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Our Ref:
APP/W1145/A/14/2228355 and
APP/W1145/E/14/2228356

18 February 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78) & PLANNING
(LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 (SECTION 20)**

APPEALS BY ROUTE 39 ACADEMY TRUST AND WILLMOTT DIXON

**STEART FARM, BUCKS CROSS, BIDEFORD, DEVON, EX39 5DW
APPLICATION REFS: 1/0126/2014/FULM AND 1/0127/2014/LBC**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul K Jackson BArch (Hons) RIBA, who held a public local inquiry between 2 and 11 June 2015 into your clients' appeals against the decisions of Torrington District Council (the Council) to refuse planning permission and listed building consent for the construction of a new school (education use D1) of 5950 square metres with associated car parking and landscaping; alterations to the existing access to the A39; demolition of curtilage of listed buildings, in accordance with application Refs 1/0126/2014/FULM and 1/0127/2014/LBC, dated 8 February 2014, at Steart Farm, Bucks Cross, Bideford, Devon, EX39 5DW.
2. On 26 November 2014 Appeal Ref. APP/W1145/A/14/2228355, concerning the new school, was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because it involves proposals for development of major importance having more than local significance. On the same date, Appeal Ref. APP/W1145/E/14/2228356, concerning the listed building, was recovered for the Secretary of State's determination in pursuance of paragraph 3 of Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act

1990 because it would be most efficiently and effectively decided with Appeal 2228355.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be dismissed. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendations and has decided to allow the appeals and grant planning permission and listed building consent. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State notes that prior to the inquiry the Council withdrew the first and second reasons for refusal relating to the effect on highway safety and the sustainability of the location and he has, like the Inspector, taken this into account in his consideration of the appeals (IR5). He also notes that prior to the inquiry the appellant offered to retain rather than demolish buildings 2 and 3 which fall within the curtilage of the listed building at Steart Farm, and that the views of the parties were sought on this matter (IR6). He agrees with the Inspector that no party's interests would be prejudiced by the consideration of this option (IR6), and he has considered this alternative option in his consideration of the case.
5. In coming to his decision, the Secretary of State has taken into account the Environmental Statement (ES), prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, as amended, and the additional information submitted on the 20 sites discounted in the ES, contained in an Alternative Site Assessment (ASA) document (IR7). The Secretary of State is satisfied that the ES and the additional information in the ASA comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.
6. The Secretary of State notes that the Inspector requested further information on the potential for slope failure, particularly following heavy rain, and he has, like the Inspector, taken the additional information submitted into account (IR8).
7. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Copies of the representations received can be made available on written request to the address at the foot of the first page of this letter.

Policy considerations

8. In deciding the appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan comprises the saved policies of the Torridge District Local Plan (LP) of 2004 (IR15). The Secretary of State considers that the development plan policies of most relevance to these appeals are those set

out in IR15-21. He notes that the Inspector agrees with the parties that the application constitutes a departure from the development plan because it is major development in the AONB which would detract from the character and appearance of the area and would not fall within any of the categories in LP Policy DVT2C (IR251). He agrees with the Inspector that the language used in LP policies DVT2C and ENV6 is more restrictive than that in the National Planning Policy Framework (“Framework”) which advocates a criteria based approach and does not rule out development which may harm character and appearance (IR251). For these reasons, he affords LP policies DVT2C and ENV6 little weight. He agrees with the Inspector that the test to be adopted in considering the appeals is whether, given the great weight to be given to the promotion of schools, and to the conservation of landscape and scenic beauty in AONBs, exceptional circumstances apply and the proposed development would be in the public interest, having regard to the 3 bullet points set out in paragraph 116 of the Framework (IR 251).

10. Other material considerations which the Secretary of State has taken into account, in addition to the Framework, include the associated Planning Guidance; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and the North Devon Coast AONB Management Plan 2014-19. The Secretary of State agrees with the Inspector that the policies in the Framework most relevant to these appeals are those set out at IR 22-24 and IR 31-32 and agrees that the policies in the AONB Management Plan 2014-19 most relevant to these appeals are those set out at IR 27-30. He agrees with the Inspector (IR 26) and has also taken into account the Joint Policy statement – *planning for schools development*, published by the Secretaries of State for Education and for Communities and Local Government in August 2011 which sets out the Government’s commitment to support the development of state-funded schools and their delivery through the planning system.
11. The Secretary of State notes that the emerging North Devon and Torridge Local Plan 2011-2031 achieved formal publication in June 2014 (IR25); that proposed main changes to the publication draft went to public consultation in spring 2015; and that later in 2015 the Council consulted on a further series of amendments. However, in the circumstances of the case, as the emerging plan has not reached examination stage the Secretary of State affords it little weight.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State agrees with the Inspector (IR 35) and has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

13. The Secretary of State agrees with the Inspector and considers that the main issues in this case are those set out in IR250, including those concerns raised by the Rule 6 party and others.

Landscape and visual amenity

Impact on landscape character

14. The Secretary of State has carefully considered the Inspector’s analysis of the landscape character (IR 252-255) and the impact on landscape character

(IR256-263). For the reasons in IR256-259, he agrees with the Inspector that the landscape in and around the appeals site retains a high value which would be highly susceptible to major built development (IR259). While he has had regard to the Inspector's conclusion that although set in a slope the proposed school would remain a horizontal form of substantial bulk (IR261), the Secretary of State has also considered the appellant's evidence that the building will appear as a single storey building in the landscape from the west and south as a result of it being set down into the hillside; that the detail of the building and the glazing would not be appreciable from the primary views towards the site from the west; and that, as a result of this and the woodland buffers that surround Steart (and which would be enhanced by the scheme), it would not be out of character with the area (IR57). He also notes that to reduce the school's footprint as far as possible all its functions would be housed in one building (IR257). He agrees with the Inspector that despite its suggested resemblance to an agricultural building, the school would have an appearance that would be highly unusual in such a building (IR261). However, on the basis of the evidence before him, the Secretary of State concludes that the school is of considered design, one which is the result of the evaluation of a series of alternative options, and one which is simple and functional and aims to be sympathetic to its setting. He considers that the use of natural materials for the external facing of the building, together with condition 3 in the list of conditions set out in Annex A to this letter (which will enable the Council to consider the suitability of the materials to be used for the development), and the additional and reinforced planting and new hedgerows, would reduce the negative impact of the development on the landscape to a considerable extent, although he agrees with the Inspector that its bulk and form, which he does not consider unattractive, would remain conspicuous (IR300). For the reasons set out in this paragraph, the Secretary of State concludes that the development would have a moderately adverse impact on landscape character.

Visual amenity, tranquillity and lighting

15. The Secretary of State has carefully considered the Inspector's analysis of visual amenity, tranquillity and lighting at IR 264-271. However, he does not agree that the development, which would be visible from relatively few places (IR264), would be an incongruous urban element in the landscape (IR265) and he does not consider that it would be an unattractive element. The Secretary of State considers that any impact on visual amenity would be reduced to a considerable extent by the simple and functional design of the school, the use of natural materials for the external facing of the building, and the additional and reinforced planting and new hedgerows.
16. The Secretary of State notes the Inspector's assessment as to the likely impact of plant in the school building on the nearest dwellings (IR266 - 267). He considers that conditions 31-34, as set out in the conditions listed in Annex A to this letter, meet the tests of paragraph 206 of the Framework and he is satisfied that they are reasonable and necessary to ensure that the use of plant and amplified sound does not interfere with the tranquillity of the area or unduly disturb residents. In relation to noise from children's voices, for the reasons in IR268, the Secretary of State agrees with the Inspector that if children are being encouraged to take advantage of the site location and surroundings, as envisaged by the school, it is more likely that the children will be nearer Bucks

Mills and in the woodland itself, almost certainly in groups, than predicted in the noise assessment (IR268). He also agrees with the Inspector's assessment of the effect of noise on "The Berries" (IR269); and considers that it is likely that the current tranquillity of the combs would be affected by noise from time to time which would diminish the tranquillity of the AONB (IR269). For the reasons in IR270, the Secretary of State agrees with the Inspector that the development would lead to a general increase in artificial light which would be undesirable in the AONB (IR270).

Conclusion on landscape and visual amenity

17. For the reasons set out above, the Secretary of State concludes that the development would have a moderate impact on landscape character and visual amenity. He agrees with the Inspector that the development would conflict with the policy aims of the AONB (IR271). He also agrees with the Inspector that it would fail to meet the requirements of LP policy ENV5 (IR271). However he considers that it would meet the requirements of LP policy ENV1, because the benefits of the development outweigh the conservation interest, and would meet the requirements of LP policy ENV6 because, for the reasons set out in this letter, he considers there to be proven national public interest in the provision of additional choices in secondary education and no alternative site outside the AONB is available that is consistent with the schools ethos. He also concludes, for the reasons above, that the development would meet the requirements of paragraphs 17, 56 and 58 of the Framework. His conclusions on paragraph 115 of the Framework are set out in paragraph 44 of this letter.

Effect on heritage assets

18. In determining these appeals, the Secretary of State has had special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses, as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Secretary of State has carefully considered and paid particular attention to the Inspector's assessment of heritage matters at IR272-275, in addition to the evidence put to the inquiry in this respect and national policy in paragraphs 131-134 of the Framework.
19. For the reasons in IR272, the Secretary of State agrees with the Inspector that, despite their general dereliction, the contribution the curtilage buildings make to the setting of the listed building and its heritage significance remains considerable and the caravanning and camping activity does not detract from its heritage value (IR272). For the reasons in IR273, he agrees with the Inspector that the appellant's preferred option of removal of most of the buildings that supported the function of the listed building as a farmhouse would cause a degree of harm to its setting that would be 'less than substantial' in terms of paragraph 134 of the Framework (IR273). He agrees that the appellant's alternative proposal to retain buildings 2 and 3 would reduce the level of harm to heritage significance (IR274). He considers that condition 29 in the list of conditions set out in Annex A to this letter, which seeks to ensure that the setting of the listed building is protected and the heritage interest of the curtilage buildings retained, will ensure that these buildings remain in place. He considers that the degree of harm in that case would remain 'less than substantial'. While he considers that the new school building would be in a dominant position in

relation to the listed building, in the particular circumstances, he concludes that the degree of harm to the listed building and its setting would be 'less than substantial' in terms of paragraph 134 of the Framework as he considers that the development would not lead to substantial harm to or total loss of the significance of the heritage asset. For the reasons in IR275, he agrees with the Inspector that the degree of harm to the Buck Mills Hill Fort Scheduled Ancient Monument would also be 'less than substantial' (IR275).

20. Where the harm to the significance of a designated heritage asset is 'less than substantial' as set out in paragraph 134 of the Framework, the harm needs to be weighed against the public benefits of the proposal, including securing its optimum viable use. Having given careful consideration to these matters, including noting that the farmhouse would have a subsidiary educational use which would have benefits to the schoolchildren, the Secretary of State concludes that the harm to the designated heritage assets in this case should be afforded considerable weight.

Alternative sites

21. The Secretary of State has given careful consideration to the Inspector's assessment of alternative sites for the development in IR276-287. He agrees with the Inspector's conclusions in IR276-278 for the reasons given as to the lack of suitability of the sites at Seckington, Swanton and Merry Harriers.
22. The Secretary of State has carefully considered the Inspector's assessment of the Milky Way site in IR279-285. He agrees with the Inspector that there would be no harm to heritage interests at the Milky Way site (IR286). However, he considers, in agreement with the Inspector, that this location would add to the degree of built form in the countryside which is in principle undesirable (IR279). He is also concerned that the siting of the school there would lead to a sense of 'sprawl' (IR279). With regard to the access road, he notes that this would probably need to be longer than at Steart (IR281). He disagrees with the Inspector that the Milky Way site would still be in a strongly rural location (IR282), as he considers that with the inclusion of the holiday park the area would become a quasi-urban location, surrounded by plantation planting, a holiday park, a leisure complex and a wakeboarding lake (IR72). He considers that such a location would be contrary to the aims and objectives of the school which seeks to inculcate the countryside into its curriculum (IR72). The Secretary of State notes that whereas at Steart pupils would be able to pass straight down public footpaths to the combs and woods, access at Milky Way would have to be by motorised transport (IR282). He considers that this would be a significant disadvantage of the Milky Way site as compared with Steart, although he accepts that locating at Steart would also have to involve motorised transport from time to time (IR282). He agrees with the Inspector that physical education/orienteering using public rights of way would be much more restricted at the Milky Way site than at Steart (IR284) and he considers this to be another disadvantage of the Milky Way site although he accepts that there could be opportunities for alternative provision (IR284). He also notes that the absence of planning permission for the school at the Milky Way site is a source of considerable uncertainty for the school (IR286); that an application for a temporary school near the Milky Way site was refused by the Council in 2013 on highways and sustainability grounds (IR14); and that there were a significant number of objections to the Milky Way scheme (IR75). Given these objections,

and the Council's acceptance that there is potential for an application at the Milky Way site to be refused (IR76), the Secretary of State considers it far from certain that an application for planning permission at the Milky Way site would be favourably received by the Council (IR286). He therefore gives significant weight to the current lack of planning permission for the Milky Way site and, in the circumstances, the lack of certainty that any future application would be approved. He also considers that there is a lack of certainty that the owners of the Milky Way site would be willing to sell (IR76). Overall, for the reasons set out in this paragraph, the Secretary of State disagrees with the Inspector's conclusion that the Milky Way site has the potential to meet the need for a new school in another way, outside the AONB (IR287).

Habitats Regulations

23. As is required by the Conservation of Habitats and Species Regulations 2010 ("The Habitats Regulations")¹, the Secretary of State has considered whether the proposed development is likely to have a significant effect on a European site², including the Tintagel-Marsland-Clovelly Coast Special Area of Conservation (SAC), or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects.
24. In considering this matter the Secretary of State has had regard to the Council's Habitat Regulation Assessment Screening Matrix and Appropriate Assessment Statement of August 2014 which concluded that the proposed development would not have any combined impacts on the Tintagel-Marsland-Clovelly Coast SAC. He notes that in its appraisal the Council considered a recently approved application for the installation and operation of a solar farm but concluded that as this development would be on the other side of the A39 from the proposed school there would not be any combined impacts on the SAC. He also notes that the Council consulted Natural England who advised that the proposed school would be unlikely to have an effect on any European site either alone or in combination and could therefore be screened out from any requirement for further assessment.
25. As the Council's Habitats Regulations screening assessment took place in 2014, the Secretary of State consulted the Council to check whether there were other existing or reasonably foreseeable planned projects not considered at the time of the Council's screening assessment which may have an impact on the SAC either alone or in combination with other projects. The Council responded that the position regarding in combination impacts on the Tintagel-Marsland-Clovelly Coast SAC had not changed since 2014 and, therefore, that it considered its screening assessment remained robust.
26. The Secretary of State concludes that he has sufficient information before him to decide whether the proposed development is likely to have a significant effect on a European site. Having carefully considered this matter, he concludes that the development would not be likely to have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either

¹ The Habitats Directive (Council Directive 92/43/EEC) and the Birds Directive (Council Directive 2009/147/EC), as they relate to European sites, are primarily transposed in England under the Habitats Regulations.

² European sites include: special areas of conservation (SACs), special protection areas (SPAs), sites of Community importance (SCIs), and candidate SACs. As a matter of Government policy, possible SACs, potential SPAs and listed and proposed Ramsar sites and sites identified or required for compensatory measures for adverse effects on European sites are also treated as European sites.

alone or in combination with other plans or projects. Therefore, the Secretary of State has concluded that an Appropriate Assessment is not required.

Protected Species

27. The Secretary of State has considered the statutory duty to ensure that the impact of development on nature conservation interests is considered under the Wildlife and Countryside Act 1981 (as amended), the Natural Environment and Rural Communities Act 2006, and the Habitats Regulations. He has carefully considered the potential impacts of the appeal proposals on European Protected Species, which are strictly protected by the EU Habitats Directive. He notes that the ecology assessments carried out at the site include the findings that:

- Dormice are likely to be absent.
- The development is not considered to have significant impacts on badgers.
- The impacts on bird species is concluded to be low.
- The development would result in some displacement of reptiles and amphibians but would not impact adversely on the species presence on site.
- 11 bat species were identified in the transect surveys and 5 species identified through emergence surveys as using the redundant barns as roosts although the numbers of these are considered to indicate only a localised importance of the species.

28. The Secretary of State has had regard to the fact that the development will result in the destruction of bat roosts, and therefore that the works must be carried out under a European Protected Species Licence (EPSL) to be applied for from Natural England. He has therefore considered whether there is a reasonable prospect of an EPSL licence being granted. In considering this matter, he has had regard to Natural England's Guidance note '*European Protected Species and the Planning Process. Natural England's Application of the 'Three Tests' to Licence Applications*' (which sets out the approach that Natural England will take to apply the three statutory derogation tests) and to its Standing Advice on Protected Species. Having carefully considered the three tests for an EPSL licence (imperative reasons of overriding public interest; no satisfactory alternative; and favourable conservation status), the Secretary of State considers that there is a reasonable prospect of an EPSL licence being granted. He is also satisfied that the information provided by the applicant is sufficient to satisfy the requirements or 'three tests' for granting an EPSL required by the Habitat Regulations.

29. The Secretary of State also concludes that conditions 6, 9, 10 attached to the planning permission and conditions 3 and 4 attached to the listed building consent, which concern protected species, are appropriate and necessary and would meet the tests of paragraph 206 of the Framework.

