Sent: 30 August 2018 17:58

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From: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)

Sent: 24 August 2018 14:42

To: FREER, Mike <mike.freer.mp@parliament.uk>

Cc: Members Enquiries <members.enquiries@Barnet.gov.uk>

Subject: RE: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

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From: FREER, Mike [<mailto:mike.freer.mp@parliament.uk>]

Sent: 24 August 2018 12:30

To: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)>

Cc: Members Enquiries <members.enquiries@Barnet.gov.uk>

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Mike

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Conservative Member of Parliament for Finchley and Golders Green

020 7219 7071 (Westminster)

020 8445 5875 (Finchley)

www.mikefreer.com

From: FREER, Mike

Sent: 10 August 2018 13:14

To: [REDACTED]

Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear [REDACTED]

Please find below the recent emails that I have received from my constituent [REDACTED], regarding the unlawful school at 84 West Heath Road. I understand the situation has still yet to be resolved, despite compliance deadlines passing as far back as April.

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Mike

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020 7219 7071 (Westminster)

020 8445 5875 (Finchley)

www.mikefreer.com

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED] [@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)

Sent: 18 April 2018 16:06

To: [REDACTED] [@parliament.uk](mailto:[REDACTED]@parliament.uk)>

Subject: RE: DUE TODAY at 11:57 : 84 West Heath Road - Heathside Unlawful School Your Ref: 101001487186 MEMEBERS ENQ

Dear [REDACTED]

It is for the School to comply or face the possibility being prosecuted. Whether or not it is considered to be in the public interest to prosecute will depend on how swiftly the school moves towards compliance. So far we have been of the view that the school is clearly putting effort in resolving the situation and therefore that we have not met the threshold for a prosecution but the longer the case remains open the harder it will be for the school to convince us to maintain this view.

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How quickly the school actually complies is a different question entirely but I would imagine that there are many logistical difficulties that it will need to overcome.

Regards,

[REDACTED]
Planning Enforcement Manager

Development & Regulatory Services (DRS)

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

Tel: [REDACTED] | Barnet Online: www.barnet.gov.uk

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Thank you for your email.

The short history of this planning enforcement investigation is that In September 2016 a Camden-based Junior school expanded into a former care home on West Heath Road. In its original form 100% of pupils were day students taken from the existing school population. The Council objected to the change from care home to day school and served notice upon those responsible for the change. The time period for compliance with the notice expired in January 2018.

The school has been consistent in its claim that they wish to use the West Heath Road building as a boarding school and details of what a future boarding school would look like have been agreed with the Council. Work to create the bedrooms and other domestic accommodation is now largely (if not wholly) complete but it does not seem as though the number of children taking up the boarding places has yet matched the approved details.

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The school has been quiet over the Easter holidays but we expect this attention to be given the school's proper attention from next week.


Regards,

**Planning Enforcement Manager
Development & Regulatory Services (DRS)**

London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ

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From: [REDACTED]@parliament.uk]
Sent: 18 April 2018 10:41
To: [REDACTED]
Subject: RE: DUE TODAY at 11:57 : 84 West Heath Road - Heathside Unlawful School Your Ref: 101001487186 MEMEBERS ENQ

Dear [REDACTED]

Thank you for getting back to me.

Can you please provide a confirmed timeframe for the council's proposed resolution, so that I can keep [REDACTED] informed.

Yours Sincerely,

[REDACTED]
Parliamentary Caseworker
Mike Freer, Member of Parliament for Finchley & Golders Green
House of Commons, London SW1A 0AA
[REDACTED]



Office of Mike Freer MP
Conservative Member of Parliament for Finchley & Golders Green
House of Commons
London SW1A 0AA

From: [REDACTED]@Barnet.gov.uk]
Sent: 13 April 2018 12:09
To: [REDACTED]@parliament.uk>
Cc: [REDACTED]@barnet.gov.uk>; Re-MembersEnquiries <Re-MembersEnquiries@Barnet.gov.uk>
Subject: RE: DUE TODAY at 11:57 : 84 West Heath Road - Heathside Unlawful School Your Ref: 101001487186 MEMEBERS ENQ

Dear [REDACTED]

Carter, Richard

From: [REDACTED]
Sent: 18 February 2019 21:54
To: FREER, Mike; Members Enquiries
Subject: RE: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Dear Mr Freer,

I am afraid that we are still awaiting a Court date. There has been some work in the background that we hope might lead to an out of court agreement in our favour but short of a date being set I cannot see this being finalised.

The lawyers are fully aware of the importance of this case to us and I am certain will be doing everything in their power to secure a hearing as soon as is practically possible

Regards,

[REDACTED]
**Planning Enforcement Manager
Development & Regulatory Services (DRS)**
London Borough of Barnet, Barnet House, 1255 High Road, London, N20 0EJ
Tel [REDACTED] | Barnet Online: www.barnet.gov.uk

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From: FREER, Mike [mailto:mike.freer.mp@parliament.uk]
Sent: 18 February 2019 11:58
To: Members Enquiries <members.enquiries@Barnet.gov.uk>
Cc: [REDACTED]@Barnet.gov.uk
Subject: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186



Office of Mike Freer MP

Conservative Member of Parliament for Finchley & Golders Green
House of Commons
London SW1A 0AA

Dear Sir,

Following on from our previous correspondence, and a follow up sent from my office on 29 January 2019, would it be possible to provide me with an update on the below?

I look forward to your response.

Kind Regards

Yours,

Mike Freer MP

Conservative Member of Parliament for Finchley and Golders Green
020 7219 7071 (Westminster)
020 8445 5875 (Finchley)
www.mikefreer.com

From: [REDACTED]
Sent: 29 January 2019 15:05
To: 'Members Enquiries' <members.enquiries@Barnet.gov.uk>
Cc: [REDACTED] <[\[REDACTED\]@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)>
Subject: RE: From the office of Mike Freer MP - unlawful school at 84 West Heath Road; Ref: 101001487186

Hi,

Mr Freer would appreciate an update on the issue of 84 West Heath Road.

I look forward to hearing from you.

Regards

[REDACTED]
Senior Caseworker to Mike Freer MP
Member of Parliament for Finchley & Golders Green
Tel: [REDACTED] | Email: [\[REDACTED\]@parliament.uk](mailto:[REDACTED]@parliament.uk)



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From: peter zinkin [REDACTED]
Sent: 26 July 2019 17:13
To: [REDACTED]
Cc: Cllr.P.Zinkin@barnet.gov.uk; [REDACTED]; Cllr.S.Ryde@barnet.gov.uk; Cllr.A.Clarke@barnet.gov.uk; [REDACTED]; [REDACTED]; [REDACTED]
Subject: RE: Heathside

Dear All

I attach below a note on the current position which [REDACTED] and I asked the council's solicitors to prepare to explain what is happening and why.

Please read and I will try and answer any questions on Sunday.

Regards

Peter

Cllr Peter Zinkin

Council statement to residents near to 84 West Heath Road

As residents will be aware, in 2018 the Council commenced legal action to seek an injunction following the continued breach of planning control at the Land at St Margarets 84 West Heath Road, London, NW3 7UN. The property is currently occupied by Heathside Preparatory School, and the Council considers it is being operated without planning permission as a day school (use class D1). Enforcement action was originally

commenced by the Council by way of Enforcement Notice following complaints made by local residents as to the negative impact that the use of Heathside School was having, such as the noise at the start and end of the school day due to children being dropped off and collected, and the consequences for traffic on an already busy road. However, Heathside School failed to take steps to ensure compliance with the terms of the Enforcement Notice.

The injunction sought would require Heathside School to take steps to reduce the number of pupils attending on a day basis in comparison to the number of pupils attending on a boarding basis. This would result in Heathside School operating as boarding school in accordance with its use class as a residential institution (use class C2).

Unfortunately, the proceedings were subject to extensive delays on the part of the Court. A hearing at which a Judge would consider the case and ultimately decide whether to grant the sought injunction was listed for 29 July 2019. This listing was made with little notice to the Council or to the other parties.

Shortly before the Council was informed of the hearing date, they became aware that some of the Defendants to the injunction proceedings (being the freehold and leasehold owners, controllers and/or occupiers of the Property) had applied for administration and/or bankruptcy proceedings. However, no evidence was provided to substantiate those claims. The Council was later informed Heathside Preparatory School may have been sold. However, the Council has as yet been unable to acquire legal evidence as to the form of sale and impact on the ownership, control or occupation of Heathside School and its property.

