Department for Communities and Local Government

Mr Kevin Scott
Kevin Scott Consultancy Ltd
Centaur House
Ancells Business Park
Ancells Road
Fleet
GU51 2UJ

Our Ref: APP/T0355/V/15/3011305

04 August 2016

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION BY BEECH LODGE SCHOOL
LAND AT HENLEY ROAD, MAIDENHEAD, BERKSHIRE, SL6 6QL

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, G D Grindey MSc MRTPI Tech.Cert.Arb, who held an inquiry from 12-15 January 2016 into your client's application to The Royal Borough of Windsor & Maidenhead (the Council) for the construction of a new school with associated access and car parking, in accordance with application ref: 14/01581/FULL dated 21 May 2014.
2. On 12 March 2015, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, the Royal Borough of Windsor & Maidenhead ("the Council"). The matters on which the Secretary of State particularly wished to be informed were: the consistency of the application with the development plan for the area; its conformity with the policies set out in the National Planning Policy Framework (the Framework) on protecting Green Belt land; and any other matters which the Inspector considered relevant.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the application be approved and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy considerations

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

Department for Communities and Local Government
Jean Nowak, Decision Officer
Planning Casework
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1626
Email: PCC@communities.gsi.gov.uk

indicate otherwise. In this case, the adopted development plan for the area comprises the Royal Borough of Windsor and Maidenhead Local Plan 2003, and the Secretary of State agrees with the Inspector that the most relevant policies are those referred to at IR19-20. In particular (IR20), the Secretary of State agrees with the Inspector that, while the Green Belt policies in what is now an old Local Plan differ in emphasis from the Framework, they are broadly in conformity with it.

5. Other material considerations which the Secretary of State has taken into account include the Framework and the subsequent planning guidance. He has also taken account of the preparation of the draft Borough Local Plan (IR20-21). In accordance with paragraph 216 of the Framework, he notes that this is not yet at an advanced stage of preparation; the analytical work to date accepts the policies of the Framework as a starting point so that relevant policies can be regarded as being consistent with policies in the Framework; and it is currently subject to unresolved objections. Overall, therefore, like the Inspector (IR20), the Secretary of State gives little weight to it.

Main issues

6. The Secretary of State agrees with the Inspector that the main considerations in this case are those identified at IR204.

Green Belt

7. The Secretary of State agrees with the Inspector that, while the Green Belt policies in the Local Plan differ in emphasis from the Framework because they were prepared in accordance with the subsequently cancelled advice on Green Belt policy in PPG2, they are broadly in conformity with it (IR20).

8. The Secretary of State agrees with the Inspector and the parties that the proposal constitutes development in the Green Belt of a type which, by definition (as set out in the Framework), should not be approved except in very special circumstances (IR204-206). He also agrees (IR208-212) with the Inspector's conclusions on the impacts and, like the Inspector, he attaches substantial weight to these.

9. The Secretary of State has therefore gone on to consider whether there are very special circumstances to justify the scheme. For the reasons given at IR247-249, he agrees with the Inspector that a compelling need for the school has been demonstrated; and he agrees that there would be life-long benefits to the wider society (IR250) as well as a benefit to potential future pupils (IR251). The Inspector concluded (IR253-269) that the argument for considering a split-site for the new school is unconvincing having regard to the inefficiencies and costs inherent in operating split-site schools – as highlighted in the Government report entitled "School Reform Funding" - even if there had been evidence of multiple small sites being available. And he further agrees (IR271) that evidence put forward for the requirement for a rural setting to facilitate outdoor learning is compelling, especially in view of the inherent difficulty in finding a site, in an area where the existing school has ties, that is not within the Green Belt.

Whether there would be any non-Green Belt harm

10. The Secretary of State agrees with the Inspector (IR213-222) that, as the site is enclosed or confined within other elements of the landscape, the longest views possible of the site from outside the enclosed space would be fairly minor relative to the wider landscape. He also agrees (IR224-225) that the scheme would introduce buildings of a pleasing design and of an appearance that might be expected in a rural setting, and that the impact would be further reduced by landscaping that would provide softening over

time. Hence, the Secretary of State agrees with the Inspector (IR226) that, overall, the change in character from open countryside to a landscaped school development would have only limited harm. Furthermore, the Secretary of State also agrees with the Inspector (IR227-235) that any negative effect of the proposals on single-time walkers on the Chiltern Way/Berkshire Loop long-distance path would be highly limited but that local users, living nearby and using the paths each day, would experience an adverse impact on their recreational enjoyment of this section of their walks flowing from the change of character. He therefore agrees that, while this would lessen in time, the harm should be regarded as significant.

Loss of best and most versatile agricultural land

11. The Secretary of State agrees with the Inspector at IR239 that, for the reasons given at IR236-239 and notwithstanding the official grading of the site as grade 2 agricultural land, there is strong evidence to suggest that it is no longer the best and most versatile land in practice so that any harm arising from its permanent loss is limited, in terms of its productive value, when assessed against the objective of national and local plan policy.

Any effects on the local highway network

12. The Secretary of State agrees with the Inspector (IR240-246) that the impact of the appeal proposals on the local highway network are acceptable in principle, meet the requirements of the relevant Local Plan policies and therefore carry neutral weight in the overall balance.

Alternative sites

13. For the reasons given at IR272 and IR277, and having regard to the factors considered by the Inspector at IR263 and IR268, the Secretary of State agrees with the Inspector that the evidence points to an adequate search having been undertaken to find an alternative site, utilising appropriate parameters, with no convincing evidence of a better alternative site being available or likely to emerge shortly. Like the Inspector, the Secretary of State gives this lack of a suitable alternative site substantial weight and agrees with his conclusion at IR278 that, overall, the other considerations considered at IR247-277 clearly outweigh the harm to the Green Belt and any other harm.

Conditions

14. The Secretary of State has considered the suggested conditions set out at Appendix A to the IR and the Inspector's comments on them at IR279-288. He agrees with the Inspector that the conditions as set out at Annex A to this letter are reasonable and necessary and meet the tests of the Framework and the guidance.

Overall balance and conclusions

15. As the proposed scheme would not be an acceptable use in terms of the Green Belt policy set out in the development plan, the Secretary of State concludes, in agreement with the Inspector (IR 206), that the proposal is not overall in accordance with the development plan. He has gone on to consider material considerations, including the Framework, in deciding whether there are very special circumstances to justify it. Overall, the Secretary of State agrees with the Inspector's conclusion at IR272 that the educational need for the school on the appeal site is compelling and should be given substantial weight. He has then gone on to consider whether this clearly outweighs the harm to the Green Belt and any other harm as defined in the Framework and, for the reasons set out in this letter, agrees with the Inspector's conclusion at IR278 that it does. The Secretary of State therefore concludes that the weight of the other material

considerations clearly outweighs the totality of the harm caused by the development so that the very special circumstances exist to justify the construction of the appeal scheme in the Green Belt.

Formal Decision

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby grants planning permission for the construction of a new school with associated access and car parking, in accordance with application ref: 14/01581/FULL dated 21 May 2014, subject to the imposition of the conditions set out at Annex A to this letter.

17. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

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

Right to challenge the decision

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

20. Copies of this letter have been sent to the Royal Borough of Windsor and Maidenhead Council and Bisham Parish Council & Burchett's Green Village Association. Notification has also been sent to all other parties who asked to be informed.

Yours faithfully,

Jean Nowak

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

Annex A

Planning Conditions

1. The development hereby permitted shall be commenced within three years from the date of this permission.

2. No development shall take place until samples of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

3. No development shall take place until samples and/or a specification of all the finishing materials to be used in any hard surfacing on the application site have been submitted to and approved in writing by the Local Planning Authority and thereafter undertaken in accordance with the approved scheme.

4. No development shall commence until details of venting, ducting and fume extraction equipment have been submitted to and approved in writing by the Local Planning Authority. The venting, ducting and fume extraction equipment shall be installed and retained in accordance with the approved details.

5. The use hereby permitted shall be carried on only by a school for children with special educational needs and disabilities and shall not endure for the benefit of the land, or any other person or body whatsoever. If, after the development has commenced, such a school ceases to be the occupier of the premises, the use shall cease and the site shall be a) reinstated to its former condition, or b) returned to a condition in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

6. No development shall commence until details of all finished slab levels in relation to ground level (against OD Newlyn) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

7. No development shall take place until the applicant or their agents or successors in title have secured the implementation of a programme of archaeological work (which may comprise more than one phase of work) in accordance with a written scheme of investigation, which has been submitted by the applicant and approved by the Local Planning Authority.

8. No development shall commence until details of the siting and design of all walls, fencing or any other means of enclosure (including any retaining walls) have been submitted to and approved in writing by the Local Planning Authority. Such walls, fencing or other means of enclosure as may be approved shall be erected before first occupation of the development unless the prior written approval of the Local Planning Authority to any variation has been obtained.

9. a) No development shall take place until evidence that the development is registered with the Building Research Establishment (BRE) under BREEAM (either a standard

BREEAM or a bespoke BREEAM) has been submitted to and approved in writing by the Local Planning Authority,
b) No superstructure works shall commence until a Design Stage Assessment Report showing that the development will achieve a BREEAM rating of Very Good, has been submitted to and approved in writing by the Local Planning Authority, and
c) No superstructure works shall commence until a BRE issued Design Stage Certificate demonstrating that the development has achieved a BREEAM rating of Very Good has been submitted to and approved in writing by the Local Planning Authority.

10. Prior to the commencement of any works a construction noise management plan shall be submitted to the Local Planning Authority detailing a method statement and project plan for the construction works. The plan shall include the predicted construction vibration and noise levels emanating from the development, the plan shall also include specific details of noise and vibration mitigation measures as well as specifying acceptable noise and vibration limits (in line with the ABC method advocated by BS5228) to be met at nearby residential and noise sensitive receptors. There shall also be an ongoing noise and vibration monitoring programme incorporated within the plan to ensure these noise and vibration limits are complied with throughout the duration of these works. There shall also be an incident/complaint log kept on site and available for inspection at any time by officer from the Council's Environmental Protection and Planning Teams. Any breaches of the noise limits shall be recorded and include remedial action to ensure compliance with environmental noise and vibration limits. Details of any breaches and corrective actions shall be notified to the Environmental Protection Team on a monthly basis throughout the construction of the scheme.

11. The applicant and their nominated contractor shall take all practicable steps to minimise dust emissions, which can be a major cause of nuisance to residents and the general public. The applicant shall prepare a detailed dust monitoring and mitigation package, that shall include an assessment of all the relevant potential sources of dust arising from site activities and deliveries, detailed dust monitoring arrangements and analysis, detailed mitigation measures to minimise dust emissions from the working site, and a complaints and due diligence log to record complaints and dust emission incidents. The applicant is advised to follow guidance with respect to dust control: London working group on Air Pollution Planning and the Environment (APPLE): London Code of Practice, Part 1: The Control of Dust from Construction; and the Building Research Establishment: Control of dust from construction activities.

12. There shall be no fires allowed on site at any time, all waste shall be recycled or disposed offsite.

13. The rating level of the noise emitted from the plant and equipment shall be lower than the existing background level (to be measured over the period of operation of the proposed plant and equipment and over a minimum reference time interval of 1 hour in the daytime and 5 minutes at night dependent upon the operating hours of the proposed plant and equipment) by at least 10dB(A). The noise levels shall be determined 1m from the nearest existing or proposed noise-sensitive premises/residential premises. The measurement and assessment shall be made
in accordance with BS 4142: 1997 'Method for rating industrial noise affecting mixed residential and industrial area'.

14. Prior to the commencement of any works of construction a management plan showing how construction traffic (including cranes) materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved and maintained for the duration of the works or as may be agreed by the Local Planning Authority.

15. No part of the development shall be occupied until vehicle parking and turning space has been provided, surfaced and marked out in accordance with a layout that has first been submitted to and approved in writing by the Local Planning Authority.

The layout shall include adequate manoeuvrability for an 11.4m x 2.49m refuse truck. The space approved shall be kept available for access, manoeuvrability, parking and turning in association with the development.

16. No part of the development shall be commenced until a plan showing the technical and construction details of the mini-roundabout shown on drawing ref no 1372/02 proposed on the private access road.

17. No part of the development shall be occupied until covered and secure cycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.

18. No development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its prior written consent to any variation.

19. Prior to any equipment, machinery or materials being brought onto the site, details of the measures to protect, during construction, the trees and hedgerows shown to be retained on the approved plan, shall be submitted to and approved in writing by the Local Planning Authority.

The approved measures shall be implemented in full prior to any equipment, machinery or materials being brought onto the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. These measures shall include fencing in accordance with British Standard 5837:2012 or any standard replacing that BS. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the Local Planning Authority.

20. Irrespective of the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fence, gate, wall or other means of enclosure shall be erected on the site without planning permission having first been obtained from the Local Planning Authority.

21. Before the development hereby permitted is brought into use, a travel plan or travel plans covering school's teaching and other staff and students shall have been submitted to and approved in writing by the Local Planning Authority. The approved travel plan shall be implemented on or before occupation of the development hereby permitted, or as otherwise agreed in the plan.

22. No development shall commence until a Construction Environmental Management Plan to control the environmental effects of all construction activities for that part of the development, and containing all relevant Codes of Construction Practice, has been submitted to, and approved in writing by, the Local Planning Authority. The Construction Environmental Management Plan shall include details of the strategy, standards, control measures and monitoring effects of the construction process and shall include:
i) hours of working and periods of the year
ii) site layout and appearance, including measures to manage the visual impacts during construction
iii) site security arrangements, including hoardings and other means of enclosure
iv) health and safety
v) piling methods
vi) foundation design
vii) details of the means of storage, disposal and removal of spoil waste arising from the excavation or construction works
viii) construction waste arising from the development that will be recovered and reused on the site or on other sites, and a Site Environmental Management Plan
ix) protection of areas of ecological sensitivity
x) details of temporary lighting.

23. Within six months of commencement, details of the measures for the enhancement of biodiversity on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and such approved measures retained.

24. Prior to the commencement of development or other operations on site, details of the proposed drainage and services, including showing their position on a layout plan, shall be submitted to and approved in writing by the Local Planning Authority. The drainage runs and services must provide for the protection of trees to be retained within or on the periphery of the site and for the protection of the soft landscaped areas to be retained or created as part of the approved landscaping scheme. Thereafter the development shall be carried out in accordance with the approved details.

25. No public address system, including loud hailers, may be used in connection with the development hereby permitted, unless otherwise agreed in writing by the Local Planning Authority.

26. Prior to installation an external lighting scheme shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented before any of

the external lighting is brought into use and thereafter the lighting shall be operated in accordance with the approved scheme and maintained as operational. The scheme shall include the following:
i) The proposed design level of maintained average horizontal illuminance for the site.
ii) The proposed vertical illumination that will be caused by lighting when measured at windows of any properties within 150m of the application site edged red on the approved plan ref no 1372/02.
iii) The proposals to minimise or eliminate glare from the use of the lighting installation.
iv) The proposed hours of operation of the lighting. There shall be no other external lighting other than that approved.

27. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any Order revoking and re-enacting that order, other than work authorised by this planning permission, no new building or any extension to any building shall take place without the prior written approval of the Local Planning Authority.

28. A landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be implemented as approved by the Local Planning Authority.

29. Prior to commencement, details of how the public right of way, Footpath 24 Bisham, where it crosses the application site, will be managed shall be submitted to and approved in writing by the Local Planning Authority. The public right of way shall be maintained in accordance with the approved details.

30. The development hereby permitted shall utilise the Envirosafe sewage treatment plant referred to in the agents letter of 1st September 2014 which shall be maintained in accordance with the details set out in Kingspan Klargester letter of 25th July 2014.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by G D Grindey MSc MRTPI. Tech.Cert.Arb.

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

Date: 16 February 2016

Town and Country Planning Act 1990

The Royal Borough of Windsor & Maidenhead

application by

Beech Lodge School

Inquiry held on 12- 15 January 2016

Henley Road, Maidenhead, Berkshire, SL6 6QL.

File Ref: APP/T0355/V/15/3011305

File Ref: APP/T0355/V/15/3011305
Henley Road, Maidenhead, Berkshire, SL6 6QL.

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 12 March 2015.
- The application is made by Beech Lodge School to Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 14/01581/FULL is dated 21 May 2014.
- The development proposed is construction of new school with associated access and car parking.
- The reason given for making the direction was that, in the light of his policy, the application shall be referred to him instead of being dealt with by the Local Planning Authority.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application: "its consistency with the development plan for the area; its conformity with the policies set out in the National Planning Policy Framework on protecting Green Belt land; and any other matters the Inspector considers relevant.

Summary of Recommendation: that planning permission be granted subject to conditions.

Child protection

1. Some parents of existing pupils of Beech Lodge School (BLS) spoke at the inquiry and/or submitted representations. They told of their child's early-life difficulties and of their own experience of how BLS had helped their child. It would be possible to identify those children from inquiry documents and **this should be borne in mind in the future handling of the file.** In my report I have had no need to identify individual children or families and have deliberately reported in general terms. Thus, in paragraph 173 of the report where it would be usual to list names of those who spoke, and in the Appearances, I have simply described those who appeared as 'parents'.

Procedural Matters

2. A Statement of Common Ground (SofCG) (CD33) was prepared only between the applicants and the Local Planning Authority (LPA). Given that there is no material disagreement between those two parties this was of little practical use in focusing the issues that separate the parties, in this case the applicants together with the LPA, and the Rule 6 parties who oppose the scheme.

3. The Rule 6 parties comprise the Burchett's Green Village Association (BGVA) together with the Bisham Parish Council. Throughout this report the convention has been used of referring to both as the 'Rule 6 parties'.

4. The applicants submitted core documents (CD) 1 – 22 in bound form in 3 volumes. For simplicity I have continued the CD numbering with documents submitted to the inquiry from the applicants, LPA, Rule 6 parties and interested persons in that order. Appendix A to my report contains the conditions which I recommend should be imposed on any planning permission granted. Appendix B is a list of abbreviations used throughout the report.

5. CD 8 contains the set of drawings which were the subject of formal consideration by the LPA. These are the latest set and are revisions of an earlier set which

remain loose in the file. At the inquiry I confirmed with the parties that the CD8 set should form the basis of our discussions. It should perhaps be pointed out that, although this is a full application, there are no large-scale details of the proposed mini-roundabout on the vehicular route to the site, other than the application site edged red shown in CD8, plan no 1372/02.

6. The application was accompanied by a number of documents including a Transport Statement in CD11. This contains a number of factual errors which I put to Mr K Scott, for the applicant, and which he agreed are incorrect. In particular:

- Para 2.4: Henley Road does not run north-south, and has a footway on only 1 side. There is no "Cuttleslowe roundabout nor any bus lane.
- Para 2.6: While the site does lie to the south of the A404, the A40(M) does not exist and the application site is many km south of the M40.
- Para 2.7: the existing roads near the site do not have "footway provision on either side" or "standard street lighting". That part of Henley Road north-east of the A404 has 1 footway on the north-east side and no lighting; that part of Henley Road that passes beneath the A404 has no footways or lighting.
- Para 213: reference is made to "the proximity of the site to local facilities and amenities". Apart from the garden centre/plant nursery there are none nearby.
- Para 2.16: reference to buses at "5 minutes frequency" is incorrect.

7. Mr Joseph corrected his proof (CD43) at the inquiry by deleting the words "and it is only for Royal Borough children, not those from Buckinghamshire, Wokingham, Bracknell, Reading and possibly elsewhere" (concerning a Hospice) from paragraph 3.4.2, page 6.

8. I made 3 unaccompanied inspections of the site and surroundings before and during the inquiry. On 15 January 2016 I made unaccompanied visits to the application site and alternative sites referred to in the inquiry; Ladds Nursery and the Old Shire Horse site. Later that day I made accompanied visits to BLS at Home Farm and Blossom House as well as sites at Berkshire College of Agriculture (BCA) and the Shanly estate. The substance of much of the case for BLS revolved around the need for the school. As such, many of the submissions are emotional, personal and deeply human and these elements have, inevitably, flowed through into my report since that was the case put, and which must be reported.

Background matter

9. The personal and financial circumstances of the applicant (in this case the proprietor of BLS, Mrs D Shanly) would not be a matter on which I would permit inquiry time to be spent usually. In the circumstances here, the most important factors in the creation of the existing BLS are the direct experiences of the proprietor who adopted a child who had certain developmental difficulties.

10. Furthermore, the Rule 6 parties made much of the financial situation of the proprietor and the possibility of access to substantial funds. Given the difficulty of otherwise understanding the substance of the case put, it is appropriate to record, for clarity, that Mrs Shanly is married to Mr Michael Shanly of the Shanly

group of companies which includes Shanly Homes, a house builder operating primarily in the south-east; Sorbon Estates, a commercial property development company and the Shanly Foundation, a charitable foundation run by Trustees. The Shanly family live on an extensive estate in the locality of the application site and BLS began life in a lodge building on the estate. Thus, for example, the Rule 6 parties refer to locating BLS elsewhere on the Shanly estate. BLS applied to the Shanly Foundation for funding and has received £5 million for the possible relocation of BLS on the application site.