Slow Worm

30. The Secretary of State has carefully considered the potential impacts of the appeal proposals on slow worms, which are protected by the Wildlife and Countryside Act 1981 and the Natural Environment and Rural Communities Act 2006. He notes that survey work carried out on site shows that the distribution

of slow worms is away from the area which is to be developed although there is potential during construction activities for the species to be affected and therefore it was suggested that a condition be imposed which requires submission of a construction mitigation scheme for slow worms. The Secretary of State considers that, with such a condition in place, the low numbers of slow worms present on-site will be safeguarded should construction activities affect the areas where they have been identified, and he considers that condition 8 attached to the planning permission is appropriate and necessary to address this and would meet the tests of paragraph 206 of the Framework.

Other Matters

Need for the school

31. The Secretary of State, like the Inspector, attaches no weight to arguments that the school, which is promoted as a free school under the Academies Act 2010 and supported by the Government, is inappropriate in principle (IR288). He agrees with the Inspector that, whilst there are spaces currently available in existing secondary schools in the area, undisputed estimates of population growth show there is likely to be unmet need sometime in the next decade (IR288). He has had regard to paragraph 72 of the Framework which says that the Government attaches great importance to ensuring a sufficient choice of school places is available to meet the needs of existing and new communities, and he agrees with the Inspector that the presumption in favour of state-funded schools and the need to establish and develop them attracts significant weight (IR288). He also notes that there is a deep felt appreciation of what the school has achieved so far by local parents and students at the school (IR288).

Highway safety

32. The Secretary of State has carefully considered the Inspector's analysis of Highway Safety at IR 289-293, the concerns raised by Alwington, Abbotsham, Parkham and Woolserly Parish Councils at IR 148-179, and has examined closely the proposed layout. In view of the Highway Authority's findings on this matter, to which he affords significant weight as a statutory consultee, he considers, in agreement with the Inspector, that the proposed layout does not form a reason to dismiss the appeals (IR292). He is satisfied that conditions 17-19 in Annex A to this letter meet the tests of paragraph 206 of the Framework and are necessary to ensure that adequate facilities remain available for the traffic attracted to the site, to ensure that sustainable travel measures to and from the school are implemented and used, and to maintain highway safety. He notes that a travel plan is the subject of a s106 unilateral undertaking (IR247) and condition 18 in Annex A to this letter requires this travel plan to be in place before occupation. Overall, applying paragraph 32 of the Framework, the Secretary of State concludes that the highways impacts in this case are less than severe in terms of the Framework.

Flooding and drainage

33. For the reasons in IR294-296, the Secretary of State agrees with the Inspector's conclusions on flooding, drainage and the potential for landslip.

Planning conditions and obligation

34. The Secretary of State has considered the schedules of conditions included within the IR, and the Inspector's comments at IR243-246. He has assessed the

proposed conditions in the light of paragraphs 203 and 206 of the Framework and the associated Planning Guidance, and is satisfied that they are reasonable and necessary and meet the tests of paragraph 206 of the Framework.

35. The Secretary of State has also considered the signed and dated Unilateral Undertaking; the Inspector's comments on this at IR247-249; paragraphs 203-205 of the Framework and the associated Planning Guidance. He agrees with the Inspector that the provisions offered by the Unilateral Undertaking would accord with the tests set out at paragraph 204 of the Framework and Regulation 122 of the CIL Regulations 2010 as amended.

Planning balance and overall conclusion

36. The Secretary of State has given very careful consideration to the Inspector's overall conclusions in IR297-302 and to his recommendation at IR303. He agrees with the Inspector that the R39 Academy is a thriving school which provides choice and an inspiring educational experience, in difficult circumstances, and he has had regard to the fact that its site selection process has fixed on Steart Farm as the best option for a new building (IR297). The Secretary of State has also carefully considered the appellant's concern that further delay would have serious implications for the school because of its lack of accommodation (IR301). He agrees with the Inspector that the advantages of a school location with an inspirational setting must not be underplayed, and that the proposed location is likely to encourage children to attend school, enjoy their experience there and relate their studies to future careers in, among other matters, conservation and science (IR302). The Secretary of State gives significant weight to these considerations.
37. The Secretary of State agrees with the Inspector that Steart Farm campsite is of high environmental value in unspoilt surroundings; that its sensitivity to this development is not significantly reduced compared to surrounding land; and that although previously developed, it is essentially grass and vegetation, and contributes to the character of the AONB (IR298). He also agrees with the Inspector that extensive changes would be required to the landform to accommodate the chosen form of the new school building and associated vehicle parking (IR298). However, he does not agree that the development, which would be visible from relatively few places, would be unsympathetic in form and detail design to the landscape (IR298). He agrees with the Inspector that the increased level of artificial light would detract from dark skies that are a feature of the area; and that noise from students is likely to affect tranquillity (IR298). The Secretary of State considers that there would be 'less than substantial harm' in terms of the Framework to the setting and heritage significance of the listed building and the Scheduled Ancient Monument. He affords considerable weight to this harm.
38. 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 indicate otherwise. The Secretary of State notes that it is common ground among the parties that the application constitutes a departure from the development plan because it is a major development in the AONB, which would detract from the character and appearance of the area and would not fall within any of the categories in policy DVT2C (IR251). He notes that

paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty; and that paragraph 116 of the Framework states that planning permission should be refused for major development in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. The Secretary of State has assessed the appeal proposals against the criteria in paragraph 116 of the Framework.

The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy

39. The Secretary of State agrees with the Inspector that there is likely to be unmet need for secondary school places in the area in the next decade (IR288). He attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities, and agrees with the Inspector that the presumption in favour of state-funded schools and the need to establish and develop them attracts significant weight (IR288). He also notes that there are a significant number of economic and social benefits associated with the development and that the applicant estimates that it would lead to over 70 jobs, construction employment, and nearly £1.7 million brought into the economy (IR90). For these reasons, he agrees with the Inspector that the appeal proposals pass the need test in paragraph 116 of the Framework (IR300).

The cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way

40. The Secretary of State notes that the appellant sought to agree a location for the new school and a temporary school with the Council in line with paragraph 72 of the Framework, although for various reasons this was unsuccessful; and that the exhaustive site selection process and the process leading up to the inquiry led to the identification of other sites, one of which, the Milky Way site, is preferred by the Council (IR300). While he agrees with the Inspector that the Milky Way site has advantages in terms of: access and a larger area of usable land, and would not harm the character of a designated landscape, he does not consider these are sufficient to overcome its disadvantages which, in summary, he considers to be: that access to the countryside would have to be by motorised transport; physical education/orienteering using public rights of way would be much more restricted; and that it would lead to a sense of 'sprawl', with the area at the Milky Way site becoming a quasi-urban location, surrounded by plantation planting, a holiday park, and a leisure complex. He considers that such a location would be contrary to the aims and objectives of the school which seeks to inculcate the countryside into its curriculum. Furthermore, the Secretary of State notes that there were a significant number of objections to the Milky Way scheme. Given these objections, and the Council's acceptance that there is potential for an application at the Milky Way site to be refused, he considers there to be considerable uncertainty as to whether an application for planning permission there would be favourably received by the Council. He also considers there to be uncertainty as to whether the owners of the Milky Way site would be willing to sell. Overall, for the reasons set out in this paragraph, and in paragraph 22 above, the Secretary of State disagrees with the Inspector's conclusion that the

Milky Way site has the potential to meet the need for a new school in another way, outside the AONB (IR287).

Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated

41. The Secretary of State agrees with the Inspector that any detrimental effect on the character of the AONB and visual amenity caused by the development would be permanent, as would the 'less than substantial harm' to the significance of the designated heritage assets (IR300). He considers that while the recreational experience of some visitors may be diminished (IR300), recreational opportunities overall would not be adversely affected. He disagrees with the Inspector that the design of the building would be unattractive and add significantly to the harm caused. For the reasons in paragraph 14 above, he considers its design to be simple and functional and that it aims to be sympathetic to its setting (IR300). He considers that the use of natural materials for the external facing of the building, together with condition 3 in the list of conditions set out in Annex A to this letter, which will enable the Council to consider the suitability of the materials to be used for the development, and the additional and reinforced planting and new hedgerows, would reduce the negative impact of the development on landscape character to a considerable extent, although he agrees with the Inspector that its bulk and form, which he does not consider unattractive, would remain conspicuous (IR300).

Conclusion

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State concludes that the appeal proposals would not be in accordance with the development plan as a whole. The Secretary of State has had special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses, as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. For the reasons set out in this letter, the Secretary of State has given considerable weight to the less than substantial harm to the designated heritage assets. The Secretary of State has gone on to consider whether there any other material considerations that indicate that the appeal proposal should be determined other than in accordance with the development plan including considering compliance with the Framework.
43. The Secretary of State has had regard to paragraph 72 of the Framework and the Joint Policy Statement and considers for the reasons above that the presumption in favour of state-funded schools and the need to establish and develop them attracts significant weight in favour of the appeal proposals. The Secretary of State agrees with the Inspector that the advantages of an inspirational setting for the school must not be underplayed, and that it is likely to encourage children to attend school, enjoy their experience there and relate their studies to future careers in conservation, science and other things (IR 302). He notes that whereas at Steart pupils would be able to pass straight down public footpaths to the combs and woods, access at Milky Way would have to be by motorised transport (IR282) and he considers that this would be a significant disadvantage of the Milky Way site. He also considers that physical

education/orienteering using public rights of way would be much more restricted at the Milky Way site (IR284) and he considers that this would be another disadvantage of this site. He further considers that this location would add to the degree of built form in the countryside which is in principle undesirable (IR279); and that the siting of the school there would lead to a sense of 'sprawl' (IR279). He notes that the absence of planning permission for the school at the Milky Way site is a source of considerable uncertainty for the school (R286); and, on the basis of the evidence before him, he considers there to be considerable uncertainty as to whether an application for planning permission there would be granted by the Council.

44. The Secretary of State considers it to have been demonstrated that the disadvantages to the public interest of the proposed development at Steart Farm within the AONB are outweighed by the significant benefits of the proposed school at the appeal site. For the reasons set out in this letter, the Secretary of State concludes, applying paragraphs 115-116 of the Framework that: (i) there are exceptional circumstances and (ii) it has been demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest. Overall, and for the reasons above, the Secretary of State concludes, in his planning judgment, that the material considerations in this case justify determining the appeals other than in accordance with the development plan.

Public Sector Equality Duty

45. The Secretary of State has considered the Equality Act 2010. Section 149 of the Equality Act 2010 introduced a public sector equality duty (PSED), that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
46. Paragraph 1(1) of Schedule 18 of the 2010 Act states that the PSED, so far as relating to age, does not apply to the exercise of a function relating to the provision of education to pupils in schools or the provision of benefits, facilities or services to pupils in schools. The Secretary of State considers that this exception is applicable in this case. With regards to the profile of the school, the Secretary of State considers that there are no specific issues identified that would adversely impact on persons with protected characteristics. The Secretary of State considers that there is no specific evidence that the grant of planning permission is likely to have any detrimental effect or a disproportionate impact on persons who share other relevant protected characteristics. For these reasons, and having had due regard to the requirements of the Public Sector Equality Duty, the Secretary of State does not consider that this decision is likely to have a detrimental effect or a disproportionate impact on persons who share a relevant protected characteristic.

Formal decision

47. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your clients' appeals and

grants planning permission and listed building consent for the construction of a new school (education use D1) of 5950 square metres with associated car parking and landscaping; alterations to the existing access to the A39; demolition of curtilage of listed buildings, in accordance with application Refs 1/0126/2014/FULM and 1/0127/2014/LBC, dated 8 February 2014, at Steart Farm, Bucks Cross, Bideford, Devon, EX39 5DW subject to the conditions listed in Annex A to this letter.

48. 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.
49. 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

50. 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 date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
51. A copy of this letter has been sent to Torridge District Council, Alwington, Abbotsham, Parkham and Woolsery Parish Councils and other parties who asked to be informed of the decision.

Yours faithfully

Lindsay Speed

Lindsay Speed

Authorised by Secretary of State to sign in that behalf

Conditions

PLANNING

- 1 The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
- 2 The development hereby permitted shall be carried out in accordance with the following plans:
 - PL- 001 B Site Location Plan (but see condition 29 below)
 - PL- 002 B Block Plan (but see condition 29 below)
 - PL- 005 A Topographical Survey
 - PL- 010 A Ground Floor Plan
 - PL- 011 A First Floor and Second Floor Plan
 - PL- 012 A Roof Plan
 - PL- 020 B Elevations 1 of 2
 - PL- 021 B Elevations 2 of 2
 - PL- 030 A Building Sections
 - L9-001_LANDSCAPE_SITE_PLAN_REV_10
 - L9-004_Landscape_Area_Schedule_Rev_03
 - L9-005_Access_and_Zoning_Strategy
 - L9-006_Tree_Protection_and_Removal_Plan
 - L9-007_Soft_Landscape_Strategy_Rev_05
 - L9-008_Landscape_Site_Sections_REV_04
 - L9-009_Landscape_Site_Sections_REV_03
- 3 Before the commencement of development, details and representative sample panels of the colour and texture of the external facing and roofing materials to be used in the construction of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in to match the approved panels and in accordance with the approved details.
- 4 The construction of the development shall not take place otherwise than between 0700hrs and 1900hrs on Mondays to Fridays, Saturdays between 0800hrs and 1300hrs and at no time on Sundays and Bank Holidays.

- 5 No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction; and
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.
 - viii. a specification, method statement and scheme of monitoring rainfall and earthworks on the site to ensure that no landslip occurs during construction.
- 6 Before the commencement of development, a detailed Method and Mitigation Scheme for bats including a timetable shall be submitted to and approved by the Local Planning Authority. The scheme shall include roosts and low level lighting along identified flight lines in accordance with the recommendations in the ES dated 8 February 2014. The development shall then be implemented in accordance with the approved Method and Mitigation Statement and timetable and any required modifications to the Statement as a result of obtaining a European Protected Species Licence must be submitted to and approved by the Local Planning Authority.
- 7 Before the commencement of development, fencing shall be erected in accordance with the approved tree protection plan L9-006. The development shall then be carried out in accordance with the plan and the fencing shall be maintained until the development has been completed and all equipment, machinery and surplus materials have been removed from the site.
- 8 Before the commencement of development, a slow worm mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority. The development shall not proceed except in complete accordance with the approved strategy.
- 9 Before the commencement of development, a biodiversity mitigation and enhancement plan including a timetable shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details and timetable; and the

mitigation and enhancement plan completed in full prior to occupation of the development. After first occupation, unless otherwise agreed in writing by the Local Planning Authority, the mitigation measures shall be permanently maintained and retained in accordance with the approved details.

- 10 No development shall take place, including demolition, on any existing structures between 1st April and 31st August, unless prior inspection has been carried out by a suitably qualified ecologist whose findings confirm that there are no breeding birds present within the structures and these findings have been reported and acknowledged in writing by the Local Planning Authority.
- 11 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. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures including furniture, play equipment, refuse or other storage units, signs and lighting; proposed and existing functional services above and below ground including drainage power, communications cables, pipelines indicating manholes; and retained historic features.
- 12 Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme.
- 13 All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 14 If within a period of five years from the date of the planting of any shrub or tree, that shrub or tree, or any shrub or tree planted in replacement for it, is removed, uprooted, destroyed, dies or becomes seriously damaged or defective, another shrub or tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
- 15 Before the commencement of development, the site access road shall be widened to not less than 6.1 metres in accordance with drawing no. 13092/C001 rev C and retained as such thereafter.
- 16 Before the commencement of development, visibility splays shall be provided and laid out at the site access in accordance with drawing no. 13092/C001 rev C and retained as such.
- 17 No occupation of the development shall occur until the access, parking facilities, bus turning area, access drive and access drainage has been completed in accordance with drawing nos. L9-001 Rev 10 and L9-005. These areas shall thereafter be retained and maintained for access and parking and for no other purposes.

- 18 The use hereby permitted shall not commence until a detailed Travel Plan has been submitted and approved in writing by the local planning authority. The Travel Plan shall set out the measures to be taken to encourage the use of modes of transport other than the car by all users of the building, including staff and visitors.
- 19 No occupation of the development hereby permitted shall take place until the bus lay-bys on the A39, the pedestrian crossing facilities and pedestrian access to the site as shown on plan 13092/T12 are completed.
- 20 No external lighting other than that detailed in drawing No. E900 and E901 received 20.02.2014 shall be installed on the site.
- 21 No occupation of the development hereby permitted shall take place until a scheme detailing the times of lighting operation has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any occupation takes place.
- 22 No development shall take place until a scheme for the provision of surface water management has been submitted to and approved in writing by the Local Planning Authority. The design shall include percolation tests to BRE365, soakaways sized for the 100 year storm and a 30% climate change allowance. The details shall include:
- i. details of the drainage during the construction phase and a timetable indicating at what stage each part of the drainage scheme is to be completed relative to the development as a whole;
 - ii. details of the final drainage scheme;
 - iii. provision for exceedance pathways and overland flow routes;
 - iv. a timetable for construction;
 - v. a construction quality control procedure; and
 - vi. a plan for the future maintenance and management of the system.

The development shall be completed in accordance with the approved scheme and timetable before occupation. The scheme shall thereafter be managed and maintained in accordance with the approved details.