In order to obtain an injunction, the Council would have to positively prove that the Defendants to the proceedings are the relevant entities who own, control and occupy the Property such that they are able to take steps to ensure compliance with the injunction. Without clear evidence of the sale (for example, whether there has been an acquisition of the freehold or leasehold of the property or just shares in the Heathside School company), it would be difficult at this stage to justify seeking to add the alleged new owners to the proceedings.

In addition, the relevant High Court Judge considering the case at a hearing would be need to satisfy themselves that the facts of the case are such that it would be just and proportionate to apply an injunction that, if breached, could result in the relevant Defendants being found guilty of Contempt of Court and sent to prison, fined and/or their assets seized. This is, understandably, a high threshold to meet in order for a Judge to consider that an injunction ought to be granted. In circumstances where the question of ownership, control and occupation of the property is unclear, and in light of the fact that, if there is a new owner, that owner would not reasonably have been able to undertake the steps required to ensure compliance in the small timeframe between acquisition and the hearing, it is very unlikely that a Judge would be willing to grant the injunction at the hearing on Monday 29 July 2019.

For these reasons, and with the benefit of legal advice from the Council's Solicitors and instructed Barrister, the decision was made to ask the Court to vacate the hearing and for a new hearing to be listed towards the end of August and before Heathside School's new term on 5 September. Whilst the Council are keen not to unnecessarily prolong this matter further, it is considered that this will provide time to make enquiries to establish the position in respect of ownership, control and occupation. If it is correct that there are new owners

then this will give the Council time to seek an order that they be added to the Proceedings and, where appropriate, to remove some of the existing Defendants. The Council can also explore with that new owner whether they will comply with the Enforcement Notice and therefore the matter be resolved without the need to continue with the injunction proceedings.

However, in circumstances where the existing Defendants and/or the new owners fail to take steps to ensure compliance with the Enforcement Notice then the Council will continue with the proceedings to seek an injunction against the persistent breach of planning control. By requesting that a new hearing date be listed ahead of Heathside School's new term this will ensure that there will be no further delay should compliance not occur.

Should you have any questions in respect of this matter then please do contact Cllr Peter Zinkin on the details provided below.

Cllr.p.zinkin@barnet.gov.uk

CONTRAVENTION:

Without planning permission, the change of use of the property to a day school (Use class D1)

RECOMMENDATION:

To apply for an INJUNCTION and request that it require those served to:-

By 8 January 2019

Either,

Cease the use of the property as a school (of any description) other than in strict accordance with the following terms, unless otherwise expressly agreed by the grant of a planning permission:

- i) The total number of pupils on-site at any one time shall not exceed 72 (including pupils that are normally educated elsewhere).
- ii) Of a total pupil population not exceeding 72, not more than 46 will be 'day-pupils' and the number of day-pupils will not exceed the number of boarders by more than a ratio of 2:1 (that is there will be no more than two day-pupils to every boarder) unless the failure to comply is the result of sickness or other relevant health condition requiring a registered boarder to withdraw from the residential arrangement.
- iii) The School will, within 5 working days of a demand by the local planning authority, make daily pupil registers or extracts thereof available (subject to the provisions of the General Data Protection Regulations and the Data Protection Act 2018 or any other applicable statutory provisions) to an appointed officer. The registers or their extracts shall clearly identify the number of children who are/were present overnight, the total number present throughout the day and at points throughout the day. On completion such registers shall be kept for not less than two years or as demanded by any other legal provision.

Or,

Cease the use of the property as a school (of any description) other than in strict accordance with the following terms, unless otherwise expressly agreed by the grant of a planning permission:

- a) The total number of day pupils (including pupils that are normally educated elsewhere) present on site shall not, unless otherwise agreed in writing, exceed the number of registered boarders, a number equivalent to any limitation on the number of boarders imposed by OFSTED/ the Department for Education or 64, whichever is the least.
- b) The School will, within 5 working days of a demand by the local planning authority, make daily pupil registers or extracts thereof available (subject to the provisions of the General Data Protection Regulations and the Data Protection Act 2018 or any other applicable statutory provisions) to an appointed officer. The registers or their extracts shall clearly identify the number of children who are/were

present overnight, the total number present throughout the day and at points throughout the day. On completion such registers shall be kept for not less than two years or as demanded by any other legal provision.

And,

In any event by 25 April 2019

Cease the use of the property as a school (of any description) other than in strict accordance with the following terms, unless otherwise expressly agreed by the grant of a planning permission:

a) The total number of day pupils (including pupils that are normally educated elsewhere) present on site shall not, unless otherwise agreed in writing, exceed the number of registered boarders, a number equivalent to any limitation on the number of boarders imposed by OFSTED/ the Department for Education or 64, whichever is the least.

b) The School will, within 5 working days of a demand by the local planning authority, make daily pupil registers or extracts thereof available (subject to the provisions of the General Data Protection Regulations and the Data Protection Act 2018 or any other applicable statutory provisions) to an appointed officer. The registers or their extracts shall clearly identify the number of children who are/were present overnight, the total number present throughout the day and at points throughout the day. On completion such registers shall be kept for not less than two years or as demanded by any other legal provision.

For the avoidance of doubt a boarder shall be interpreted as meaning a child under 18 who will have sole right to a bed-space during term times and will have spent no less than 50% of term-time weekday nights at 84 West Heath Road. A day pupil shall be any child under 18 receiving lessons/education at 84 West Heath road other than defined as a 'boarder'.

That the Head of Legal Services to be instructed to take such action as may be necessary, including further legal proceedings, to secure compliance with the injunction.

OFFICER REPORT:

Site Description

The site is accessed from West Heath Road between Eden Close and Westover Hill. The existing building was originally built in the Victorian style but has been heavily extended in a more utilitarian fashion to the rear. The property was previously in the ownership of the London Borough of Camden as a Care Home (use class C2) known as St Margaret's. The building was disposed by the London Borough of Camden and was acquired by Heathside Preparatory School. Heathside is a pre-existing school spread over several sites in nearby Highgate, the main 'campus' being at New End NW3. It is understood that during its time as a

care home the communal rooms were generally at the front of the site with the majority of the private residential rooms being in the extension.

The site has car parking to the front which is accessible from West Heath Road and open space around the footprint of the building. Heavy screening prevents all but glimpsed views of the site from West Heath Road.

The area is characterised by large residences. It is within a Controlled Parking Zone.

There are no planning designations of note.

Legislative Position

Within planning law most uses of land, including buildings, are grouped within certain 'use classes'. Changes of use within a class or between certain classes do not require planning permission. The Use Classes Order 1987 sets out that Class C2 (Residential Institutions) consists of the use of or provision of residential accommodation and care to people in need of care (other than a use within class C3 [dwelling house]), use as a hospital or nursing home, or use as a residential school, college or training centre.

Boarding schools and care homes both belong within class C2 of the Use Classes Order.

Day schools are within class D1 (non-residential institution)

Planning permission is required to make a material change of use from class C2 to class D1.

Site History

The London Borough of Camden operated a care home for the elderly for a period of many years until 2015/2016. In early 2016, the London Borough of Camden voted to dispose of the building and their interest in the site. The site was acquired for use by the Heathside Preparatory School.

Discussions with the Head teacher in September 2016 revealed that the school had acquired the site in order, apparently, to open-up a boarding school to complement the existing day school in Highgate. The exact proposed relationship between the elements was not made clear during the discussions. However, it was clear from the inspection that the intention was to refurbish some or all of the flats of the care home to provide the boarding accommodation and to use the balance (if any) as classrooms or similar. The old communal rooms to the front were to be used as a library, studios and classrooms. The school would be serviced as before with the kitchen, laundry and medical room to be retained in their former locations.

The head teacher has claimed/confirmed that the original plan for the site was deflected by significant construction work taking place at a site adjoining the main school building. The school considered that the health and safety of the pupils at the school was being/would be compromised by this work. Consequently, it was considered necessary for some pupils to be educated elsewhere. As a result of the works a number of day-students were decanted from the main site into the building in question in time for the start of the 2016/17 school year.

By the time of a second site visit in September, the use of the building as a school had commenced with lessons taking place in a number of predominantly ground floor rooms. During this visit a number of rooms particularly to the rear of, and within the upper floors of the building, were seen to have been repainted and earmarked for conversion to student bedrooms.

During the 2017/18 academic year the total school population reached 102. At the start of the year all of the pupils were day students and no facilities for boarders had by then been provided. Over the course of the year bedrooms and ancillary facilities became available and by the summer term sufficient bed spaces and facilities were available for approximately 50 pupils. It is understood that the total capacity could rise if further phases of development were to be undertaken. The number of boarders in residence has varied, peaking at around 30 during the summer term but apparently falling shortly thereafter.