Site and Surroundings

11. The site lies within the Green Belt (GB). Measuring 3.2ha it is a broadly regular part of a field laying to the south of the A404; along this northern boundary the land is banked up and is planted with trees and shrubs. To the west the site is bounded by a hedgerow, the eastern boundary is undefined and the south boundary lies a little to the north of a well-defined unmade track which has an avenue of Horse Chestnut trees along it. Vehicular access to the site would be from a minor private road joining Henley Road at a T junction. This minor road passes beneath the A404, south-westward to Stubbings House and a well-used garden centre/plant nursery. A mini-roundabout is proposed at the point where the school access would leave the existing minor road. All this is shown on drawing 1372/02 in CD8. There are no buildings on the site and none immediately nearby. The nearest is a red-brick Lodge to Stubbings House estate which lies near where the proposed mini-roundabout would be.

12. The aerial photograph, plan no 1372/01 in CD8 gives a useful over-view of the application site and its position in the wider locality. It shows its position mid-way between the eastern edge of Burchett's Green and the western edge of Maidenhead and the garden centre/plant nursery to the south. The A404 can be clearly seen, as well as Henley Road and Maidenhead Thicket (National Trust land) to the south-east of the application site.

13. Of particular interest is the number of footpaths in the locality (see CD56). Running broadly east-west is path 23 from Burchett's Green to Maidenhead Thicket. Numerous footpaths connect to the eastern end of this and enter Maidenhead Thicket. Branching north from path 23 is path 24 which diagonally crosses the field of which the application site forms a part. This then passes beneath the A404 in an underpass shared with vehicular traffic to join Henley Road and beyond. Footpaths 23 and 24 form part of the Berkshire Loop of the Chiltern Way, a long-distance footpath. All of these footpaths appear to me to be well used. I visited the application site on several occasions and always saw walkers on the footpaths, even on dull, wet, January days.

14. There are 43 photographs attached to the proof of Mr Joseph (CD43) many of which are taken from these footpaths. Regrettably there is no plan attached to show the point from where the photographs were taken so they should be assessed to give a general flavour of the locality only. In particular, it should not be assumed that the application site forms the foreground. Many of the photographs are taken from the footpaths and the application site is nearly indiscernible in the distance. The photographs appear to be stills taken from the video submitted on a memory stick (CD44). Again, while the video does contain a map of the entire route of a walk taken, it does not fix where any particular scene was photographed from. The proposed elevations, taken from the

application plans and inserted over the landscape in the video, do not appear to me to be accurate as to scales or levels and should be taken as a guide only.

15. To be preferred are the photographs in Mr Macquire's appendix AM7 to his proof (CD25). These concentrate on the application site and, helpfully, a plan indicates the viewpoint from which they were taken. The technical visualisations in CD25 appendix AM10 are to be preferred as to accuracy of scales and levels of the proposed buildings inserted into the landscapes. However these are incomplete since the proposed access road and mini-roundabout is not shown.

Policy

16. *Best interests of the children* – Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the children shall be a primary consideration in all actions by public authorities concerning children. Article 3(1) applies to decisions made by Inspectors and others. To be a 'primary consideration' means that no other consideration can be inherently more important than the best interests of the children, but their interests can be outweighed by other factors when considered in the context of the case. Considering the best interests of children might also involve a factual inquiry into their educational needs.

National policy

17. The National Planning Policy Framework (the Framework) is contained in CD3. GB policy is to be found within Section 9: paragraphs 79 – 92. The government attaches great importance to GBs. The fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances (VSC). When considering any planning application LPAs should ensure that substantial weight is given to any harm to the GB. VSC will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

18. Section 8, paragraph 72, promotes healthy communities, and sets out that the government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It continues that LPAs should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen the choice in education. They should give great weight to the need to create, expand or alter schools and work with school promoters to identify and resolve key planning issues before applications are submitted.

The development plan.

19. The policies most relevant to the application are contained within the RBWM Local Plan 2003 (CD1). These are Policy GB1 (Acceptable uses and development in the GB); GB2 (largely concerned with impact on openness, harm to the character of the countryside, intensification in the level of activity and permanent loss of grade 1, 2, or 3a agricultural land); CF2 (provision of new community facilities which meet the needs of residents); T5 (new development and highway design) and P4 (parking within developments).

20. This is an old Local Plan, prepared in accordance with the cancelled PPG2 Green Belts. While broadly in conformity with the Framework it differs in aspects of emphasis. RBWM are in the course of preparation of a new Borough Local Plan with public consultation in 2016. Thus it is at an early stage of preparation when little or no weight can be attached to it.

21. As part of the draft Borough Local Plan the Council has undertaken a "Green Belt Purpose analysis" (CD4). Brief reference was also made to RBWM's Landscape Character Assessment (CD25, appendix AM6) and the Berkshire Landscape Character assessment (CD25, appendix AM5)

Planning and Site History

22. There is no planning history on the application site.

23. However of note, since it concerns the agricultural land classification (Local Plan policy GB2) is the use of the field, of which the application site is a part, for spreading chalk from the construction of the adjacent main road. In the early 1990s the A404 near the site was constructed and this required excavation of chalk for the cuttings for the A404 and also the underpass to take the minor road from Henley Road to Stubbings House, the garden centre/plant nursery and the application site.

24. Statements and photographs from the land owner and the farmer of the application site (CD29) state that the land is formally classified as "official grade 2 agricultural land". They continue that the field that includes the application site was used to dump the chalk excavated for the works by removing top soil and subsoil, grading and shaping the dumped material and replacing the subsoil and then the top soil. Since that disturbance, they continue, the agricultural yields are no longer economic and the land is used for livestock grazing and hay.

25. The field is notably higher than the adjacent field to the west and has a different texture; it is tussocky grass and is not a smoothly cultivated arable field like the adjacent one. There was discussion about the agricultural land classification at the inquiry. The planning officer had made enquiries during the processing of the application and recorded in the report to committee that the land is "the equivalent to grade 5" (CD 38, paragraph 7.15). This would be land with the most severe limitations or restrictions.

26. The Rule 6 parties disputed this anecdotally but provided no evidence to the contrary. The simple fact is that the land remains "officially" graded as grade 2 but it is known that it has had excavated chalk placed on it and has been engineered and graded which could have had some effect upon fertility and/or drainage. I doubt that single fields are re-classified as a general rule; no one is able to state with confidence what grade it might be classified as today. It was clear from my site inspections that the field of which the application site forms a part is not used for arable crops in the same way as the immediately abutting one to the west.

27. The scheme would result in a small parcel of this field (eastern side) being effectively "left over" see the application site edged red on CD 8 plan ref no 1372/02. It would have the A404 to the north, the existing access road to the east, the school to the west and the new school's access road to the south. The owner and farmer comment on the uneconomic nature of the whole field

including the application site, in terms of yield at the present time, and this, together with the difficulty of farming such a small area with today's large farm-machinery, could further reduce the utility of this 'left-over'. In this event the loss of agricultural land, (of whatever grade it is deemed to be) could be 3.2ha (application site) together with the remainder of the field.

The Proposals

28. BLS currently operates from a small, domestic scale, converted barn at Home Farm. It has a temporary planning permission which expires next year. Older pupils utilise a leased portacabin, called Blossom House, within the huge campus of Berkshire Agricultural College (BCA) the hub of which lies a few km to the east.

29. The scheme involves the construction of a new school, mostly single storey and of a design unlike a typical mainstream school building. The design concept is of a traditional appearance of farmstead barns grouped around a courtyard with ancillary outbuildings too. Materials are proposed to be dark stained weather-boarded walls with red clay tile roofs which have similarities to the existing school building. The buildings would facilitate partially separate mini-schools to reduce the scale of pupil numbers, to cut potential anxiety in children unable to cope with noise and larger numbers of other pupils. Each mini-school would have its own classrooms, kitchens and dining areas, toilets and chill-out room. The building work is proposed to be phased as shown on drawing 1372/11a in CD8.

30. There would be a separate building between the two largest buildings to house some facilities common to all, such as a staffroom, administration offices, a main hall, storage facilities, reception area and Head's office. The school proposes a total maximum gross internal floor area of 2465 sq m. The parties sought to calculate a percentage of site coverage during the inquiry: the applicants arrived at a figure of 20% site coverage (see paragraph 56 of this report) the LPA said 7.7% (see paragraph 79). The LPA is correct: 2465sqm (from the application forms) as a proportion of 3.2ha site = 7.7%.

31. The whole scheme is proposed to sit within a heavily landscaped setting to include animal housing and sports and recreation areas. See CD8 for the plans given formal consideration by the RBWM. Footpath 24 is shown to follow its existing route diagonally across the site; this would need to be fenced for security.

32. The site would be served by a new access road branching from a mini-roundabout sited on the existing private road; this would lead to a parking area for 30 vehicles.

The Case for the applicants

The material points were:

33. Mrs Daniela Shanly is the co-founder and proprietor of the BLS and parent of an adopted child. The very personal circumstances are set out more fully in CD24. The child did not thrive in mainstream education and after extensive research the proprietor set up a charitable non-maintained special school for children aged 5 - 17 whose needs cannot be met in a mainstream setting.

34. Initially the school had one teacher and 3 children and was located in a lodge/gatehouse at the Shanly estate. Shortly afterwards the little school was able to transfer to domestic-scale accommodation at Home Farm on the Shanly Estate in Honey Lane – see photograph of existing school in CD9, paragraph 3.5, figure 4. This officially opened in 2013 with 5 pupils and 4 staff. Today the school has 22 pupils, 10 full time staff, 6 sessional staff and 4 therapeutic staff. BLS operates under a temporary planning permission at Home Farm which expires on 1 October 2017. Older pupils use a portacabin, (Blossom House), within the grounds of BCA. BCA has a huge campus, typical of large agricultural colleges, with numerous buildings. The campus lies to a few km to the east of Home Farm.

35. All the children have a diagnosis of one or more special educational needs; over half have been fostered/adopted and have attachment difficulties and atypical emotional and social development. Some have specific learning difficulties, speech and language needs, autistic spectrum disorder, obsessive compulsive disorder or sensory processing difficulties. The area of attachment, developmental and relational trauma is a special area of expertise in BLS. The majority of pupils have this area of difficulties, mostly arising from trauma in early life experiences; they may have Statements of Special Educational Need or an Education, Health and Care Plan (EHCP), described in detail under the respective Acts, in Mr Clyne's proof (CD24).

36. The school offers very small classes; typically the children cannot cope with being in large groups usually found in mainstream classrooms. The nature of a special school and the statutory requirement for Statements of Special Educational Need or a EHCP to name an appropriate school for that pupil means that there is no typical "catchment" areas for such schools. Pupil numbers arising in a single local educational area would be unlikely to sustain a special school and so pupils have to travel. At the inquiry parents described how their children often do not have the inner resources to cope with long journeys to school. Over stimulation, distraction, noise and frustration play a part in a child arriving at school unready to begin to learn and needing time to calm down to avoid a "meltdown".

37. As stated earlier, BLS's older children are catered for in a small self-contained portacabin unit at BCA. There is much overlap between the two locations as sometimes a child's chronological age does not match their developmental age and so they cannot automatically transfer to the older unit but need to transition between the two until they integrate successfully. This close relationship with the Further Education College offers the children a future. They can experience at first hand, with taster vocational courses, a route to entering adulthood with qualifications, interests and possibilities to make a success of their lives.

38. In brief BLS provides an alternative educational provision for children who have needs that are difficult to meet in mainstream schools and all 22 have, indeed, failed to thrive in mainstream schools. Ofsted inspected BLS in 2014 and it was graded as good in all areas. As a result, local education authorities are now placing children in the school and are funding them. The RBWM currently funds 6, Bracknell Forest, Reading, Wokingham, Buckinghamshire and Southwark fund others with 13 of 22 pupils now funded by local education authorities.

39. The school does not operate on a "first come first served" basis but can only admit a child if there is an appropriate cohort of children with which they can

settle. BLS only accepts children if they are wholly satisfied they can meet the child's needs fully. For example, the school would not admit a quiet, withdrawn 11 year old girl into the current class of loud, boisterous 10/11 year of ADHD boys, despite being otherwise able to meet the needs of the girl.

40. The school bases its education on outdoor learning, forest school and interaction with animals (see CD23, appendix 16) and nature. Planting, harvesting and cooking the results are encouraged.

41. The local education authority (LEA) in which BLS is located supports this application and states the value of the school and the increasing demand for the specialist provision that the school offers (CD39). There is no other similar provision in the immediate or adjacent areas. The school meets the needs of children who would otherwise need to travel further afield or attend a school less well able to meet their needs. Both education witnesses gave evidence on the continuing and expanding needs for special schools such as this, see CD24 and CD39.

42. In the 50 working days between 16 September and 8 December 2015 BLS received 34 enquiries for places (see CD24, appendix 15). In answer to my question Mrs Shanly made clear that they had had to "decline" (as so listed in the table in appendix 15) most of enquiries because there was no existing cohort of children within which the new child could integrate successfully. BLS has a need for larger premises, so that it can offer places to a greater number of children, although it would only ever be a very small school.

43. To improve provision they require dedicated therapy rooms for occupational therapy, speech and language, music and play therapy, quiet withdrawal rooms for children in a fragile state on a particular day. Children and parents require private space where they can discuss matters with staff without being overheard by others. Currently, at BCA the staff have no place to go for a break. There is a need for a communal assembly/sports hall, woodwork, IT and home economics facilities.

44. The new school requires a tranquil rural location as much of their education is outdoor based. With a larger site they would have donkeys, goats and other small animals to increase animal-assisted therapy (CD23, appendix 16) as well gardening facilities, cycling areas/tracks, free play and sports areas.

45. Appendices 21 – 24 to the proprietor's proof (CD24) are statements by 4 parents who spoke at the inquiry, who read these documents. These statements, that of Mrs Shanly, of the Head Teacher and another by a specialist assessor and teacher at BLS set out the founding principles, professional ethos and the value of the existing BLS (see CD24, appendices 21 – 24, CD54 and CD55). Parents and teachers also gave statements concerning the difficulties that these children can bring to family life. The social and economic outcomes were spoken of - the loss of careers, the time, sadness, anxiety and stress to parents, carers, siblings and families can be huge. If the children are thriving in BLS the reduction in these problems can be of wider benefit than just to the child and his/her future position in society.

46. The grant of permission for BLS will materially change lives. This will be a school for incredibly vulnerable children who have been harmed by their history and experience. This is not just mild suffering, like having a cold, but significant and

material trauma which has had major effects on their ability to live and experience the world. These children are characterized by a deep sense of fear and vulnerability. The world is a place of danger and potential harm.

47. BLS has done something extraordinary – it has provided a sanctuary of hope and love for these children. They are the future and they are intrinsically more vulnerable to the world and its vagaries. In this case the children who need BLS are highly vulnerable and love and hope are fundamental prerequisites for them to recover and have lives that are fruitful and have a degree of contentment.

48. Few planning inquiries have heard testimony with the strength of feeling and desperation as heard during this inquiry; it is rare that one comes across a proposal of such benefit and importance. This school is a place which must be found a permanent site. It demands to be given a home which is suitable, of long-term use and as a matter of urgency. To do so would bring about the most incredible transformation in the children, their families and those connected to the families.

49. The Rule 6 parties appear hard hearted. The inquiry heard the determination of a very few to protect their world at the expense of all others. The argument was that this site is unacceptable, because of its harm to the GB, and yet they say there are 3 other sites in close proximity, within the GB, which would be preferable, without any assessment of any kind.

50. So this is not a case of principle that the development should not take place on the GB but that this development should not take place on this particular site in the GB. For a few to seek to object to this proposal when it will barely affect, in any way, the way they live and experience the environment is deeply depressing particularly when it is said that the school can go to the BCA site which is in the GB and has significant heritage issues being adjacent to a Grade 1 building and a listed garden. The fundamental proposition is that it will affect a view none of them will see from their homes and it will affect a walk which only some of them do on the most intermittent basis.

51. Whatever happens with this decision Mrs Shanly is a person who has dedicated herself to helping others. The staff have dedicated themselves to helping others. The parents in many cases have chosen to adopt many deeply traumatised children in an attempt to help them. The contrast with the Rule 6 parties could not be starker.

52. Examining next the policy framework for the determination of this application, this is a proposal for inappropriate development in the GB. It is therefore, by definition, harmful to the GB and should not be approved except in very special circumstances. In considering harm one needs to consider the effect of the proposal on the openness of the GB. In considering harm one needs to consider the effect of the proposal on the purposes of the GB. In terms of the purposes at worst what we are considering is the harm by reason of encroachment into the countryside. In considering harm one needs to consider other harm in addition to the GB harm. It is incumbent upon the Applicant to show there exist circumstances which justify the grant of planning permission and that will amount to VSC.

53. The VSC in this case are: the educational need, the need for a rural location and the lack of alternative sites. In order for planning permission to be granted, VSC

need to exist which outweigh the harm to the GB and any other harm. It is the contention of the applicant that in this case; the VSC do outweigh the harm identified. That contention is supported by the RBWM since October 2014. The Secretary of State and Inspectors have, in other circumstances, concluded that there are VSC in the case of an educational need.

54. Since 2012 LPAs and, by proxy, decision makers are asked to give great weight to create, expand or alter schools (Paragraph 72 of the Framework). LPAs should take a positive, proactive and collaborative approach to development that widens choice in education. The Government attaches great importance to ensuring that a sufficient choice of school places is available.

55. The case of the Rule 6 parties, based on no evidence whatsoever, is that this proposal will cause significant harm to the GB. Strong submissions have been made which bear no relation to the evidence that has been called. The Rule 6 parties have not commissioned any professional evidence to substantiate such an allegation. In contrast the Applicant has produced detailed, technical evidence that the proposal will only cause minimal harm to the openness of the GB and that harm will be highly localized[1].

56. BLS has called a witness, Mr Macquire, who was fair, balanced and objective and has very considerable experience in these matters. The effect on the purposes of the GB will only be in the case of encroachment and unrestricted sprawl. In terms of encroachment into the countryside the proposal whilst patently resulting in buildings creates an attractive rural style development which is completely in keeping with the location. It is noteworthy that Mr Scott did not accept harm to unrestricted sprawl in chief and was not challenged on it. That is a valid planning conclusion. The reality is that this is a proposal which will not have significant impact on the GB. The proposal is well designed and will result in attractive buildings. The extent of development on the site is close to around 20%[2] and not the 50% as contended by the objectors (Inspector's note – see my comment in my paragraph 30 – actually 7.7%). Therefore it is reasonable to conclude, as Mr Macquire does, that the level of proposed harm to the GB is towards the lower end of the spectrum.

57. Concerning other non-green belt harm, the sensitivity of the landscape is only medium. The impact on landscape character is only of minor or moderate significance[3] because the effect is highly localized and the fundamental effect on the landscape will enable the open arable landscape character to the west to remain and the parkland landscape to the east and south to remain. To the North the character is determined by the A404. There is no professional evidence which contradicts that. The effect upon the visual environment is only material from 4 viewpoints and no additional viewpoints have been put forward as requiring consideration by the Rule 6 parties. The extent of change to the visual environment is considered acceptable and not significant[4]. There is no professional evidence which contradicts that. There is no material harm in terms of effect on trees.

[1] Macquire 5.27
[2] Macquire, re-examination
[3] Macquire, 5.10
[4] Macquire, 5.15

58. The footpath will change by requiring walkers to walk through the school. What they will see is an attractive group of buildings in heavily landscaped grounds and sounds of laughter, activity and enjoyment. The traffic can be adequately and appropriately catered for on the highway network. There is no professional evidence that contradicts that.

59. The allegation that the proposal will not be sustainably located is incredible in the context of the position of the Rule 6 parties that the site should or could be located many miles away and therefore longer journeys can be undertaken without any consideration of the additional mileage undertaken by the children and their parents. In any event it is clear that the normal approach to alternative means of travel have to be carefully caveated because of the nature of the proposal and the pupils.

60. The land is not fully productive in terms of agriculture because of what was put on the top of the land with the construction of the A404. The level of loss to agricultural land is tiny because of the size under consideration.

61. The educational need for this proposal is overwhelming. Early years trauma is highly relevant to the wellbeing of children and their ability to be educated in the mainstream. There is a need to educate such children in a way which responds to their particular needs. Since opening in 2012 the school has now grown to 22 pupils. That is a clear reflection of the need that exists. In the past 3 months the school has received 34 enquiries from prospective pupils and their parents. That is a clear reflection of the need that exists. The school has shown in the past 3 years that there is clearly a need for the type of educational provision that the school offers. That need is reinforced by the legislation in the Children and Families Act 2014 which introduces EHCPs which enable, for the first time, parents and children to influence and dictate the education, health and care that they receive.

62. The need for the school is recognized by the LEA; the school currently has 13 children from the RBWM. That need is also recognized by numerous other LEAs. No evidence has been put forward by the Rule 6 parties that the need does not exist or can be met in any other way; that is highly material. The Secretary of State has, on numerous occasions, recognized that educational need can amount to VSC. It is contended that the need in this case absolutely amounts to VSC. The stories from the parents both orally and written to this inquiry show in the strongest way that there is a need which is being fulfilled by this school. The school seeks permission for 96 children and the need for that size has been evidenced by Mrs Shanley and Mr Clyne. No challenge to the extent of need has been put forward by the Rule 6 parties.

63. The need for a rural location is clear. This proposal cannot be considered unless one considers the educational offer which is given to the pupils in terms of facilities and access to the environment. The pupils require something different in terms of how they learn and the environment they are in. Anyone who has listened to the proposal will understand that critical to the children's education is the need to have access to nature, animals and tranquillity. The school could not locate within Maidenhead, Marlow or any other urban area. The design seeks a forestry lodge, provision for animals and significant areas of greenery within the proposal. It is extremely unlikely that any such location could be found within the urban area. It is again instructive that the Rule 6 parties have not challenged

the components of the educational offer for the children which requires a rural setting. No educational evidence has been called which contends or alleges that the provision can be met within an urban area.