- 23 No development shall take place until full details of a scheme detailing the method of treatment of waste water and sewage, operation of the school's waste water and sewage system and compliance monitoring of discharge to watercourses has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any occupation of the development hereby approved.
- 24 The development hereby permitted shall not be occupied until a community use scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the wider use of the

site by the community. The approved scheme shall include details of pricing policy, hours of use, management responsibilities, a mechanism for review and a programme for implementation. The approved scheme shall be implemented upon the commencement of the school/educational use of the site and shall be complied with for the duration of the use of the site as a school/educational facility.

- 25 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), (or any Order revoking and re-enacting that Order) no development of the types described in Part 32; of Schedule 2, other than that hereby permitted shall be carried out without the further grant of planning permission.
- 26 No development shall take place until a scheme of investigation, recording and analysis of the historic buildings on the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.
- 27 No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 28 The development shall not be used other than between the following times: 0700 - 2000 hours in the months of October – March (inclusive) 0700 – 2100 hours in the months of April – September.
- 29 Notwithstanding the application plans, Buildings 2 and 3 shall remain in place as per amended plan references PL-002 Rev C, L9-001 Rev 13, L9-007 Rev 7 and the development shall not commence until a scheme of works to stabilise Buildings 2 and 3 has been submitted to and approved in writing by the Local Planning Authority.
- 30 No development shall take place until a scheme to prevent internal lights being visible from outside during hours of darkness has been submitted and approved in writing by the Local Planning Authority. The scheme shall be implemented and operational before any occupation takes place and shall be retained and maintained as such.
- 31 In respect of properties to the north of the A39 and outside of the application site boundary, the rating level of the noise emitted from the premises from fixed plant shall not exceed a level of 25dB(A) outside any dwelling, at a distance not less than 1 metre from any façade of that dwelling containing a window to a habitable room, at any time. The measurements and assessment shall be made in accordance with BS4142:2014.
- 32 In respect of properties to the south of the A39: (a) between the hours of 19:00 to 08:00 the rating level of the noise emitted from the premises from fixed plant shall not exceed a level of 25dB(A) and (b) between the hours of 08:00 - 19:00 the rating level of the noise emitted from the premises from fixed plant shall not exceed a level of 5dB(A) below the minimum external

background noise, in both cases to be measured outside of any dwelling at a distance not less than 1 metre from any façade of that dwelling containing a window to a habitable room. The measurements and assessment shall be made in accordance with BS4142:2014 and the background level should be expressed in terms of the lowest LA90, 30 mins during 08:00 - 19:00.

- 33 No sound reproduction equipment shall be audible at the application site boundary at any time.
- 34 The extract and ventilation equipment and passive air inlet grilles shall be maintained in accordance with the manufacturer's instructions. Records of maintenance work shall be retained on site and kept for inspection by the Local Planning Authority.

LISTED BUILDING

- 1 The works to which this consent relates must be begun not later than the expiration of three years beginning with the date on which this consent is granted.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

PL- 001 B Site Location Plan (see condition 6 below)

PL- 002 B Block Plan (see condition 6 below)

PL- 005 A Topographical Survey

PL- 010 A Ground Floor Plan

PL- 011 A First Floor and Second Floor Plan

PL- 012 A Roof Plan

PL- 020 B Elevations 1 of 2

PL- 021 B Elevations 2 of 2

PL- 030 A Building Sections

L9-001_LANDSCAPE_SITE_PLAN_REV_10

L9-004_Landscape_Area_Schedule_Rev_03

L9-005_Access_and_Zoning_Strategy

L9-006_Tree_Protection_and_Removal_Plan

L9-007_Soft_Landscape_Strategy_Rev_05

L9-008_Landscape_Site_Sections_REV_04

L9-009_Landscape_Site_Sections_REV_03

- 3 Before the commencement of development, a detailed Method and Mitigation Statement for bats shall be submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved Method and Mitigation Statement and any modifications to the Statement as a result of requirements of a European Protected Species Licence, must be submitted to and approved by the Local Planning Authority.
- 4 No development shall take place, including demolition, on any existing structures between 1st April and 31st August, unless prior inspection has been carried out by a suitably qualified ecologist whose findings confirm that there are no breeding birds present within the structures and these findings have been reported to the Local Planning Authority in writing.
- 5 Before the commencement of development, a scheme of investigation, recording and analysis of the historic buildings on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.
- 6 Notwithstanding the application plans, Buildings 2 and 3 shall remain in place as per amended plan references PL-002 Rev C, L9-001 Rev 13, L9-007 Rev 7 and the works shall not commence until a scheme of works to stabilise Buildings 2 and 3 has been submitted to and approved in writing by the Local Planning Authority.

ANNEX B**Representations received too late to be considered by the Inspector**

Name	Date of correspondence
Graham & Diana Shackson	15 May 2015
Simon Shackson	Undated
N Shackson	Undated
Evie Shackson	Undated
Jean Downton	Undated
Julian Downton	Undated
S G Elliston	Undated
D S McDonagh	Undated
Andrew Nimmo	Undated
Tom Elliston	Undated
Laura Spittles	Undated
Philip Spittles	Undated
Kay Elliston	Undated
A Kent Habers	Undated
Mrs C K Edmonds	Undated
G Edmonds	Undated
A Woodrow	Undated
D Woodrow	Undated
Judith Barnes	Undated
William Barnes	Undated
Mrs Hockin	Undated
Dennis Ryalls	Undated
D Ryalls	Undated
Amy Ryalls	Undated
J Kinnersley	Undated
Mrs Kalbery	Undated
Carole Smith	Undated
Jane Latchem	Undated
David Latchem	Undated
Helen Colwill	Undated
J Wannacott	Undated
Mrs H J Wannacott	Undated
Lesley Ann Paine	Undated
B Harding	Undated
Amanda Ley	Undated
Maria Barraclough	Undated
Peter Barraclough	Undated
Margaret & Graham Braund	Undated
Paul A Hartley	Undated
Lucy Tannett	Undated
Linda Atkins	Undated
Sybil F M Williams	Undated
D B Clifton	Undated
J G L Nichols	Undated
John & Ruth Rawlings	Undated

Katherine Lambert	Undated
D G Robinson-Walsh	Undated
Peter Robinson	Undated
Linda Kinsella	Undated
Wendy Heard	Undated
Karen Tamplin	Undated
M Smedley	Undated
Louis Roncarelli	Undated
Dr Kate Procter	Undated
David Colsey	Undated
L Colsey	Undated
Simeona Harevy	Undated
Noreen Shakespeare	Undated
Louise Hammond	Undated
Christine Seagal	Undated
John & Jennie Keeler	Undated
Les Barker	Undated
Margaret Bills	Undated
Christine Wagstaff	Undated
L M Hersey	Undated
M Staunton	Undated
Julia Nicholls	Undated
Greg Ede	Undated
Ann Ede	Undated
David Brenton	Undated
Rachel Mal	Undated
C Bannister	Undated
Mrs F K Broadfield	Undated
RF Broadfield	Undated
AD White	Undated
Maureen A Read	Undated
Catherine Jones	Undated
Sarah White	Undated
Liesl Tiessen	Undated
David Jameson Evans	Undated
Sylvie Barham	Undated
Anne Turner	Undated
Rob Turner	Undated
Caroline Wright	Undated
John G Clark	Undated
Fiona Cameron	Undated
T J Armstrong	Undated
T A Armstrong	Undated
Rosemary George	Undated
C J Galleymore	Undated
Alan Lewis	Undated
Anna Jameson Evans	Undated
Susan & Gabriel Lavelle	Undated
Jane Barham Carter	Undated
S Salvidant	Undated
Jane Grove	Undated
C Farge	Undated
Ursual Farge	Undated

Julian Farge	Undated
Eric Farge	Undated
Richard Field	Undated
Patricia Field	Undated
Caroline Taylor	Undated
M J Clark	Undated
Lysbeth White	Undated
Leona Morgan	Undated
A Miller	Undated
Mrs A D Owen	Undated
P J Thorogood	Undated
Chris Jones	Undated
Sarah Taylor	Undated
R S Balkwell	Undated
E Balkwell	Undated
Jamie Lee Brown	Undated
Mrs A M de C Glen	Undated
Z Beach	Undated
H S Stevenson	Undated
Lewis Andrew – Torridge District Council	21 July 2015
John & Jo Stevens	15 September 2015
Alan Lewis	5 October 2015
John Stevens	5 October 2015
Chris & Kate Jones	17 October 2015

Report to the Secretary of State for Communities and Local Government

by Paul K Jackson B Arch (Hons) RIBA

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

Date: 24 July 2015

Town and Country Planning Act 1990
Planning (Listed Buildings and Conservation Areas) Act 1990
Torrige District Council

Appeal by
Route 39 Academy Trust and Willmott Dixon

Inquiry opened on 2 June 2015
Site visit held on 11 June 2015

File Ref(s): APP/W1145/A/14/2228355 and APP/W1145/E/14/2228356

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**Appeal Refs: APP/W1145/A/14/2228355 and APP/W1145/E/14/2228356
Stear Farm, Bucks Cross, Bideford, Devon EX39 5DW**

- The appeals are recovered for decision by the Secretary of State by a direction under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, and paragraph 3 of Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- The appeals are made by Route 39 Academy Trust and Willmott Dixon against the decisions of Torridge District Council.
- The applications Ref 1/0126/2014/FULM and 1/0127/2014/LBC, dated 8 February 2014 were refused by notices dated 4 September 2014.
- The development proposed is construction of a new school (education use D1) of 5950 square metres with associated car parking and landscaping; alterations to the existing access to the A39; demolition of curtilage listed buildings.

Summary of Recommendation: That the appeal is dismissed.

Preliminary Matters

1. The Inquiry opened on 2 June 2015 and sat for 7 days, closing on Thursday 11 June. An accompanied site visit took place on 11 June to the appeal site, the existing school premises in Clovelly and a potential alternative school site at the Milky Way. Unaccompanied, I visited at other times local footpaths, other alternative sites and viewpoints identified at the Inquiry and in representations.
2. The application and appeal forms describe the site location as being at Horns Cross. At the Inquiry, it was agreed that the correct address is Bucks Cross and I have considered the appeals accordingly.
3. **Prior to the Inquiry, 'Rule 6' status was granted** to a group of Parish Councils from Alwington, Abbotsham, Parkham and Woolsery (AAPWPC). The AAPWPC was not formally represented at the Inquiry. At their request, no witnesses were presented on their behalf and no other witnesses were cross-examined¹. However, the AAPWPC observed the proceedings at all times.
4. A signed and dated section 106 (S106) unilateral undertaking (UU) has been submitted by the appellant. The aim of this is to facilitate and implement a Travel Plan and Bus Management Plan. I consider this later in the Report².
5. A signed Statement of Common Ground (SOCG) was submitted prior to the Inquiry³. Prior to the Inquiry, the Council withdrew the first and second reasons for refusal relating to the effect on highway safety and the sustainability of the location. I have taken this into account.
6. Prior to the Inquiry, the appellant offered to retain rather than demolish buildings 2 and 3 which fall within the curtilage of the listed building at Steart Farm. This is proposed to mitigate the alleged harm to heritage interests⁴. The Council objected to Listed Building Consent being granted on the grounds that the demolition of curtilage listed buildings in the farmstead would substantially harm its setting. The appellant ideally wishes to demolish buildings 2 and 3 but offers to retain them if the decision maker considers they contribute to heritage

¹ See statement at Doc 8

² See Doc 46

³ Doc 47

⁴ See plan at drawing ref OXF8732 showing location and numbering of buildings at Steart Farm

significance to the extent that the reason for refusal could be overcome. At the start of the Inquiry, the views of the parties were sought on this matter. I **decided that no party's interests would be prejudiced if this option was** considered at the Inquiry.

7. The applications were accompanied by an Environmental Statement (ES), prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended. Further to a request from the Council, additional information was submitted on the 20 sites discounted in the ES. This is contained in an Alternative Site Assessment (ASA) document. This is in 2 volumes and the introduction provides a helpful insight into the site selection process initially adopted by the appellant and an update carried out in 2015.
8. At the site visit, having regard to the slope of the land and the location of watercourses, and in view of the proposal to create large soakaways and relocate a substantial amount of excavated material on the site, I requested further information on the potential for slope failure particularly following heavy rain which could affect people living in Bucks Mills. The submitted Letter Report⁵ has been taken into account.

The site and surroundings

9. The appeal site is a camping and caravan site accessed from the A39 trunk road between Bucks Cross and Waytown. The site consists of several former fields surrounding a Grade II listed farmhouse with associated traditional stone farm buildings in various states of repair. It is common ground that it is previously developed land by virtue of its approved planning use. The site has direct access to a network of footpaths, through woodland belonging to the Woodland Trust, to Bucks Mills, a former fishing hamlet lying in a wooded combe⁶. The whole of the site lies within the North Devon Coast Area of Outstanding Natural Beauty (AONB), the defined Heritage Coast, the locally designated Coastal Preservation Area (CPA) and is within North Devon's UNESCO Biosphere Reserve. There is a Scheduled Ancient Monument (SAM) approximately 0.5km north of the site on a headland and adjacent to the South West Coast Path (SWCP), a National Trail.
10. The site is attractive meadowland with a mixture of traditional Devon hedgerows and new hedges separating camping areas. It enjoys a view across Bideford Bay. A small number of static caravans lie north of Steart Farmhouse, which has been restored and is in good condition. To the north, the land falls away at an increasing angle into the woods. To the south, a mixed area of trees and scrub separates the site from the single carriageway A39, which at this point has been improved with a long gentle curve. It has a 60 mph speed limit.

The proposal

11. The school would be housed within a single building measuring 100 metres (m) in length by 36 metres in width. It would have a maximum height of 9.3m over the sports hall area and 7.6m across the remaining roof area. The materials proposed for the building are red brick to the ground floor with European

⁵ Doc 48

⁶ A helpful photograph of Bucks Mills is at page 67 of the AONB Management Plan (Ms Mitchell's Appendix 6). The development would be above the woodland in the centre top right of the picture.

redwood timber vertical cladding on the first floor, and a dark grey membrane forming the roof covering. The ground floor would be cut into the upper part of the site. Seen from the main approach from the south, the school building would appear as a single storey building with a bridge to the main entrance.

12. An area would be provided to the south of the building which provides coach drop off, parking, waiting and drop off facilities for parents and visitors. A further car park would be provided to the west of the access road for staff at the school. The Grade II listed Steart Farmhouse is to be retained to the north west of the school building, and three (or one, if buildings 2 and 3 are retained) of its curtilage structures are to be removed as part of the development, along with a number of minor ancillary campsite buildings. Outdoor play space would be provided immediately to the north of the building and further land to the north would be utilised for outdoor activities.
13. The existing access to the site from the A39 would be widened. Existing visibility splays would be maintained. A right hand turn lane would be provided on the A39 along with bus lay-bys to cater for waiting during pick up times at the school. A pedestrian island would be provided to the west of the access linking to the adjacent side of the A39. The proposed arrangement is shown on drawing 13092/C001 rev C⁷.

Background

14. It is important that the context behind the application is understood. The Route 39 Academy (R39) has been in existence since September 2013 and is funded by the Department for Education (DfE). It currently operates from higher Clovelly in various temporary and public buildings, but is short of space due to expansion with each new academic year. The appellant examined potential sites in 2012/13 before submitting the application, in conjunction with Council officers. A shortlist of 5 sites, including Steart Farm, was drawn up which satisfied 4 central criteria; availability, suitability, affordability and a planning appraisal⁸. Officers endorsed Steart Farm as the most preferable in their Report to the Torridge Planning Committee. Following the subsequent refusal by the Council members, and the publishing of the statement of case prepared by the Council for this appeal, the appellant carried out an updated ASA with additional criteria, identifying 8 site options⁹ including 4 at the Milky Way Adventure Park (referred to hereafter as the Milky Way). In the meantime an application for a temporary school near the Milky Way was refused, against officer recommendation, in 2013, on highways and sustainability grounds. For the Inquiry, the Council identified 4 alternative sites, at Milky Way (in a different location to that proposed for the temporary school), Swanton, Merry Harriers and Seckington. The Council has prepared a Landscape and Visual Impact Assessment (LVIA) for the Inquiry¹⁰. The **appellant's consultant** has also prepared an LVIA **for the Council's suggested** Milky Way site and a comparative site assessment¹¹.