The school claim to have a travel plan in place but this has not as yet been provided to the Council. It is, however, evident that some thought has been given to travel. Most notable of the travel arrangements is the provision of a coach service that shuttles pupils between the school and destinations to the South.

It is understood that rooms within the school are let out to external groups outside of school hours and during vacation periods. At present the Council is aware of a stage school that hosts classes at the site but details are likely to change and develop over time. It is considered that the activities known of can be considered as ancillary to the main use of the building as a day school. However, as the main use is itself unlawful it stands to reason that these 'ancillary' activities are themselves unlawful.

Planning History

Of the applications previously submitted in respect of the site only that relating to a certificate of lawfulness (16/5298/192) is of immediate relevance. In its original form this application sought clarification that the described use constituted a boarding school within the C2 (Residential Institutions) use class of the Use Classes Order (1987) and therefore that planning permission was not required for the change to this use from the previous care home use.

Documents provided with the application stated that the school in its final form would accommodate up to 130 pupils with 65 of these being boarders, accommodated specifically in 842sq.m of floor space. It also stated that 434sq.m of the internal floorspace would be for teaching space (irrespective of the status of the pupil) and that approximately 545sq.m would be circulation and other amenity space. The original application also stated that there would also be boarding staff in the site at second floor level.

The submission documents suggested that there would be a staged progression from day to boarding school and that full capacity could only be reached at the start of the 2017/18 school year.

Roughly 50% of the building would be dedicated to residential accommodation and 50% to teaching. This ratio was largely met by Summer 2018.

Legal advice obtained during consideration of the application confirmed that the description of the use was of a day school.

A planning enforcement notice was served upon interested parties on 19 January 2017 and required that the use as the property as a day school cease within a period of 6 months of the notice taking effect. After an abortive appeal process the notice took effect on 24 May 2018 and the time period for compliance extended to allow the deadline to coincide with the start of a new school term on 14 January 2018

An application for a certificate of lawfulness was determined on 27 January 2017 with a certificate being granted. In summary the Council agreed that the use could be considered as a boarding school if the total number of students did not exceed around 130 and if the ratio of day students to boarders did not exceed 1:1. In the use description at page (3) it is stated that "The total number of pupils within the school is capable of as accommodating up to 130" and page (6) where the following appears "the fully subscribed school is based on 50% of pupils being boarders".

PLANNING APPRAISAL:

The following text appears, with small variations and updates, in the delegated powers report that led to the service of the enforcement notice. It remains a valid assessment of the school, present and future.

Planning Considerations

The main considerations in this case concern the impact of the development on the following: highway safety and the free flow of traffic; levels of noise and disturbance caused to the occupiers of neighbouring properties; the impact of the patterns activity associated with the use on the character of the area; the community benefit arising from the provision of additional school places in the South of the Borough; and any fall-back position as may be established.

Appraisal

The fall-back position.

Legal advice confirms that a school for approximately 130 children, half of which are boarders is a 'residential institution' within the understanding of C2 of the Use classes order. If the day school were to close there is a real prospect of a boarding school replacing it since that is the school's stated intention. As such the day school must be assessed against this fall-back position as well as in relation to the previous use of the land.

In the absence of any controls over the future evolution of the use and the site consideration must also be made as to the possibility of the day school expanding and the implications of such an expansion. It is also reasonable to conclude from the proportions of the school currently earmarked for residential accommodation that up to if not more than 200 children could be placed at the school.

The need for school places

The National Planning Policy Framework (NPPF) states that "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" (para 94). At a local level this demand translates into policy contained within chapter 15 of the local plan Core Strategy development plan document (2012); chapter 14 of the Development Management Policies Document (DMPD) (2012) and policy 3.18 of the London Plan (2015). These policy documents recognise the growth of Barnet's population and the demographic changes that are reasonably expected in the future and state Barnet's commitment to providing suitable school places to meet present and future change.

Furthermore, a report to the council's 'Children, Education, Libraries and Safeguarding' Committee confirmed the need for school expansion in the South of the Borough (<https://barnet.moderngov.co.uk/documents/s34658/Planning%20for%20new%20school%20places%20201718%20to%20201920.pdf>).

There is little within the adopted planning policies to suggest that they should be not be equally applied to both state and private sector developments.

Given the demand for school places in the South of the Borough and the general policy context considerable weight should be given to the provision of a modest but important number of school places.

Conversely, Education officers within the London Borough of Barnet have confirmed that robust plans are already in place to meet expected future demand for school places and that, in extremis, children displaced from this school could be provided with spaces nearby.

Noise and disturbance

Policy DM12 of the DMPD states that "New community or educational uses will be expected to protect the amenity of residential properties". Policy DM04 continues "proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted".

It is not considered that a formal noise assessment in line with British Standard 4142:2014 Methods for rating and assessing industrial and commercial sound or BS8233:2014 Guidance on sound insulation and noise reduction from buildings would be of great assistance in the current considerations. The former is not intended for use in the rating and assessment of sound from people (para 1.3 [f]) whilst the latter does not provide guidance on assessing the effects of changes in the external noise levels to occupants of an existing building, as is the required here.

The school is surrounded on each side by residential developments. The site entrance is to the South West onto the predominately residential West Heath Road. Although there is no evidence that such a use is made the land lying on the other sides of the site could be pressed into use as school playground thus bringing noise generating activity into close proximity of houses in Eden Close and Westover Hill. The possibility that any part of the land might be brought into use as a playground would likely exist equally in a day school or boarding school and is not in itself a reason to object to the current use. The building itself is set close to other dwellings but the class rooms are currently set away from the site edges.

It is considered that there are four primary sources of noise (current and potential) that require consideration: from children either at play in school grounds or on the way to play elsewhere (Teachers currently escort children to the nearby Golders Park during break times); from children arriving at and leaving the school; from vehicles collecting or dropping pupils off at site; and from activities within the school itself.

Evidence obtained during visits at school opening and closing times suggests that access and egress is generally well-managed and orderly. However, the observations were made during periods when the school will have been aware of the planning interest in the site and may not be reflective of ordinary activity, current or future.

West Heath Road is a residential road that, whilst busy at peak periods, is generally quiet. In this location, background noise levels are likely to be dominated by sound from passing traffic.

However, ambient noise level is reduced off-peak, during the evenings or early mornings or at weekends when the street is likely to be less busy.

Local residents have complained about the impact of the building's intensified use on their quality of life and have, in particular, cited the noise and disturbance caused by the vehicles, particularly the coaches that bring children to and from school. Although some neighbours are supportive of the school these supporters have not sought to argue that the school has had a negligible effect on noise levels.

The potential for noise emanating from within the building cannot be disregarded but does not currently appear to cause such harm to amenity as to warrant further action at this time. It is considered that the imposition of appropriate conditions on any future planning permission would likely provide an adequate means of mitigating the impact of internal noise should a problem arise. There is also little evidence that the break time arrangements currently cause detriment to neighbouring occupiers or that any impact cannot be successfully mitigated through the expeditious use of planning conditions and obligations. However, it is also considered that the use of the site as a day school, however well managed, is likely to increase noise levels at the start and end of the school day by a significant amount. If the school is allowed to grow then a corresponding increase in noise levels is likely to follow.

A number of neighbours have complained about noise and activity associated with the out-of-hours use of the site by external organisations. Whilst in principle such uses may or may not be appropriate without proper control of the type that can be exercised in conditions and legal agreements the Council cannot be certain that the activity will remain at a level appropriate to the circumstances.

On balance it is considered that the use of the site as a day school has a detrimental effect upon neighbours' standard of life and that there exists the potential to increase the level of general disturbance and cause considerable angst and harm to nearby residents. At present the main concern is with the noise and disturbance caused at the beginning and at the end of the school day. Other sources of noise are noted but the levels associated with these other sources have not as yet reached / been evidenced as having reached the point where immediate action would be highly desirable.

It is recognised that a boarding school will also generate noise from all of the above activities. However, the natural restriction on pupil numbers and the patterns of activity associated with such a use are likely to mitigate against levels that might be associated with a day school.

Character

As well as causing noise and disturbance to nearby residents the introduction into a previously quiet residential area of the incongruous patterns of activity associated with the school and, in particular, the increased comings and goings at either end of the school day has resulted in detriment to that character.

Highway Safety

Policy CS9 of the Core Strategy states the Council's strategic objectives as regards travel and transport in the borough and, pertinently, states the commitment of the Council to improving highway safety and the free flow of traffic. Policy DM17 of the DMPD provides further detail and states that "The council will ensure that the safety of all road users is taken into account when considering development proposals, and will refuse proposals that unacceptably increase conflicting movements on the road network or increase the risk to vulnerable users.