64. The past shows that there is no alternative site. The objectors argued that there had been no methodical search for a school site. Yet Mr Michael Shanly is one of the biggest development companies in the South East who have developed huge amounts of commercial and residential land in the RBWM. Near this inquiry venue are developments of 460 units at Badnells Pit and 230 units just next door. The applicant has a team looking for sites, as the answers to the Inspector's questions revealed.

65. The contention that the preparation of a formal report into alternative sites would have identified alternatives missed by the combined might of the Shanly group of development companies is simply fanciful. Mr Shanly has access to agents, land buyers, planners, and a whole range of sources. His companies develop around 45 sites a year. It is patently clear that from 2012 to 2014 he would have become aware of any possible site that might have been suitable. Therefore the contention of the Rule 6 parties that the site search was not proper because of the absence of one formal report is incorrect.

66. The Rule 6 parties' criticisms do not extend to bring to the inquiry one site which they say was available and suitable and missed by the Applicants. The evidence is missing. Their only contention is that sites were not pursued which the Applicant did identify. Why would the Applicant not pursue available and suitable sites? They are not masochists! It is not tenable to allege they have walked away from such a site. It is also true from contemporaneous evidence that other sites were considered to a very high degree with offers and bids having been made and detailed discussions having taken place from 2012-14. CD30 lists such sites. Therefore the evidence is that from 2012-14 a serious search took place and offers were made. It cannot sensibly be contended that alternatives were not considered. The current evidence shows there is no alternative site. The Rule 6 parties stated (in their Rule 6 statement) they would bring evidence of the existence of other sites today that would be suitable for the school. However, what has actually happened at this inquiry is not one of the Rule 6 parties' witnesses have brought forward evidence of a site which exists on which the school could be located currently. The Applicant does not know of any site that currently exists on which the school could be located. Mr Joseph sought to suggest sites at BCA and/or the Shanly Estate, but those would not offer advantages and both are in the GB.

67. There is no evidence of any kind that such a site exists, even if one extends the search area to the extent that is alleged to be credible by the Rule 6 parties. So it is reasonable to conclude, in the absence of any such site, that there is no alternative site. The Rule 6 parties also contend that no evidence is before the inquiry to show that no site exists that would be less harmful to the GB. Of course not. But what is highly material is they have no such evidence and again Mr Macquire in chief gave strong and compelling evidence that there was unlikely to be any such site that would be less harmful than the application site. The addition of the past evidence and the current evidence allows one to conclude that there is no realistic prospect of finding a site in the future.

68. The Rule 6 parties submit that, if the application is refused, unquestionably within 2 years, a site which is suitable, available and receives planning permission will be found. This contention completely fails to look at the evidence of 2012-16. When there is clear evidence of no such site in the past 4 years is one now likely to emerge? This is a device to suggest that a refusal will not be that harmful, when it so patently will be. The correct conclusion, based on evidence resulting from the resources of one of Britain's most successful development companies, is that to find an appropriate site is incredibly difficult and almost impossible.

69. The balancing exercise is clearly in favour of the grant of permission. The harm to the GB should be given substantial weight. However, the extent of that harm lies on the lower end of the scale due to the design of the proposal, the characteristics of the site and the nature of the use. The educational need is compelling and urgent. It relates to the most demanding type of educational need and should be given very significant weight having heard from the existing staff, parents and educational experts. The need for the school to have a rural location is fundamental to the educational offer and should be given considerable weight. The lack of any alternative site in the urban area is clear from the evidence arising from 2012-2016. The lack of any alternative site which is less harmful to the GB is shown by the complete inability of the Rule 6 parties to identify such a site. Therefore the lack of any alternative site can be given significant weight.

70. Consequently on a fair balancing exercise within the parameters of the Framework and, in particular paragraphs 87-89, it is completely right to conclude that planning permission should be granted because the VSC outweigh the harm to the GB and other harm. That is a judgment shared by the LPA officers and members. The gravity that Mrs Sharman and Mr Scott gave their evidence is noted; they are conscientious, intelligent and thoughtful officers whose judgment may be given considerable weight. That is the judgment endorsed by Members who know their Borough intimately and have a detailed understanding of the issues affecting the GB. That is a judgment endorsed by Mr Scott who also applied a reasonableness and thoughtfulness to his evidence. The application should be granted planning permission; the evidence deserves such a conclusion. The children deserve such a conclusion. The future pupils deserve such a conclusion. The parents deserve such a conclusion. The staff deserve such a conclusion.

The Case for the RBWM

The material points were

71. The proposed school would be a charity based non-maintained school for pupils with particular educational needs. The school currently operates from smaller, separated and temporary premises in Honey Lane, Hurley, and from a temporary building in the grounds of the BCA. The proposed development would provide for the relocation and expansion of the existing school so that it could accommodate 4 houses of 3 class groups in each with a capacity of 96 pupils, and this is reflected in the building design.

72. The RBWM as LPA and LEA resolved to grant planning permission for the development subject to conditions on 22 October 2014[5] (subject to referral to the Secretary of State) following the recommendation of officers[6].

73. The RBWM's view is that the critical issue in local and national policy is whether the proposal (acknowledged to be inappropriate development) passes the balancing exercise required by sections 87 and 88 of the Framework[7], which is also reflected in broad terms within local plan policies GB1 and GB2[8].

74. The Borough's evidence has been prepared in line with the approach to the Green Belt balancing exercise endorsed in Redhill Aerodrome Ltd v SSCLG [2015] JPL 416. It is common ground that there are elements of the balancing exercise that pull in opposite directions. The Framework provides the key policy context for the striking of the balance. The Rule 6 parties explicitly disavow any attempt to undermine the educational benefits of the school proposal[9]. The Rule 6 parties present no evidence on the educational benefits one way or the other – certainly nothing to gainsay the evidence of those either involved in establishing and running the school, Mr Clyne, or, particularly pertinent to the case of the Borough, to gainsay the clear position of the LEA that there is a clear and continuing need for the education provided by the proposed BLS and which is currently lacking from the RBWM or the adjoining areas[10]. This statement of need from the LEA charged by the Government with delivering the statutory educational duties and functions was not effectively challenged. The need for the proposal is accordingly clearly established.

75. The recognition of this need by the parties sets the fundamental context for the balancing exercise. There is a clear, immediate and continuing need for this facility, which will grow into the future.

76. The Government places great importance on ensuring a sufficient choice of school places is available to meet the needs of existing and new communities (the Framework 72). That choice is not available in RBWM, and great weight must be given to the need to create and expand schools.

77. The Rule 6 parties are not able to identify any alternative means of this need or choice being provided. There are no alternative proposals to meet this need in the offing, and no party has identified a reasonably available alternative site suitable for this educational facility let alone any prospect of the need being met on that site and let alone in a less harmful way.

78. *GB harm*. National policy attaches great importance to GBs and identifies their fundamental aim as being to prevent urban sprawl by keeping land permanently open. The Framework identifies five purposes[11] of the GB, and an application for development within it must address the extent to which the proposal conflicts with those purpose.

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[5] CD17
[6] Report at CD18
[7] CD3
[8] CD1 – The RBWM Local Plan 1999 (incorporating Alterations adopted in June 2003).
[9] MR Opening para 1
[10] D Scott 10, 13, and 21
[11] NPPF 80

79. Mrs Sharman is clear that the proposals taken as a whole amount to inappropriate development, and has an adverse and permanent effect on openness, and that policy directs that substantial weight must be given to any harm to the GB including by way of inappropriateness[12]. As to openness, regard must be had to the quantum of built form across the site. This is limited – less than 7.7% based on the floorspace of the building on a site of 3.2ha[13]. There is also some hardstanding, which will have a lesser impact as a result of its form and as its use will not be full-time but only, for example when vehicles are parked[14].

80. Similar issues arise as to safeguarding the countryside from encroachment. The proper approach is not, however, to reference the encroachment in the context of the red-line area, but rather the GB. When properly analysed, development of this form has a limited impact on this GB purpose. It is also relevant to consider the balance of open land within the site, which is left unbuilt upon and put to uses consistent with the countryside nature, such as outdoor recreation, nature trails etc. Mrs Sharman properly had regard to the particular site characteristics and development proposals in considering this impact.[15]

81. There is no material harm, on Mrs Sharman's assessment of the particular development proposals[16] and their careful design, with purposes 1, 2, 4 and 5. Mr Joseph alleges no such conflict in his written evidence, and neither does Mr Reed in his opening[17]. In short, due to the site's location and containment the proposal would not contribute to "the unrestricted sprawl of large built-up areas", that is Maidenhead, would not contribute towards town's merging into one another, would preserve the setting and character of historic towns, and, due to the nature of the proposal, would not undermine urban regeneration.

82. In summary, the proposals do adversely impact on openness, and would encroach to a degree on the countryside. Both are the inevitable result of placing buildings on undeveloped land within the GB. However, Mrs Sharman considers that the specific design of the buildings and the placing of structures within the site, together with its containment, minimise the harm in these respects. This harm, and the weight to be given to it, has at all times been recognised by the RBWM in striking the balance in favour of the scheme.

83. *Other harm*. Mrs Sharman has also considered other harm caused by the proposed development. The first of these is the impact on the character and appearance of the area. Mrs Sharman recognises that the proposal, in developing an undeveloped field, will change the character and appearance of the area. More detailed evidence is given on behalf of the applicant by Mr Macquire, and the Inspector has carried out a detailed site visit. Mrs Sharman draws attention to the relative containment of the site by established landscape features, and by the road to the north. Two footpaths (23 and 24[18]) provide localised views across the site, and there will be a noticeable change in the character and appearance of the

[12] NPPF 88
[13] CD7 q18 and 21
[14] SS XX MR
[15] Proof 7.7, 7.8
[16] Drwgs at CD8; DAS at CD9
[17] See statement 2 and para 3.
[18] See Mr Macquire's Appendix 6 for illustrative photographs and viewpoints

land as a result of the development. However, the perception of the buildings in light of their design and siting is important.

84. The scheme is conceived as a rural development, using recessive materials and in keeping with the local, rural vernacular, presenting as a farm complex. The buildings are predominantly single story and of rural appearance. The main school building will be cut into the site reducing its perceived impact. Landscape mitigation is proposed, and is intended to reflect the parkland-countryside transition presented by the current site. This will reinforce the perimeter planting and integrate the proposed built-form. There is considerable scope for landscaping, and there can be particularly sensitive treatment around the parking areas and the footpath. There is a wide area of the site given over to recreational uses, which will be capable of management in line with the school's ethos of relating to the natural environment, including nature trails and greenery. There will also be elements of rural use as part of the school's ethos and educational method. All these factors combine to reduce the adverse impact on the character and appearance of the area.

85. From the perspective of the Rule 6 parties Mrs Robson Brown considers the proposed buildings would be attractive[19], and no-one among the Objector's case disagrees.

86. There will be an impact on the amenity of footpath users, in particular footpath 24 as it crosses the site. It is intended that this footpath will be incorporated within the design of the scheme so that its use remains convenient and protected. It is a short stretch of footpath, and the landscaping proposals will reflect its use. Again, there will be a noticeable change for users of the footpath across the site – some 125 m length. However, the route will continue to connect to the wider network of footpaths, and will be but another element of the experience of walking along the footpaths in this area.

87. The impact on trees has been considered, and the applicant has produced a Tree Protection Plan[20]. No point appears to be taken on trees by the Rule 6 parties.

88. Mrs Sharman has also considered potential impacts through loss of agricultural land and residential amenity. The conclusion, as to the precise classification of the land as agricultural land, is not known on the evidence available. It is clear that the works to construct the A404 led to the alteration of the land and the deposition of excavated material in a way that affected adversely its agricultural production[21]. The land has not recently been put to beneficial agricultural use[22], and it has not been able to produce arable crops[23] economically. The application of policies therefore to protect the best and versatile agricultural land would appear to be a fairly pointless exercise. The Framework directs attention[24] towards the economic benefits of the best and most versatile agricultural land, which - if the site is so considered – seem to be very limited. Further the scale of development is not significant in this regard. Even if considered as Grade 3a land

[19] Proof
[20] CD12
[21] See statement from Chairman of Stubbings Group Ltd
[22] KS XX MR
[23] Statement of Chairman of Stubbings Ltd.
[24] 112

(which is the highest the Rule 6 parties appear to put its case on the evidence), Mrs Sharman's considered view[25] is that this impact is negligible in light of the size of the application site, and the balance of agricultural land in the borough.

89. As to residential amenity, it is hard to understand what material harm can be caused given the distances involved, together with the degree of the site's visual containment. Mrs Robson Brown suggests that from some parts of the footpath some distant housing may be visible, but this says nothing as to what the impact on the amenity of those residents will be, or what the effect of the development will be on views from within those premises. The ZVT shows there are no views that will be materially affected. Overall, these impacts are considered to be negligible.

90. As to sustainability, the RBWM has conducted an overall assessment of sustainability and concluded that the development is sustainable development and should be granted permission, and that it complies with the Framework and the Local Plan read as a whole.[26]. Whilst the school will be heavily reliant on private means of transport[27] and is poorly located in terms of public transport accessibility this must be considered bearing in mind that wherever a school of this nature were located the likely mode of transport for those children with relevant needs is likely to be the car.

91. In summary, the RBWM, as explained in evidence by Mrs Sharman, considers that the proposals amount to inappropriate development in the GB, have an adverse impact on openness and do to an extent encroach on the countryside. This harm has been limited through the design and siting of the proposed development, but is an inevitable consequence of developing an undeveloped GB site. This harm has been given substantial weight in the balancing exercise. There is localised harm to the character and appearance of the area, but again this is limited and mitigated by the scheme design and its rural, vernacular appearance.

92. *Benefits & VSC*. It is the need for the proposed school and the inability for this to be provided within the urban area that is at the heart of the VSC case, and which led the RBWM to resolve to grant planning permission for the development. In reality, this issue is also at the heart of the Rule 6 parties' striking of the balance against the proposals, in that the Objectors do not accept the need for the development to be located within the GB, at least not within this Borough.

93. There appears to be no dispute, however, as to: the benefits for the Borough of having such an educational facility within it; the need for such a facility within the wider area; or the benefits that such an education offers to those children in need of it; nor that there is no similar school existing or proposed within the Borough, or the wider area including neighbouring LPAs; that presently RBWM is the largest single beneficiary of pupil places, and responsible for the largest number of enquiries as to future places[28]; and that as to the principle of the education facility the Rule 6 parties support its provision within the Borough and

[25] Proof 7.15
[26] SS proof 7.56 to 9.3
[27] SS XX MR
[28] See Mrs Shanly proof Table a and App 15

indeed the Parish (subject to an appropriate site being found). Though stated shortly, this common ground is of fundamental importance.

94. It is also the case that no party has established a credible existing alternative location (i.e. one reasonably suitable for the education facility proposed on this application and of meeting the identified need for this educational facility) for the school within the Borough or elsewhere. Even then there has been no analysis by the Objectors to suggest any site is preferable in planning terms. The Objectors have not asked any of its witnesses to consider this issue. Mr Joseph confirmed that they have not gone even so far as drawing up a list of constraints or opportunities that apply to any other sites[29].

95. This provides relevant context for the striking of the balance. The position of the Rule 6 parties is not to argue that this educational facility – the relocated and expanded BLS with its existing approach, methods and ethos – should not be provided. Their position is that it should not be provided now on this site, on this application. It accordingly seeks to characterise its position of one of delaying the provision of the facility. However, despite engaging Knight Frank, despite its own knowledge of the area, it is unable to put forward to the Inspector any evidence-based contention that there is a preferable alternative site where this facility could be delivered. This, of course, is entirely consistent with the evidence of the Applicant that, despite the use of all the resources available to it, no reasonably available and suitable alternative site has been found. It is entirely consistent with the RBWM's position in accepting that evidence, and within the context of the Borough's own experience in handling GB applications and its knowledge of the Borough, that it is unaware of any reasonably available alternative site.

96. Furthermore, the Objectors present no evidence consistent with its own case as to the consequences of delay. It strives only to ask the school to acknowledge that it would "make do" until a solution is found. The Objector's evidence has not actually turned its mind as to what the consequence of denying this new educational facility to the community would be, or what the consequences would be for the existing pupils and families would be of "making do" with the compromises and uncertainty of the current arrangements[30] compared to the timely delivery of the intended and planned facility.

97. There is one further important point of context from the RBWM's point of view. It is fair to note that Mrs Sharman's consideration of sites was focused on the applicant's search, and the RBWM. However, what the Objectors ignore, is that the LEA is entirely supportive of the provision of this facility within the Borough. The support of the LEA is because there is a pressing and continuing need for this facility to meet the needs of the Borough now and into the future. Mr Scott explains the need for the school and the opportunity it presents to the Borough to provide good outcomes for its pupils from the education available to them.

98. *Educational need*. It is important to recognise that the proposed development is for the relocation and expansion of an existing school, which currently operates under time-limited permissions. It has a proven track record which must be taken into account. The school's track record and its success is welcomed and endorsed by the LEA (see evidence of Mr D Scott), which funds a number of

[29] CJ XX G
[30] See evidence of Lucy Barnes

pupils at the school and anticipate funding many more. The particular need has been demonstrated in evidence by Mrs Shanly, Mr Clyne, and the parents of children who attend the school.

99. Further, Mr Scott explains the increasing demand that exists within the Borough for the specialist provision offered by BLS. From the LEA's perspective, pupils will (if permitted) be placed at BLS following the identification of that school on his/her EHCP following comprehensive assessment that identifies the school as the most appropriate educational establishment given that pupil's particular needs. There is no similar provision in the Borough or adjoining LEA's areas. Thus, if the school were absent, then the cohorts of children that would otherwise be directed to it would necessarily be placed at a school less able to meet their specific learning needs, or much further afield. The benefits deriving from the educational offer are lifelong, and extend well beyond (albeit primarily focused on) the individual child in need.

100. The LEA supports the principle of provision of this form of education. As Mr Scott concludes: "*This expanded school will contribute to more children being able to be offered the best opportunity to succeed and have good outcomes from their schooling, and support them being able to transition into adulthood as active members of society, better placed to be able to contribute to their community.* None of this is challenged.

101. The LEA has concluded firmly that there is an immediate and continuing need for this facility. Mr Reed's opening submissions, on the other hand, state that there is an absence of "quantitative or qualitative evidence of what the effect will be on future pupils if permission is not granted." Mr Reed did not put to Mr Scott what evidence he would have liked to see. One is considering here the needs of future pupils, not yet identified, and for whom a future case by case assessment will identify BLS as best suited to meet that individual's needs. The criticism implied by Mr Reed is misplaced, but in any event is beside the point. The LEA is clear that the immediate and continuing need exists. There is no evidential basis to conclude to the contrary. On the other hand, the evidence from the Applicant has considered in detail the benefits to those current pupils, the extent of demand from potential pupils, and importantly the outcomes it is delivering.

102. This evidence must be viewed against what the Government is asking the planning system to deliver, through paragraph 72 of the Framework. "*The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:*

- *Give great weight to the need to create, expand or alter schools; and*
- *Work with schools promoters to identify and resolve key planning issues before applications are submitted."*

103. As far as the Borough is aware the alternative to the provision of this facility through the grant of permission, from the Borough's perspective, is the loss of this future educational choice.

104. In this framework, it is very hard to understand any argument made by the Rule 6 parties that making do with the status quo in a way that is 'satisfactory' or 'adequate' assists the Inspector or Secretary of State. The proposals must be given great weight. Further, such suggestions have been strongly countered by the Applicant's evidence. It is (pace Mr Reed) unfortunate to be arguing for the status quo in the face of proposals that deliver precisely what the Government seeks by way of sufficient choice, a proactive, positive and collaborative approach, and the creation and expansion of schools; and where the benefits of such provision are so clearly substantiated by the evidence of the families served by the current facilities prior to the relocation to a purpose built building on a suitable site.

105. It is even more unfortunate when such an argument is entirely premised on a supposition that an alternative site will be found in due course, and where the clear evidence of those involved in the school is that the existing arrangements are well-short, in terms of its disaggregation, physical limitations and uncertainty deriving from its temporary status, of what the school would like the provision to be and what it would be through the application proposals.

106. *Alternatives*. There is no extant alternative to the proposed school in the Borough or the adjoining areas. The LEA is unaware of any proposal to provide such a facility in any adjoining area. Accordingly, as explained by Mr D Scott, if not provided, the children that otherwise in the future would be directed through comprehensive assessment to the proposal will have to be educated in alternative and less well-suited facilities, and/or potentially much further afield.

107. Given the GB location of the application site and the inappropriateness of the proposed development within it, the RBWM considered the issue of alternative sites in resolving to grant planning permission. As set out in the Committee Report[31], and the evidence of Mrs Sharman, the Borough accepted the applicant's alternative site search. The RBWM itself, having considered alternative sites in a different context in relation to an application for the new Oldfield Primary School in late 2013 adjacent to Bray Road, Maidenhead, was not, and is not, aware of any credible alternative site for the proposed development. No such proposal is before the inquiry.

108. Primarily, this is an issue that the Applicant has addressed in evidence, and it has described the exercise undertaken. From the Borough's perspective, it is important to approach this question with realism and in the evidential context of this application. The proposed school has a particular ethos that requires a location that allows a reliance on the natural environment, and is not urban in character. Mrs Sharman considered this in assessing the alternative site search undertaken, including the potential for sites near the urban area that may nevertheless afford sufficient natural environs[32]. Mrs Sharman had also considered alternative site searches within the GB in the context of the children's Hospice and Oldfield primary school applications[33].