⁷ Doc 33

⁸ See 2015 ASA paragraph 3.3

⁹ Ms Mitchell's Appendix 1

¹⁰ Mr Leaver's Appendix 1

¹¹ Ms Mitchell's Appendices 7 - 12

Planning Policy

15. For the purposes of section 38(6) of the Act, the development plan consists of saved policies of the Torridge District Local Plan (LP) of 2004. Saved policies of the LP include ENV1, which is described as a keynote policy that sets conservation needs at the heart of decision-making. It advises that development will be expected:
- (1) (a) to protect or enhance the distinctive architectural, historical, archaeological, geophysical, landscape, geological, ecological, and hydrological attributes, characteristics, and features of the area;
(b) to incorporate conservation and where possible enhancement measures within the overall scheme design, layout, and phasing where an appropriate assessment establishes conservation priorities; and
(c) to maintain or where possible enhance biodiversity, the richness of wildlife habitats, and the variety of natural interest.
 - (2) Where the benefits of development outweigh the conservation interest, built and /or natural environmental loss and disturbance shall be minimised and any mitigation measures required to offset such effects may be secured by a planning condition or by a planning obligation which advises that development is expected to protect or enhance the distinctive characteristics of an area including landscape; and to maintain and where possible enhance biodiversity.
16. The explanatory text to ENV1 indicates that the important features of the environment that must be protected and where appropriate enhanced are as follows:
- **Distinctive landscape characteristics**
 - **The special qualities of designated areas**
 - **The distinctive form and setting** of settlements
 - **The unspoilt nature of the rural area**
 - **The tranquillity of the countryside**
 - **The open and undeveloped nature of the coast**
 - **Buildings and structures of special townscape, historic, or architectural interest**
 - **Landscapes and sites of historic, geological, and archaeological interest**
 - **Landmarks and spaces of amenity value or cultural interest**
 - **Public access to the open space and countryside recreation networks**
 - **The interconnectivity and diversity of wildlife habitats**
 - **The quality of natural ecosystems, including water and air quality**
 - **The natural habitat of protected species.**
17. Policy ENV2 is referred to in the Listed Building Consent refusal. It states that development proposals, including works, that affect a Listed Building or its setting will be determined having regard to the desirability of preserving the building, its setting, or any features of special architectural or historic interest that it possesses. Development affecting a building of local importance will be permissible provided that the general architectural or historic character will not be harmed and the removal of features that contribute to the character, appearance, and architectural or historic interest will be avoided.

18. Policy ENV5 relates more specifically to countryside protection and landscape conservation, advising that different landscape areas are to be protected on the basis of their distinctiveness. Development will be expected to conserve or enhance the natural and historic character, natural beauty, and amenity of the Torridge landscape on the basis of local landscape character, historical and cultural associations, and the landscape priorities defined in Schedule E, which includes Bideford Bay as a conservation priority.

19. Policy ENV6 covers designated landscape areas and advises that:

- (1) Development that would affect an AONB will be permitted only where:
 - (a) it will not harm the landscape and scenic beauty of the designated area;
 - or
 - (b) in the case of major development, there is a proven national public interest at stake and no alternative site outside the AONB is available.
- (2) In the Areas of Great Landscape Value shown on the Proposals Map, development should not detract from the particular landscape qualities and characteristics that have led to the designation of that area.
- (3) Within the Coastal Preservation Area as defined on the Proposals Map, development will be permitted only where there is a particular and proven need for that development to be located within the CPA, including where it supports public access and enjoyment of the coast, and where the need outweighs any harm to the unspoilt nature of the area.
- (4) Within the Rural Gaps as defined on the Proposals Map, development will be expected to mitigate any adverse effect on the natural appearance of the designated area or the separate identity of settlements with measures that seek to maintain or enhance the surrounding landscape.

20. The explanatory text notes that the policy provides for development necessary for the economic or social wellbeing of such areas. Incompatible developments in the AONB would include the following:

- **Development that would have an adverse impact on the landscape, on the public enjoyment of the area, or on the local community;**
- **Large-scale development that could be accommodated elsewhere, or the need for which could be resolved in some other way.**

The area priority for the AONB is the conservation and enhancement of natural beauty.

21. Policy DVT2C states that in the countryside away from the villages development should not detract from the character and appearance of the area. Subject to that general consideration, it says that certain types of development will be allowed including:

- The conversion of a previously used building or a redundant agricultural building for employment reuse;
- Agricultural, countryside recreational, and /or identified types of tourist development and /or other development that is related to appropriate farm diversification;

-
- The alteration, improvement, redevelopment and /or minor extension of a building for purposes directly related to its established use; and
 - The provision of small scale rural business developments and other local services and /or utilities for which there is a proven need.
22. Turning to national policy, the National Planning Policy Framework (NPPF) has a number of core principles at paragraph 17, including recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it; contributing to conserving and enhancing the natural environment and reducing pollution, encouraging the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value; and conserving heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.
23. At paragraph 72, the NPPF advises 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. 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.
24. Paragraph 115 says that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 116 goes on to state that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:
- The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
 - The cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
 - Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
25. The LP is in the process of being replaced. The North Devon and Torridge Local Plan 2011-**2031 achieved formal 'publication' on the 26th June 2014**, but is not at an advanced stage and cannot be given any significant weight.
26. The Secretary of State for Communities and Local Government and the Secretary of State for Education published a policy statement in August 2011¹² which sets **out the Government's commitment to support the development of state-funded**

¹² Included at Appendix 3 of Mr Hunt's evidence

schools and their delivery through the planning system. It states: *'The Government wants to enable new schools to open, good schools to expand and all schools to adapt and improve their facilities. This will allow for more provision and greater diversity in the state-funded school sector to meet both demographic needs and the drive for increased choice and higher standards. For instance, creating free schools remains one of the Government's flagship policies, enabling parents, teachers, charities and faith organisations to use their new freedoms to establish state-funded schools and make a real difference in their communities. By increasing both the number of school places and the choice of state-funded schools, we can raise educational standards and so transform children's lives by helping them to reach their full potential.'*

It is the Government's view that the creation and development of state-funded schools is strongly in the national interest and that planning decision-makers can and should support that objective, in a manner consistent with their statutory obligations. We expect all parties to work together proactively from an early stage to help plan for state-school development and to shape strong planning applications. This collaborative working would help to ensure that the answer to proposals for the development of state-funded schools should be, wherever possible, "yes".

The Government believes that the planning system should operate in a positive manner when dealing with proposals for the creation, expansion and alteration of state-funded schools, and that the following principles should apply with immediate effect:

- There should be a presumption in favour of the development of state-funded schools, as expressed in the National Planning Policy Framework.*
- Local authorities should give full and thorough consideration to the importance of enabling the development of state-funded schools in their planning decisions. The Secretary of State will attach significant weight to the need to establish and develop state-funded schools when determining applications and appeals that come before him for decision.'*

Other policy considerations

27. The statutory AONB Management Plan 2014-19¹³ has a number of relevant policies including the A series, which has a general aim to conserve and enhance the natural beauty and special landscapes of the AONB, including:

A1: Landscape character and natural beauty are conserved and enhanced;

A2: Dark skies, peace and tranquillity within the AONB are preserved;

A3: Planning of future developments, both onshore and offshore, to take full account of open views, wilderness and maritime connections;

A4: No development is permitted outside the AONB that would harm the natural beauty, character and special qualities of the AONB.

¹³ Ms Mitchell's Appendix 6

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28. Policy E1 seeks to identify, protect and conserve the historic environment of the AONB, its setting and the historic character of the landscape; and policy E2 encourages access to, interpretation and understanding of heritage assets. Policy I4 says that no development should be permitted inside or on the edge of the AONB which will have a detrimental impact on the landscape character and setting of the AONB. Policy I5 promotes the use of sustainable vernacular building design and construction, using traditional materials and styles wherever possible and incorporating renewable energy and water recycling technologies where these do not detract from the historic character and fabric of buildings.
29. The C series of policies seeks to conserve and enhance the geodiversity of the North Devon Coast AONB and recognise the contribution to landscape value. C1 aims to manage and enhance nationally important and locally characteristic geodiversity, in particular the coastal exposures; C2 seeks to maintain and enhance the geodiversity of the AONB through the appropriate management of sites, areas and wider landscapes; and C3 seeks to increase public understanding of geodiversity and how this contributes to the natural beauty and local distinctiveness of the AONB.
30. Amongst some of the issues, trends and forces for change identified are inappropriate development which may encroach on sensitive sites, natural degradation (erosion) of a feature which may occur over time, unsustainable specimen collecting and over-intensive site use for recreation. Other policies concern access for recreation and health: H1 seeks the promotion of access to the natural environment celebrating the natural, historic, inspirational and tranquil places to all; H2 aims to increase sustainable and sensitive access to the AONB in ways that are compatible with AONB designation and the achievement of favourable status for European sites; H3 aims to enhance the environment along the SWCP and increase access and interpretation; H4-H7 seek to reduce barriers to participation in countryside recreation, maximise opportunities for countryside and health-linked recreation and develop links with healthy lifestyle initiatives.

Statutory considerations

31. The NPPF defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset. The NPPF says that the significance of an asset is defined as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. **Significance derives not only from a heritage asset's physical presence, but also from its setting.**
32. Heritage significance can be harmed through development within setting. Substantial harm to the significance of a Grade II listed building should be exceptional. Paragraph 133 of the NPPF says that if development would cause substantial harm to significance, then planning permission should not be granted unless it can be demonstrated that an exception is warranted; an exception would be justified if the substantial harm is necessary to achieve substantial public benefits that would outweigh the harm. If the development would cause

less than substantial harm, this harm should be weighed against the public benefits of the proposal.

33. The Planning Guidance of March 2014 (PPG) provides advice on conserving and enhancing the historic environment, saying that heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits. In assessing whether 'substantial harm' in the terms of the NPPF is likely to occur, it says: *'What matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset. As the NPPF makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting. Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the NPPF. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.'*
34. Under the section 'How can proposals avoid or minimise harm to the significance of a heritage asset?' the guidance says *'A clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm. Early appraisals, a conservation plan or targeted specialist investigation can help to identify constraints and opportunities arising from the asset at an early stage. Such studies can reveal alternative development options, for example more sensitive designs or different orientations, that will deliver public benefits in a more sustainable and appropriate way'*.
35. In accordance with the statutory duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), special regard must be paid to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. The preservation of setting is to be treated as a desired or sought-after objective, and considerable importance and weight attaches to the desirability of preserving the setting of listed buildings when weighing this factor in the balance.

The Case for Route 39 Academy Trust and Willmott Dixon

The main points are:

36. The primary policy basis for assessing this appeal is contained in paragraphs 115-116 of the NPPF. Local plan policy ENV6 is largely inconsistent with the NPPF by failing to properly reflect the tests contained in paragraph 116; the other policies contained in the reason for refusal are largely encapsulated or subsumed within the paragraph 116 analysis. As a result, these submissions concentrate on

the degree to which there is compliance with paragraph 116. The development is major development for the purposes of paragraph 116. It will be necessary to establish, that there are exceptional circumstances to justify siting the development in this location and that it is in the public interest.

37. The exceptional circumstances and public interest in this case may be summarised as follows:
- a) There is a clear need for the school.
 - b) There are substantial benefits arising from the siting of the school at Steart.
 - c) There are significant effects associated with further delay in the approval of the scheme.
 - d) There is no significant landscape or visual harm associated with it.
 - e) The development of any other available site would be more harmful in landscape and visual terms than the appeal site, whether the effect on the AONB is considered in isolation or the totality of the harm is considered.
 - f) No other site provides the same level of benefits as the appeal site.
 - g) There is no significant effect on the cultural heritage of the AONB.
 - h) There will be substantial environmental and social benefits associated with the development – it will be sustainable development.

The need for the development

38. There is a clear need for a permanent school within the local area. The **Government's advice in the Joint Policy Statement**¹⁴ set out the importance of increasing choice in education. The creation and development of state-funded schools is strongly in the national interest. This leads to a presumption in favour of the development of state-funded schools. Such need, and the great weight to be attached to it, is reiterated in the NPPF. The Ingleby Manor case¹⁵ highlights that it is not for an authority to go behind such support; indeed that appeal highlights the very clear way in which further educational provision will produce substantial benefits.
39. There has been a suggestion that the great weight to be attached to this issue is capable of being cancelled by the great weight to be attached to the conservation and preservation of the AONB. However, that great weight only acts against the development if the scheme does not conserve or enhance the AONB. If the **development has no significant effect upon it, the "great weight" is not engaged.** For the reasons given below, there will be no such harm.
40. In spite of the fact that qualitative need of itself is a matter to be given great weight, there can be little question that there is a pressing need for the development. The authority was wrong to suggest (as it originally did) that the quantitative need only arises by 2031. On the basis of the calculations undertaken by the school, this need arises at 2021 – the predicted Torridge

¹⁴ Mr Hunt's Appendix 3

¹⁵ Mr Hunt's Appendix 1

population exceeds the stated capacity of the relevant schools by that date¹⁶. The local circumstances reiterate the importance of this issue. Bideford College is currently in special measures and there is no outstanding school in the area.

The benefits of the development at Steart

41. The site has significant landscape diversity which would enable children to begin their land-based learning at an early stage. In educational terms, it allows students to experience the diversity of the coastline and hinterland directly and as part of the core of the curriculum, rather than the students visiting the area on an irregular basis and as only an extension to a standard education. Restricted access would be a disadvantage and would tend to exclude more disadvantaged children. The school would directly benefit by operating from within the AONB. A detailed exposition of the very clear linkage which exists **between the location in the AONB and the school's** aims was considered by the school as part of its planning¹⁷.
42. It is suggested that the educational opportunities which are offered at Steart could be obtained at other sites. The critical point is that these opportunities will not be capable of being offered at those locations nearly as well as at Steart. The diversity of the ecology and landscape opportunities are fully available at Steart but are limited elsewhere. None of the other sites can provide an adequate access to the coast in order that it can be made part of the core curriculum. Access to the coast is not a self-fulfilling prophecy insofar as no other identified site can achieve such a location. It is simply a function of the fact that the alternatives are less advantageously located than Steart.
43. The school will be able to contribute to the management of the AONB. The AONB Unit welcomes such involvement. Their concerns related (in part) to whether such management would be achievable, but the imposition of a condition which sets out a management plan scheme would set a clear and on-going commitment **towards fulfilling that goal. It has never been the appellants' case that a location** within the AONB is a necessity, but it is a benefit and a longstanding objective. The authority and others contend that a location within the AONB was not an aspiration of the school at its inception. That is wrong. The application to the EFA made continual references to a coastal location which enables the diversity of the area to be experienced by children; and the coast in this area is the AONB – the two descriptions are synonymous. In any event, if there are educational benefits associated with being in the AONB, the point remains: they are benefits that should be taken into account. These benefits associated with the **development of Steart are consistent with the Government's aims of broadening** the educational base in a way which improves educational opportunity. It is part of the national public interest supported by the Government.

Delay and its effects

44. The Secretaries of State expect there to be co-operation which avoids delay, to ensure the minimum disruption to children and teachers. There have been **significant delays in this process which were not of the Academy's making. This** places a greater urgency on the need to find a stable solution for the school.

¹⁶ See Mr Bence's rebuttal proof

¹⁷ See Doc 34, produced in answer to a query by the Inspector

That solution is necessary because for the last 2 years, the education of children has been substantially affected. Courses cannot be offered; and children who will be coming up to study for their GCSEs will be doing so in constrained circumstances. The school has had difficulties employing high-quality staff because of the uncertainty of the future. The current teachers are operating in constrained and challenging circumstances.

45. The authority seeks to argue that there should be a period of reflection to assess **the most appropriate site. But that "process of reflection" has been undertaken** by way of a 3 year-old alternative sites assessment. The school had engaged fulsomely with the authority to achieve a negotiated solution. The Academy has **negotiated the position with care and attention, obtaining officers'** recommendations to approve both temporary accommodation at Milky Way and the permanent site at Steart. Officers recommended permission for the temporary site and the rejection was on the basis that was unjustified (the sustainability objection was based on the same policy applicable today when the authority accepts it has no proper sustainability objection); officers also recommended approval for the current application as well.
46. The delays which have arisen since the school embarked on its planning application processes should be fully taken into account. The delay arising from the permanent and temporary accommodation procedures amounts to some 1½ years. There is a real risk that further delay will lead to the closure of the school. **The authority's response to that is that the children may go elsewhere. That fails** to engage at all with the human aspect of this case – one which is having real effects on significant numbers of children. Such an approach is reflected in the fact that there was no assessment of the effects of delay in any part of the **Council's evidence, even when the matter had been clearly raised by the** appellant in evidence. These matters contribute to the establishment of exceptional circumstances and are clearly in the public interest.

Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated

47. The development would be a high quality design which has had regard to its context in the scale and massing of the development. The design took its model from the Danish Hellerup school but did so in a way which sought to take into account the local area, following the simple practical look of agricultural buildings. The economic use of available resources and the function-driven aesthetic is an appropriate way of meeting local needs. The overall form has nothing too overworked or prissy. The outline of the building has a functional economic shape and uses traditional cladding materials. It followed evaluation of a series of alternative options. This was, in short, a considered design, which aims to be sympathetic to its locality.
48. **The authority's** approach towards the issue of design is misconceived; it sought to criticise the **appellant's case on the basis that the design was not exceptional**, did no more than address what should be provided anyway and thus could not amount to an exceptional circumstance. However the design is not an exceptional circumstance of itself, but only one of the factors which should be **taken into account. "High quality" design is a contextual concept and will be** informed by whether the development achieves its aim. Here, the aim must be to conserve the natural beauty of the landscape. It clearly achieves that.