No details of a travel plan have been provided to the Council. However, it is apparent that some thought has been put to travel arrangements. A coach service, comprising two 'standard size' single deck coaches, ferries children to destinations south of the site. It is understood, but remains unconfirmed, that the coach picks up / drops off close to the main school site in New End, NW3 and the nearby tube stop.

Council highway officers have visited the site and have provided comments to assist in determining the expediency of planning enforcement action.

The Highway officer's assessment based on observations suggests that at present there are no urgent safety concerns. In collecting or dropping pupils off most parents/guardians tend to park in safe and sensible places. A few drivers were observed making inappropriate decisions as regards parking or manoeuvres but these were determined to be very much in the minority. However, it was also observed that the morning 'drop-off window' was unusually long. It is opinion of the highways officer that if this window were to be reduced or if numbers of children arriving by car were to increase (for instance due to an increase in school size or the withdrawal of the coach service) there would be reason to think that potentially unsafe behaviour might arise.

Planning obligations designed to secure funding for highway improvements might provide some mitigation against potential safety concerns but a lack of certainty prevents further consideration at this stage.

The empirical data required to assess the change in traffic flow resulting from the school does not exist and therefore it has not been possible to examine the contribution of the journeys to and from the school towards traffic on local roads. However, the road has been observed as congested during the morning peak, a situation it seems sensible to assume was exacerbated if not caused by school traffic. Furthermore, given comments above and the observations about the coach service it seems likely that even if the school is currently neutral in terms of its contribution to congestion there is no reason to suppose that this will remain the case.

It is recognised that a boarding school providing education for approximately 60 boarders and 60 day-pupils will also generate a number of journeys. Those generated in relation to the boarding school will likely be confined mainly to weekends and term ends whereas those generated by day visits will follow similar patterns to those now observed. The above notwithstanding it is considered that traffic generated by the day school, over and above that which might reasonably be associated with the fall-back position, likely reduces the free flow of traffic on local roads and that any increase in journey generation, whether resulting from a change in travel behaviour or an increase in the size of the school, will exacerbate the situation. Furthermore, any increase will also likely lead to an unacceptable risk to local highway safety.

EQUALITIES AND DIVERSITY ISSUES

Section 149(7) of The Equality Act 2010 sets out the relevant protected characteristics for the purposes of s.149(1)(b) and (c): it includes reference to age. The school children share a protected characteristic. This report bears in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The local planning authority has not been provided with details of pupils or staff that might be relevant to other protected characteristics and no special pleadings have been made. A full

assessment of the possible impacts of closure is therefore constrained. It is understood that the school educates a higher proportion of children with special educational needs than might ordinarily be expected. However, there are no apparent accommodations or adaptations made in respect of such characteristics that might not also be seen in any number of other schools within Barnet or neighbouring boroughs.

The property has step free access and a lift served the ground and first floors. These features appear to be a legacy of the site's previous use rather than adaptations to an immediate need. It is understood that the current school population is largely, if not completely drawn from pupils who previously attended Heath Side middle school sites in NW3. It is understood from the school's online accessibility plan that these sites are not inherently suited to or adapted for disabled access. The London Borough of Barnet is content that the needs of any child with a disability displaced from Heathside could be met within the borough and would consider an application for transport costs to a school that could meet the child's needs.

A 2017 OFSTED report written in relation to the school states that "The school population reflects the ethnic diversity of the local community", closure is not therefore expected to disproportionately impact persons who share the protected characteristics of race, religion or belief.

THE RIGHT TO AN EDUCATION

Article 2 of the first protocol of the European Convention on Human Rights sets out a right to an education and demands that the "State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

In July 2018 LB Barnet education officers confirmed that all children displaced as a result of a complete closure of the school building at 84 West Heath Road could be provided with alternative spaces nearby. Around this area of Barnet there are 7 secondary schools (of which one is a faith school) and 8 primary schools (two of which are faith schools). It is also possible that pupils could also be educated elsewhere within the school estate or in neighbouring boroughs. Given the nature of the existing school and range of possible options for potentially displaced children the LPA is of the opinion that its actions would not result in a disproportionate interference with the child's right to an education in accordance with parents' religious and philosophical convictions.

It is noted that It is the statutory responsibility of the Local Authority in which the children reside to provide a school place to everyone who applies within 2 miles of the child's home if they are under 8 or 3 miles if they are 8 and over. However, families but could apply for a place in a Barnet school regardless of their home authority. Heathside is a private school that is likely to draw its population from a wide geographical area. Barnet education officers will be available to assist in the event of possible disruption.

APPLYING FOR A NEW SCHOOL

The London Borough of Barnet is confident that is could provide an appropriate school place for the up to 102 pupils that might be displaced if Heathside school were to cease operations as a day school. Furthermore, it is confident that adequate provision could be made for children with special educational needs and/or disabilities.

The application process is online and Pan-London. Applications are received by the School Admissions Team as soon as they are submitted. Barnet schools (and many other boroughs) are signed up to a Fair Access Protocol which places any unplaced children over number if there is no other place available. Nationally, The School Admissions Code (SAC) requires applications to be processed within 4 weeks but in most circumstances the process can be completed in a much shorter time frame.

In the unlikely event that children cannot be placed in their preferred community (directly managed) schools but have included academy voluntary-aided or free schools in their list of preferences, places cannot be offered until the convening of an entry panel. If there are children in this category, or if they are otherwise unable to secure a suitable place it is suggested that the West Heath site be allowed to continue to operate until the end of the first half-term

There is a significant amount of information on the school admission pages of the Council's website to support parents with the application process. The School Admissions Team at Barnet have already indicated that they are always happy to help anyone who may need their support

DUE REGARD AND THE BALANCE OF ACTIONS

The school has been pressed on many occasions for details of a 'compliance plan' that allows for the orderly transition from day school to boarding school. The LPA has also been provided with numerous assurances as to future compliance. However, although outline details of building work and possible property dealings have been provided these have not been sufficiently robust for it to be clear to the LPA that these steps will be enough to ensure that this transition will be complete by the start of the 2018/19 academic year.

Furthermore, it is not known how much information regarding the enforcement notice and its implications has been passed to pupils, including prospective pupils, and their parents. Given the intelligence gaps it must be considered at least a reasonable possibility that an injunction will leave pupils in need of alternative schooling and with comparatively little time to identify it.

Throughout the history of this investigation the LPA has sought to balance the desirability to protect residential amenities for neighbours with the rights of the children to an appropriate education. The issuing of an injunction, it is submitted, is not inconsistent with this approach. An injunction would bring certainty on the Council's actions to all parties (a trait that the notice has so far failed to achieve); provide adequate environmental protection and; uphold public trust and confidence in the planning system. This must be weighed against the possibility that some pupils or prospective pupils and their parents or guardians will face an uncertain summer and the possibility that their first-choice school will not be available to them. Whilst such disruption would be an entirely regrettable outcome it is considered that the need to bring matters to a head outweighs the potential harm and that the Summer holidays is by far the most appropriate time of year to compel compliance.

The owners of the school are already compelled to stop its use as a day school and an injunction would not change the obligations placed upon them. It would, however, likely alter the perceived gravity of the obligations and the penalties that may be imposed as a result of a failure to comply

Should the school prove to have a robust and effective plan for compliance that has been or is due to be put into action then no disruption will be necessary.

As an alternative or as a complement to an injunction the LPA may, in theory, choose to commence prosecution proceedings. Whilst penalties on conviction would be commensurate with the breach of planning control the retrospective nature of such action would not resolve the harm complained of. Furthermore, the threat of a prosecution has not, yet, had the desired effect of securing compliance.

It is considered expedient to make an application for injunction pursuant to s.187B of the Town and Country Planning Act 1990

Carter, Richard

From: [REDACTED]
Sent: 09 March 2020 10:10
To: [REDACTED]; [REDACTED]; [REDACTED]
Cc: Ryde, Cllr Shimon; Clarke, Cllr Anne; Zinkin, Cllr Peter
Subject: 84 West Heath Road - Heathside High School

Dear [REDACTED]

I apologise for the delay in providing you with an update to this matter and can confirm that, we asked the Solicitor for an update which they provided below. We recognise the frustration this will cause but can only assure you that we are working with the Solicitors to resolve this as quickly as possible.

'You will be aware that the Council have agreed a way forward with the School which will ensure that certain steps will be taken by the School to move them towards, and ultimately to ensure, compliance with the original planning enforcement notice. Based on evidential and procedural issues caused by the unusually lengthy delays of the Court in listing hearings in the Proceedings and the change in management of the School, the Council are confident that the agreement reached is a reasonable and pragmatic outcome in the circumstances.