109. Secondly, the Borough accepts that there are good reasons why the school should be located in proximity to the existing school, to its staff, and those

[31] CD18
[32] SS XX MR
[33] SS App 1 and App.2

responsible for establishing and maintaining it. Further, Mr D Scott endorses in educational terms those particular factors that the proposal can deliver in contributing to the learning outcomes of those RBWM pupils (and others) with barriers to learning, namely it being local, small, and with close links to the environment[34]. From the LEA's perspective, the location of the school within the Borough represents a real opportunity and educational benefit to the Borough. The RBWM in this context has indeed focused on the provision of the school within the Borough.

110. Mr Reed had, in closing, referred to 'catchment area' for the school. But, for special schools such as BLS, there is no formal catchment area and the position of the RBWM is to recognise the benefit that derives from a school such as this in the locality and the shorter travel times which will flow from that. The idea of a 'catchment area' should be resisted. Mr D Scott was asked about travel time and said that travel factors should be taken into account when considering the overall plan required for a potential pupil and he stated it should be 'the shorter the better'.

111. Thirdly, the Objectors advance their case in effect along the lines that the alternative sites search must be done in a particular way or else it cannot be sufficient to justify GB development. The RBWM, as explained by Mrs Sharman, has not taken this approach. It assesses need, and then considers the evidence as to whether an alternative site is available which may be suitable and meet the identified need. The relevance of the alternative sites goes to the "VSC" case. If the search for alternatives has been undertaken inadequately then the need for a GB location has not been demonstrated[35]. But, the adequacy of the search is an evidential matter. It need not be one size fits all. Mrs Sharman explained in her evidence that the RBWM was satisfied by the original evidence presented by Mr K Scott.

112. Further, in her evidence, she concluded that none of the sites hitherto mentioned could be considered available, reasonably suitable and less harmful than the application site so as to represent alternative sites[36]. Mrs Sharman herself is unaware of any credible alternative site, and finds this unsurprising in light of her knowledge of the Borough[37]. Further, Mrs Sharman welcomed in her evidence the identification of an alternative site by any party which she could investigate. No such site has been proposed. In these circumstances, the RBWM considers that the consideration of alternative sites by the applicant is adequate, and is reinforced in this conclusion by its own researches and knowledge of the Borough, and from the fact that no other party involved in this application process has put forward a credible alternative. The Applicant has provided evidence of the search undertaken.

113. The Objectors raise potential issues such as disaggregation, although has no educational evidence to support this as a notion, or to assert that it would meet the same need as the proposal. It also refers to its own notions such as "maximum" travel time – although it presents no evidence on such issues as to the impact on the pupils, families or school. The true position should be whether

[34] Proof para 18.
[35] SS XX MR
[36] Proof 7.45-49
[37] 7.49 and E-in-C

an alternative site can meet the identified need – that is from the LEA's perspective – the immediate need for the expanded and relocated school.

114. As a result of these points it is necessary to reflect briefly on the evidence on alternative sites presented by the Rule 6 parties. Mr Joseph's written evidence reviews the sites considered by the Applicant prior to the planning application and accepts that none represents a reasonably available alternative site. The suitability of sites in planning terms is not considered by Mr Joseph. In oral evidence two new sites are referred to, but again the suitability has not been assessed even at high level. Both sites (BCA and land within the Shanly estate) are GB, and BCA is a Grade I listed building within a Grade II registered Historic Park and Garden. Availability has not actually been addressed by the Objectors. But, in any event, the absence of analysis cannot justifiably support a submission that there is a credible alternative site for this proposal. Mrs Robson Brown does not address the alternative sites.

115. Mrs Cleugh presents high level evidence that premises do become available from time to time within a 45 minute area for "a school use". However, whether such a site is suitable as an alternative requires detailed consideration of whether the site can accommodate (and do so less harmfully) the particular facility proposed. Mrs Cleugh had regard to the plans, the Planning Statement and the DAS. It is clear, and accepted, that the sites referred to would not accommodate suitably the proposed development. Mrs Cleugh had not (understandably within her high level and time constrained analysis) sought to address whether the buildings on the sites would actually be suitable for adaptation either in planning terms or, more importantly, in educational terms for the proposed facility so that it would indeed deliver the facilities proposed and so meet the identified need, which is accepted by all parties.

116. No input from the school was taken, and no independent educational or planning advice sought. Reference to the DAS and the architect's brief by itself makes clear why the particular buildings on other sites are inappropriate, and the Applicant has addressed in evidence the requirements imposed by the particular needs of the children under the school's care. None of this has been reflected by the Objectors. At its best this evidence shows that there is a market for large school buildings in the sub-region. That comes as no surprise.

117. In summary, the evidence of the Objectors on alternative sites not only fails to identify alternative sites that are available and suitable, but it highlights the difficulties inherent in finding suitable land for this specialist use. The very fact that the Objectors are drawing attention to GB sites that are heritage assets of the highest order as potential alternatives underlines this.

118. As a result one returns to the context identified at the outset. There is an acknowledged and immediate need for the expanded and relocated school. There is no alternative in the Borough or adjoining LEAs that can meet this need. There is no other proposal to meet this need. There is no site where the need could alternatively be provided known to the Applicant, the Borough, or the Rule 6 parties. The RBWM is satisfied that the site search is adequate.

119. In these circumstances, it is for the Secretary of State to strike the balance now on the evidence available. There is no sound evidential basis for striking the balance by way of comparison between the benefits of permission now versus an unknown period of delay. Such a delay may or may not lead to a preferable site

(as yet unidentified and where all researches to date show that it would be a GB site) during which period BLS's performance and expansion is compromised with significant consequences for those who are and would otherwise be its pupils. As Mr D Scott explained the LEA would not support a delay, as need and demand increases, the school is running out of space, and the pressure on the system and the impact on current and future pupils grows, term on term. Of course, if any future site search returns the same site, then nothing has been gained. And yet there is no basis on which to assess any other potential alternative site as no such site has been identified.

120. *Conclusion*. The GB balancing exercise within paragraphs 87 and 88 is an expression of the Government's view on what constitutes sustainable development. The proposal delivers very substantial social and economic benefits. The advancement of the environmental role is mixed. There is harm to the GB, and there is also well-conceived design of built and landscape features. There is a careful balancing exercise to be undertaken. The harm to the GB must be given substantial weight. In the RBWM's conclusion, that weighted harm is clearly outweighed by the benefits to which the Government attaches great importance, of providing a unique educational facility that will address the specific needs of the children that will attend the expanded school with significant benefits for their education, their futures, and the community.

The case for the Rule 6 parties, Objectors (Bisham Parish Council and Burchett's Green Village Association)

The material points were

121. The policy context in this case is clear. It is necessary for the Applicant to establish VSC to clearly outweigh the harm to the GB. As Mr Scott accepted, the greater the harm, the more weighty those circumstances must be. In this case, for the reasons set out below, there will be substantial harm to the GB. There will be significant other harm. The Rule 6 Parties' case is set out by way of 8 propositions – as below.

122. The proposal is inappropriate development for the purposes of GB policy and will have a significant effect on the openness of the GB. A green field site which contains no development at all will be replaced by 6 buildings up to 60 metres in length with associated car parking and highway works will have a significant impact on openness. Both the Appellant and the RBWM have made the error of judging the impact on openness by reference to the visual impact on it. That is wrong – the impact on openness relates to physical parameters, not perception (*cf. Timmins v Secretary of State for the Communities and Local Government* [2013] EWHC 2844, [73] upheld by the Court of Appeal). Moreover, even the slightest amount of development is likely to have an effect on openness (*Timmins,*[26]). In part, the Borough's original assessment was based upon the fact that the car parking areas were not to be regarded as compromising openness. However, under cross examination, Mrs Sharman accepted that they would do so, by virtue of the cars being parked on the hardstanding. Mr Joseph indicated that additional harm would derive from additional car movements.

123. The development will have a clear and negative effect on the purpose of including land in the GB in order to assist in safeguarding the countryside from encroachment. It is agreed that the proposal has this effect: this scheme patently will be encroaching on the countryside. Yet there was inconsistency in

the evidence of the Applicant on this issue. Mr Macquire considered that there would be an impact by reference to the first purpose because the development would not check unrestricted sprawl, while Mr Scott thought it would not. Mr Macquire's position patently indicates his implicit recognition of the significance of the proposal. Mr Macquire also accepted that, in spite of what he said in his proof, the RBWM's GB analysis[38] was of relevance to this decision in so far as it reached judgments (albeit at the level of the district landscape classification, dealt with below) as to the significance in GB terms of different areas. In that regard, it is to be noted that the assessment consistently identified the importance of the site in its contribution to all of the purposes of including land in the GB.

124. The development will lead to substantial landscape and visual impacts in both the short and long term; landscape impact is considered first. The County and District Character Assessments both indicate that the area within which the application site lies is of a type that should be conserved. The district character assessment for area 11b makes it clear that the capacity for development is to be considered as "low". This significance is in part made up of the fact that a key feature of the landscape related to the mixture of arable, pasture and woodland[39]. Mr Macquire accepted that this key feature was reflected in the area surrounding the site. Mr Macquire also agreed that while there had been works done to the land in association with the construction of the A404, it had the appearance of an established pasture.

125. The Applicant has relied upon the visual containment of the site when seeking to characterise it. However, it was clear from the evidence of Mr Macquire that his ZVT, on which, in part, his views of containment were based, derived from an assessment of the effect of vegetation in full leaf. He acknowledged that he had not undertaken any such analysis of visibility in bare leaf conditions. Moreover, this suggested "containment" has an air of unreality about it. The well-used footpath network means that this is not a "contained" site; it is open to clear and close views by numerous residents. Thus any impact on landscape character (also dealt with below, any visual impact) will be appreciated clearly from public views. This is not a field which is contained in the sense that works will not be appreciated by the public – it patently will.

126. As to the effect on landscape character, that is a matter of judgement – the video and photographs submitted by the Rule 6 Parties give a clear indication of the locality. As a matter of fact, however, the proposal will have the effect of compromising a key feature identified in the district Character Assessments, namely, the patchwork of arable and pasture which exists in this area – this pasture will be turned over to built development and ancillary land. The suggestion that in some way this proposal will have the appearance of a farmstead should be rejected – the buildings with associated development (fencing, lighting etc) will not appear as such. Indeed, anyone travelling along footpath 24 would be hard-pressed to imagine they are walking through a farmyard.

[38] Appx 3.
[39] See the district assessment.

127. It is fair to note that Mr Macquire acknowledged that there would be a material change in landscape character and that this will be adverse. However, it is clear that Mr Macquire's assessment was missing important elements. He confirmed that his assessment of the impact of the proposals from a landscape perspective was on the basis of the effect at year 15, not post construction. He had reached, he acknowledged, no judgment at all as to what the effect would be at year 1 at any of the three tiers of assessment (county, district or local). As he recognised, however, the effect will be greater at year 1 than year 15. Indeed, whether at year 1 or year 15, there is patently going to be a significant effect. With regard to visual impact, this is also to be significant and adverse. The visualisations clearly show this, but even these did not indicate the full picture; the access to the school was inexplicably missing from the visualisations. Nor do they show the views obtained from within the site or from viewpoint 3.

128. The footpaths are, as the Applicant's usage survey has shown, very well used (agreed, Mr Macquire) and are part of a regionally designated route, the Berkshire loop of the Chiltern Way. Given that this proposal stands within a gap between Burchett's Green and Maidenhead Thickett, the extent of the effect on this footpath is considerable. The extent to which such impacts are likely to be felt is displayed by the number of people who have signed the most recent petition. There seemed to be some suggestion that there were a limited number of people affected by the proposal, but the first and the updated petitions show the extent and depth of that feeling and the benefits which the footpath has in allowing local residents to enjoy the countryside in a constrained location. As to Mr Macquire's analysis of the degree of visual effect, it is difficult to understand how some of the judgments have been reached consistently. For example, his finding of a low adverse effect at viewpoint 1 and only medium at viewpoint 2. Nor is it persuasive that the impact at view point 6 was "medium"; if a viewpoint was taken a few metres further into the site, the impact would patently be very significant.

129. It will no doubt be said that the Rule 6 Parties do not have any expert landscape evidence on which to base its case. Mr Joseph has expressed his view of the harm and the Rule 6 Parties are entitled to establish why the judgment of the Applicant is wrong as to the level of effect (supported by Mrs Robson Brown). The evidence of Mr Macquire established clearly how such judgments were wrong.

130. Reference is made to the cross examination of Ms Robson Brown, with suggestions of impartiality and neglect which were patently unjustified. Her actions were entirely within the standing orders of the Bisham Parish Council and no member of the Parish has dissented from the stance that the Parish Council resolved to take on the application.

131. The development will lead to the loss of best and most versatile agricultural land. The Rule 6 Parties' case has been made out on this issue. The land has an agricultural classification of grade 2 designated by the Department of Environment and to that extent there is clear evidence of what its current quality is.

132. With the production of further evidence during the inquiry by the Applicant, it has been confirmed that there is no evidence that the land is, as was stated by the Borough to its determining committee, grade 5. All that is said is that yields

have declined[40]. There is, however, nothing which indicates that this means that the land has now reduced from its current grade. At best, the information which has been received by the Applicant indicates that a detailed land quality assessment should have been undertaken – that would be a usual approach. Without such, there is no adequate basis for concluding that the land is different in quality to the classification it currently holds. Mr Joseph gave compelling evidence as to why it was that the reasoning for the decline in yield is difficult to understand, having received advice from a farmer and taking into account his own understanding of the position.

133. The RBWM's and the Applicant's attempt to answer this obvious flaw is that not very much land is being removed, that it is "negligible" in amount. Yet, as queried by the Inspector, there is an issue over the likely future use for agriculture of the remaining part of the field parcel if permission is granted. It would be unlikely to be capable of any real use in such a neutered form. The effect of permission is thus likely to sterilise considerably more than 3 hectares. Whether looked at in isolation or as part of a cumulative effect, the development will have considerably more than just a negligible effect on the loss of best and most versatile agricultural land. It is to be noted, contrary to Mr Scott's argument (in cross examination), that this loss is no less just because the land is not currently farmed – it is the potential for use that is important – it is that which the Framework is seeking to protect.

134. The development is in an unsustainable location in transport terms. This is accepted by both Mrs Sharman and Mr Scott. The Highway Authority was correct in this case to conclude that, in reality, all traffic movements will be by car. This would be unsustainable. In mitigation of that, Mrs Sharman suggested that the car trips will already be on the network. However, she acknowledged that no work had been undertaken to establish that this was the case. This was pure conjecture (and not something apparently identified by the Highway Authority) Ms Sharman accepted that it is not possible to say that other alternative locations would be equally unsustainable since that assessment has not been undertaken and, in any event, the school may potentially be sited adjacent to a built up area. An attempt was made in cross examination of Mr Joseph to argue that this was the case, but Mr Joseph dealt with this issue by saying that, that could not be known, without an assessment having been undertaken. The lack of transport sustainability tells against this project as a result.

135. The Applicant's reliance on need is insufficient to amount to VSC if there has been an inadequate search for alternative locations that are less harmful, whether or not in the GB. Given the above, the question is whether VSC have been established to clearly outweigh this harm. As Mr Scott and Ms Sharman acknowledged in cross examination, the primary question to be asked in this case is whether the site search in this case was adequate. The fact that the Applicant has established a need for the school itself is insufficient, of itself, to justify the proposal. Given that the proposal is for the development of this specific site, the identification of a need for the school does not establish <u>that this particular site</u> is justifiably required to meet that need. That will only be established if it is shown that no other site - which is less harmful, either because it stands outside the GB

[40] See the additional information.

or within the GB but with less landscape/visual impact - is or has been reasonably available.

136. Thus the adequacy of the Applicant's site search stands at the heart of its justification. This leads to the following further observations. The question to be considered in relation to alternatives is not whether a party objecting to the inquiry has shown that an alternative to the site has been identified. It is whether the applicant has shown that no less harmful site exists to that proposed. That is because, as Mr Scott acknowledged, the evidential burden lies on the Applicant to establish VSCs (and see *Redhill Aerodrome Limited v Secretary of State* [2015] P.T.S.R. 274 [26], which reiterated that the Framework made no significant change to former GB policy).

137. The Applicant's reliance on the fact that the Rule 6 Parties have not identified a site is thus irrelevant – it is for the Applicant to establish that no site would come forward. Second, as Ms Sharman stated in cross examination, given that the applicant is proposing a site in the GB to meet a particular need, the question for consideration is whether it has been established that no less harmful site is available. As she accepted, when assessing what is a less harmful site, that will require consideration of the degree to which it has been shown that no site either outside the GB or within the GB but in a less harmful location is available. If the Applicant has undertaken an inadequate search for sites, it could not be concluded that the Applicant has established that no better alternative location exists. This is not a case in which it is said that only this site is capable of meeting the Applicant's requirements – that is why the requirement to consider alternatives is significant. When assessing the appropriateness of potential alternative locations which are less harmful, the opportunities available for funding those alternatives will be relevant. That is clear from the St Albans decision[41]. Mr Scott accepted the relevance of financial issues when assessing the question of alternatives.

138. The search for alternative sites has been inadequate and defective. The alternative analysis is patently defective. These defects related to the following primary points: the failure to search beyond a 15 minute area and the failure to take forward other sites that had been considered by the applicant during the site search process and the availability of other locations within the 15 minute travel-to-school zone.

139. *Area of search*: The Applicant's approach towards the area of the site search was patently inadequate. What is clear is that the search process was restricted to the area within, at most, 15 minutes from the site. That was confirmed by Mrs Shanly in cross examination. This search area was far too restricted and stood contrary to the clear evidence as to why a wider search area was feasible. In particular, as was made clear in the Epping Appeal decision[42], the question of the availability of alternative sites is to be considered by reference to the catchment which "the school serves". Given that this school is without any formal catchment, this is dictated by the location of pupils who are at the school and who would be at the expanded school. This, as Mrs Shanly confirmed, includes and would include (see the "waiting list" travel times) pupils travelling up to 45

[41] Scott appx 13.
[42] KS7, para. 148.

minutes from the site; that is true whether or not the Rule 6 Parties' evidence is relied upon. But, it should be noted, on the Rule 6 Parties' estimates a considerable proportion travel from well beyond the 15 minutes isochrone. Mr Joseph explained how the Rule 6 Parties arrived at their time estimate. BLS did not explain how they had arrived at their figures.

140. As to those pupils currently attending the school and travelling outside the 15 minute search zone, Mrs Shanly considered that the current travel arrangements were adequate for present pupils – if so, there is patently no reason not to consider a wider area. Mrs Shanly indicated simply that the potential travel distance of up to 45 minutes was capable of being undertaken albeit that it was "not ideal". Again, that patently allows for a wider search area. Mr Clyne accepted that travel distances of up to 45 minutes for special school pupils was "quite normal". He accepted that he had made no analysis in the case of current pupils of what the travel distance was.

141. Mr David Scott indicated that he had undertaken no assessment of what the appropriate travel distance would be for the current pupils although he accepted that longer travel distances, of up to 45 minutes were undertaken. Again, like Mrs Shanly, his view was only that such distances were "not ideal" – he did not say that a broader distance than the 15 minute distance would not be "local" (as he described it in his evidence); rather, he considered it unusual for there to be such short travel times particularly for secondary school students. While the Borough has indicated that it would "preferable" for shorter travel distances, the RBWM did not specify what that should be and how far that would be unachievable if a 45 minute drive time was adopted.

142. The only evidence of any difficulties with regard to longer travel distances was from some of the parents of existing children. Only 4 such oral presentations were given. However, three points are of importance in relation to that evidence First, self-evidently, the evidence of Mrs Shanly on behalf of the School as to the satisfactoriness (though not the ideal situation) of a travel time of up to a 45 minutes, was provided in the light of these case studies. It is notable that the transport statement made provision for cycling opportunities and travel by bus – it is perceived that some pupils will not have the difficulties indicated in relation to some other pupils.

143. Secondly, the travel distance need not change by virtue of a wider catchment of search. As a parent accepted, his child was currently travelling from central Maidenhead, 10-15 minutes east of the application site, but could attend an alternatively located school site which was, for example, 10 minutes further north – that would be 20-30 minutes from the application site. Third, the particular effect on the cohort of current pupils (e.g. what number would be affected and how they would be affected) would be the subject of consideration to be reached at the time that any alternative site(s) were identified. However, that assessment is a factor which should be dealt with <u>as part</u> of a wider search analysis, not a reason for rejecting such a wider search at the outset or any wider search of sites. In short, you don't know the effect until you undertake the search.

144. There was an attempt to suggest that a wider area of search could not be undertaken because of the need to have a connection with the BCA. However, the evidence in support of that case is, I submit, unpersuasive. Mr Scott referred

in his proof only to the "potential" for a connection to the BCA[43]. This potential lay (Mrs Shanly in cross examination) in an "anticipation" that pupils will go on to study at the BCA. There is no current arrangement in place. Moreover, as Mrs Shanly confirmed in cross examination, there are likely to be other further education providers where such courses could be undertaken in the wider search zone. Moreover, if the former pupils go on to study at BCA they would, even if the site was given permission, be physically separated from the Site by a car journey. Mrs Shanly also indicated that there was the opportunity for taster vocational courses which had been undertaken. However, there is no reason why that should cease simply because the search area is broader, nor that this could not be arranged at other further education institutions.