Landscape and AONB character impacts

49. The landscape and visual impact of the development of this site has been carefully and comprehensively assessed by the appellant who concludes that there would be very limited harm associated with it. The area is characterised in part by a dispersed settlement pattern of scattered farmsteads and nucleated villages. The AONB management plan sets out the same characteristics. The main school building echoes the farmstead typology. At a distance that impression will be particularly evident. The design of the building has a simplicity which fits with the sorts of farmsteads identified in the locality. The number of large buildings within and adjacent to the AONB and the areas of substantial built curtilages shows the extent to which the proposal would fall within that characteristic. In spite of **the Council's** suggestion that a number of those large buildings are located to the west of the site in a different character area, those areas are also described as including scattered farms as part of their character; there are a significant number close to the appeal site.
50. The building will appear as a single storey building in the landscape from the west and south as a result of its being set down into the hillside. The detail of the building and the glazing would not be appreciable from the primary views towards the site from the west. As a result of this and the woodland buffers that surround Steart (and which would be enhanced by the scheme), it would not be out of character with the area. The Council did not undertake a full landscape and visual impact assessment of the Steart proposal and this led it into error. Its assessment of the scheme was by reference to an evaluation of sensitivity. That **was set at too high a level. The appellant considers the site's sensitivity to be medium.** The Council ascribed the site with a high sensitivity, the highest possible sensitivity of all locations within the AONB. This failed to acknowledge at all the detracting features which exist on the site – in simple terms a camping and caravan site with a largely manufactured and limited landscape context.
51. A significant proportion of the site is previously developed land – that is because its lawful use is now as a camping and caravan use and thus does not fall under **the caveat that the land is or has been used for agriculture. The Council's** assumption was that because the development sits within the AONB, it should be given the highest sensitivity. But this fails to recognise that some parcels of an AONB will not be of sufficient quality to merit such a designation. While it might be suggested that such areas should still be given the same policy protection as the remainder of the AONB, the weight to be attached to such policy protection (and thus the degree of sensitivity which that land should be attributed with) will be substantially lessened. **One example relates to the Council's view that the historic field patterns remain, but these have substantially changed; the agreed drawing also shows the limited extent of the hedgerow which remains with the site¹⁸.**
52. When assessing the night time impacts on character, there is a considerable number of farms in particular which are noticeably lit; and the larger agricultural barns in the area have rooflights. Lighting at Steart would not be out of character against these far more obtrusive sources. In any event, the lighting

¹⁸ Docs 20 and 42

impacts would be capable of being addressed through a lighting strategy including the use of blinds to block light and hours of operation.

53. As for the use of the land itself as a school, the primary point made by the authority is that there would be a substantial effect on tranquillity. The topography of the adjacent combe is such that noise rapidly dissipates within it given the masking effect of the stream and surrounding tree cover. It would also be largely screened from light from the development. There will be no substantial effect on footpaths. Noise from plant on the building would be capable of being controlled by condition if necessary. To the extent that tranquillity might be affected by views of the site, this will be very restricted. The effect of the school use on tranquillity must be considered against the current permitted use; this has the potential to be used by a significant number of caravans/campers and for a longer period than the school use. This provides an important baseline against which to judge the increased numbers of children on site – that baseline should be judged on the potential operation of the site, not observations as to its current use.
54. Many of the objections of the Council derive from the identification of a few of the characteristics of a landscape character area. It is necessary to consider the totality of the characteristics, including those which are unaffected, in order to assess the extent of the harm – that provides a balanced view of the position. **The appellant's** assessment is that it would have negligible effects on character. Given that the study area itself is relatively contained (2.5 kilometres (km)), the effect of the development on the broader character areas is necessarily limited.
55. Even if an assessment is made of the special qualities of the AONB identified in the Management Plan, it reinforces the very limited effect of the development. Six of the 14 qualities are wholly unaffected. As to the others, there would be the following additional impacts:
- a) A slight impact on diversity of scenery as a result of the development on the site.
 - b) A negligible benefit associated with panoramic seascape views.
 - c) A negligible impact on panoramic views across the farmland.
 - d) Negligible effects on tranquillity.
 - e) A slight adverse effect on landscape pattern because of on-site hedgerow removal.
 - f) Negligible indirect effects on the hill fort and tranquillity.

Visual impacts

56. There would be very limited visual effects even though the building is some 100 metres long. The Council accepts that there is no objection to the scheme from views from the east along the A39¹⁹. The highest impact that the Council **attributes is only 'moderate'**. **This is because the closest relevant views are several hundred metres from the site.** It is suggested that the Council's additional viewpoint at Lower Worthygate has greater sensitivity on the basis that walkers may view the site from there. That is unconvincing; these are minor roads. There is no evidence of any real use of these roads and the coast path lies a little way to the north. It cannot be sensibly said that a substantial number

¹⁹ See viewpoints 1 and 2 (ES)

of walkers use those paths sufficiently often to alter the overall sensitivity calculation.

57. As for potential views of the Hill Fort Scheduled Ancient Monument (SAM) it was suggested that vegetation clearance would lead to greater visibility of the site from the SAM²⁰. However, nothing has been produced that shows there will be any very significant removal which would open views into the site. Nor does the removal of diseased larch affect visibility.

Cultural heritage in the AONB

58. This must be dealt with on a slightly different basis to heritage issues associated with the listed building application. Cultural heritage in the context of the AONB should, given that the primary issue relating to impacts on the AONB relates to the effects on landscape and scenic beauty, assess the extent to which any particular heritage asset may be seen or appreciated within the landscape. Steart Farmhouse (and its curtilage buildings) are not capable of being seen from the A39 in any meaningful way and they are not readily appreciable within the landscape from the north or west. Given this, it is unsurprising that there would be limited effects on the cultural heritage of the area by virtue of the works **affecting the listed building. It should also be noted that the "great weight"** which is applicable to landscape and scenic beauty does not apply to cultural heritage issues.

The cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way

59. With regard to NPPF paragraph 116, the question arises as to whether an alternative exists. The Council relies on 4 locations. While paragraph 116 of the **NPPF requires assessment of the "scope" for developing outside the AONB, the** approach towards this issue depends upon the facts. Those sites have been the subject of detailed assessment in the ASA which is not criticised by the Council in terms of its assessment methodology. The Council relies in detail on one site, the 'Milky Way'²¹ 2c site. It knew of Swanton Farm as an option at a stage when it could have identified that as a location; and it knew of the other Milky Way sites.
60. A clear comparison can be undertaken at this stage and no further investigation need be made of these sites –in respect of the Milky Way, the Council has set out its position on this site. It is wholly impermissible for the authority to rely on any ambiguities or uncertainties in respect of those sites along the **lines of "well, there may be problems but further assessments may lead to a solution",** particularly for the Milky Way. The Council has been aware of the Milky Way as an option for nearly a year given its stance on the temporary application. It proposed the Milky Way site generally as an alternative location in this case in February 2015 and so had months to establish a case on this site. In those circumstances, it cannot simply rely on a lack of certainty in relation to any particular issue (for example, lighting or highways) – these are points that it should have dealt with by now.

²⁰ See Doc 19

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61. As to the assessment of the impacts of developing those alternative sites, this should relate to the totality of the impacts which will be caused. That is landscape and visual harm. It cannot have been the intention of the authors of the NPPF that paragraph 116 should favour development outside the AONB which is, taking into account all the potential harm arising from a scheme, nevertheless more damaging to the environment than the development of a scheme within the AONB.
62. **The Council's** case now is that a school may be sited in the open countryside. It is also willing to accept development that causes greater visual impacts than at the appeal site. As to the comparative exercise which has been carried out by the appellant in the ASA, the authority has no criticism of the methodology itself; the only point it has raised relates to the appropriateness of one of the criteria, the location in the AONB. The comparative exercise carried out by the appellant has the merit of considering a range of issues in addition to landscape and visual. Any assessment of an alternative must take into account the totality of both the impacts and opportunities that they provide including educational issues– an holistic approach is plainly necessary. The evaluation of these issues led to the clear conclusion that Steart was the most appropriate site.
63. Importantly, the Council carried out no comparative exercise beyond the landscape and visual appraisal (not an impact assessment) undertaken of Milky Way and Steart; but even that is not a full comparative exercise. The comparison between Steart and the three other sites now relied upon by the Council is even less pronounced. While the authority may suggest that they have had insufficient time to properly assess those sites that is certainly not the case with regard to Swanton, which **the Council's landscape witness** confirmed he was well aware of at the time of his appointment.
64. As a result, the Council has no case as to whether any of those sites is more or less appropriate as an alternative than Steart when looking at educational, availability and landscape and visual matters.

The Milky Way site

Landscape and visual issues

65. In relation to the impact on the AONB, it would have a greater effect on the AONB as a result of its impact on dark skies given the lighting which will be necessary. As to the effect on character, Milky Way would be more harmful than Steart on Landscape Character Area (LCA) 4: Bideford Bay Coast, (which stretches into the AONB), given its associated impact with the holiday park and adventure park. The Council's **landscape witness** undertook no landscape and visual impact assessment of Milky Way in spite of being able to do so. As to the object of his study²², he acknowledged that all that had been prepared for his assessment was a sketch, but it was a sketch, as will be seen, which failed at all to deal with material matters of relevant to the AONB.
66. In relation to visual impact, the Council identified major and moderate effects in respect of the development of that site against moderate effects for Steart. This **analysis did take into account the additional sensitivity of Steart's location within**

²² See Ms Mitchell's Appendix 8

the AONB –the sensitivity of Steart was increased. The reason for this conclusion is because of the open nature of the Milky Way site (the ZTV is much larger for Milky Way and it is on a ridgeline) – but it also reflects the **site’s location next to** the AONB. It is part of the setting of the AONB. Additionally, his assessment of visual impact did not assess a critical viewpoint²³ in spite of the clear visibility of the site from that location. Had this location been taken into account, this would have elevated the impacts further. As to mitigation from the newly planted woodland plantation, not only is this planting itself out of character, but these trees were not growing well given their exposed position and the poor soil condition; and large parts of this plantation would be outside the control of the school.

67. As to the landscape character impacts, the Council has concluded that the actual impacts are equally harmful at Milky Way as at Steart. The only difference which elevates the significance of Steart is the susceptibility criterion of sensitivity. But it is odd to conclude that Steart is more susceptible than Milky Way when that site comprises an open paddock and Steart is a camping and caravan complex. And this conclusion applies irrespective of a number of important omissions in his assessment, the most notable the acknowledged failure to take into account the cumulative effect of the proposed holiday park²⁴ with the Academy and the Milky Way when assessing the impact of the scheme. Had this matter been taken into account there would have been still greater effects on character. Both character areas 5B and Bideford Bay refer to the existence of scattered settlements and farming units – this area will amount quite literally to a sprawl of development on the doorstep of the AONB.
68. The assessment also failed to take into account the impact of the proposed lighting of the school. 4 metre lighting columns would be necessary over a distance of 500 metres along the access road (following the equivalent approach at Steart). The effect of this lighting will be compounded by the potential requirement to light the junction, given the interaction between the separate uses of the junction (the Adventure Park and the school and the consented holiday park) and the potential use of the access road as a drop-off point.
69. Nor is the associated effect of potential hedgerow removal on the A39 assessed by the Council. The appellant has given clear evidence (set out in a technical note²⁵) of the likelihood that there will be some hedgerow removal if the layby access is used. This will exacerbate the effect of any lighting. Devon County Council (DCC) has not queried that part of the assessment.
70. Both the AONB management plan (policies A2 and A4) and LP policy ENV6 seek to prevent development which would have an adverse effect on the setting of the AONB. This impact is therefore a very significant one. In that sense, the Milky Way site is capable of amounting to a valued landscape for the purposes of paragraph 109 of the NPPF. If just the relative landscape and visual impact of Milky Way is compared with Steart, Steart is less harmful. This is the case whether the issue that is being considered is simply the impacts on the AONB or the character of the area as a whole.

²³ See Ms Mitchell’s Appendix 3

²⁴ See Ms Mitchell’s Appendix 8

²⁵ At Doc 18

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71. The authority may seek to argue that, even if there is some greater harm associated with Milky Way, nevertheless, the weight to be attached to the harm **at Steart is greater because of the "great weight" which is to be attached to the conservation of the AONB under paragraph 115.** That, however, is a fact-sensitive process and does not lead to any different conclusions in this case because there is no significant harm to the AONB as a result of the scheme – consequently there is no harm to which **the "great weight" may attach.**
72. **One of the "critical" criteria used in the ASA is whether a site is in a rural location.** The Milky Way site, when considered as it was without the new holiday park, would be in a rural location. However, when the holiday park is factored into this assessment, the area stops being rural – it will become a quasi-urban location, surrounded by plantation planting, a holiday park, a leisure complex and the paraphernalia of a wakeboarding lake. This is clearly contrary to the aims and objectives of the school which seeks to inculcate the countryside into its curriculum.
73. The Milky Way site would have no direct connection with the AONB. It is incapable of being accessed by foot – DCC has stated that such an access would be unsafe. The Council has resorted to arguing that the use of buses to access the AONB would be sufficient, but it would not; it would be costly and impractical and would effectively cut off the school from the AONB.
74. The Milky Way site **is described as "relatively impoverished" in ecological terms;** so the Council is forced to argue that there is a benefit associated with the creation of a new landscape. The creation of an enhanced landscape would take a generation. The Council is suggesting that the wakeboarding lake is able to contribute to the diversity as is a sewerage settlement pond. The extent of **access to any neighbouring areas will be determined by the landowners' consent** and there is no evidence of any consent to enter the adjacent Hobby Lodge Wood. Nor is there any commitment to allow the use of neighbouring areas by the owners. Milky Way cannot be regarded as a comparable alternative in these terms – indeed, given that the authority is seeking to rely on what may be done in the future, it essentially accepts that at present it is not as good a site as Steart.
75. As for deliverability, there is no evidence that this site would be acceptable to the authority:
- a) The statement of case was only authorised by an officer whose view was actually that permission should be granted for Milky Way.
 - b) There is no documentary evidence that any decision-maker agreed to this proposal.
 - c) There is no evidence that they have been kept up to date with the evidential position set out by the parties.
 - d) **The Council's position is that Milky Way is now acceptable** because the sustainability case which was used to refuse the temporary consent has now been dropped. However, there were a significant number of objections to that scheme from local residents and their views influenced the decision at Steart. The DCC position on Milky Way was agreed because it was temporary in nature,

not permanent. It is plainly open to the authority to refuse an application for consent at Milky Way in those circumstances.

76. The Council is not able to say whether, should an application be made, it would be likely to get permission – it was accepted that there is the potential for permission to be refused. The authority has also contended that the land owner will agree to the development of the site, but the relevant letter from the owner²⁶ does not, however, present certainty – it simply sets out an in-principle stance. There are joint owners and the authority has provided no evidence that all of the owners would agree to the sale. The access road is specifically stated to be outside the area that can be sold and there is no indication of how that road is to be used and/or whether it is to be offered on acceptable terms. These points could all have been dealt with in evidence by the Council but they chose not to address them at all. Milky Way cannot be regarded as a site which will be deliverable for the school.
77. The Council does not criticise the costs associated with the scheme. What is said is that the costs do not take into account 'cut and fill' costs at Steart. But there are fill requirements on the Milky Way site; as to the requirements to stabilise the listed building, this is unlikely to amount to a very significant sum. Moreover, the EFA costs did not take into account enhanced land purchase costs which might follow a refusal which identifies Milky Way as the appropriate alternative.
78. Consequently, the Council requests the decision-making process to lead to further money being spent on a development which leads to no advantage in landscape and visual terms and provides a reduced educational opportunity. That is not, on any basis, value for money.
79. Turning to highways, two highway accesses are now put forward by the Council. The first option and that which was proceeded with in the sketch proposal for Milky Way is the use of the layby to the east of the main Milky Way access. Yet the option which seemed to be relied upon by DCC was the combined use of the existing Milky Way access. That, however, is an unacceptable form of access; it has the potential to produce travel conflict between the school use and, given the longer hours of the Academy, the Milky Way; that will be exacerbated by the addition of the consented and implemented holiday park.
80. **The planning authority's position is that DCC's view can be relied upon. Very** little weight should be placed upon the letters and emails produced by Mr Collins for DCC on this point because there is no evidence that he has discussed his views with senior officers. Mr Collins does not say that his position is the position of the highway authority. He has not made himself available to be cross-examined and there is no detailed assessment of the junction – simply one paragraph in the first letter of 3 June 2015. That assessment makes no mention **of the holiday park's potential role in** the interaction at the junction. DCC does change its position on the same site and for effectively the same proposal (see the approach on the temporary consent) and what it now says does not mean that this is what it will say at the time of any future application – at the time of the temporary application, the authority objected to this scheme on sustainability grounds. The Council accepted that DCC may take a different position at a point in the future.

²⁶ Mr Wood's Appendix 1 (10 April 2015)

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81. It is said by the authority that a grant of permission at Milky Way would have the benefit of avoiding the closure of Steart as a tourist facility, but the authority has failed to provide any context for that assertion; it gives no figures on the overall camping/caravanning provision in the area.
82. In summary, Milky Way simply cannot achieve what Steart Farm does. It does **not come close to meeting the school's aims and objectives. It would achieve a** substantially compromised educational provision. And it would do so by way of a development that would cost considerable more and have greater landscape and visual impacts than Steart whether looking at the AONB in isolation or not. That is not an alternative – it amounts, in short, to a stance which has been taken simply because the site is not in the AONB.