Due to the administrative and procedural processes in arranging for the agreement to be formally entered into by all parties to the Proceedings, the Court Order has not yet been approved by the Court. The Council are ensuring that every effort is made to formalise the agreement reached without further delay, however you will appreciate that there are contributing factors beyond the Council's control.

As soon as it has been approved by the Court then the terms will become binding and enforceable and the Council will review the situation regularly to ensure that the School are not acting in breach. If the School do act in breach, then the Council will write to the Court to arrange for an urgent hearing to take place to hear the Council's case in respect of the injunction. Nonetheless, given the time and efforts involved in reaching this position, the Council are hopeful of positive engagement from the School.

If residents are aware of any excessive noise, traffic or disruption as a result of activities from the School going forward and after the Court have approved the agreement then they should continue to report them to the Council for action'.

Kind regards

[REDACTED]

[REDACTED]

Member Liaison Lead **Re**

Address: 2 Bristol Avenue | Colindale | NW9 4EW

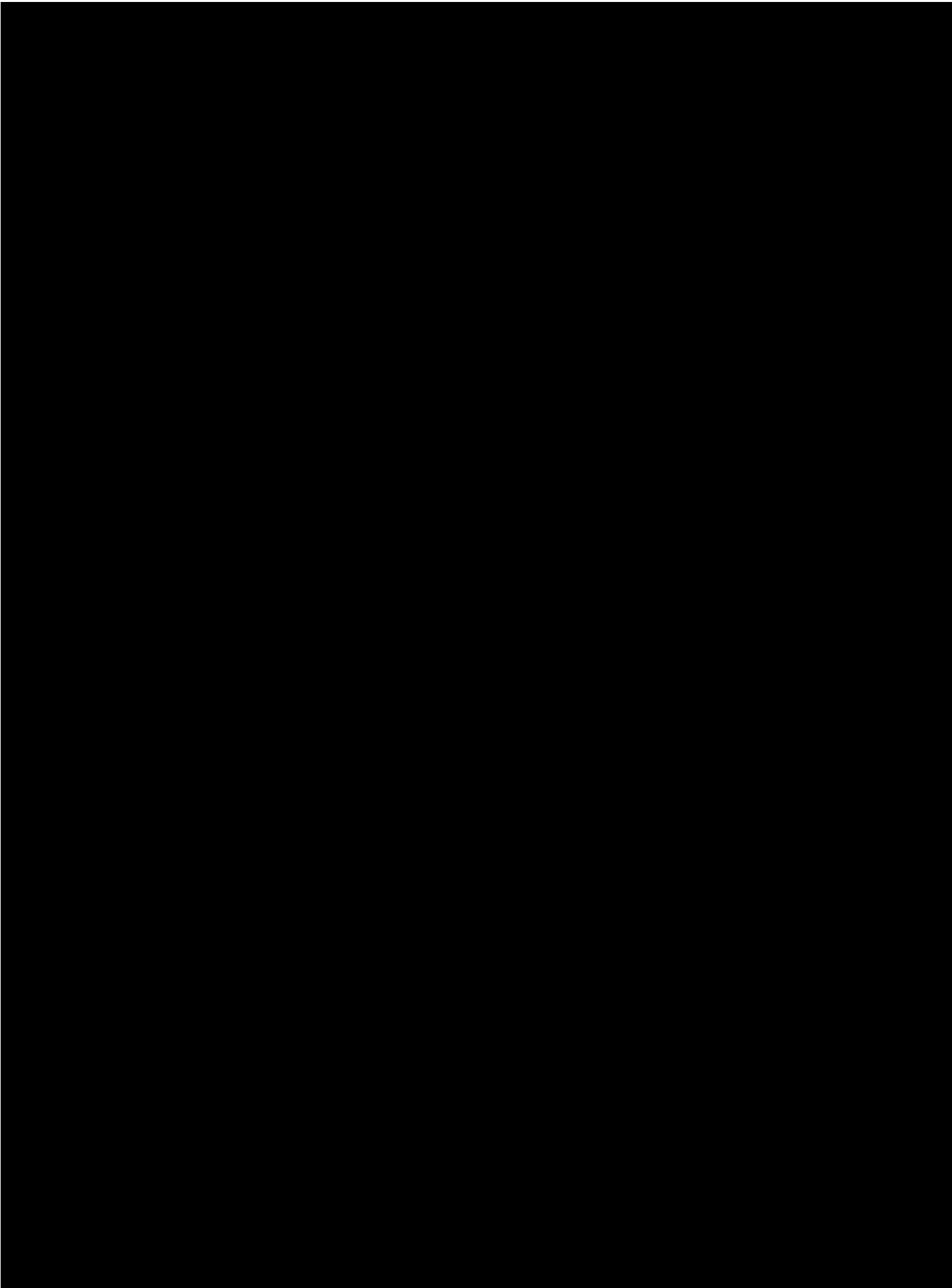
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Email: [REDACTED] [@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)

Email: [REDACTED] [@capita.co.uk](mailto:[REDACTED]@capita.co.uk)

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[REDACTED]

From: [REDACTED] <[REDACTED]@Barnet.gov.uk>

Sent: 13 January 2020 17:42

To: [REDACTED]
Cc: Ryde, Cllr Shimon <Cllr.S.Ryde@Barnet.gov.uk>; Clarke, Cllr Anne <Cllr.A.Clarke@Barnet.gov.uk>; Zinkin, Cllr Peter <Cllr.P.Zinkin@Barnet.gov.uk>

Subject: 84 West Heath Road - Heathside High School

Dear [REDACTED]

The parties have agreed the terms of the agreement and we are now awaiting to have the agreement recognised by the Court. The Council's understanding is that a future breach could be dealt with as a contempt of Court with such breach being a very serious matter with imprisonment a possibility for the breaching party.

The decision on the timing of deadlines is driven as much by estimations of any possible hearing dates in the event that an agreement was not reached as it is by considerations of fairness to the other party or the children. Taking all this into account we believe that we have come to an equitable compromise and concluded that if we had insisted on earlier deadlines the matter might have been delayed beyond these dates whilst we waited for a hearing date.

We understand that the school population remains at the level it was in September and trust that the reduced pupil numbers and the change in management continue to make the delay less burdensome than it might have been under the old regime.

I would also like to take this opportunity to introduce [REDACTED] Planning Resident Liaison Officer (copied into this email). [REDACTED]'s role is to engage with residents in relation to planning matters, ensuring that they are provided with a high level of support for their enquiries, Complaints and FOI requests liaising with stakeholders, partners and officers to ensure that our residents receive a timely, appropriate and consistent response to all complex planning enquiries / updates. Shereena will be working closely with myself and Officers to ensure you are kept updated on this matter.

Kind regards

[REDACTED]

[REDACTED]
Member Liaison Lead **Re**

Address: 2 Bristol Avenue | Colindale | NW9 4EW

Mobile: [REDACTED]