145. Equally, the suggestion of Mr Clyne that the replacement school must be close to the existing school (so that pupils can see the development of it) should be rejected. Mr Clyne accepted that it was a view provided without any psychological input. He said it would be a recommendation for any school, whether or not special in nature. It is patently impracticable as it would necessarily place potentially significant constraints on the siting of schools and is not recognised in policy. It has not been part of the applicant's justification for identifying the site at any stage previously.

146. Given that a wider area was properly able to be searched and given that this was capable in principle of extending over a 45 minute drive time from the site, the site search area was dramatically inadequate. Indeed, it is equally defective if one simply doubled the search radius, to 30 minutes; proportionately it leads to a very significant increase in area. Mr Scott's suggestion that the Shanly organisation must have looked in these sorts of locations should be rejected: first, it was pure conjecture based only on what he knew about the Shanly organisation – he was not, he confirmed, involved in the search process and did not know what it actually comprised and whether this wider area was considered; second, it stood contrary to Mrs Shanly's evidence as to what search had been undertaken – she was clear that the search area was within the 15 minute drive time zone.

147. Since no search was undertaken of this reasonable search zone, so it cannot be said that no alternative which is less harmful exists – the applicant simply has not done the job of looking to see if that is right. While Mr Scott sought to suggest that there would be limited opportunities for such sites, he simply was not able to reach any conclusion on this point because the work had not been done. Moreover, any such contention patently stands against the actual facts in this case: within the 15 minute site alone, 11 potentially feasible alternatives were considered – why should that be any different over the next 15 minute zone, or again in the 15 minute zone thereafter? The potential for a positive search for sites would be significantly enhanced if a proper, methodical site search were to be undertaken. That is the nub of Ms Cleugh's evidence which was persuasively put in a measured manner.

148. As she pointed out, the evidence of the site search indicated that no methodical approach had been taken. Indeed, the evidence of the applicant on this issue is that the site search was ad hoc and wholly undocumented (at least in

[43] Paragraph 8.45

relation to what has been provided to this inquiry). Ms Cleugh indicated that a stepped systematic assessment process should be undertaken is to highlight any gaps in the knowledge base as to available areas/types of properties/or fruitful land resource opportunities. Indeed, any search process which is unrecorded means that it is simply not possible to know whether the search process which has been undertaken is adequate.

149. Conversely, if a proper search, as Ms Cleugh has suggested, is undertaken, the prospects of finding the right site are enhanced. Ms Cleugh was subjected to a lengthy cross examination which established nothing of significance since it missed the point. Ms Cleugh's assessment of sites was not to identify a site within the 45 minute area for the school. It was simply to show that, even if you undertook an assessment over a couple of hours, the adoption of a 45 minute travel time threw up immediate opportunities. This is patently what her evidence established. It is notable, however, that one of the factors which was persistently made about those sites was that they were too big and what would one do with the buildings, sell them off for redevelopment? That is a painfully ironic line of questioning given that Mr Scott indicated that in relation to the Holyport site that this was *precisely* what was intended in 2012.

150. Moreover, it is clear that such a search, if undertaken, would be able to consider a broad range of sites, for the following reasons. The Applicant is willing to consider sites that are on the edge of built areas. As Mrs Shanly stated, BLS was willing to consider Ladds Nursery and the Old Shire Horse site which are both by busy roads and with significant amounts of built up areas around them; the Blossom House site at BCA is also within a built part of the BCA. It is notable that Mrs Sharman was also of the view that a location next to a built up area could be considered. Given this, the suggestion, if made, that the need for a site to be in a rural location would prevent alternatives in the wider time zone coming forward should be rejected.

151. There is no compelling evidence that the Applicant is significantly financially restricted in the sites it can seek. Not only has it been stated that there is a £5 million budget, there is also no compelling evidence that this is the full extent of the available funding. Mrs Shanly explained that she made an application to the Foundation set up by her family which is run by trustees. The Foundation had previously made, she said, donations in the last two years alone of £4 million and £10 million (Mrs Shanly, cross examination). No evidence has been provided that no other funds would come forward from the Foundation. Patently, given the level of its past donations, the trustees would necessarily have to consider whether further funds should be disbursed. It cannot be said that there is any substantial financial restriction on the funding of the project. Nor was it suggested to Ms Cleugh in cross examination that any of the 5 sites were out of the financial reach of the Applicant.

152. Reasonably, the Applicant is able to consider disaggregated provision to achieve the school's aims. As Mr Clyne accepted, disaggregated provision does exist. In relation to the current site, Ms Barnes (BLS's Head teacher) agreed that, while she had concerns in relation to the disaggregated site that she was currently operating under, she was planning, under that arrangement, for a quality of educational provision which was greater than satisfactory. Mrs Shanly's evidence was that such an arrangement was "not ideal". This was a consistent theme in the Applicant's evidence – that an alternative form of

arrangement either more distant from the site or on a disaggregated basis would not be ideal. However, with respect, in the light of the compromising of the GB which would occur through this scheme, there must be some compromise from the "ideal" which is being sought.

153. BLS is willing to accept sites with existing buildings on them. It was stated that "institutional" buildings (e.g. Victorian) would not be accepted because it would not fit with the ethos of the school. Whether that is reasonable should be carefully scrutinised. This was not identified as a particular criterion in the information provided to the Borough, nor was it specifically stated in Mr Scott's or Mrs Shanly's evidence[44]. And while Mr Scott pointed out that the intention, if the acquisition of Holyport School progressed, was not to use the existing historic buildings, Mr Scott was unaware whether this intention had been documented at any stage, and the newspaper report did not assist.

154. Finally, it has not been suggested that the area which it is seeking for this development is the least which is necessary to provide for BLS. No evidence has been provided to that effect, as Mrs Shanly accepted and Mr David Scott indicated he had not been asked to consider that issue and nor had Mrs Sharman considered it. Given that, as Mrs Shanly acknowledged, the Applicant was willing to consider Ladds Nursery as an option, which was considerably smaller than the existing site, there is patently flexibility. The Applicant cannot place responsibility for its failure to properly consider the alternatives analysis on the Rule 6 Parties. The inadequacy of the site search by reference to the area covered had specifically been raised by the Rule 6 Parties in their statement of case[45]. No attempt was made by the Applicant to undertake any wider search despite that notification.

155. It may be said that the Rule 6 parties have not found a site despite saying that it would identify one. However, that does not establish that no such site in this extended search zone exists: the Rule 6 parties ultimately did not carry out a search, as Ms Cleugh indicated. The Applicant cannot therefore rely upon the Rule 6 Parties analysis to shore up its own case.

156. The original primary justification for the limited search zone establishes the error of the search process. It was based upon the perceived needs of the teaching and support staff[46]. The convenience of employees is not a proper justification for the following reasons: staff may leave or move house; there will be a further 20 staff at BLS if permission is granted and there is no indication where they will live; staff, far more so than some of the pupils, will be able to travel longer distances than simply 15 minutes to the school.

157. *Failure to Take Forward Sites Which Had Been Identified and the Availability of Sites within the 15 minute zone.* Aside from the failings which existed in relation to the catchment, there were sites which were identified during the site search which should have been progressed given that they were more appropriate locations and other sites which the Rule 6 Parties have identified which are more appropriate to be taken forward. Those sites are Ladds Nursery; BCA, the Forest

[44] See 3.4-3.5 of the proof.
[45] Para. 7A and 7B
[46] See letter, 1 September 2014 of KS and his proof,

Bridge School Site; BCA, the "Diana statue" site and within Mrs Shanly's estate at the northern end of Honey Lane.

158. Each is dealt with below. Before doing so, the question of whether the site search within the 15 minute zone has been adequate is addressed. In the light of the failure to properly document (or at least to bring before this inquiry documents relating to) the search process, it cannot be concluded that the search was appropriate. The contention that, given that land agents had been used, necessarily they would have achieved a comprehensive approach can only be conjecture. Moreover, there has been no updated search from the search which was undertaken between 2012 - 2014. A year has passed and there has been no update from the Applicant. That is surprising – patently, the relevant evidence base for considering this application is the present day, not a year ago. There is no compelling evidence that no other sites have become available within this restricted area. Again, the Rule 6 parties did not undertake any such search. That said, sites were/are available which should have been or should be considered.

159. *Ladd's Nursery*. Mrs Shanly accepted that she had considered this site as a potential option and had considered altering the buildings on site. The subsequent rationale as to why the site was rejected has altered in the documentary evidence: it was indicated in 2014 that the reason was down to inadequate site size but then shifted to the fact that Wokingham had been negative about the proposal. As to that latter point, the rejection of the site was not reasonable – proper assessment of the arguments should have been undertaken and there is no evidence before this inquiry that it was.

160. *BCA: the Forest Bridge School Site*. The Rule 6 Parties had indicated that this was an appropriate site; it patently was: another school is now in the process of taking this site forward. Access issues do not arise given the extent of traffic coming from the BCA. While this site is not now available, the Applicant's failure to take this site forward should count against it. It cannot be right as a matter of principle to allow an applicant to establish VSC on the basis of an unreasonable stance which it adopted in the factual nexus it relies upon to establish those circumstances.

161. *BCA: by the statue of Diana.* This site is available and has much less impact than the proposal site.

162. *The Shanly Estate*. This location is in principle acceptable to Mrs Shanly given her evidence that the estate was capable of being used[47] for the school. Such a location would be less impactful given the existing effect of a large scale office development and would not have access problems.

163. In short, alternatives, even within the 15 minute zone, are available. It cannot be reasonably said by the Applicant that there is no time to undertake a more adequate search. If the Rule 6 Parties' case is accepted, any refusal will be on the basis that the site search has been inadequate and that an adequate search should be undertaken. It may be said by the Appellant that, even if the search is inadequate, the Secretary of State should not refuse permission because of the

[47] Para. 1.6.

effect which a refusal would have. Such an argument should be rejected – time can be taken to undertake a proper search.

164. A further temporary planning permission has been granted by the RBWM for the existing site. If the Secretary of State concludes that a wider search area needs to be considered, as Mr Scott recognised in cross examination, the likelihood is that the LPA would grant a further extension should that be required. Moreover, the guidance contained in the Planning Practice Guidance (ref 014-1021014-20140306) would not prevent a further grant since the LPA has already deemed it appropriate to grant a second temporary consent.

165. BLS has achieved a good rating from Ofsted. Mrs Shanly confirmed that the school is flourishing at present; that is the tenor of the submissions made by third parties. Ms Barnes, the Head teacher[48], while she has concerns, is planning for more than satisfactory provision over the two sites and Ms Wells indicated that the sort of benefits associated with woodland walks are capable of being enjoyed now from the existing sites. Representations from parents indicate how well their children are doing at the school now.

166. This scheme is essentially about the needs of pupils not currently attending the school, rather than those who are currently attending the school. Neither the Applicant nor the RBWM have provided any qualitative or quantitative evidence of what the effect will be on any future pupils if permission is not granted and particularly those who are in receipt of an educational statement or EHCP – Mr David Scott accepted that this was the case. It has not been evidenced, therefore, what the extent of any disadvantage in a refusal, pending a proper search, would be. Such evidence could have been obtained both by the Applicant and the Borough.

167. Mr Clyne's suggestion that refusal would lead to the loss of "millions" of small steps of development[49] was wrongly characterised given it assumed outright refusal of the school as a matter of principle and failed to acknowledge the matters set out in the preceding sub-paragraphs.

168. *Conclusions and balance.* As indicated earlier, the Rule 6 Parties do not question the benefits associated with the educational provision of the school. Paragraph 72 of the Framework states that great weight should be placed on educational provision, although it is to be noted that the 2011 joint statement on education[50] does not apply to this case given that this is not a proposal for state provision (and Mr Scott accepted that the Applicant did not consider that it had any significant role to play in this case). This phrase "great weight" patently does not have the effect of meaning that VSCs are to be regarded as established. It means what it says – great weight but as set against the heavily restrictive policies of the GB.

169. It cannot be concluded that this site is needed because only more harmful sites would be available. The conclusion that there is an absence of better alternative sites simply cannot be reached. There is no reason why such a gap in the Applicant's case should be ignored or overridden by virtue of other

[48] Day 2 reps.
[49] By reference to his paragraph 11.7
[50] CD21.

considerations: it has been clearly established that the school could continue in its present form and it has not been established that there would be any or any significant harm to children arising from a refusal.

170. While Mr Scott has referred to 3 appeal decisions in his evidence – the Billericay, Epping and St Albans decisions – he confirmed that he does not rely upon these as a precedent since the factual circumstances will change with each case (both as to harm and allegedly special circumstances). Plainly, that is right and, in any event, it is not possible to take more from the decisions than that education needs may be a VSC. That, while true, is unilluminating since each case must be considered on its merits.

171. Since, therefore, it cannot be concluded that there are no other less harmful sites, it cannot be concluded that this site is required to meet the need. Given the harm that the proposal would exact, the sustainability credentials of this scheme are clearly lacking. There may be elements which are to be regarded as satisfying the social and economic roles of sustainability for the purposes of the Framework, but the proposals fail to contribute to the environmental role. The Framework indicates that these roles should be sought jointly[51] and the proposal does not do so.

172. The application should, consequently, be refused. The Secretary of State has recently and continuously indicated the importance which is placed on the GB (indicating, for example, that housing need is not unlikely to amount to VSC[52]). Such importance should be recognised and particularly in circumstances where, however beneficial a project, it has not been established that a less harmful site is unavailable. Planning permission should be refused.

The case for interested persons supporting the proposals

173. *4 Parents* Appendices 21 – 24 to the proprietor's proof (CD24) are statements by 4 parents of children at the existing school who spoke at the inquiry, and read these documents. These are very personal statements and concern the profound difficulties their children have experienced in their lives and the resultant psychological, emotional, social and learning issues. All describe how their children failed in mainstream schools and have thrived at BLS. They explain how the particular ethos of BLS has assisted their child. One parent explains that, once the special needs of their child was accepted by the LEA, the Borough made an offer of a place at a school in Surrey, a two hour taxi ride every day, demonstrating the lack of suitable alternative schools nearby.

174. *Mr Gareth Marr* (CD 53) focused on the special nature of BLS. Mr Marr is a Governor of the Virtual School for Windsor & Maidenhead, among other relevant positions. A Virtual School is a statutory requirement in English LEAs to provide education support for children in care, recognising the challenges they face from their early life trauma. This role also extends to support children moved from care to adopters and guardians. The aim of the Virtual School is to support children so that they can remain in mainstream schools. However some are so affected by their early life they cannot cope and need specialised support. After assessment a child can get an EHCP which requires the Borough to provide the

[51] Paragraph 8.
[52] 034 Reference ID: 3-034-20141006

appropriate support at a named school. BLS can be used for that purpose. It is a valuable resource and there is no equivalent school available locally.

175. Mr Marr expects the demand to increase locally as outreach to adopters has made many more aware that their children need support in schools. Four other LEAs now place children in BLS; it is an undoubted success but cannot take more children. The demand exists and the school needs to enlarge to meet it. BLS has developed teaching methods that have made a remarkable difference to their pupils' attainments and continues research and development in this specialised area.

176. Nationally the demand for such school places will increase as the needs of these children become more understood. NICE published guidelines in December on caring for adopted children with attachment difficulties and specifically mentioned the need for school support. The government's adoption policy is to encourage the placement of "harder to place" children. The reason they are harder to place is primarily that they suffered more trauma. More children will need the BLS approach.

177. A rural situation is essential part of the school's approach. The children need to arrive as calm as possible and to be aware they are in a safe environment. The teaching methods include working with animals and outside lessons in a country setting. The school could not operate in an urban environment. Good access is essential as the students are driven from a number of LEAs.

178. Mrs Shanly should be praised for her philanthropy and determination to make a significant difference in the future lives of hurt children. The work that BLS does can break the continually repeating cycle of abuse and neglect.

179. *Lucy Barnes* (CD54) is Head teacher at BLS. Significant emotional and sometimes physical abuse causes deep trauma in children and their healing is not easy. BLS is showing on a daily basis that the school's approach is working for all the children. The physical buildings at BLS and the woodland environment are instrumental in the school being able to facilitate learning and to ensuring the significant impact on the life chances of the children.

180. 80% of prisoners have literacy skills equal to or below that of an 11 year old child due to a combination of learning difficulties or social and emotional difficulties. The majority of BLS children arrive with literacy levels significantly lower than national expectations, but improve with the special teaching methods applied.

181. The view has been put that BLS can function successfully on a split site, as at present. BLS needs to be on a single site. For the vast majority of the pupils their chronological age, cognitive level and social/developmental level are mismatched. A child may, for example, have a chronological age of 14, a cogitative level of 12 and, at times a developmental age of a 4 year old. Another may operate as a regular year 7 in the morning in accessing the curriculum but in the afternoons and at social times may need the provisions of a 5 year old.

182. On a single site the children are able to float between staff and activities depending on their emotional state, the cogitative level of a lesson and activities with their peer group. On a split site, even one a 15 minute walk away, this cannot happen to the degree that is needed. BLS has only been on a split site for

a term and, day by day, the difficulties and the compromises that are made are becoming more evident as is the detriment to the pupils. BLS cannot anticipate when a pupil is going to have a meltdown; it cannot be said that at 2pm on a Wednesday a pupil is going to need the nurturing provision at Home Farm. Whenever it happens, they need the appropriate environment, care and staffing instantly.

183. Children with attachment disorders, often those who have been through the care system (as 60% of BLS children have) need time and intense support to build and maintain trusting relationships. BLS has a Key Worker system which on the single site provided excellent support. Now the school is split this cannot happen as effectively as some children are based at BCA and their Key Workers are at Home Farm. It is not possible to simply change a staff member for a child with attachment disorder. It takes time to build a new relationship. Some children need their Key Worker for 6 hours a day, some for 6 minutes. It is not possible to plan for this when split over 2 sites.

184. In the government report entitled "School Reform Funding" published by the Secretary of State for Education the inefficiency, additional cost and duplication of resources affected by split site schools is explicitly addressed.

185. There are also logistical difficulties, for example, music therapy sessions. BLS educates by stage rather than age and for therapeutic interventions it is imperative that the right balance of pupils make up a group. This has inevitably meant that some pupils from Home Farm are matched with pupils from Blossom House at BCA. A staff member has to spend the day transporting individuals and groups of children back and forward across the sites from 11:15 to 15:15. Year 7 pupils are split over both sites because of their differing academic needs. The only opportunity they have to socialise with their chronological peer group is for 45 minutes on Friday afternoon. This is impeding their opportunities for appropriate socialisation.

186. BLS is already cramped, thus if an anxious and tearful 15 year old arrives in the morning there is nowhere for that child to go for privacy and dignity whilst s/he is helped over their anxiety. If the child enters either classroom other children will see them. The Head has the dilemma of whether to ask the dyslexia specialist and their pupil to vacate a room, or the speech and language therapist to vacate another room. Already BLS does not have the space it requires to do what it needs to do for the children. While BLS has a tent they use, that is unsuitable for a distressed child in winter.

187. It has been said that Ofsted had no concerns about BLS and their accommodation. But the Ofsted inspection was in January 2014 when the school was solely at Home Farm and had 8 pupils. BLS now has 22 pupils over 2 sites and the Head teacher has concerns over the accommodation and facilities at Blossom House.

188. The facilities and size of cohort mean that the Key Stage 4 options class will be compromised. 2 years ago it did not look likely that this group would be able to take GCSE qualifications. 4 out of 6 pupils come from adopted backgrounds. The figures for children who have been in care and who achieve 5 x A-C grades is shocking. 12% do, against 53% for children who have not been in care. For this cohort there is now the realistic opportunity of them being able to sit a range of

GCSEs. However the very limited space and facilities of Blossom House put at risk the offering of all the subjects which they may be capable of taking.

189. Recent research demonstrates the physical and mental health benefits of children being outdoors. A child may feel that s/he compares poorly to others academically in a classroom situation, but may be able to shine in an outdoor situation, thus improving confidence, pride, motivation, concentration, physical skills and an understanding of the environment.

190. Evidence of the difficulties of particular children and the improvements to their lives, upon joining BLS, can also be found in CD54.

191. *Susan Wells* (CD55) is a specialist assessor and teacher at BLS; formerly part of Ms Well's job was interviewing people in Police cells who had been arrested. She became increasingly concerned about the poor levels of literacy – 80% of prisoners have literacy skills at or below that of an 11 year old; 48% of those read below the level of a reception class, year 1 pupil. Ms Wells described a generic boy at age 7 in mainstream education: of average and age appropriate intelligence. However, with dyslexia such a child cannot access learning independently or get good ideas down on paper. He also has poor fine motor skills and is demotivated and ashamed by his scrawling handwriting and unintelligible spelling.

192. Such a child dislikes having a teaching assistant with him as it makes him feel different and he knows he is placed on the low-ability table. Comparing his work to others he decides he must be stupid. The child also has sensory issues, disliking scratchy school uniform and stiff shoes and fidgets because he is uncomfortable. Fidgeting leads to inattentiveness and corrections from a teacher, compound feelings of failure. The generic child also has ADHD and his attention jumps to any stimuli, so the classroom wall-displays distract him. In a class of 32 children there is also a lot of noise and the child struggles to block this out and concentrate.

193. With the best of intentions the teacher tries to reward good behaviour that conforms to the school's expectations. When this does not work his teacher imposes punitive measures. Neither approach works because the child's actions are not deliberate or premeditated but are impulsive and driven by sensory needs. By aged 8, the child spends time outside the Head's office but finds that preferable to being in class and failing. By this time he is behind his peers academically and feels overwhelmed. Miserable, he is reluctant to attend school and has to be dragged in every morning and there are rows at home.