Swanton

83. There has been a clear finding that the site is not available – the position was recently checked and confirmed. The potential that things may change cannot be a realistic basis for arguing that the site is an alternative: Swanton is owned by someone else. Swanton has been the subject of a detailed assessment in landscape and visual terms as part of the ASA work. It compared less favourably to the appeal site in respect of: landscape quality/condition, the potential mitigation measures, the ability to accommodate change, its prominence, visual containment and its potential effects on light pollution. The AONB unit was against this site given its prominence and potential effect on the AONB. That potential effect is now exacerbated by the recent grant of a wind turbine on the site – the fact that the Inspector who determined that appeal considered that that development was acceptable is not a justification for this scheme given the scale of the ZTV for such a development; it would be a very visible skyline development.
84. The Council suggested that a smaller development could be proposed or the building could be sited in a different location. However, this was the first time any such suggestion was made and the authority had (see Milky Way sketch) proposed the same size of building – there is no evidence on the ability in educational terms to have a building that was smaller in floor area than the current building. It was also suggested that the building could be on the south side of the Swanton landholding, but this would involve constructing the building on a part of the site which has the best diversity features and would involve a significant amount of cut and fill works. It would also lead to the likelihood that the site would be accessed from the A39. As a result, an access road would have to be sited on the field, over the ridge, for a significant length and would be lit.
85. There is a clear objection in highways terms of achieving an access across the A39 to the AONB. Student movement travel plans and even bridges over the A39 would be both impractical and unsafe. Accordingly, the site is, like the other options, cut off from the AONB. It is also agreed not to be in walking distance of the AONB. In summary, a school development in this location will be substantially more harmful than at Steart even if the site were to be regarded as available. Despite that, it would offer a considerably reduced educational offer.

Merry Harriers

86. This site is plainly unacceptable in highways terms. The difference between the approaches of DCC and **the appellant's highway witness** is striking. DCC

indicated in a single paragraph that access was possible; that the road could accommodate traffic and if necessary could be widened and that an informal one-way route within the local highway network was possible. None of these arguments was correct. A one-way route is simply not possible given the swept paths analysis. That analysis was not questioned by the authority nor was it responded to by DCC. Coach traffic could not be accommodated on the route to Merry Harriers and would be exacerbated by the introduction of farm traffic. The verge seemed not to be wide enough to accommodate traffic – again, there was no questioning of these conclusions.

87. There would also be the potential for significant landscape and visual impacts – the ZTV is very significant; it is not an answer to suggest that the siting and size of the building could lead to a more acceptable position, without justification and with no assessment of what the effect would be. As to the diversity of the site, though there are opportunities for improvement; it is not as good as Steart. Merry Harriers is not an achievable site in highway terms and it is likely to have substantial landscape and visual effects.

Seckington

88. Seckington is outside the search area for a school site; the authority has no basis **for querying the appellant's search area. DCC has indicated its preference as to** the search area for a school site – the authority has no expertise at all to go behind that. There are good reasons for that position: the County Council expects large amounts of growth from Bideford. On that basis, Seckington is rightly excluded – it is 2 miles west of the search area and 10 miles from Bideford; Steart is just over 5 miles²⁷; every day, therefore, each child coming from Bideford will be travelling an additional 10 miles and other pupils closer to Steart would also be extending their journeys if they had been located at Seckington. This will discourage pupils from transferring to Route 39 and fail to achieve what DCC want. Torridge DC does not seek to take issue with educational decisions. On this basis, there should be no question as to the inappropriateness of Seckington.
89. There is likely to be substantial landscape and visual harm associated with a school development at Seckington. It has a much greater ZTV than Steart and extends well into the AONB. There has already been permission for two very significant barns at the site and it is likely that there will be skyline views associated with any development of the site for the school. Such views are specifically sought to be avoided in the character assessment guidelines for the Bideford Bay Coast character area. The open nature of the area was likely to make this development more visible in the landscape and, consequently, more harmful.

Environmental and social benefits associated with the development

90. In the present case, the paragraph 116 test will be determinative: the only real factor against the development for the authority is the landscape and visual impact and this will have been taken into account when deciding whether

²⁷ Queried by members of the public. The Inspector has established from theaa.com that the centre of Bideford is 7.9 miles (12.7km) from Horns Cross and 9 miles (14.5km) from Bucks Cross, along the A39. Seckington is about 7 miles (11.26km) from Bucks Cross and about 16 miles (25.75km) from Bideford.

exceptional circumstances exist. There is a significant number of economic and social benefits associated with the development aside from those dealt with above. The development will lead to over 70 jobs, construction employment and nearly £1.7 million brought into the economy. As to the application of paragraph 14 of the NPPF, given that the school is sustainable development, the presumption would, even if considered, apply. The development accords with paragraph 116 and does not contravene any of the local plan policies when read consistently with the NPPF.

Matters Raised by Third Parties

Highways

91. The Rule 6 parish councils have raised a number of points about highway safety and sustainability of the location. **The appellant's highways witness** has addressed those various points by way of a detailed analysis. In summary, the development accords with the NPPF; it will be safe. Proper measures have been put in place to achieve a sustainable development. As part of the transportation strategy, the school has committed to the provision of a bus service for a proportion of its pupils should it fail to meet a stringent target that requires that no more than 10% of total student trips per annum shall be by car. That is fully **in accord with the Government's aims to achieve a sustainable development** consonant with its location. The lay-by locations may be altered to achieve an adequate visibility. The use of the old A39 may be discouraged through appropriate travel plan measures.²⁸

Sewerage at Bucks Mills

92. The sewerage in the stream at Bucks Mills does not affect the shoreline benefits associated with the educational use. Bucks Mills itself is a substantial area at low tide and will provide a significant resource; this is simply a management issue.

Surface water issues

93. A flood risk assessment has been undertaken by the appellant and has been approved by the Environment Agency (EA). It is capable of being appropriately conditioned.

Landslip

94. Cut and fill analyses have been provided which show that the requirements for both level changes and soakaway provision have been considered.

The Listed Building Appeal

95. The harm arising from the development would be less than substantial. The Council's **position has shifted fundamentally** during the Inquiry. What started as a case of substantial harm became less than substantial. The authority now accepts that the harm would be less than substantial. Given that the proposals involve the demolition of a curtilage asset, the assessment which must be made is whether the removal of part of the heritage asset amounts to substantial harm. It would be wrong to assess the merits of the curtilage buildings by way of the **benchmark of the primary heritage assets' quality**. The guidance of Historic

²⁸ In response to questions from the Inspector

England (HE)²⁹ indicates that an assessment of the significance of the individual curtilage buildings must be undertaken since, as they have acquired protection under the LBCA by process of law, their quality will vary according to the circumstances of the case.

96. The authority's objection to the proposals was on the basis that the demolition of **the curtilage buildings affected the "setting" of the main listed building**. It clearly formed the view that the effect of the demolition related, not to the particular quality or significance of the buildings, but their effect on the listed building. This error of approach does not matter very much since the significance of the curtilage buildings is related to their contribution to the listed building.
97. The parties agree that the significance of the curtilage buildings is as part of an historic farmstead which had links with Mark Rolle, a later 19th Century landowner. However, while the curtilage buildings are part of that farmstead, the contribution which they make is severely limited as a result of the quality of the buildings. **The Council's heritage witness wrongly** considered the quality of the buildings by reference either to the state they were in 1995 or (in respect of building 8) in the state they would have been in had a planning permission been implemented. The only basis for such a justification was that there was deliberate neglect. However, her assessment was based upon a reading only of paragraph 130 of the NPPF and not the guidance contained in the NPPG and the extended guidance contained in the HE advice which make clear that deliberate neglect is only relevant if done in order to make planning permission easier to obtain. There is no evidence that any neglect occurred for that purpose. The authority has **no evidence as to what the extent of (a) the curtilage buildings' significance as a whole is and (b) the impact on what that significance would be.**
98. Building 2 is now a ruin. **The Council's heritage witness** had not seen the state of that collapse having not gone back to site despite the fact that the collapse had been clearly identified in **the appellant's** evidence. There is a reduction in the significance of the building as a result. In those circumstances, it cannot be **reasonably said to provide anything more than a "reasonable contribution" to the significance of the heritage asset**. It was accepted that this building is not a Mark Rolle building.
99. Building 3 is in a similar state. It consists only of the flank walls – and only makes a reasonable contribution to the significance of the asset.
100. The **appellants' position is that all of the curtilage buildings should be demolished**, but they are willing to commit to a scheme which will allow the retention of buildings 2 and 3. This will see the maintenance of the status quo in respect of the buildings. As the Council accepted, there could be no objection to the scheme in relation to these buildings; the fact that buildings may be rebuilt is not material – the question is whether the listed buildings are preserved or enhanced – there is no requirement to enhance.
101. Building 8 is in a largely ruined state and comprises part of a barn and the remains of a horse engine shed. The building makes a reasonable contribution to the significance of the asset. That judgment is informed by the fact that the

²⁹ Formerly English Heritage

horse gin is largely defined simply by a range of modern concrete blocks and the remaining parts of the shed are now very limited.

102. Building 4 is a renovation of a pre-existing building, but has been the subject of significant change. It is in residential use and has had significant changes - it is not, in short, in its original condition nor in its original use. The building can only be regarded as making a reasonable contribution to the heritage asset.
103. The farmhouse itself will be untouched by the development in physical terms. It is the most significant building in an historic context – it provides the basis of and justified the original listing. The curtilage buildings could have been listed but were not. As a result, the farmhouse is the principal heritage feature on the site and is a part of a historic farmstead. But it is a historic farmstead which has been significantly affected by the change of use to a caravan and camping site; the field boundaries have been significantly changed, there is no agricultural use of any part of the premises and caravans stand hard up against the curtilage of the farmhouse.
104. The loss of the curtilage buildings and carrying out of the development will cause harm to the designated heritage asset. However, it will not be substantial, for the following reasons.
- a) The farmhouse, as the most important feature, remains untouched.
 - b) Other structures associated with the farmhouse surrounding the building will remain, such as gateways.
 - c) The school itself will be sited at a respectful distance from the farmstead and is of a form and mass which echoes functional farm buildings; within the area there are a number of examples of similarly scaled buildings in such proximity to a farmhouse. This impression from the farmhouse would be enhanced if building 2 is retained.
 - d) The buildings which will be demolished are largely in a ruinous state.
 - e) The scheme will lead to the cessation of the camping and caravan use which would be a benefit to the listed building. It would be a particular benefit of the scheme that the static caravans to the north of the farmhouse would be removed given that this provides better views of the listed building from the north.
 - f) There would be a greater public use and appreciation of the listed building.
105. The test of what amounts to substantial or less than substantial harm has been considered in the decision in *Bedford Borough Council v Secretary of State for Communities and Local Government*. The question is whether the significance of the building **has been "largely drained away"**. This has been interpreted by the Secretary of State, correctly, that it is harm at a level when the grading of the building is called into question.
106. The listing of the farmhouse is not called into question as a result of the development. It is to be noted that the Council did not give evidence as to **where, within the scale of "less than substantial harm" the effect of the proposals lies**. The appellant considers it is at the lower end of the scale. The Council now

concedes that there is less than substantial harm but has no evidential position on the actual level of impact beyond that general categorisation.

107. The test contained in paragraph 134 of the NPPF requires a balance to be struck between the harm in question and the public benefit. The need for the school, the lack of suitable alternatives and the other factors justifying the development of the site in the AONB under paragraph 116 necessarily overcomes this balance given that 134 is a lower test than the paragraph 116 test – paragraph 132 is the only heritage impact test which uses the equivalent grade of exceptional circumstances. Consequently, if permission is justified under the planning permission, so must, necessarily the listed building consent. This conclusion applies even taking into account the requirement of section 16(2) of the LBCA that the decision-maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses; and the decision in Barnwell Manor.
108. The conclusion that this balance does favour granting listed building consent is **supported by the Council’s conservation officer, HE and the Council’s planning officer.**

Conclusion

109. In conclusion it is respectfully requested that these appeals are allowed. Granting permission and listed building consent will enable the Academy to start a new chapter in its history, to realise its aims to achieve excellence in education, to contribute to the landscape in which it will sit and provide inspiration to its children. It will be able to achieve those objectives without causing any significant harm to the landscape and visual qualities of the AONB. It will achieve them through development which is both sustainable and beneficial. The alternative is further delay and uncertainty and the prospect of siting the school in a location which will be more damaging to the landscape, less beneficial to the children than the appeal site and more costly to the public purse. In those circumstances, the balance stands fundamentally and firmly in favour of granting permission and consent.

The Case for Torridge District Council

The main points are:

110. These are two appeals (planning and listed building) to build a large single unit **school building, following an “institutional” design and involving the demolition of** between two and four listed buildings. The scheme also includes the construction of two car parks and an access road. All of this takes place within the boundaries of the North Devon AONB at Start Farm.
111. **The Framework requires that ‘great weight’ should be given to conserving** landscape and scenic beauty in the AONB. Similarly, local plan policy ENV6 and AONB management policy A1 require the conservation and enhancement of the landscape character and natural beauty of the AONB and to protect and conserve the historic environment of the AONB.
112. A very large building 100 x 36 x 9.3 metres does not do so. It is not akin to a large agricultural barn that can be found at farmsteads and farm complexes in the AONB and elsewhere. Its roof is pitched at 6 degrees, not what one sees in

other large farm buildings in the AONB, it has obvious windows and other openings, visible even at a distance (see VP9 and photomontage VP5)³⁰.

113. This part of the AONB (a caravan site with open land and a low-key use) may **be less 'outstanding' than other parts**. This does not stop it being designated. More importantly, once designated it receives all the protection of being in the AONB; **to deal with it otherwise would allow an applicant to 'cherry-pick' different parts of the AONB and seek to apply less protection to those parts, which would set a dangerous precedent and would be wrong**. This is a major development **which does not 'preserve' still less 'enhance' the AONB and this is not merely the building but its use**. There would be upwards of 40 cars on site plus buses and up to 800 teachers, staff and students.
114. It harms a Grade II listed farmhouse in a number of ways. Harm to its setting, the change of use from residential and, in particular the loss of four (or perhaps two) curtilage listed buildings, together with the loss of the farmyard. These buildings are important for understanding the history and development of this farmhouse by an important Devon family (the Rolles) and the development of 19th century farming techniques. The farmhouse, robbed of its farmyard **(whether four or two curtilage buildings are demolished) is caused 'great harm'**, because no recognisable farmyard remains and therefore does not preserve the significance of the listed building or its setting.
115. The harm does not relate to purely a single aspect of the heritage asset. It relates to four individual but related components. This is not a case where only one matter such as setting is affected. The courts have been clear in the approach to be taken to harm to listed buildings. There is a presumption against the grant of planning permission and listed building consent, particularly in circumstances where there is irreplaceable loss of finite heritage assets.
116. The appellants say the school must be in the AONB. However, their application to the Department for Education shows that they merely seek a **"rural" location. Their own ASA shows a similar approach**. There is no necessity for it to be in the AONB ('Critical Constraint' **1 refers merely to a 'rural' location**) and where **the AONB is specifically considered the test is "in or adjacent to" the AONB. And the Council has suggested that there is 'scope' for developing outside the AONB and has suggested sites**.
117. The Council does not doubt the imperative of the Secretaries of State to improve education and provide choice and the weight to be attached to that. Yet there is nothing in the schools policy which overrides national, or local, policy regarding the protection of the AONB and listed buildings. The policy for the provision of new schools says that **'great weight' must be given to this. But 'great weight' must be given to conserving the landscape and scenic beauty of the AONB** and there is a presumption against the grant of planning permission where there is harm (even if less than substantial) to a heritage asset, as with the listed buildings here.

³⁰ In the ES

Alternative sites

118. The four alternative sites offered by the Council provide the scope for development outside the AONB which would not undermine the educational objectives of the school in terms of delivering land and coastal based education. The sites at Merry Harriers and at Milky Way would cause the AONB to suffer no adverse landscape effects, and any visual effects would not be significant. It has been said that the moderately significantly adverse visual impacts on the landscape at Milky Way would be greater than the visual impacts should the school be at Steart. This approach is wrong in policy terms.
119. In the case of Swanton and Seckington, indirect significant adverse effects on the setting of the AONB could be mitigated. At Merry Harriers it is unlikely there would be adverse impacts on undesignated countryside. At the other sites adverse impacts on undesignated landscapes are likely.

Development in the AONB

120. It is **accepted between the parties that the scheme amounts to “major development”** in the AONB and therefore within the scope of paragraph 116 of the NPPF. Paragraph 115 requires that great weight should be given to conserving landscape and scenic beauty within the AONB. It has been suggested that the part of the AONB in which the school is sited is somehow devalued by virtue of currently being a camping and caravan park, or by the lack of diversity of landscape and that the weight to be given in paragraph 115 should somehow be reduced. However, **the appellant’s evidence** does not support this approach³¹. Land is not prevented from being treated as of natural beauty by the fact that its physiographical features are partly the product of human intervention in the landscape.
121. Despite quoting the appropriate guidance, the appellant does not apply it. Its analysis of the AONB is flawed from the outset. This is because its starting point is that this particular site, despite being in the AONB and despite therefore benefitting from the national and local policy protection does not possess the outstanding natural beauty and this is the reason that landscape effects arising from the proposals are described as not significant. This approach is supported neither by policy nor by case law. It creates a potentially dangerous precedent permitting developers to cherry-pick parts of the AONB to carve out potential sites, running counter to long standing national policies to protect these specific areas of national and public interest. **Therefore, the “great weight” required by paragraph 115 applies in this case.** It is relevant to note the advice in paragraph 17 of the NPPF which states that the redevelopment of previously developed land should not be permitted in an area which is environmentally sensitive³². It is accepted between the parties that the appeal site is such a location in landscape and heritage terms.