Email: [REDACTED] <[REDACTED]@barnet.gov.uk>

Email: [REDACTED] <[REDACTED]@capita.co.uk>

Website: www.capita.co.uk/property

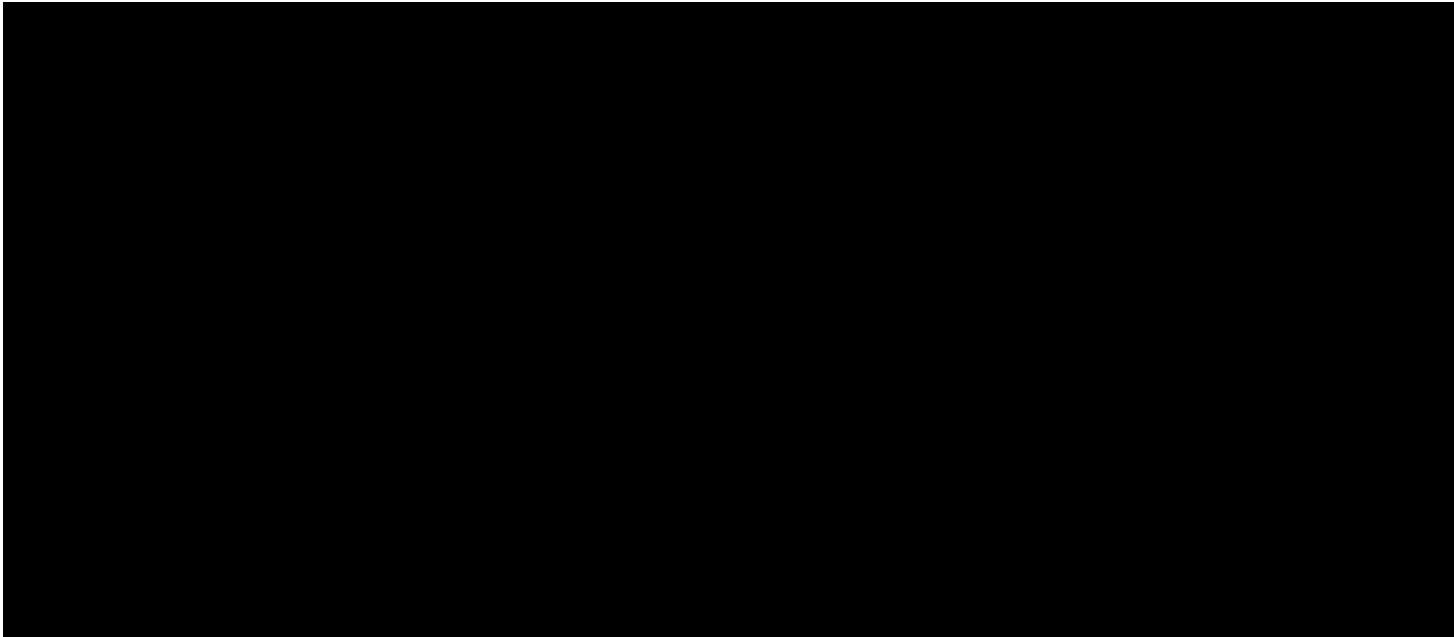
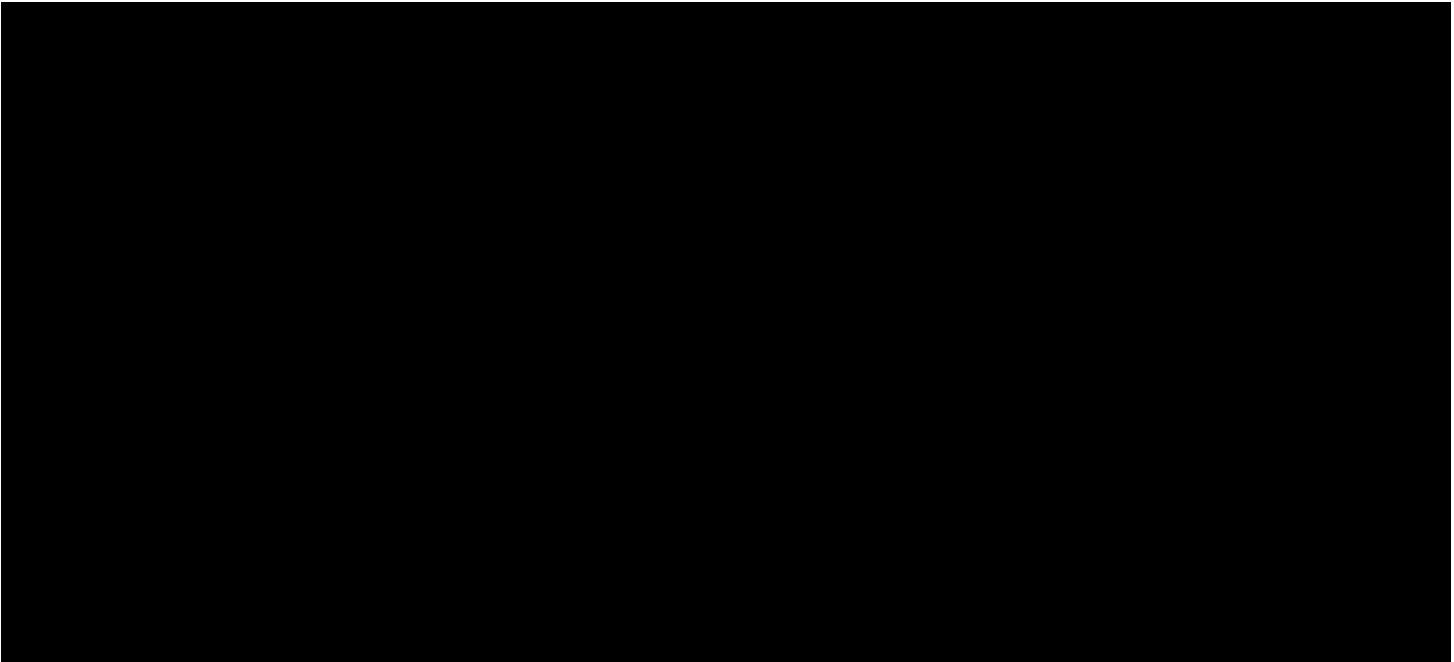


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[REDACTED]

[REDACTED]

On 13 Dec 2019, at 17:00, [REDACTED]@barnet.gov.uk> wrote:

Dear [REDACTED]

Thank you for your patience, and allowing me the time to liaise with my colleagues in Planning.

Following discussion between the two parties agreement has been reached on a way forward which is attached. We have referred this to the Court for the Judge to make the final order. I understand this isn't everything you wanted however it should provide more certainty and if the undertaking is breached the School may be held in contempt of court.

I have noted your comments about the sudden increase in cars dropping and collecting pupils and confirm that this may be attributed to the end of the school term, having checked their website it appears that the school broke up on the 11 December 2019.

In addition, I also discussed that planning application with my colleagues and can advise that the recent tree work application was submitted by an arboricultural agent who regularly makes a number of tree work applications throughout the borough.

Kind regards

[REDACTED]

[REDACTED]
Member Liaison Lead Re

Address: 2 Bristol Avenue | Colindale | NW9 4EW

Mobile: [REDACTED]

Email: [REDACTED]@barnet.gov.uk

Email: [REDACTED]@capita.co.uk
Website: www.capita.co.uk/property



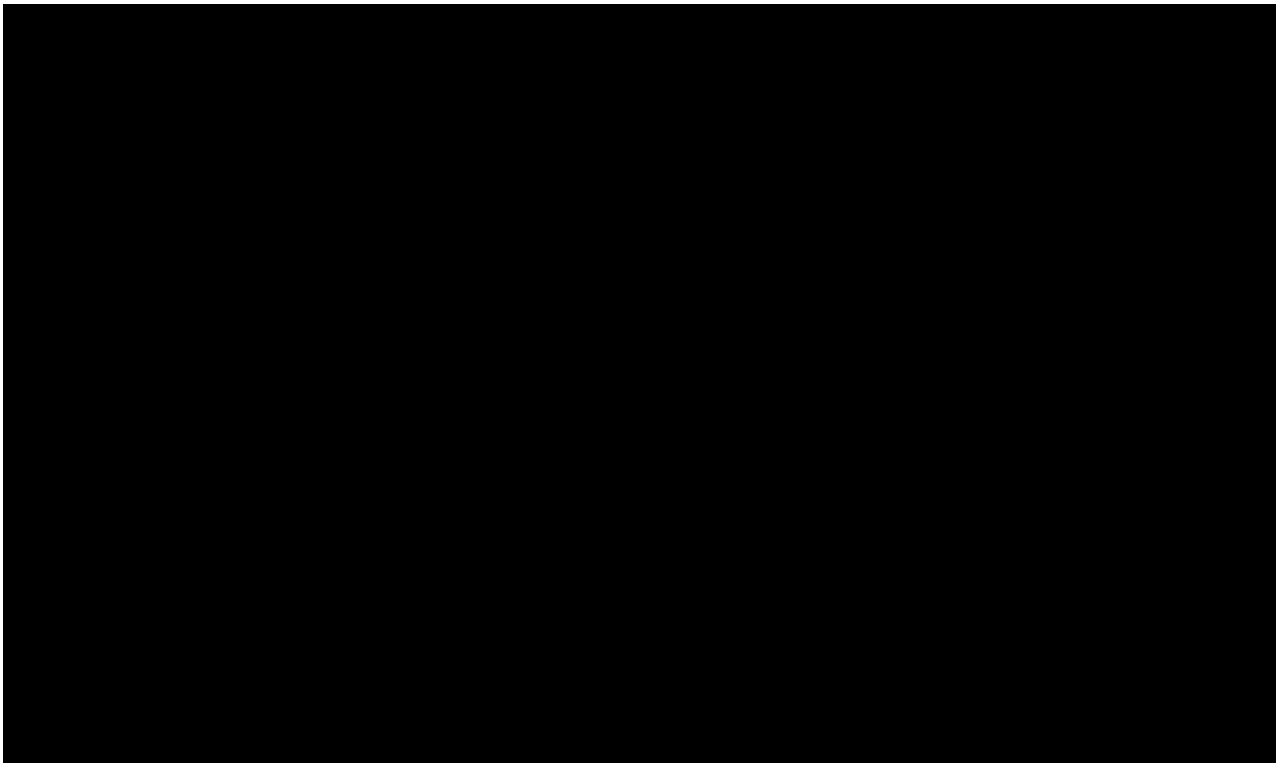
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From: [REDACTED]@Barnet.gov.uk>
Sent: 10 December 2019 17:14
To: [REDACTED]
Cc: Clarke, Cllr Anne <Cllr.A.Clarke@Barnet.gov.uk>; Ryde, Cllr Shimon <Cllr.S.Ryde@Barnet.gov.uk>; Zinkin, Cllr Peter <Cllr.P.Zinkin@Barnet.gov.uk>
Subject: 84 West Heath Road - Heathside High School

[REDACTED]

Further to my email below, I had aimed to provide you with an update to this matter today however, the undertaking is with our Legal Team for comments/thoughts with any comment due back to us tomorrow.