194. By aged 14, the child is disaffected and does not bother at all. He dislikes or does not trust teachers because they have never been able to help him and have unrealistic expectations. Every piece of work reinforces feelings of failure. The child no longer cares, has no aspirations and cannot see a future for himself; it is all about the NOW. His behaviour has escalated, he is not intimidated by authority; he does not want to be in school and does whatever is necessary to be removed from a lesson or excluded. His teachers have stopped trying to help him as they do not like him; he is difficult. At 14 his hormones have kicked in and he is angry, frustrated and bored. He either refuses school or truants.

195. As the school has split the pupils into ability groups he is now with other like-minded children who dislike school and they develop a pack mentality which

makes them feel braver. Behaviour escalates further and the teachers spend time just trying to contain them, they no not educate them. At that point the education system has lost that child, he leaves school barely literate and with no GCSEs. 5 – 10 years later, such a child can end up as a part of the "80% of prisoners barely literate" statistic, mentioned earlier. The demotivated child grows into a disaffected teenager who will grow up into a dysfunctional adult.

196. Another typical scenario is a child who may withdraw into herself, does not say how she feels; does not vent anger or frustration. Often they develop mental health problems and are diagnosed with clinical anxiety or depression. They may become school refusers or develop eating disorders or self-harm. Seeking solace on the internet they put themselves in vulnerable positions and become targets for grooming or exploitation. They can develop long term mental health problems.

197. These examples are not fictional or worst-case scenarios, they are typical pupils at BLS and can be found in every primary and secondary school, in pupil referral units, young offender units and in prisons. BLS ethos is *if they can't learn how we teach, then we must teach how they learn.* BLS is providing an alternative model of education and there is no other school like it nearby.

198. A larger school is now needed so BLS can save more children and get them on the right pathway. Outdoor space and a woodland environment is required because of the therapeutic value. It provides opportunities for learning both academically and socially that cannot be replicated in the classroom or the playground. It can provide opportunities for the pupils to shine; most of BLS children will not shine in the classroom not even in non-academic subjects. When the class walks through a field with hay-bales, an Autistic Spectrum Disorder boy with a narrow band of interest can recount every detail of hay-baling and all the equipment used. His peers are captivated by his knowledge – for a moment he shines.

199. Walks and outdoor work stimulate conversations and learning experiences that cannot be planned for or created. BLS children do not generally participate in team-sports – their motor coordination problems combined with a weak understanding of social rules means they find team sports too tricky. However, on a recent walk a spontaneous game of football developed and staff saw cooperation and teamwork that they had not been able to instigate in the playground during PE. Games of hide and seek can turn into an elaborate game with all children contributing, with communication and negotiating skills that would not otherwise be forthcoming. These are spontaneous and valuable learning opportunities generated outdoors.

200. The new school also needs to be close to BCA to be able to use their facilities. BLS's responsibility does not end at 17; staff work to get the children into vocational courses and to prepare them for the next stage of their lives after school. BLS needs to be built to give these children a bright and positive future and a path that helps them to become fully functioning members of society, to be the best they can be.

Written Representations

201. At inquiry stage 69 representations were made in support of the application; all raised broadly the same points as those of the BLS. These can be found

within the file. There were 5 representations against the proposals at inquiry stage; one person initially objected and then changed their opinion, supported the scheme and requested their name be removed "from the initial petition and [to] strike my earlier letter of objection from the record". These can also be found within the file. A second petition against the scheme was submitted to the inquiry, containing 178 signatures - see CD47. The petition signatories and the letters of objection put broadly the same arguments as the Rule 6 parties.

Conditions

202. A schedule of suggested conditions, together with reasons, was included within the SofCG, see CD33. These formed the basis of discussions at the inquiry. I have made a number of amendments to that list, included within my list of recommended conditions in Appendix A, for reasons set out later in the report.

My conclusions begin on the next page. The figures in square brackets [] refer to paragraphs earlier in report.

Conclusions

203. The matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application are "its consistency with the development plan for the area; its conformity with the policies set out in the Framework on protecting Green Belt land and any other matters the Inspector considers relevant. The main considerations, set out below, flow from these.

204. (i) In answer to my question at the commencement of the inquiry, all parties agreed that the application proposals would constitute inappropriate development in the GB, in terms of the Framework and development plan policy [52,73,79,122]. Thus the next questions are (ii) What would be the effect on the openness of the GB and on the purposes of including land within the GB? (iii) Would there be any other non-GB harm? (iv) As the development is inappropriate, are there any 'other considerations' which would weigh in favour of it? (v) If 'other considerations' exist, do they clearly outweigh the harm to the GB and any other harm? And, lastly, (vi) If the weight of the other considerations clearly outweigh the totality of harm do "VSC" exist?

(i) the application proposals would constitute inappropriate development in the GB, in terms of the Framework and development plan policy.

205. Given the agreement between the parties, this element may be dealt with shortly. The Framework sets out national policy on GBs and is an important material consideration. The government attaches great importance to GBs. Paragraph 87 of the Framework indicates that inappropriate development is, by definition, harmful to the GB and should not be approved except in VSC.

206. Likewise, Local Plan policy GB1 states that in the GB, save in VSC, permission will only be given for a limited range of development types none of which apply here. The proposals would not, therefore, accord with the development plan.

207. Considerations of other aspects of GB and non-GB harm are dealt with next in the headings below, I then consider the 'other considerations' put forward by BLS in support of the new school.

(ii) What would be the effect on the openness of the GB and on the purposes of including land within the GB?

208. *Openness*. Paragraph 79 of the Framework indicates that openness and permanence are essential characteristics of the GB. 'Openness' is discussed in The *Timmins* case [122] with Mr Justice Green quoting, in turn, from *Heath & Hampstead Society v London Borough of Camden 2007*. "Openness was a concept which related to the absence of building: it is land that is not built upon. Openness is hence epitomised by the lack of buildings but not by buildings that are unobtrusive or camouflaged or screened in some way."

209. The application site is at present open and the construction of the school buildings and the associated development of outbuildings, hard surfacing, car parking and the access road would change this. The site would be built upon, in

part, and would no longer be open. This was accepted by BLS [123] and the RBWM [79].

210. I am unconvinced by the applicant's argument that "the proposal will only cause minimal harm to the openness of the GB" [55] and that "the level of proposed harm is towards the lower end of the spectrum" [56]. I do not think that this is a correct interpretation of GB policy in the light of the *Timmins* case [122]. The placement of buildings, of itself, will impact upon openness, regardless of whether they are unobtrusive. Visual impact should, of course, be considered but not at this 'in principle' point. This harm to openness should carry substantial weight.

211. *The Purposes of including land in the GB*. Paragraph 80 of the Framework lists the 5 purposes of including land within the GB, including to assist in safeguarding the countryside from encroachment. The case for the applicants included an examination of the "Green Belt Purpose Analysis" (21) that the LPA has undertaken as part of the draft Borough Local Plan. The study breaks GB land into 500 x 500m parcels and then assesses how each parcel contributes to the 5 purposes of including land within the GB. It seems to me to be of limited value in assessing this application since each square is measured against criteria selected only to establish its value to those 5 purposes, not to directly assessing a planning application. For example, virtually all of the GB parcels in the Borough are scored highly in 'assisting in regeneration' as shown in CD25, appendix 6 page 21 figure 6. This seems logical, in that areas where development is restricted around an unrestricted urban area may well direct new development into the unrestricted area. It does not get the consideration of this application much further forward however.

212. The 500 x 500m parcel is too great a scale to identify the site exactly; nonetheless the Analysis confirms that the parcel makes a medium contribution to safeguarding the countryside from encroachment. There is no dispute between the parties that the proposals would encroach into the countryside; BLS [52,56] the RBWM [80,82] and the Rule 6 parties [123] all agree on this point, as do I. The proposed buildings and associated ancillary buildings would introduce built forms which would intrude onto this undeveloped field and thus would encroach upon it. I attach substantial weight to this matter as paragraph 88 of the Framework states.

(iii) Would there be any other non-GB harm?

213. *Character and appearance*. Reference was made to RBWM's Landscape Character Assessment 2004 and the Berkshire Landscape Character assessment 2003 in the applicant's case. These provide only a broad overview and so are of only moderate value particularly at the Berkshire County level. The LPA's Assessment describes the area within which the application site lies as 'farmed chalk slopes' with a pattern of arable, pasture and woodland land uses. Specific mention is made of 'large farmsteads' as being characteristic, including Stubbings House and Hall Place, now the BCA and as stated in the extract found in Mr Macquire's appendix 6 to his proof, paragraph 3.11.15.

214. The description of the Burchett's Green landscape character is of "a rural managed landscape with contrasting elements. The expansive open arable landscapes are contained in the wider landscapes by irregularly shaped woodland areas and belts resulting in distant but wooded horizons". I find that this is a

reasonable 'broad brush' description of the application site locality as the Rule 6 parties argued [124].

215. I have considered the findings of the Landscape and Visual Assessment (LVA) submitted by the applicant. Added to this I visited the site and the footpaths in the area on several occasions, with the LVA to hand, to assist and to compare its findings with my own observations.

216. The Rule 6 parties criticised the plan in the LVA showing the 'ZTV' or 'extent of theoretical visibility of development' found in CD 25, appendix 1, page 3, saying that it did not record the inter-visibility between the site and the eastern edge of Burchett's Green. However, as the evidence from Mr Macquire makes clear in paragraph 3.26, this illustrates the *theoretical* inter-visibility and is a starting point. His evidence goes on to refer to the 'inter-visibility with the eastern edge of Burchett's Green some 600m to the west". I found this to be the case, with long-distance views of some houses in Burchett's Green visible from the application site.

217. The Rule 6 parties also made much of Mr Macquire's agreement under cross examination that he had not undertaken any analysis of visibility in bare leaf conditions. I was fortunate in viewing the site in January, in bare leaf conditions, and was thus able to make the comparisons necessary [125].

218. The Rule 6 parties did not suggest that there were entirely new viewpoints that should have been analysed by the LVA. Overall, I agree broadly with the LVA's analysis of the local landscape [57,89]. With 1 exception, it selects fairly the views that would potentially experience the greatest degree of change resultant from the proposals. The only place I would depart from the LVA is the selection of Viewpoint 1. In particular, there is a discrepancy between the position in which it is depicted on CD 25, appendix 10, page 62 and the 'existing viewpoint' on page 63. It is clear that the 'existing viewpoint' is taken standing on the gravel surfaced bell-mouth access in front of the gates on footpath 23, NOT further to the north, as shown on the location aerial photograph (page 62).

219. Had a 'predicted viewpoint 1' been prepared from that location, further north, it would have broadly been on the mini-roundabout and looking down the proposed access road to the school. If the Site Location Plan drawing ref no 1372/02 showing the application site edged red in CD8 is compared to the LVA viewpoint location plan found in CD 25, appendix 10, page 62, it can be seen how helpful a correct viewpoint here would have been. Even with the 'predicted viewpoint' as prepared, found in CD 25, appendix 10, page 62, the proposed access road would be visible, passing behind the avenue of Horse Chestnuts and towards the buildings that have been inserted into the landscape. Mr Macquire agreed, in answer to my question, that this is not an accurate prediction since it fails to show this element and that there is a mismatch between location and actual viewpoint 1.

220. Correctly in my view, the LVA assesses that the primary receptors of these views will be walkers, and thus the sensitivity of the views would be high. The built development would completely change the character of this field – a "notable change" as Mr Macquire describes it in his evidence. The contribution that the application site makes to a walk through a rural open landscape would diminish or cease. If the scheme proceeds walkers commencing from viewpoint 3, found in CD25 appendix 10, page 65, passing west to east, for example, would

pass by open arable/built development/woodland area, instead of moving through an open farmed landscape to woodland. Walkers commencing from viewpoint 6, found in CD25 appendix 10 page 69, and passing south-westward to join footpath 23 and then onwards to Burchett's Green would move from grass field/new hedge boundary and built development/open arable. At present they would cross an open grass field to join the open arable field. This is the first point to note – a change of character [83]. (The enjoyment of the footpaths is considered later).

221. Mr Macquire's analysis suggested that the site benefited from "a significant degree of containment". The RBWM finds the site relatively contained [83]. In contrast, the Rule 6 parties commented that the suggested containment "has an air of unreality about it" because the well–used footpaths mean that this is not a contained site but is open to clear and close views by residents [123]. I do not agree. I found that the site has a high degree of visual containment from the surrounding landscape. The site is bordered to the north by wooded embankments to the A404; to the east by the National Trust woodland, to the south by the mature planting and development around Stubbings House and its estate buildings such as the garden centre/nursery and to the east by a hedgerow and, further away, the edge of Burchett's Green settlement. This is a site that is enclosed or confined within other elements of the landscape.

222. It is true that walkers can pass through the enclosed area to which I refer, on the public footpaths. But even the longest views possible of the site are, in reality, fairly minor relative to the wider landscape. The ZTV plan in CD25 appendix 1 pages 3 and 4, indicate that the distance from the eastern edge of Burchett's Green to the application site is around 650m. Viewed from the east and looking westward at the site, say on footpath 24, I doubt if the length of view affected would be greater than 150m or so. This is a site tucked into 4 strong, containing land forms such that there would be little or no wider impact on the landscape. Indeed Ms Robson Brown for the Rule 6 parties describes it as "out-of-the-way GB site" in paragraph 3.2 of her proof which I think also demonstrates its relative seclusion.

223. Turning to appearance, the buildings have been designed to *reflect* a farmstead complex, with the main school elements clustered in a traditional layout and ancillary outbuildings set further away. I agree with the submission of the Rule 6 parties that "anyone travelling along footpath 24 would be hard pressed to imagine they are walking through a farmyard" [126].

224. But to my mind, the design does not set out to deceive or even imitate exactly; that is not a goal of good design in any event. Rather, the scheme creates a typically rural-appearance set of buildings that relate well to their surroundings in that the scheme would be appropriate in its rural context. No one would be surprised to walk past a set of buildings with the scale and general appearance of a farmstead within a rural setting; that is where a viewer might expect to find such an element. Stubbing's House and the garden centre/nursery, within its rural setting and a little to the south of the application site, is not a discordant sight in the open countryside. Large farmsteads are a typical element of the area, as the LPA's Landscape Character Assessment identifies [21]. I saw on my accompanied site inspection the scale of the grade I listed original buildings at Hall Place, now the BCA.

225. Thus a design approach that creates a sympathetic set of buildings, in a style of earlier building forms, but short of direct imitation, is appropriate in many situations including a rural one such as this. While the scheme would transform the appearance of the site, it would introduce buildings of a pleasing design and of an appearance that might be expected within a rural setting [56]. The impact would be further reduced by landscaping that would provide softening over time. I agree with the submissions of the Rule 6 parties that the effect of the scheme in year 1 will be more severe and less well integrated into the landscape than year 15. That is inevitable.

226. There was agreement from all the parties that the design of the buildings was satisfactory, with the Rule 6 parties stating "the various buildings as shown on the current plans would be attractive but would form a very large development…". The LPA commented that planning conditions could be used to control the materials used. In the design and access statement they are described as red clay tile roofs and weather-boarded walls over red brick plinths. Purely in appearance terms, and setting aside matters of GB principle, I find that the scheme would not harm the appearance of the area. Although the proposal would change the character of the area, overall it would be well contained within the wider landscape [125]. The change in character from open countryside here to a landscaped school development would have only limited harm.

227. *Enjoyment of and use of the footpaths*. It is clear, from the large number of people who signed the petition that they value the footpaths and the "pristine open green field" of the application site. I find that the word "pristine" over-states the case, as I understand that to mean 'in an original condition', and 'unspoilt'. The site is not, physically, in an original condition since it has had spoil placed upon it [23-27]. Standing anywhere on footpath 24 on the site, the traffic noise from the A404 to the north is evident. From footpath 24, looking south, it is possible to see overflow parking, associated with the Stubbings nursery, along the south-east edge of the field between the access road to their car park and footpath 23, as well as glimpses of the structures in the nursery. There is a mobile phone mast in view and a line of wooden telegraph poles with wires. Looking to the west there are distant views of houses in Burchetts Green.

228. Nevertheless the application site is an open green field at present and, using footpath 24, is part of a pleasant walk, as demonstrated by the video [126] submitted by the Rule 6 parties. Footpath 23 is an obvious route from Burchett's Green, out into the countryside for a dog walk or a recreational walk, across the application site or passing directly to the south of it, entering National Trust woodland, with plenty of paths to create a loop to return home as can be seen on the plan at CD56. The survey by the applicants and contained in Mr Macquire's proof at appendix 13 found that only about 10% of walkers crossed the application site field, the majority took alternative routes such as footpath 23 to the south of the application site. The survey also confirmed that the paths are very well used; 66 users in 2 hours of observation on a dry Sunday in November for example. Walkers also came from Maidenhead direction, passing adjacent to the site, before returning home.

229. Footpaths 23 and 24 for the most part in this locality are not narrow, fenced or 'hemmed in.' They are unsurfaced and cross fields or follow wide tracks, such as adjacent to the Horse Chestnut avenue. Plenty of people use these paths and their perception of the walks will be of entering the countryside, and of following

paths of rural character that facilitate short or medium-length views of pleasing countryside.

230. Footpaths 23 and 24 are also part of the 'Berkshire Loop,' which is an extension of the long distance Chiltern Way, a circular walking route of some 200km. The Berkshire Loop leaves and then rejoins the Chiltern Way, providing a southwards extension to the long distance path of some 45km. Thus the path around the application site will be used by many walkers who are not local but are enjoying the long distance path.

231. If the application is approved the route and thus use, of footpath 24 is shown to be unchanged; the experience of the walk would be altered however. 125m of path, through the school premises would need to be fenced to a height of 1.8m or so with chain link fencing or similar for security [86]. Since it would concentrate walkers into a narrow path it is likely it would need to be surfaced and would thus be more urban. On leaving footpath 23 and travelling north-east walkers would cross into the school site, probably gated at the boundary, cross an open area, cross a two-way internal access road, pass to the south of the car-park and a further open area to leave the school site, again probably with a gate on the boundary. For all of this length walkers would have views of school buildings, vehicular movement and school activities on the open areas; thus the experience of using the walk would change for this section of route. There would, in all probability, be a uncharacteristic feeling of confinement rather than the wider, open feeling of the walk as at present [86, 128].

232. Perception of the school on the footpath route would not be limited to the 125m or so passing directly through the school site since the development would be seen in the foreground or near distance when moving, for example, along footpath 23 or any of the paths emerging from the National Trust woodland. Mr Macquire, for BLS, accepted that the key receptors of the views would be walkers and, as such, their sensitively is high. Even so, he argued that "the views have the capacity to accommodate the sensitively designed development and while the proposed development will materially affect the views within the immediate setting of the site boundary the significance of the effect can be considered to be moderate".

233. I assess that perceptions might well vary between users. Single-time users, walking the Chiltern Way long distance footpath would experience only a single field built upon – a small percentage of change, relative to the whole length of their walk. If they are walking all day, it would be a matter of 10 minutes or so in their day, to pass through the school site. Thus as a percentage of the whole long distance path experience this would be a small effect. In contrast, those who live within walking distance of the site, in Burchett's Green or Maidenhead for example, and use the footpaths around the application site every day, the change (if the school is built) would be a greater percentage of the experience of the whole walk and one that is repeated every subsequent day. The sheer numbers of walkers here, together with the evidence from the Rule 6 parties, make it clear that these 'everyday' walks are greatly cherished and valued.

234. Even so, only 10% or so of walkers during the survey period actually crossed the application site. There is an alternative to crossing the school site, since footpath 24 is the hypotenuse to a triangle. Walkers, if they decided not to cross the school site, could still reach exactly the same points by walking the other two

sides of the triangle – ie footpath 23 by the Horse Chestnut avenue and the path along the edge of the National Trust woodland between the underpass and the junction with footpath 23. Walkers choosing this route would undoubtedly still be aware of the school development but perhaps less so than passing directly through the site. It could be perceived as a single, more urban element, soon passed by, and a minor element in a still pleasant walk.

235. In my assessment, any negative effect of the proposals on single-time walkers on the Chiltern Way/Berkshire Loop long-distance path would be highly limited. In contrast, common sense dictates that most local users, living nearby and using the paths each day would experience an adverse impact, flowing from the change in character, and thus their recreational enjoyment of this section of their walks. While this would lessen in time, as the landscaping proposed matures, the harm should be regarded as significant.

236. *Loss of the best and most versatile agricultural land*. This may be dealt with shortly. Both Local Plan policy GB2 and the Framework, paragraph 112, seek to take into account the economic and other benefits of the best and most versatile agricultural land. As stated earlier the land remains officially graded as grade 2 but it is known that it has had excavated chalk placed on it and has been engineered and graded which could have had some effect upon fertility and/or drainage [23-27]. I doubt that single fields are re-classified as a general rule; there is no evidence before the inquiry what grade it might be classified as today.

237. What is clear from my site inspections is that the field of which the application site forms a part is not used for arable crops in the same way as the immediately abutting one to the west. The owner's and farmer's comment on the uneconomic nature of the land in terms of yield at the present time can be found in CD29. Thus construction of the school would result in the permanent loss of 3.2ha of officially grade 2 agricultural land - and thus the best and most versatile - although that grade is at least debatable [88].