122. Considering the matters set out in paragraph 116 of the NPPF:

³¹ At paragraph 7.4 of Ms Mitchell’s proof, referring to paragraph 2.7 of the *Guidance for Assessing Landscapes for Designation as National Park or AONB in England* ‘Land is not prevented from being treated as of natural beauty by the fact that it is used for agriculture, or woodlands, or as a park, or that its physiographical features are partly the product of human intervention in the landscape’ **quoted from s99** of the Natural Environment and Rural Communities Act 2006

³² 8th bullet point, in different wording

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- *The need for the development, including in terms of any national considerations and the impact of permitting it, or refusing it, upon the local economy*

123. The DfE has, in approving the funding for the school, decided that there is a need for it, but that must not be the end of the consideration on this issue in planning terms. The Devon County education authority does not anticipate a need for more school places for at least a decade. Whilst a need for choice is accepted, it is not a pressing need since there are existing schools with spaces that present parents with a choice from within the existing providers or if they are compelled to leave R39. That is not to say that the Academy should not continue. It is about the site it should occupy. The lack of quantitative need provides a window for the school and the Council to work together to find a more appropriate site or to develop on one of the alternatives already proposed.

124. It is accepted by the Council that the school will bring social and economic benefits to the district through the provision of more choice and a diversity of education and improved outcomes for pupils. The appellant accepts that the delivery of these social and economic benefits is not specific to the school being on the appeal site. The benefits can be delivered, just as well on any of the alternative sites proposed.

Secondly:

- *The cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way*

125. **It is the Council's case that "scope" refers to the potential availability of other sites; and the ability of the school to deliver its objectives of land and coastal based courses on the alternative sites.** The appellant accepted that **"scope" meant "opportunity"**. The Council has produced a range of potential alternatives (opportunities) to the proposed site, Milky Way being the primary alternative. That site sits outside the AONB and would enable the school to meet its objectives of land and coastal based education. The Duchy College, that delivers a similar style education and is a prospective partner for the school, manages to successfully run such courses outside of the AONB.

126. The Council has tried to collaborate with the appellants, but collaboration requires both parties to approach discussions with a co-operative mind set. The appellant has not sought to work collaboratively. The school initially considered 25 sites but only sought to discuss 5 of them with the Council. When they conducted the site assessment, the criteria used by the school were weighted such that unless the site was **"in or adjacent to the AONB" (as defined by them)** it was unlikely to be selected. In a change to the position in their initial proofs of evidence, **it appears now that it is not a "necessity" or "requirement" to be in the AONB, but it is a "benefit"**. It is noteworthy that no evidence of how the curriculum of the school or practical examples of why the school needs to be in the AONB were forthcoming. There is merely a document from the headteacher prepared hastily overnight and containing no practical examples of why any benefits from the AONB are not as readily available outside the AONB, in the countryside³³. It has been accepted that in order to gain a full understanding of

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the countryside, as opposed to just that available in a narrow strip of the AONB or parts of the AONB accessible by foot from the site, pupils will need to travel outside the AONB, perhaps to see large scale dairy farming or flora and fauna not accessible on the site or within walking distance. It was accepted that the site at Milky Way, whilst perhaps less ecologically diverse, would provide an opportunity for the school to develop and improve an environment.

127. **There are many schemes that would also “benefit” from being within the AONB.** No doubt the school would derive some benefit from being in it, but it is not, and apparently never has been a critical criterion in respect of the location of the school; and there are no effective means by which the alleged benefits can be guaranteed in practice. However, mere benefits are not enough to tip the balance so as to amount to an exceptional circumstance.
128. Much is made of the partnerships the school would strike with the AONB Management Team and the Woodland Trust. In its response to the planning **application the AONB Management Team “strongly objected” to the school and** the discussions with the Woodland Trust have not produced anything concrete. The reasons offered for this were that these organisations were not willing to discuss partnerships until planning permission for construction on the site is approved. The Chair of the AONB Management Board, gave evidence to the Inquiry objecting to the school being in the AONB. He did not rule out working with the school, but that would be on the same basis as with other schools in the area, **that is to say on a project by project basis. Any idea that a “partnership”** would be established whereby the school children would assist with the maintenance of the site would not be possible as the AONB partnership team is only 2 officers – they simply do not have the capacity.
129. Nor is there any evidence that the school would be able to develop effective and long-lasting relationships with the Woodland Trust, the SW Paths Association, or Natural England regarding means by which the value of the AONB could be sustained and enhanced as part of the teaching of the National Curriculum.
130. It was suggested that Council officers had not carried out full assessments of the alternative sites in LVIA terms and had not worked with the Council committee members to gauge the likelihood of them approving an alternative site. This is wrong in policy terms and in terms of the democratic principles of planning decision making. The appellant cannot say to officers **“unless you find an alternative site not in the AONB, that will probably get permission, we will build in the AONB”.** **That is wrong. The onus in** paragraph 116 is on the appellants to demonstrate that there is no potential or opportunity to develop outside the AONB. It should be acknowledged that the assessment undertaken by the appellant of alternative sites, particularly the Milky Way, is at best partial. By contrast the Council sets out the additional benefits of developing there, such as no loss of a valuable tourist facility or loss of irreplaceable heritage assets, and many others. The appellants have never undertaken an assessment of either the Milky Way site or other sites in terms of their potential benefits relative to developing on the appeal site and this is a fundamental flaw.
131. Whilst there may be **potential “benefits” for the school to be in the AONB,** many would be available outside it. In addition, there could be a significant benefit in enhancing an ecologically poor site, which would accord with Government policy. There is no suggestion that the appeal site is in any way

degraded or in need of enhancement and improvement. The converse applies to the Milky Way site and others. In the short time available, following receipt of the ASA, it has identified the Milky Way site and a further three sites that offer scope to develop a new school.

132. In the light of the **appellant's changed stance in relation to the need to be in the AONB, if it is only a "benefit" there is no detail on how this will operate or how it is specific to the AONB.** Furthermore, there is no evidence before the Inquiry that the cost of developing on any of the alternative sites, which have been identified by the Council, are in any way prohibitive. In relation to the scope for developing on these alternative sites, the appellant accepted that the **test was whether they presented an "opportunity" to develop a new school.** On any reading of the evidence all four sites present such an opportunity. On this basis, the second bullet point of NPPF paragraph 116 is not met.

Thirdly:

- *Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*

133. Section 85(1) of the Countryside and Rights of Way Act 2000 states that *'In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'* (underlining added). This is restated in the North Devon AONB Management Plan on page 37³⁴. It is **the Council's case that the direct harm to the AONB caused by the school would be a moderate adverse landscape effect and a moderately significant visual impact on the AONB.** This does not conserve the scenic beauty of the AONB and consequently great weight should be attached to it.
134. The approach R39 is promoting is that this is a comparison between the landscape and visual harm of the school sited at Steart Farm or at Milky Way. This comparative approach finds no support in case law or policy. The issue for the Secretary of State is to attach great weight to the conservation of the AONB. Any scheme which does not meet this objective must by definition conflict with the overarching aim of promoting sustainable development as set out in the NPPF.
135. This large building has no architectural similarities with local large farm buildings often found in the AONB. The most obvious differences are windows, openings, bulk and shape giving an institutional appearance, and a virtually flat roof. Its form and appearance has no local reference point and the use of massing and scale are completely irrelevant in making an assessment as to its design merit and whether it maintains or enhances local distinctiveness, an aim found within the local plan, landscape character assessments and landscape character types, and the NPPF. The appellant considers that the school would appear as part of the farmstead, but it is no longer a farmstead if it is part of the school, and in any event the many people and cars make this visual composition implausible. In short, the size, form, appearance, bulk and fenestration, particularly the first floor and the roofscape, mean that the building cannot be

³⁴ Ms Mitchell's Appendix 6

characteristic and would harm landscape character and the AONB. It is an inappropriate design that could be found on any business or office park which despite the assertions to the contrary, has been based on a template for such buildings with a token attempt to make it fit onto the appeal site.

136. The ability to locate the building within the appeal site is extremely limited due to the severe constraints of the heritage assets, the prominence of the northern portion of the site, the mature perimeter woodland, the steep gradients and impact of noise from the A39. No effective moderation of the harm caused to the AONB has been offered. As well as the large incongruous building, the site will be occupied by 700 students and between 80 and 100 staff. The school will run 5 days a week for 195 days a year, and outside of school times will be used as a community resource into the evening. This will have negative impacts in terms of tranquillity within the AONB and light spill from the school. There is nothing before the Inquiry to suggest that the appellants have given any serious consideration to minimising light pollution.
137. The argument that tranquillity is already disturbed by the use of, and light spill from the small camping and caravan park on the site appears fanciful. The campsite was never used to full capacity, let alone intensively. Even the camping site at full capacity would be a less intensive use than the proposed development. It should also be recognised that the existing use is characteristic of the AONB. It should not be assessed on the basis that it is a non-conforming or inappropriate use of the appeal site, notwithstanding its location within the AONB.
138. In conclusion on the issue of development in the AONB, the proposal will cause direct harm to this protected landscape and does nothing to conserve nor to enhance the AONB as national and local policy requires. There are viable **alternatives, both in terms of availability and, although not the Council's case,** achieving the educational objectives. Overall, the school runs counter to the national and local AONB policies and could be rejected on these terms alone.

Heritage

139. The proposal involves demolition of either four or two of the curtilage listed buildings. It will also harm the setting of the farmhouse itself. There is a change of use from residential and the loss of the historic farmyard. It was accepted by **the Council's heritage expert under cross-examination**, that although she had asserted the historical harm was substantial, she conceded the harm overall was less than substantial. This was accepted following her concession that the listed building would remain listed after the demolition of the curtilage buildings. According to NPPF paragraph 134, the less than substantial harm should be weighed against the public benefits of the proposal, including securing the **heritage assets "optimum viable use"**. Despite the concession, the decision should follow the established case law in Barnwell³⁵. This was followed and applied in the judgment of Sullivan LJ in Forge Field³⁶ R. (Forge Field Society) v. Sevenoaks DC [2014] EWHC 1895 Admin. In summary:

³⁵ Barnwell Manor Wind Energy Ltd. v. East Northants DC [2014] EWCA Civ 137

³⁶ Forge Field Society v. Sevenoaks DC [2014] EWHC 1895 Admin

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- The desirability of preserving listed buildings (LBs) and their settings are not mere material considerations to which the decision maker can attach such weight as it thinks fit.
 - When a development harms the LB or its setting, the decision maker must give that harm considerable importance and weight.
 - The harm gives rise to a strong presumption against the grant of planning permission.
 - The presumption is not irrebuttable. It can be outweighed by material considerations powerful enough to do so.
 - The degree of harm to the LB/conservation area is a matter for the planning judgement of the decision maker, for example whether it is substantial or less than substantial. If it is the latter, the strength of the presumption is lessened but it does not follow that the 'strong presumption' against grant has been entirely removed.
 - Even if the harm is less than substantial the decision maker must not overlook, in the balancing exercise, the overarching statutory duty (s16 and s66 LBCA) which 'properly understood ... requires considerable weight to be given ... to the desirability of preserving the setting of all listed buildings ...'.
 - The error made in Barnwell was to treat the less than substantial harm to the LB as a less than substantial objection to the grant of planning permission.

140. It is clear that the views of statutory consultees (such as the AONB Partnership) must be given considerable (or significant) weight and only departed from for good reason³⁷. The starting point is the helpful concession by the **appellants' heritage witness** that all the curtilage listed buildings make a reasonable contribution to the farmstead. This is important: first of all the loss of listed buildings should be exceptional and secondly, the loss of 2 or 4 buildings, will remove the form of the farmyard. The Council considers that even if two were kept there would be great harm because no recognisable farmyard remained. As is obvious, the principal listed building is a farmhouse and its **raison d'être, the farmyard, will no longer remain.**

141. The appellants simply have not grappled with the loss of the curtilage listed buildings and the loss of the farmyard and the effect these have on the significance of the heritage asset. This is in part due to the inadequacy of the ES and **the Council's heritage witness's** own careful assessment of the history and cultural and social importance of the farmhouse and its curtilage.

Planning balance

142. The planning balance is very simple. There is a requirement to comply with NPPF paragraph 116. This requires the demonstration of exceptional circumstances and that it is in the public interest. A failure to meet this overarching requirement must by default mean that the appeals must be dismissed. To assume otherwise means that the value of the AONB is in effect

³⁷ see RWE Innogy Ltd. v. SSCLG [2014] EWHC 4136 (Admin) and R. (East Meon Forge and Cricket Ground Protection Association) v. East Hants DC [2014] EWHC 3543 Admin

nullified since both national and local policies recognise that such a location has an elevated status in planning terms. In practice what this **means is that 'great weight'**, must be given to conserving and enhancing the natural beauty of the area. The public interest is not one-dimensional and does not relate simply to the **benefits, whatever they are, of the 'Free' school**. They relate to the terms of the public interest, that also includes other dimensions. In respect of these appeals, these include the protection and enhancement of the AONB and the 'great weight' which is afforded to the protection of heritage assets.

143. The Council accepts that the exceptional circumstances relating to the provision of schools and the opportunity to provide choice and diversity in education provision can appropriately be described as such, save that the focus on rural and land based studies need not take place in the AONB, still less involving the total and irreplaceable loss of curtilage listed buildings. The suggestion that the building is of high design quality is not an exceptional circumstance since the NPPF at paragraphs 56-57 expects that all buildings will achieve good or high design standards .
144. The appellant considers the adverse effects on the Route 39 Academy from the delays and the way in which the planning process has operated to be an exceptional circumstance; but this problem has arisen from the failure of the school either to ensure that a permanent permission was in place before enrolling students, or that an adequate temporary permission was in place to cover the operation of the school until a permanent permission was obtained. On the issue of public benefits, the Council accepts that there would be construction of a new school to deliver choice and diversity in education, delivery of a new community education centre for land-based studies and long term benefits for the rural community by virtue of the creation of 70+ new jobs and by the raising of educational standards. These are applicable to this scheme save that these benefits could be delivered anywhere and not merely at Steart Farm or in the AONB.
145. However, the long term sustainable use of the farmhouse is maintained as a result of it being part of the school is not a public benefit. The farmhouse can remain in viable use in its present role as focus for the caravan site. There is no evidence that it is likely to close. Understanding of the historic environment and access to it for teaching will result from the school use is not a public benefit. While the farmhouse may be used for that purpose the curtilage listed buildings (or two of them) will be demolished and, as has been demonstrated, an important part of the historic asset will be irretrievably lost. The Council has demonstrated the importance of those assets, the need for their retention and their use to the school possibly for projects in relation to farming and cultural history.
146. **The benefits of the scheme are in the Council's submission limited. That said** the starting point in relation to the AONB must be s85(1) of the Countryside and Rights of Way Act 2000 and paragraph 116 of the NPPF. Planning permission should be refused except where there are exceptional circumstances and it is in the public interest. The public interest does not only include the benefits of the school. **Taking paragraph 116 as a whole it is the Council's clear submission that** the identified serious harm to the AONB and to the landscape generally clearly outweighs those circumstances and interests that have been identified.

147. The failure to preserve the listed buildings and the setting of Steart Farmhouse does not comply with s16 and s66 of the LBCA and with policy ENV2 of the LP. There is less than substantial harm to the listed buildings and again the benefits identified do not outweigh that harm. Great weight should be given to conserving the landscape and scenic beauty of the AONB and there is no clear and convincing justification for the harm to the heritage assets. These circumstances in relation to the AONB and the heritage assets, taken singularly or together, mean that the appeal should fail. In those circumstances there is no need to consider paragraph 14 of the NPPF since footnote 9 clearly advises that in these circumstances the development should be restricted. If it becomes necessary to consider paragraph 14, the Council say that the identified harm significantly and demonstrably outweigh the benefits of the scheme, and hence, in any event, the appeal should be dismissed.

The Case for the AAPWPC

The main points are:

148. The Parish Council Group represents Alwington Parish Council, Abbotsham Parish Council, Parkham Parish Council and Woolserly Parish Council. The four parishes encompass the villages and settlements of Abbotsham, Kenwith, Westacott, Alwington, Ford, Fairy Cross, Woodtown, Parkham, Broad Parkham, Horns Cross, Goldworthy, Northway, Higher Waytown, Lower Waytown, Bucks Mills, Bucks Cross, Woolserly, Alminstone, Cranford and Stoxworthy.

149. Their objections to this proposed development of a large school at this rural location adjacent to the main A39 road are based primarily on the following reasons :

- The unsustainable nature of the site.
- The high risk of serious road traffic accidents at this location.
- Updated Road Safety Audit confirms design inadequate.
- Unrealistic school bus management plan.
- Traffic congestion and disturbance to adjacent villages and settlements.
- Unsuitable nature of the rural road network to support a major development.
- Potential contribution to Air Pollution.

150. The North Devon and Torridge Local Draft Plan Part 3 identifies Abbotsham, Bucks Cross, Parkham and Woolserly as "Rural Villages" and as such are not considered suitable for any major developments in the Spatial Development Strategy for North Devon Local Plan under Policy ST06 and ST08. There are a total of 1,353 dwellings(2) in the four Parishes that comprise the Rule 6 Group, consequently the Group believes they represent the vast majority of residents who object to the proposed development of a large school at Steart Farm.

151. There is very considerable opposition to this development by both local residents and those living in a wide area around the proposed school site. This includes parents of potential pupils for the school who have who expressed misgivings over the location the site and the inability for pupils to walk or cycle to school. The Parish Councils believe that the views of those residents who believe

the location will give rise to a large increase in road traffic when the use of road transport could have been avoided by the selection of a more appropriate location should be taken in to account. Also due consideration should be given to local opinion.