I apologise that I am unable to provide you with a full update today and expect to be in apposition to provide this to you on Thursday.

Kind regards

[REDACTED]

[REDACTED]

Member Liaison Lead Re

Address: 2 Bristol Avenue | Colindale | NW9 4EW

Mobile: [REDACTED]

Email: [REDACTED] [@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)

Email: [REDACTED] [@capita.co.uk](mailto:[REDACTED]@capita.co.uk)

Website: www.capita.co.uk/property

[REDACTED]

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From: [REDACTED]
Sent: 04 December 2019 14:11
To: [REDACTED]
Cc: Clarke, Cllr Anne <Cllr.A.Clarke@Barnet.gov.uk>; Ryde, Cllr Shimon <Cllr.S.Ryde@Barnet.gov.uk>; Zinkin, Cllr Peter <Cllr.P.Zinkin@Barnet.gov.uk>
Subject: 84 West Heath Road - Heathside High School

Dear [REDACTED]

Thank you for your email in relation to 84 West Heath Road.

I would like to confirm that I am in discussion with my colleagues in Planning and can advise that I aim to provide a full update to you on Tuesday 10 December 2019.

Kind regards

Member Liaison Lead Re

Address: 2 Bristol Avenue | Colindale | NW9 4EW

Mobile:

Email: [\[REDACTED\]@barnet.gov.uk](mailto: [REDACTED]@barnet.gov.uk)

Email: [\[REDACTED\]@capita.co.uk](mailto: [REDACTED]@capita.co.uk)

Website: www.capita.co.uk/property

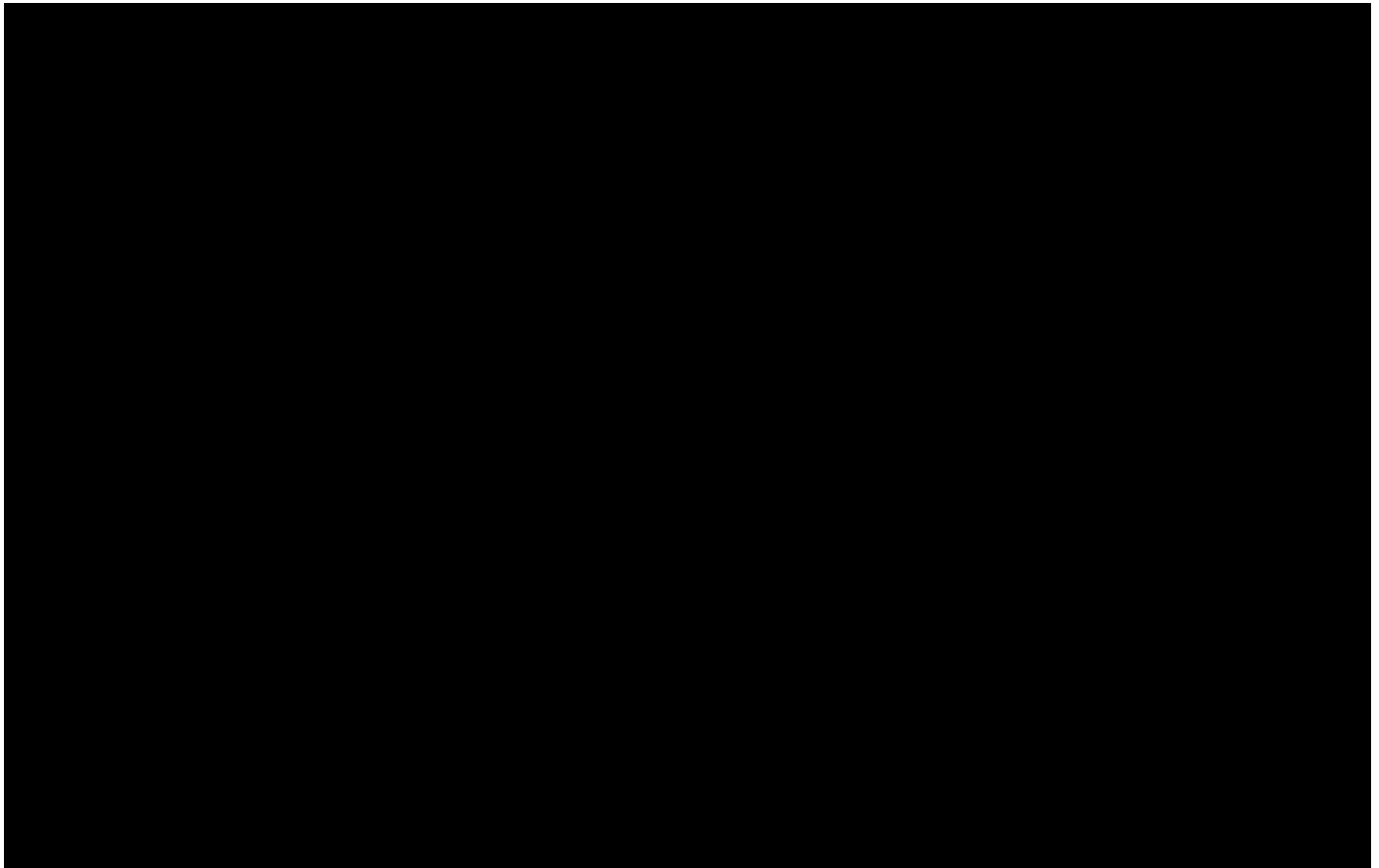
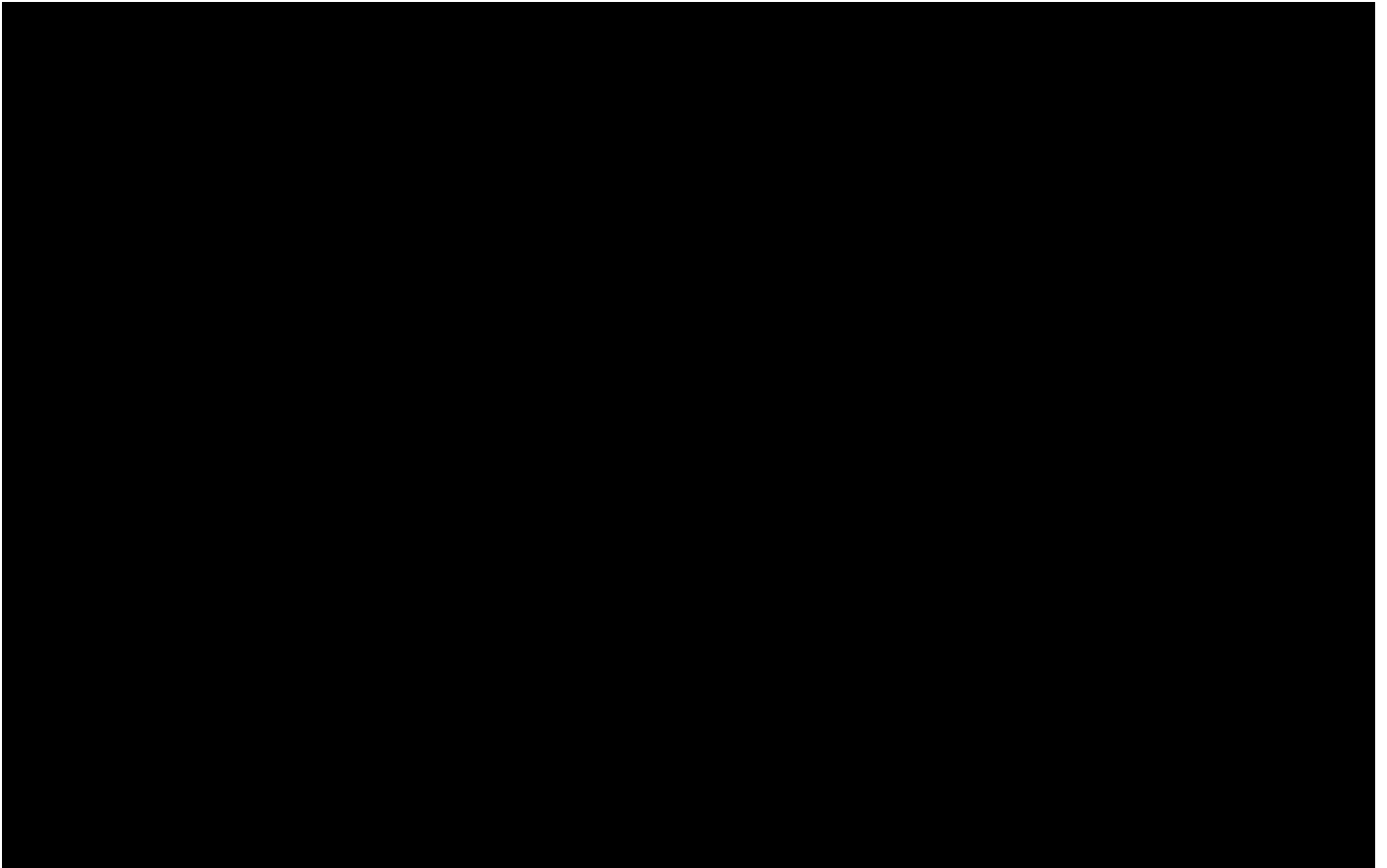
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From: [REDACTED] <[\[REDACTED\]@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)>
Sent: 18 November 2019 17:49
To: [REDACTED]
Cc: Zinkin, Cllr Peter <Cllr.P.Zinkin@Barnet.gov.uk>; Ryde, Cllr Shimon <Cllr.S.Ryde@Barnet.gov.uk>;