238. In addition, the scheme would result in a small parcel of this field (eastern side) being effectively "left over". It would have the A404 to the north, the existing access road to the east, the school to the west and the new school's access road to the south. This is still a part of the field that received the tipped chalk, and this, together with the difficulty of farming such a small area with today's large farm-machinery, could further reduce the utility of this 'left-over'. In this event the loss of agricultural land, (of whatever grade it is thought to be) could be 3.2ha (application site) together with the remainder of the field [60,88,131-133].

239. I can see no reason why an efficient farmer would not use a field if it could be used to farm profitably, so its non-arable use tends to confirm their statement that, at present, it is not economic to farm. Thus, not withstanding the 'official' grade, I think the evidence points to the likelihood that this land is no longer the best and most versatile agricultural land in practice. Any harm which would arise from the permanent loss of the application site is limited in my view, when assessed against the objective of national and Local Plan policy.

240. *Any effects on the local highway network*. The Rule 6 parties concern is the "severe traffic problems that would be likely to occur on the Burchett's Green roundabout which leads onto the A404 which it is anticipated would take much of the extra traffic, and many properties in the various roads of Stubbings and

Burchett's Green would be greatly affected by the increase in traffic volumes of cars coming to the site from different directions" as Mrs Robson Brown said for the Rule 6 parties. This view was not supported by any technical evidence, nor supported by the Highway Authority who recommended approval subject to conditions.

241. I referred earlier to the sheer inaccuracies contained within the Transport Statement submitted with the application. The Highway Authority also found the conclusions of the Transport Statement to be unconvincing. In particular the Transport Statement stated that "the site is in a sustainable location with good footway and cycle links and where regular bus and rail services which supply good coverage can be accessed". None of this is correct and the Highway Authority commented on the Transport Statement negatively and concluded that "the site is inaccessible and therefore, given local knowledge, it is anticipated that all travel will be by car". Indeed, BLS did not argue otherwise at the inquiry, stating that almost all children would travel to school, as they do at present, by private car [59]. This was accepted by Mrs Sharman for the LPA too [134]. The statements made at the inquiry by parents outlined the personal struggles of the children in coping with long, stressful and frustrating journeys, given their range of developmental difficulties [90,173].

242. The Rule 6 parties submit that it is not possible to say that alternative locations for BLS would be equally unsustainable since that assessment has not been made and, in any event, it might be sited adjacent to a built up area.[134] But the reality is that if such a school were to be located 'adjacent to a built up area' then it would still only be accessible (and therefore more sustainable in accessibility terms) to those children who live in that adjacent built up area, and even then they may well still attend by private car because of personal difficulties [90].

243. But it was put to the inquiry that there is no catchment for a school such as BLS. Such a school may be the named school on an EHCP for any child anywhere. Mr Clyne stated, unchallenged, that the education of children with special educational needs are provided by the state at no cost to the parent at the named school/institutions that can best provide for these needs without regard to cost, location or the status of the school/institution.

244. Given this large, unknown element (the travel origin of an unknown cohort of children) I am unconvinced that the selection of another site assuming one could be found, hypothetically at a transport hub say, would, in reality, turn out to be more sustainable. It might, in theory, be possible for pupils to travel by public transport because it was located at a transport hub. The reality of the nature of the pupils' personal difficulties and/or journey length, make it just as likely that journeys would be made by private car [90, 173]. Staff may, however, make different travel choices.

245. A further element is the need for a rural site, if accepted (and I deal with this later) is that almost by definition, such a site would not be in a well connected location. Thirteen children attend BLS from the RBWM already; the rest travel from neighbouring LEAs. These children are already on the highway network as Mrs Sharman stated [134]. The Rule 6 parties argue that it is not possible to know whether an alternative site might be better in sustainability terms until that assessment is done. Equally, I see no reason why the additional (as yet

unknown) children would have a substantially different travel origin or travel mode to the existing children. If 22 travel from the RBWM and surrounding LEAs, it is reasonable to assume that the future unknown pupils would be at least likely to do the same and to be mostly brought by car; these are children that need a lot of support [59, 90].

246. There is no technical assessment of any likely impact on the local road network other than that of the Highway Authority. They calculated that the proposal would generate somewhere between 450 - 524 trips per day and found the proposals to be acceptable in principle and met the requirements of Local Plan policies T5 and P4 [19]. On the evidence placed before the inquiry therefore I see no reason to take a different view. This carries a neutral weight.

247. *(iv) As the development is inappropriate, are there any 'other considerations' which would weigh in favour of it? – educational need*. Since BLS was recognised as a school by the Department for Education in March 2013 it has grown; it now has 22 pupils [34]. The case history of each of these is described in Mrs Shanly's proof appendix 9; from this it can be seen that almost all failed in mainstream schools but are now thriving at BLS. Six of these children are funded by the RBWM and 7 others by other LEAs. Thus over half the existing pupils are funded by other LEAs; BLS is judged by those LEAs to be the school that can best provide for the child's particular needs. This demonstrates a compelling need for the school [61,74,92,97-99,101,118,168,175]. In addition, it should be remembered that BLS is, at present, operating under a temporary planning permission at Home Farm and in a portacabin on the BCA site; an entirely unsatisfactory situation in terms of accommodation, investment and forward planning as well as the pupil number limitation.

248. BLS has received over 30 enquires for places for children in just 50 working days [61]. The school has had to decline almost all of those children places at the school, simply because there is no appropriate cohort of children to place them with rather than because they cannot help, as Mrs Shanly's proof details at appendix 15. Ten of those enquiries were directly from LEAs, which suggests that other LEAs at least consider BLS to be the school that could best provide for the child's particular needs. The high number of enquiries in total in a short period of time is a clear demonstration of need.

249. In turn the need for such a school is supported by the education cases set out in the statement from Mr D Scott for RBWM as LEA; from Mr Clyne for the applicant; Professor Stephen Scott child mental health expert comments in a letter included in appendix 26 and from Mr Marr, governor of the Virtual School [62,72, 174-178]. It seems to me that great weight should be placed on the opinion of Mr Scott, formerly Head of Education for the RBWM as LEA, as to the Council's increasing demand for the specialist provision BLS offers [109]. His statement that all boroughs are experiencing an increase in demand for places for children with barriers to learning is also of importance, since it confirms the search for pupil places recorded directly by BLS. This also demonstrates a need for the school.

250. Lastly the life-long benefits to society should be considered. The evidence presented to the inquiry underlines that children who fail to learn and do not have their needs met appropriately tend to create a disproportionate cost to wider society in the long-term [100, 150,179-200].

251. While accepting the benefits associated with the educational provision of BLS, the Rule 6 parties argue that the site search has been inadequate and time can be taken to carry out a proper search without harm. They continued that this is particularly so since there is no evidence to the inquiry as to the effect on future pupils of a refusal [166]. On that point it seems to me that the list of 34 enquiries for places, received by BLS in 50 working days, is evidence of children almost certainly failing in mainstream education at the present time. It is unlikely that parents or LEAs would be inquiring about a place at BLS if the child was thriving. Thus a further delay - the original application was dated May 2014 after all – *would* set back the education path of those children, since they are failing now. 1 – 2 years is a significant proportion of the whole of the school career of a child. As the LEA states, there would be "significant consequences for those who are or would otherwise be pupils". To my mind this is some evidence of the effect, on future pupils, of a refusal now [96,119].

252. If planning permission is granted for BLS on the application site this need would be met and this factor would count in favour of the scheme. However, before it is possible to determine how much weight to assign to this factor, it is necessary to consider whether this particular site is justifiably required to meet that need.

253. *Need to be met on this or an alternative site*. The Rule 6 parties are critical of BLS's methodology in the search for another site. In particular that the school had not set out a detailed report as to their precise requirements and area of search, as would be typical with a commercial transaction [135-150]. Comparisons with clients who engage consultancies such as Knight Frank seems to me to potentially overlook the very personal motivation for the commencement of this school [9,33]. The proprietor initially sought to solve the educational difficulties of her own child.

254. The school has grown quickly but is operating from a site with temporary planning permission. Thus, when a decision was made to relocate to a permanent site where both elements of the already-functioning school could be incorporated, it would be understandable that there was a degree of urgency in the search. Thus while it might be more typical to conduct the measured, 1-2 years site search, followed by additional time for planning issues, plus any construction or adaptations on the purchased site argued by Ms Cleugh, nothing before the inquiry indicates this is the only possible way of finding a site [111].

255. BLS has been searching for over 2 years in any event; it is important to note that all the land in the RBWM area that is not built up is GB; this cannot be anything other than a constraint in searching for suitable sites for BLS with its outdoor teaching emphasis. Indeed the list of sites investigated in detail, as set out in the report to RBWM Members when they considered the application and in CD30, reveal that almost all are within the GB. A surprising number of sites have been investigated and offers made [66], even though a school with a teaching ethos that requires to be in a calming rural environment is limited in choice from the outset. For this reason I do not think that the Rule 6 parties' point that an 'edge of settlement' site could be preferable is a strong one since such land is still likely to be within the GB and have the same 'in principle' objection.

256. The second unique factor in this element is the Proprietor, Mrs Shanly's, access to the site search capabilities of the Shanly Group because she is married to Mr

Michael Shanly [10]. While Mr Scott accepted he was not involved in the BLS site search directly, in answer to my questions he described his familiarity with their considerable resources and their manner of search for land and property sites. Mr Scott works with the Shanly Group on various projects; they have a team of land buyers and planners. Shanly Homes develops around 45 sites per year in the south east which, if unsuccessful sites are factored in too, demonstrates the scale and efficiency of their initial land-assessment capabilities, sifting though countless 'possibles' in order to identify that number of sites that do come to fruition.

257. In these personal circumstances I see no particular failing in BLS in not commencing a search with a "detailed report," or "documented" in some way; argued as essential by the Rule 6 parties [148]. BLS is not a typical commercial enterprise searching for a new site; instead they have, unusually, access to an already existing team of land-buyers through happenstance. The Shanly Group land-buying team would have been aware of the basic requirements of BLS in just the same way as they would be aware of the basic search parameters for the residential and commercial sites sought for development.

258. The Rule 6 parties argued that a greater number of alternative sites would be potentially available if a greater 'travel time' formed part of the search-brief for the school. This was borne out by the limited evidence of Ms Cleugh who carried out only a "high level" (not detailed) search over a couple of hours. It seems to me to be common sense that, if a larger land area is examined, then a larger number of sites could be potentially found. In the event, the Rule 6 parties did not aim to produce evidence of any site exactly meeting the perceived requirements of BLS, merely that there are such sites that come onto the market from time to time. Ms Cleugh acknowledged that some of the sites she put before the inquiry were sold, others were very large and/or contained buildings of historic interest and are within the GB. The exercise was to demonstrate that alternative sites, which might bear further evaluation, were available within a greater search area approximating to a 45 minute travel time.

259. Thus some thought has to be given as to what is a reasonable search area in terms of travel-to-school time. BLS sought to search within an approximately 15 minute drive time of the existing school since they have pupils who already attend and it would be disruptive to move to a site considerably further away. They wish to maintain their ties with BCA as the College offers the children a possible vision for their futures [200]. The inquiry heard that BLS does not see that their responsibility to the children ends at 17 when they leave, but that the school seeks to fit the children for a future life, including vocational courses. The RBWM and adjacent LEAs already fund children at the school which supports an argument that the school is in an area that is not otherwise served by such a school and that there is no other special school these children could easily be re-directed to nearby [93]. The education experts stated that this need will grow.

260. The Rule 6 parties considered that a 45 minute travel time would be feasible and, indeed, that many of the potential pupils on the enquiries list found in Mrs Shanly's appendix 15 would have to travel for longer than 15 minutes, as shown on the Googled travel times list they produced during the inquiry – although the average was 28 minutes or so. Regarding any effect on existing pupils it was argued that the resultant change should be considered as part of an analysis of an alternative site, not a reason to reject a wider search at the outset.

261. Mrs Shanly accepted that 45 minutes travel time was possible, undertaken by some, but not ideal. Mr D Scott also stated that journeys of 45 minutes were often undertaken by children everywhere but that, again, such travel times were not ideal, particularly for children with special needs. The inquiry heard from parents concerning the difficulties that some children experience with long frustrating journeys and how they may arrive at school over stimulated and/or too anxious to learn, thus needing a calming-down period. Reference was also made to children being offered school places, by their LEAs, involving a two hour taxi ride to attend other schools [173].

262. Pulling these threads together, it seems to me that BLS caters for disadvantaged children with special educational needs and disabilities. Such children will be less likely to have the inner resources to cope with long journeys than children who do not have special educational needs [59,90]. BLS may well be the school named in an EHCP as the most suitable to meet a child's particular needs; travel time is only one factor taken into account in the preparation of these. Thus some children will have to travel further than would otherwise be the case to attend the school which most closely meets their needs. Evidence to the inquiry was that there are no other similar schools nearby to provide a local alternative; so there is a gap in local provision for this type of education and that need is growing [74,75]. In particular, this is what the LEA states [93,99,] and Mr Marr [174].

263. I find little evidence to support basing search criteria on a precise travel time; or in finding that 15 or 45 minutes travel times are correct or reasonable. More to the point is that, wherever BLS is situated, it will involve some children travelling for a time, possibly 45 minutes or so, simply because such schools do not have a traditional 'catchment' area and so the children must travel to the nearest school best able to meet their needs. Common sense says that the fewer children who have to undertake long journeys to school the better. The school is already established within the RBWM; the Borough supports the school and already has a working relationship with it and potentially wishes to place more children there. The new school is a *relocation* of an existing one, it is not footloose but already has ties. The new school site would cater for 96 children in an area where there is a gap in specialist provision and close to where 22 existing pupils already attend and would also be close to BCA. It seems to me that these are factors which support a smaller area of search, close to the 2 existing school sites, than a wider one. If these points are accepted then the evidence is that BLS has searched in an appropriate area.

264. Evidence was put forward of sites examined in detail by BLS and, in some cases, progressed further and then stalled for a variety of reasons [66]. While time was spent at the inquiry examining some of those possible sites, I do not consider that this moves the consideration forward much; they are not being formally considered now. Some, like the Old Shire Horse Centre which I inspected are in the course of redevelopment for residential use, others like Ladds Nursery in Wokingham Borough Council's area received a negative response in pre-application advice since it was (and still was at the time of my inspection) an operational employment site.

265. The Rule 6 parties argue the rejection of the proposal by Wokingham was not reasonable [159]. But the purpose of seeking pre-application advice is to find out whether it is worth the costly and time-consuming effort of continuing to an

application. I do not think that BLS can be criticised for not pursuing this site in these circumstances.

266. The Rule 6 parties were also critical of BLS for not progressing other sites within the BCA or the Shanly Estate. One site considered by BLS at BCA was apparently later taken forward by the Forest Bridge School, although there was anecdotal evidence at the inquiry that this scheme has recently encountered difficulties because the original building at the heart of the college site (Hall Place) is a grade I listed building within a grade II historic garden.

267. Other potential sites were pointed out to me at my accompanied site inspection within the BCA overall site, such as near to the listed statue of Diana, around 500m north of the main house and another near to the southern avenue to the main house. The information available on these sites is sketchy; I do not know if they are acceptable to the BCA and they would have little information on which to make a decision until a scheme was drawn up. At my site inspection they did not appear to me to offer any landscape advantages over the application site. Both are fairly exposed – particularly by the listed statue of Diana where the land drops away to the north and east. They are within the BCA grounds, the setting to a grade 1 listed building and a grade II registered Historic Park and Garden [114]. These sites are also within the GB and so would still attract an 'in principle' objection as would a site within the Shanly estate.

268. With all these notional sites, however, there is no evidence that a quick progression to planning permission would have been straightforward anyway. It has taken from at least May 2014 (the date of the application) to the present day to progress this, still undetermined, application - 21 months so far. Had BLS progressed the sites that the Rule 6 parties say are alternatives any or all of them would have attracted the same 'in principle' GB objection; there would be no guarantee of success. Bearing in mind the 21 month lead-in time to the present day it also seems to me somewhat unrealistic for the Rule 6 parties to argue that there has been no updated search. I think it unlikely that any charitable institution, once they have invested in detailed plans, flood, transport, ecology and arboricultural reports etc for a selected site would pursue multiple applications on different sites.

269. The Rule 6 parties also put the point that there is no compelling evidence that BLS is financially restricted; the school could, it was argued, potentially have access to greater funding and thus could compete on an equal footing for sites with higher-return development such as housing. That would depend upon the school applying successfully to the Shanly Foundation in the same way as any other charity seeking money. The Foundation is administered by trustees; the outcome, if any such additional application to the Foundation were to be made, is unknown, so there is no persuasive evidence either way. I do not consider this should be a determining matter.

270. I do not find the argument that BLS should consider a split-site for the new school, (thus increasing the number of potential sites) convincing. The school already has experience of operating with pupils on two separate sites; the difficulties were explained of a child's trusted Key Worker being located at the other site [181-183] and of the sheer time-wasting inconvenience of moving children from one site to the other [85]. The Head Teacher referred to a government report entitled School Reform Funding which highlighted the

inefficiency, additional costs and duplication of resources an intrinsic part of split-site schools; such inefficiencies would have a greater impact with a small school such as is proposed [113,181-186]. In any event there is no evidence of multiple small sites, without similar issues, available that BLS could utilise.

271. *The need for a rural site*. The Rule 6 parties do not question the benefits associated with the particular, outdoor-based educational provision of BLS. The educational benefits were expanded upon in both the written and oral evidence of Susan Wells, teacher at BLS; Lucy Barnes, Headteacher; Mr Scott, for the LEA, Mr Marr and particularly Mr Clyne for BLS. I find the evidence put forward for the requirement for a rural setting to facilitate outdoor learning to be compelling; outdoor learning is a strong ethos of the school and has proven favourable educational outcomes [63,69,84,108,177,179,189,198,199]. The need for such, if accepted, also points to the inherent difficulty of finding a site, in an area where the existing school has ties, that is not within the GB.

272. Pulling all these various elements together, I find that the evidence points to an adequate search, utilising appropriate parameters, has been made by the BLS to find a site and that there is no convincing evidence that points to a better alternative site [66,69,94,95,106,111,112,118]. I bear in mind the government's policy set out in the Framework that great importance is attached to ensuring that a sufficient choice of school places is available; great weight should be given to the need to create, expand or alter schools, as here. I find that the educational need for BLS, on this site, to be compelling, it would accord with the government's policy as above and the social dimension of sustainable development and I give this substantial weight.

273. *(v) If 'other considerations' exist, do they clearly outweigh the harm to the GB and any other harm?* I have found that the construction of a school in the GB would be inappropriate development. In accordance with the Framework and Local Plan policy, I attribute substantial weight to the harm so caused to the Green Belt. I attach substantial weight to the harm caused by loss of openness in the Green Belt and to the purposes of including land in the Green Belt.

274. I find limited harm caused to the character of the area. The lack of harm to the appearance of the area and the lack of negative effects on the highway network are neutral factors. The harm to the enjoyment of the footpaths, by those who use them most, would be significant. The permanent loss of the best and most versatile agricultural land, if such it be, should carry limited weight in my view.

275. In favour of the proposal, first and foremost, the RBWM, as LEA and LPA, supports this school, already sends children to it and wishes to place more pupils there. Other, adjacent, LEAs also send pupils here. Existing and future educational need is demonstrated by the written and oral evidence of the parents of existing BLS pupils, staff of BLS and the education witnesses. The UN Convention on the Rights of the Child provides that the best interests of the children shall be a primary consideration in all actions by public authorities. Paragraph 72 of the Framework sets out that the government expects that great weight should be given to the need to create or expand new schools. The Local Plan is similarly supportive of new community facilities.

276. The large number of enquiries for future BLS places is further evidence of children who are failing in mainstream education and who could have their life-

chances wholly improved by the nurturing ethos of BLS, with benefit to wider society. These enquiries also support the need argument. I attach substantial weight to the very real, compelling need, now, for the continued and future education provision that BLS would provide.

277. The site search carried out by BLS, through the Shanly Group facilities, uniquely available to the proprietor, has investigated other sites. A specific factor of the BLS approach to learning is contact with animals and outdoor education in a tranquil, calming setting; thus there is an obvious need for a rural location for the re-located school. A remarkable number of sites have been considered, bearing in mind the considerable constraints imposed because the RBWM is subject to GB policy on all unbuilt land, which severely restricts possible locations. BLS has provided sufficient evidence that a search for a less harmful site has been undertaken with appropriate parameters and that no alternative site is to be found. There is no evidence to suggest that a different site could emerge shortly either. I give all these factors substantial weight.

278. Taken together I find that these other considerations clearly outweigh the harm to the GB and any other harm.

Conditions.

279. A list of conditions is contained within the SofCG. These formed the basis of discussions at the inquiry. I have made a number of amendments to that list, now included in my list of recommended conditions, for the following reasons.

280. Suggested condition no 5 in the SofCG seeks to restrict the use to BLS only; in effect this would be a 'personal' condition. Such conditions are highly unusual in the case of permissions for permanent buildings. Since the proposal, if thought acceptable, would be likely to be founded on compelling educational need a condition limiting the permission to a school for children with special educational needs and disabilities would be appropriate.

281. Suggested condition no 6 in the SofCG seeks to restrict the use of the school to between the hours of 0800 -1800 hours Mondays to Fridays and at no time on weekends, Bank or Public holidays to protect the character of the area. This would restrict typical functions of a school such as sports, theatrical, or charity events, fetes, open days and so forth that can often take place during a weekend as well as restricting staff staying late for any reason. If the need for the school, on this site, is accepted then it would be unreasonable to restrict typical school events from taking place. I have not included this condition in my list of recommended conditions.