Clarke, Cllr Anne <Cllr.A.Clarke@Barnet.gov.uk>; [REDACTED]
Subject: FW: 84 West Heath Road - Heathside High School

Dear [REDACTED]

Further to my email in the trail below, I would like to confirm that i am awaiting an update form our Legal Department to ensure I am providing you with the latest update, it is expected that we will be provided with this tomorrow.

I will also include in my email update tomorrow responses to the points Mr Woolf raised in the email below.

Kind regards

[REDACTED]

[REDACTED]

Member Liaison Lead **Re**

Address: 2 Bristol Avenue | Colindale | NW9 4EW

Mobile: [REDACTED]

Email: [REDACTED] [@barnet.gov.uk](mailto:[REDACTED]@barnet.gov.uk)

Email: [REDACTED] [@capita.co.uk](mailto:[REDACTED]@capita.co.uk)

Website: www.capita.co.uk/property

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[REDACTED]



From: [REDACTED] <[\[REDACTED\]@Barnet.gov.uk](mailto:[REDACTED]@Barnet.gov.uk)>

Sent: 18 October 2019 10:32

Cc: Zinkin, Cllr Peter <Cllr.P.Zinkin@Barnet.gov.uk>; Ryde, Cllr Shimon <Cllr.S.Ryde@Barnet.gov.uk>;

Dear [REDACTED]

I would like to introduce myself as your point of contact in relation to your concerns about Heathside. I apologise for the delay in providing you with my first update, and can advise that I will be providing you with all future responses for this location ensuring that you are responded to within a reasonable timeframe. I would like to propose that I diarise my calendar to ensure you are provided with a monthly update or earlier if there is a requirement to do so, I have diarised my calendar to provide my first monthly update to you on the 18 November 2019.

Further to the statement issued by the Council in August 2019, I would like to confirm that the school was sold to an Academy Company in the weeks running up to the Court hearing that was to be held on the 29 July 2019. Legal advice was given to Officers that an injunction would not be granted until such a time as the new owners had a chance to undertake their own investigations, be included in the proceedings and have a chance to respond to the enforcement notice. In light of this advice the Court was asked to adjourn the case until late August/early September 2019. Unfortunately the Court was unable to arrange a hearing in August and have not provided an alternative hearing date. The council is still committed to an injunction if voluntary compliance is not achieved in the near future.

The number of pupils currently at Heathside is understood to be around half of that for 2018/19, with consequent effect on noise, disturbance and traffic activity.

In order to prevent delays in obtaining a hearing date impeding progress, the Council has invited the school to make an undertaking to the Court that will set out restrictions on the school and certain practical steps designed to mitigate any issues that have arisen or might otherwise arise. The undertakings that the school has been invited to make are as listed below. We await the school's response.

1. The Third Defendant will use best endeavours to identify and acquire an alternative property with appropriate D1 use class at which the non-boarding element of Heathside Preparatory School that is currently utilising the Property should operate from Thursday 2 January 2020. The Third Defendant will provide fortnightly updates to the Claimant's Solicitors as to their progress in this regard.
2. In the event that the Third Defendant is unable to identify and acquire an alternative property with the appropriate D1 use class from which to operate the High School, the Third Defendant will instead ensure that by Thursday 2 January 2020:
 - a. the total number of day pupils (including pupils that are normally educated elsewhere) present on site at any one time shall not exceed the number of registered boarders
3. From the start of the Autumn 2019 term on Thursday 5 September 2019, the Third Defendant has ensured, and will continue to ensure, that:

- a. No more than a total of 50 pupils will be present on site at 84 – 86 West Heath Road, London NW3 7UJ (the “Property”) at any one time, to include day pupils, boarders and pupils that are normally educated elsewhere;
- b. The day pupils present at the Property are to be from the High School (i.e. year groups 7 to 9 inclusive) only;
- c. No chickens are kept at the Property;
- d. There is the employment of traffic monitors with hi-visibility and/or Heathside Preparatory School branded vest or jacket at pupil drop off and pick up times to ensure orderly conduct during these times and to provide advice to drivers to reduce instances of illegal, dangerous and/or obstructive parking practices and to suggest other steps that should be taken by the Third Defendant to relieve traffic congestion and poor parking practices in the vicinity of the Property;
- e. A minibus service be provided by the Third Defendant, with designated pick up and drop off points to be located within the Property and not on the public highways of West Heath Road or surrounding streets;
- f. Immediate measures will be put in place to prevent kerbside staff parking, with stipulations preventing and discouraging on-street parking in West Heath Road to be incorporated into a formal code of conduct. A copy of these measures and code of conduct are to be shared with the Claimant for their comment within 1 calendar month of the date of this Undertaking;
- g. The number of bicycle racks be increased to 10 within one month of the date of this Undertaking;
- h. Parents/guardians of pupils educated or boarding at the Property have been written to, or will be written to by no later than 1 calendar month from the date of this Undertaking, to request that they join a car sharing scheme to be facilitated by the School to reduce the number of cars at pupil drop off and collection times;
- i. Increased staff presence during play and lunch times to monitor and reduce noise levels. There will be a minimum ratio of at least 2 teachers to every 15 pupils;
- j. When escorting groups of pupils along West Heath Road or surrounding streets there will be a minimum ratio of at least 2 teachers to every 15 pupils;

- k. A letter has been, or will be sent by no later than 1 calendar month from the date of this Undertaking, to all parents/guardians which shall identify the concerns raised by neighbours and asking them to consider local amenity and to comply with the new measures introduced by the Third Defendant as listed above;
- l. A noise management plan and travel plan will be prepared and submitted to the local planning authority for comment or approval by no later than 1 month from the date of this Undertaking. If the plan is rejected then the Third Defendant will be required to redraft and submit an amended plan and to continue to make amendments until such time as the plan is in a form that can be approved by the local planning authority. The plan (or amended plan) will then be implemented within 14 days of approval; and
- m. on demand by the local planning authority, make daily pupil registers or extracts thereof available to an appointed officer of the local planning authority. The registers or their extracts shall clearly identify the number of children who were present overnight and the total number present throughout the day. On completion such registers shall be kept for not less than two years or as demanded by any other legal provision.

Kind regards

[Redacted]

Member Liaison Lead **Re**

Address: 2 Bristol Avenue | Colindale | NW9 4EW

Mobile: [Redacted]

Email: [Redacted] [@barnet.gov.uk](mailto:[Redacted]@barnet.gov.uk)

Email: [Redacted] [@capita.co.uk](mailto:[Redacted]@capita.co.uk)

Website: www.capita.co.uk/property

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