282. Suggested condition no 8 concerning the requirement for an archaeological investigation might seem incompatible with the known tipping of chalk on the site. I was informed at the inquiry that the southern portion of the site was not disturbed and thus an investigation there may reveal archaeological remains, thus the need for the condition remains.

283. I have deleted the suggested condition no 17 on the SofCG which was suggested by the Highway Authority. The condition discusses visibility splays at the point of access to the school from the private road but misses the point that there are no construction or detailed drawings at all of the mini-roundabout

shown on drawing no 1372/02 of the application plans. I have inserted a condition that requires this rather than details of visibility splays.

284. Suggested condition no 25 on the SofCG requires a survey to establish if any ground nesting birds or reptiles are active on the site. The Phase 1 Habitat Survey found a low potential for the site to be used by birds, and a moderate potential for reptiles. The survey concluded that it is not possible to adequately exclude the risk of harm to protected species or habitats without the need for further survey work.

285. Circular 06/95 states that the presence of a protected species is a material consideration when a planning authority is considering a development proposal. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.

286. For the following reasons I do not think that there is a reasonable likelihood of protected species being present. Firstly, as stated above, the Phase 1 Habitat Survey found a low potential for the site to be used by birds (and then only in trees and hedgerows), and a moderate potential for reptiles "potentially using the long grass and hedges to bask and forage, especially where bramble is present". Since bramble is indicated, this suggests reptiles, if present, are most likely to be found near to the existing hedgerows since no bramble is present within the open grass part of the application site. Thus the large majority of the site is unlikely to contain reptiles.

287. Secondly, the Phase 1 Habitat Survey boundary includes more land than is shown edged red on the application site, including the line of veteran Horse Chestnut trees to the south of the site and the hedgerow on the western side of the private road which is only breached to provide for the access road; these would remain. The Survey may, therefore, have over estimated the likelihood of species being present. Thirdly, the building works would be central in the application site, with even ancillary buildings located to the inside of the retained hedgerows. It seems to me that protected species are unlikely to be present at all but, if they are, will be within the retained hedgerows. With a suitable condition these can be protected during building works. Lastly BLS wishes to enhance the biodiversity of the site and the finished school project is likely to be of enhanced value for wildlife than the somewhat sterile agricultural field it is at present. I do not, therefore, include this condition in my list of recommended conditions.

288. Suggested condition no 28 on the SofCG, concerning external lighting, includes the phrase "the proposed vertical illumination that will be caused by lighting when measured at windows of any properties *in the vicinity*" (my emphasis). This term is too vague and should be defined by a measurement; I suggest 150m from the application site edged red, which would include the red brick Lodge

house near to the proposed access route but not, for example, the properties 500 -600m away in Burchett's Green or on the other side of the A404.

289. **Recommendation**. The last of the considerations I set out earlier is *(vi) if the weight of the other considerations clearly outweigh the totality of harm do VSC exist*? When assessed in accordance with the Framework as a whole I find that the other considerations advanced here clearly outweigh the totality of harm caused by the development. I do not find this is a case where the issues are finely balanced. Having regard to the case as a whole, I conclude that very special circumstances exist which could justify the application development. I recommend that the application be approved, subject to the conditions in Appendix A attached to this report.

Gyllian D Grindey

Inspector

APPEARANCES

FOR THE APPLICANT:

Mr Sasha White	QC, instructed by Mr Scott of Kevin Scott Consultancy
He called	
Ms Daniela Shanly	Co-founder & proprietor of Beech Lodge School (BLS)
Mr Bernard Clyne LCP(Dip.SMS) Cert Ed MAE	Principal EFM Education & Social Infrastructure consultancy
Mr Alistair Macquire BA(Hons) Dip LA CMLI	Associate Director of Aspect Landscape Planning Ltd
Mr Kevin Scott BA(Hons) Dip TP MRTPI	Director of Kevin Scott Consultancy Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Guy Williams	Of Counsel instructed by Mr O'Connor of Royal Borough of Windsor & Maidenhead (RBWM)
He called	
Ms Susan Sharman BA(Hons) MSc TCP MRTPI	Senior Planning Officer RBWM
Mr David Scott Cert Ed	Previously Head of Education, RBWM now Head of Governance, Performance & Policy, RBWM

FOR BISHAM PARISH COUNCIL & BURCHETT'S GREEN VILLAGE ASSOCIATION (BGVA) RULE SIX PARTIES:

Mr Matthew Reed	Of Counsel, instructed by Mr C Joseph
He called	
Mr Clifford Joseph MA MRTPI(Legal)	Co-founder of BGVA
Ms Amanda Robson Brown	Chair, Bisham Parish Council
Ms Emma Cleugh BSc(Hons) MRICS	Partner, Knight Frank LLP, Head of Institutional Consultancy Dept

INTERESTED PERSONS:

Parent	Head-teacher of another school & parent of child at BLS
Parent	parent of child at BLS
Parent	parent of child at BLS
Parent	parent of child at BLS
Ms Lucy Barnes	Head-teacher & co-founder of BLS
Ms Susan Wells	Specialist Assessor & teacher at BLS
Mr Gareth Marr	Adoptor, Member of Berkshire Adoption Panel, Governor Of Virtual School for Windsor & Maidenhead

DOCUMENTS

CD1 RBWM Local Plan 2003
CD2 RBWM Dev Plan Policy Schedule 27 September 2011
CD3 National Planning Policy framework
CD4 Green Belt Purpose Analysis
CD5 RBWM Highway Design Guide
CD6 Covering letter to application 200514
CD7 Application forms
CD8 Drawings
CD9 Planning Design & Access Statement
CD10 Flood risk Assessment
CD11Transport Statement
CD12 Tree Protection Plan
CD13 Tree constraints Plan
CD14 Tree Schedule
CD15 Phase 1 Habitat survey
CD16 Arboricultural Method Statement May 2014
CD17 Committee minutes
CD18 Committee Report
CD19 Edward Timpson speech
CD20 Nick Clegg speech
CD21 Pickles & Gove statement
CD22 David Cameron speech on opportunity
The above documents are spiral bound into 3 volumes and were submitted by the applicants. For simplicity I have continued the numbering

CD23 Proof & appendices of Ms Shanly (appendices 21 – 24 were read at inquiry by parents)
CD24 Proof & appendices of Mr Clyne
CD25 Proof & appendices of Mr Maquire
CD26 Proof and appendices of Mr Kevin Scott
CD27 Opening submissions for the applicants by Mr White
CD28 Article from Maidenhead Advertiser of 20 September 2012
CD29 Statement from D Good and C Rayner together with photographs of cutting and chalk dumping area for construction of A404 in "early 1990s".
CD30 Search for alternative sites 2012 – 2014 & attached map
CD31 Chronology relating to BLS & the Bisham Parish Council, bundle of Minutes
CD32 Annual Financial return for Bisham Parish Council 2014-2015
CD33 Statement of Common Ground
CD34 Bundle of maps to assist in Inspector viewing some alternative sites considered by parties
CD35 copy of Sec of State decision on appeals decisions no APP/J1915/A/11/ 2149483 & 5 other associated appeals in Bishop's Stortford, Essex and referred to in Mr Macquire's proof at paragraph 5.24
CD36 Closing submissions for applicants by Mr White
CD37 Opening submissions for the applicants by Mr Williams
CD38 Proof & appendices of Ms Sharman
CD39 Statement or proof of Educational Need of Mr David Scott
CD40 Closing submissions for LPA by Mr Williams

CD41 Transcript of *Redhill Aerodrome Ltd v Secretary of State for Communities & Local Government, Tandridge District Council & Reigate & Banstead Borough Council* 2014 put in by Mr Williams

CD42 Opening submissions for the Rule 6 parties by Mr Reed
CD43 Proof & appendices of Mr Joseph
CD44 Memory stick containing video of walk in locality of site, referred to in Mr Joseph's proof at paragraph 2.1
CD45 Proof of Ms Robson Brown
CD46 Proof of Ms Cleugh
CD47 2nd petition against BLS on the application site
CD48 Email trail of 1 September 2014 Kevin Scott/Susan Sharman
CD49 Table of stated travel times & Googled travel times of existing & prospective pupils of BLS put in by Rule 6 parties
CD50 Sites considered by BLS & located on Ordnance Survey plan attached
CD51 Closing submissions for Rule 6 parties by Mr Reed
CD52 Transcript of *Mrs Jean Timmins AW Lymn (The Family Funeral Service) Ltd v Gedling Borough Council v Westerleigh Group Ltd* 2014 put in by Mr Reed
CD53 Statement of Gareth Marr
CD54 statement by Lucy Barnes Headteacher of BLS
CD55 Statement of Susan Wells, Specialist Assessor and teacher, BLS
CD56 Streetmap print from Ordnance Survey showing footpath routes displayed at inquiry

APPENDIX A

1. The development hereby permitted shall be commenced within three years from the date of this permission.

Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. No development shall take place until samples of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

Reason: In the interests of the visual amenities of the area. Relevant Policy GB2, DG1.

3. No development shall take place until samples and/or a specification of all the finishing materials to be used in any hard surfacing on the application site have been submitted to and approved in writing by the Local Planning Authority and thereafter undertaken in accordance with the approved scheme.

Reason: In the interests of the visual amenities of the area. Relevant Policies - Local Plan GB2.

4. No development shall commence until details of venting, ducting and fume extraction equipment have been submitted to and approved in writing by the Local Planning Authority. The venting, ducting and fume extraction equipment shall be installed and retained in accordance with the approved details.

Reason: To ensure the proposed equipment does not harm the appearance of the building in the interests of the visual amenity of the area. Relevant Policies - Local Plan GB2.

5. The use hereby permitted shall be carried on only by a school for children with special educational needs and disabilities and shall not endure for the benefit of the land, or any other person or body whatsoever. If, after the development has commenced, such a school ceases to be the occupier of the premises, the use shall cease and the site shall be a) reinstated to its former condition, or b) returned to a condition in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

Reason: Occupation of the accommodation other than in accordance with this condition may be contrary to the development plan. Relevant Policies - Local Plan GB1, GB2.

6. No development shall commence until details of all finished slab levels in relation to ground level (against OD Newlyn) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

Reason: In the interest of the visual amenities of the area. Relevant Policy Local Plan DG1.

7. No development shall take place until the applicant or their agents or successors in title have secured the implementation of a programme of archaeological work (which may comprise more than one phase of work) in accordance with a written scheme of investigation, which has been submitted by the applicant and approved by the Local Planning Authority.

Reason: The site lies within an area of archaeological potential, specifically there is a potential for prehistoric remains. The Condition will ensure the satisfactory mitigation of any impacts upon buried archaeological remains in accordance with national and Local Plan policy.

8. No development shall commence until details of the siting and design of all walls, fencing or any other means of enclosure (including any retaining walls) have been submitted to and approved in writing by the Local Planning Authority. Such walls, fencing or other means of enclosure as may be approved shall be erected before first occupation of the development unless the prior written approval of the Local Planning Authority to any variation has been obtained.

Reason: To ensure the satisfactory resultant appearance and standard of amenity of the site and the surrounding area. Relevant Policy - Local Plan DG1.

9. a) No development shall take place until evidence that the development is registered with the Building Research Establishment (BRE) under BREEAM (either a standard BREEAM or a bespoke BREEAM) has been submitted to and approved in writing by the Local Planning Authority,

b) No superstructure works shall commence until a Design Stage Assessment Report showing that the development will achieve a BREEAM rating of Very Good, has been submitted to and approved in writing by the Local Planning Authority, and
c) No superstructure works shall commence until a BRE issued Design Stage Certificate demonstrating that the development has achieved a BREEAM rating of Very Good has been submitted to and approved in writing by the Local Planning Authority.

Reason: The Code Assessor can only submit the Design Stage Assessment Report when the design is complete. The Assessor then needs to write a report and submit it to the BRE. The BRE can only then verify the submission and issue Design Stage Certificate. This could realistically take 2 months to achieve.

10. Prior to the commencement of any works a construction noise management plan shall be submitted to the Local Planning Authority detailing a method statement and project plan for the construction works. The plan shall include the predicted construction vibration and noise levels emanating from the development, the plan shall also include specific details of noise and vibration mitigation measures as well as specifying acceptable noise and vibration limits (in line with the ABC method advocated by BS5228) to be met at nearby residential and noise sensitive receptors. There shall also be an ongoing noise and vibration monitoring programme incorporated within the plan to ensure these noise and vibration limits are complied with throughout the duration of these works. There shall also be an incident/complaint log kept on site and available for inspection at any time by officer from the Council's Environmental Protection and Planning Teams. Any breaches of the noise limits shall be recorded and include remedial action to ensure compliance with environmental noise and vibration limits. Details of any breaches and corrective actions shall be notified to the Environmental Protection Team on a monthly basis throughout the construction of the scheme.

Reason: To protect the surrounding amenities and to accord with the Local Plan Policy NAP3 and NPPF policy 109 and 123.

11. The applicant and their nominated contractor shall take all practicable steps to minimise dust emissions, which can be a major cause of nuisance to residents and the general public. The applicant shall prepare a detailed dust monitoring and mitigation package, that shall include an assessment of all the relevant potential sources of dust arising from site activities and deliveries, detailed dust monitoring arrangements and analysis, detailed mitigation measures to minimise dust emissions from the working site, and a complaints and due diligence log to record complaints and dust emission incidents. The applicant is advised to follow guidance with respect to dust control: London working group on Air Pollution Planning and the Environment (APPLE): London Code of Practice, Part 1: The Control of Dust from Construction; and the Building Research Establishment: Control of dust from construction activities.

Reason: To protect the surrounding amenities and to accord with the Local Plan Policy NAP3 and NPPF policy 109

12. There shall be no fires allowed on site at any time, all waste shall be recycled or disposed offsite.

Reason: To protect the surrounding amenities and to accord with the Local Plan Policy NAP3 and NPPF policy 109

13. The rating level of the noise emitted from the plant and equipment shall be lower than the existing background level (to be measured over the period of operation of the proposed plant and equipment and over a minimum reference time interval of 1 hour in the daytime and 5 minutes at night dependent upon the operating hours of the proposed plant and equipment) by at least 10dB(A). The noise levels shall be determined 1m from the nearest existing or proposed noise-sensitive premises/residential premises. The measurement and assessment shall be made in accordance with BS 4142: 1997 'Method for rating industrial noise affecting mixed residential and industrial area'.

Reason: To protect the amenity of the residential development and surrounding residential development and to accord with the Local Plan Policy NAP3 and NPPF policy 109 and 123.

14. Prior to the commencement of any works of construction a management plan showing how construction traffic (including cranes) materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved and maintained for the duration of the works or as may be agreed by the Local Planning Authority.

Reason: In the interests of highway safety and the free flow of traffic. Relevant policies – Local Plan T5.

15. No part of the development shall be occupied until vehicle parking and turning space has been provided, surfaced and marked out in accordance with a layout that has first been submitted to and approved in writing by the Local Planning Authority.

The layout shall include adequate manoeuvrability for an 11.4m x 2.49m refuse truck. The space approved shall be kept available for access, manoeuvrability, parking and turning in association with the development.

Reason: To ensure that the development is provided with adequate parking and turning facilities in order to reduce the likelihood of roadside parking which could be detrimental to the free flow of traffic and to highway safety, and to facilitate vehicles entering and leaving the highway in forward gear. Relevant Policies - Local Plan P4, DG1.

16. No part of the development shall be commenced until a plan showing the technical and construction details of the mini-roundabout shown on drawing ref no 1372/02 proposed on the private access road.

Reason: In the interests of highway safety. Relevant Policies - Local Plan T5.

17. No part of the development shall be occupied until covered and secure cycle parking facilities have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.

Reason: To ensure that the development is provided with adequate parking facilities in order to encourage the use of alternative modes of transport. Relevant Policies - Local Plan T7, DG1

18. No development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its prior written consent to any variation.

Reason: To ensure a form of development that maintains, and contributes positively to, the character and appearance of the area. Relevant Policies - Local Plan DG1.

19. Prior to any equipment, machinery or materials being brought onto the site, details of the measures to protect, during construction, the trees and hedgerows shown to be retained on the approved plan, shall be submitted to and approved in writing by the Local Planning Authority.

The approved measures shall be implemented in full prior to any equipment, machinery or materials being brought onto the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. These measures shall include fencing in accordance with British Standard 5837:2012 or any standard replacing that BS. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the Local Planning Authority.

Reason: To protect trees and hedgerows which contribute to the visual amenities of the site and surrounding area. Relevant Policies - Local Plan DG1, N6.

20. Irrespective of the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fence, gate, wall or other means of enclosure shall be erected on the site without planning permission having first been obtained from the Local Planning Authority.

Reason: To ensure the location, form, design and materials are appropriate for the character and appearance of the area. Relevant Policies - Local Plan DG1, GB2.

21. Before the development hereby permitted is brought into use, a travel plan or travel plans covering school's teaching and other staff and students shall have been submitted to and approved in writing by the Local Planning Authority. The approved travel plan shall be implemented on or before occupation of the development hereby permitted, or as otherwise agreed in the plan.

Reason: In the interest of highway safety and to reduce reliance on private cars by staff, pupils and other users of the development hereby permitted, in the interests of encouraging sustainable modes of travel to the site, managing traffic on the highway network and to assist in a strategy to reduce carbon dioxide emissions. Relevant Policies: Local Plan - DG1, T7, T11.

22. No development shall commence until a Construction Environmental Management Plan to control the environmental effects of all construction activities for that part of the development, and containing all relevant Codes of Construction Practice, has been submitted to, and approved in writing by, the Local Planning Authority. The Construction Environmental Management Plan shall include details of the strategy, standards, control measures and monitoring effects of the construction process and shall include:
i) hours of working and periods of the year
ii) site layout and appearance, including measures to manage the visual impacts during construction
iii) site security arrangements, including hoardings and other means of enclosure
iv) health and safety
v) piling methods
vi) foundation design
vii) details of the means of storage, disposal and removal of spoil waste arising from the excavation or construction works
viii) construction waste arising from the development that will be recovered and reused on the site or on other sites, and a Site Environmental Management Plan
ix) protection of areas of ecological sensitivity
x) details of temporary lighting.

Reason: To protect the environmental interests (waste, ground water, ecology) and amenity of the area. Relevant Policies - Local Plan DG1, NAP3, NAP4, GB2.

23. Within six months of commencement, details of the measures for the enhancement of biodiversity on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and such approved measures retained.

Reason: In order to maintain and enhance the biodiversity of the site and to accord with Requirement 6 of the Royal Borough of Windsor and Maidenhead 'Sustainable Design and Construction Supplementary Planning Document' (September 2009).

24. Prior to the commencement of development or other operations on site, details of the proposed drainage and services, including showing their position on a layout plan, shall be submitted to and approved in writing by the Local Planning Authority. The drainage runs and services must provide for the protection of trees to be retained within or on the periphery of the site and for the protection of the soft landscaped areas to be retained or created as part of the approved landscaping scheme. Thereafter the development shall be carried out in accordance with the approved details.

Reason: To ensure the protection of trees identified for retention at the site and to ensure new planting is not compromised. Relevant Policy - Local Plan N6.

25. No public address system, including loud hailers, may be used in connection with the development hereby permitted, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the area. Relevant Policy - Local Plan NAP3.

26. Prior to installation an external lighting scheme shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented before any of the external lighting is brought into use and thereafter the lighting shall be operated in accordance with the approved scheme and maintained as operational. The scheme shall include the following:
i) The proposed design level of maintained average horizontal illuminance for the site.
ii) The proposed vertical illumination that will be caused by lighting when measured at windows of any properties within 150m of the application site edged red on the approved plan ref no 1372/02.
iii) The proposals to minimise or eliminate glare from the use of the lighting installation.
iv) The proposed hours of operation of the lighting. There shall be no other external lighting other than that approved.

Reason: In the interest of the amenities of the area and ecology. Relevant Policies - NAP3, GB2.

27. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any Order revoking and re-enacting that order, other than work authorised by this planning permission, no new building or any extension to any building shall take place without the prior written approval of the Local Planning Authority.

Reason: In the interests of the openness of the Green Belt and the character of the countryside.

Relevant Policies: Local Plan - DG1, GB2.

28. A landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be implemented as approved by the Local Planning Authority.

Reason: To ensure the continuing standard of landscape provision in the interests of the visual amenity of the area. Relevant Policies: Local Plan - DG1, GB2, N6.

29. Prior to commencement, details of how the public right of way, Footpath 24 Bisham, where it crosses the application site, will be managed shall be submitted to and approved in writing by the Local Planning Authority. The public right of way shall be maintained in accordance with the approved details.

Reason: To ensure continued access to the public right of way in the interest of amenity. Relevant policy: Local Plan R14.

30. The development hereby permitted shall utilise the Envirosafe sewage treatment plant referred to in the agents letter of 1st September 2014 which shall be maintained in accordance with the details set out in Kingspan Klargester letter of 25th July 2014.

Reason: To ensure there is no risk of pollution to ground or surface water. Relevant policy Local Plan NAP4

Appendix B: List of abbreviations used in the report

BCA Berkshire College of Agriculture
BGVA Burchett's Green Village Association
BLS Beech Lodge School
EHCP Education, Heath & Care Plan under the Children & Families Act 2014
GB Green Belt
LEA Local Education Authority
LPA Local Planning Authority
SofCG Statement of Common Ground
RBWM Royal Borough of Windsor & Maidenhead
VSC Very special circumstances

Department for
Communities and
Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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