A39 road safety hazards

152. The A39 Atlantic Highway between Barnstaple and Bude has substantially less capacity than its name would imply and has a reputation locally as being a dangerous stretch of road with a variety of different hazards which cause numerous accidents which frequently result in lengthy road closures. For most of its length it is only a single carriage wide in each direction and has numerous stretches with double white lines where overtaking is prohibited, or "ghost islands" to keep traffic in two lanes where the road is wider. The road is characterised by its steep hills, blind brows, sharp corners, narrow width, numerous T junctions and cross roads. The A39 is the only main road serving the North Devon coastal towns between Bideford and Hartland and the West Cornwall Coastal Towns between Hartland and Bude.
153. Consequently the A39 road carries very high volumes of commercial vehicles from vans to HGV articulated lorries, a wide range of agricultural vehicles from slow moving harvesters, slurry tankers, high speed haulage tractors, milk tankers to animal transporter lorries. The road also provides the commuter route for car drivers travelling between Bideford, Kilkhampton, Stratton and Bude as well the normal daily local traffic. The A39 also provide the main access route to Cornwall for holiday traffic and carries large numbers of coaches, camper vans and cars towing caravans. The siting of a large school, or any similar type of major development at Steart Farm will generate thousands of additional vehicle movements per annum on the A39 main road and the surrounding rural road network. This is contrary to all Central Government, Regional Government and Local Government authorities policies on carbon emission, sustainable transport and air pollution.
154. The NPPF at paragraph 29 gives clear directions that due consideration should be given to reduce the need to travel and maximise sustainable methods of transport. NPPF paragraph 30 identifies the need to reduce greenhouse gas emissions and reduce traffic congestion. The current applications will be contrary to policy. The Updated Road Safety Audit document³⁸ states in paragraph 1.1.4 that a site visit to the A39 at Steart Farm was carried out on 14 August 2014 outside the morning and evening peak periods. However the school buses will start to arrive at 0805 and will depart the site by 0815, the second phase of buses will start to arrive at 0820 and are scheduled to depart the site by 0835. Similarly the first phase of buses will arrive back on site to begin departing at 1700 and the second phase of buses will also arrive on site after the first phase has departed. The second phase is scheduled to have departed by 1730.
155. In parallel to the school bus movements, private vehicles will be entering and departing the site after dropping off or picking up pupils and staff members cars will also be arriving and departing the site. Consequently any observations on the volume of traffic flowing on the A39 past the entrance to the site completely fails to take into consideration the higher levels of commuter traffic, or commercial

³⁸ Mr McKechnie's Appendix A

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- vehicles, occurring before the start or after the end of the normal business day. (before 0900 and after 1700). No actual measured traffic figures are quoted.
156. The large numbers of school buses or other vehicles entering or exiting the site during the peak traffic periods will potentially be in conflict with traffic travelling both east and west on the A39 at this point. This problem is compounded by the need for every vehicle, both bus and private car, to make a right turn across the path on oncoming traffic when either entering or exiting the site. This hazardous situation is made even more dangerous by the fact that the site entrance is situated on a long sweeping bend, the entrance will tend to be obscured from traffic approaching from both the east or west, the site entrance is within a 60 mph section of the road and traffic was noted to be travelling at near to the maximum speed limit.
157. Local knowledge of the location will confirm the fact that the section of the A39 running past Steart Farm is one of the few places between Fairy Cross and Baxworthy Corner where overtaking slower moving vehicles is possible. Also accelerating vehicles will regularly exceed speed far in excess of 60 mph past the school entrance in order to complete an overtaking manoeuvre in the face of oncoming vehicles. This hazard is very clearly identified on page 4 of the Updated Road Safety Audit in paragraph 2.1.1. The siting of the school at this particular location will add a significant volume of additional traffic at this junction on a daily basis and will increase the potential for road traffic accidents. The developers own Road Safety Audits identify serious concerns about the location and design of the school entrance on the A39. The lack of viable options to overcome these problems without introducing even more hazards to traffic using the A39, or a major re-engineering of the junction at a very substantial cost to meet the standards required by the Highways Authority, is raised a number of times in the audit document.
158. The A39 at Fairy Cross, approximately 4 miles to the east of Steart Farm, climbs sharply to an altitude of approx 550 feet above sea level. The road remains roughly at this altitude until it climbs again at Horns Cross and then after passing Bucks Cross reaches an altitude of about 650 feet at Baxworthy Corner. This elevated position causes the A39 to be prone to severe adverse weather conditions such as high winds, low cloud, mist, sea fog, heavy rain and ice. Approximately one quarter of a mile to east of the Steart Farm site entrance is located a roadside meteorological monitor site to give early warning of adverse travelling conditions. Due to the geographical location of Steart Farm, the probability of encountering adverse road conditions, particularly during the autumn and winter, should be taken into account when considering the road safety, suitability and sustainability of the site.
159. At least two fatal accidents and two serious accidents were known to have occurred in the recent past just a few hundred yards outside the distance criteria used in the first Road Safety audit parameters. By considering the Accident Statistics for the A39 road between Fairy Cross and the Cornish Border, (from approximately 4 miles east of the site entrance to approximately 6 miles west of the site entrance), over a longer period would give a much more representative picture of the actual situation. Over this longer period of time and considering more realistic length of highway, the figures obtained from the Devon and Cornwall Police indicated there had been a total of 166 accidents reported up to December 2012, 4 of which were fatal and 12 serious. No figures were available

for 2013 or later. However since 2013 there are known to have been other very serious accidents that have occurred on this stretch of the A39. Information obtained from Devon County Council under an FOI request No. IR 915364 relates to an email exchange between DCC Highways, Torrington DC and the appellant's consultants and covers a disagreement over a number of design issues related to the junction design³⁹. Particularly relevant is the email from the DCC Neighbourhood Highway Engineer dated 23rd October 2013 on the subject of accident statistics over a 5 year period relating to T junctions on the A39 in the National Speed Limit zones similar to the right turn access being proposed for the Steart Farm site. This was one of two reports on the issue being considered. Neither make terribly comfortable reading and they demonstrate that even with a centre lane, turning movements either entering or exiting are an issue.

160. The Road Safety Audit on page 4 proposes the use of a pedestrian crossing /refuge island in paragraph 2.1.5 with a plan illustrating this, and other issues causing concerns with the junction, on page 10. The location of this refuge is shown in more detail in the Hydrock road layout plan in their drawing number 13092-SKC007(6). For some time Woolsery Parish Council has been in negotiation with the DCC Highways for the provision of a similar road crossing refuge approximately a quarter of a mile to the west of the site entrance for use by the residents of Bucks Cross. This was to allow pedestrian traffic a safer road crossing facility in the vicinity of the bus stops located on the north and south side of the roadway. DCC Highways have categorically refused to allow this quoting, amongst other reasons, that highway regulations do not permit the provision of pedestrian crossings/refuges in locations where the national speed limit of 60 mph is in force. Information obtained under a FOI request⁴⁰. This email exchange shows there were a number of concerns raised about the feasibility and safety of providing a pedestrian crossing/refuge at the point where a right hand turn lane for westbound traffic on the A39 was being proposed by the developer. There were also concerns that this would invite parents to park cars on the south side of the A39 and allow children to cross the road rather than to enter the site and use the school car park, thus increasing the risk of a serious or fatal accident.
161. Whilst DCC Highways did not recommend outright refusal to the planning application it is now clear that they had very serious concerns over the design of the proposed junction, road safety to all road users and inadequate parking provisions. These concerns are highlighted in the updated Road Safety Audit where many problems and the potential dangers associated with the site access junction are identified. Greater consideration should be given to this report. The nature of the A39 road outside the entrance to the proposed school invites the use of high speeds and overtaking manoeuvres at less than ideal location. NPPF paragraphs 29, 32 and 35 recommend that LPAs, and others, take in to account the sustainability, safety and the provision of adequate travel and parking facilities when considering major developments. The objective of NPPF paragraph 32 is that safe and suitable access to the site is to be achieved for all people. The road safety audit indicates there is a very high risk of serious injury to pupils in the event of a collision. LP policy DVT 18 requires that a safe access is provided.

³⁹ The FOI response is at Annex H.

⁴⁰ Annex H

Unsustainable location

162. It is assumed that 90% of the pupils will travel by bus, but there is no evidence that this will happen as the location of the pupils is unknown and the school bus routes are undefined. The figure of 90% is only a target figure based on a number of estimates and many unknown factors. The initial estimate for only 12 buses appears to be based on the extremely "robust" assumption that each 53 seat bus will have a load factor in excess of 99%. This is considered to be extremely optimistic and unlikely to be achieved in practice. In order to meet the desire to serve the dispersed rural community and coastal population of the district of Torridge and north Devon more generally, then significantly more buses will be required. This is confirmed in the Road Safety Audit.
163. The Updated Road Safety Audit in paragraph 2.1.2 on page 4 clearly identifies that the School Travel Plan⁴¹ will require up to 30 school buses to serve the Steart Farm site. This has far reaching implications for other aspects of the proposed development. Avoiding the high reliance on use of road transportation is identified in the NPPF Core Principles. Paragraphs 29, 30 and 32 are particularly relevant when considering the sustainability of the proposed site. TDC Local Plan Policy DVT 18 also requires the impact of any development on traffic to be given due consideration.

Bus queuing and parking

164. Paragraph 3.4.6 Table 1 of the Travel Plan shows the proposed timetable for the arrival and departure of the school bus service. There is no viable solution proposed as to where the buses that arrived in Phase 1 go to after they have disembarked their passengers to make way for the second phase of buses arriving. Similarly there is a problem accommodating the buses in Phase 2 waiting to enter the site to pick up departing pupils. In the absence of any clarification on this point it must be assumed that all buses will have to vacate the site between dropping off the last pupil in the morning and arriving to pick up the first departing pupils in the afternoon. This doubles the number of vehicle movements as well as adding to the congestion at the junction and increasing the probability of buses queuing back on to the A39.
165. More significant is that 30 school buses are required, not 12 in two phases of 6. There will be an impact on the bus schedule illustrated in Table 1. Any empty buses waiting in the new lay-by on the A39 proposed for the public bus service, as shown in Hydrock Plan 13092-SKC007, will only create further need for them to make a right turn at the junction across the both lanes of traffic. The Updated Road Safety Audit also identifies in paragraphs 2.1.2, 3.1.2 and 2.1.3 the danger to road users from eastbound buses queuing to enter the site and overhanging the roadway. Similarly the danger from westbound buses overhanging the proposed right turn lane and overhanging the westbound A39 carriageway.
166. DCC Highways already has serious concerns about this design and the under capacity provided for the initially proposed 12 buses. The increase in the requirement to use 30 buses twice per day makes the site unsustainable.

⁴¹ See Doc 46 for the up to date Travel Plan

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167. The Updated Road Safety Audit (4) in paragraph 3.1.1 states that the on-site bus queuing and loading arrangements are inadequate for the number of school buses required on a daily basis. In paragraph 3.1.3 it states the design presents a danger to pupils and makes no provision for parents to drop off or collect pupils directly. The probability is that much more than 10% of the pupils will arrive and depart using private cars. Also it can be foreseen that some older students will use their own cars and motor cycles.
168. The proposed design is inadequate for the number of vehicle movements and does not meet the objectives of DVT 18 and DVT 19. Also NPPF guidelines on the need to reduce road travel, carbon emissions and provide a sustainable development have not been given due consideration.

Public bus service

169. Stagecoach South West 319 service is of little practical use to pupils attending the school. The first westbound bus from Barnstaple via Bideford and Abbotsham arrives at Bucks Cross at 0949, 1 hour 20 minutes after the school day has started at 0830. The first return eastbound service after the end of the school day does not depart from Bucks Cross until 1849, about 1 hour 50 minutes after the school had ended at 1700.
170. The eastbound bus service from Bude serving Kilkhampton, Hartland and Clovelly could be used as it is scheduled to arrive at Bucks Cross at 0748. However the first return westbound service after the end of the school day departs Bucks Cross at 1724, but this is a restricted service which terminates at Hartland. The first westbound bus serving Kilkhampton and Bude does not depart from Bucks Cross until 1809 about 1 hour 10 minutes after the school has closed.
171. Today the R39 school at its temporary location at Clovelly already has pupils travelling to the site from Cornwall, Bradworthy and Bideford. However when considering the potentially large area from which the school hopes to attract pupils in the future, it is not unreasonable to consider an area enclosing Barnstaple - Bideford - Bude - Holsworthy - Hatherleigh - Great Torrington. This would equate to more than 1000 sqkm. The capability of the proposed school bus service being able to support the transportation requirements of pupils living in remote rural locations, even after increasing the number of vehicles from 12 to 30, has yet to be proven. Therefore the need for parents to use private cars to and from the school twice per day will probably be very much greater than the 10% currently estimated.
172. Due to the remote location of the school and the lack of footways, street lighting, cycle tracks, the narrow rural C class roads and the proximity to the A39 main road, it is thought unlikely that any more than about 0.5% of the pupils could walk or cycle to school. The likelihood that 10% of the pupils would use private vehicles has probably been significantly underestimated taking in to consideration the large pupil catchment area and the dispersal of rural settlements.

School vehicle movements

173. The Updated Bus Management Plan⁴² shows parking spaces for 40 staff vehicles, 57 spaces for parents dropping off/collecting pupils and refers to the need for 12 buses, a figure that was subsequently upgraded to 30. However no provision is made for other vehicles that will also visit the site on a daily basis delivering catering supplies, stationery supplies, service vehicles, refuse collection and visitors. As the school has no track and field sports facilities or swimming pool, it is assumed these activities will require classes to be transported by bus to Bideford or Bude where these facilities are available.
174. It can be foreseen that the estimated number of vehicle movement required each day could be in the order of 468. No allowance has been made to include pupils who may use their own cars or motorcycles. The statement that some teaching staff would be required to car share is not contractually enforceable and therefore the figure used may be under estimated. 460+ additional vehicle movements per day at a junction where serious concerns have been raised by both DCC Highways and the developers own consultants over the danger to road users due to every vehicle having to make a right hand turn across oncoming traffic, when either entering or leaving the site, cannot be ignored. Only a major redevelopment of the A39 at great cost would adequately address issues.
175. In an email exchange contained in Annex H, DCC Highways already predict a serious, if not fatal accident, in the foreseeable future at the Steart Farm junction. Assuming a school year of 180 days, this addition volume of some 84,000 traffic movements annually will make a significant contribution to carbon emissions and air pollution. This is a complete contradiction to National, Regional and Local Government policies and the core principle objective of the NPPF paragraph 30.
176. It is a major concern to the four parishes in the Rule 6 Group that the development of Steart Farm at Bucks Cross will generate a considerable volume of traffic passing over the local road network, and through the rural villages and settlements, to reach Bucks Cross without using the A39. This will give rise to noise and congestion for local residents. The local road network does not lend itself to supporting the proposed development of a large school in a remote rural location. The location is inappropriate and the transportation requirements make it impossible to make any contribution towards the reduction of emissions. Sustainable methods of transport such as walking or riding are not feasible.
177. Increased road congestion, noise, pollution and avoidable dangers to road users would be introduced if this development went ahead at the location proposed. It is believed that the residual cumulative impacts of additional road traffic generated by this development will be severe and are grounds to refuse this appeal. NPPF core policy 10 and paragraphs 29 and 30 and LP policies DVT18 and DVT19 all provide adequate guidance as why this location is unsustainable.
178. There is also a concern that air pollution will increase. A report by the Environmental Audit Select Committee⁴³ was published after the planning application for proposed school at Steart Farm was refused by the Council and is

⁴² See Doc 46

⁴³ 6th Report, *Action on Air Quality* 8 December 2014

therefore relevant new information that should now be taken into consideration. From the estimated daily number of vehicle movements generated by the proposed school, as predicted in paragraph 3.6 of this submission, it can be seen that this development has the potential to generate an additional 84,000 vehicle movements per year which will make a major contribution towards the creation of a rural air pollution "hot spot".

179. The proposed location of the school has virtually no public transport links. There are no footways or adequate cycle tracks on the A39 that enable safe "active travel" access to the site. All pupils, teaching and admin staff, visitors and delivery vehicles that require access to the site on a daily basis will tend to contribute to increased pollution levels. Air Pollution in Rural areas is increasing. Environmental Audit Select Committee recommends schools are not built in close proximity to trunk roads. This recommendation is endorsed by DEFRA. The proposed site at Steart Farm is not compliant with some NPPF Core Principles and fails to meet numerous NPPF objectives.

Interested Parties

180. In this section, where speakers made similar points, they have not necessarily been included in this summary.
181. **Robin Julian** drew attention to the tendency for the area to be subject to dense fog which would adversely affect highway safety, and the increase in houses to be built in Bideford, which is where he considers a new school should be sited. He is also concerned about the impact on bat species at the site. **Chris Medland** is in favour and said that the area around the appeal site is of low sensitivity and well screened. The listed building would not be harmed. The key thing is the benefit to the community of a school placed within the AONB. **Francesca Buckingham** is a pupil at R39 and points out that the quality of teaching is high. The opportunity to study within the AONB would avoid pupils having to pile into minibuses. **Graham Shackson** is a resident of Bucks Cross and says the road at Steart Farm is known to be the only safe passing place for a long distance on the A39 but is particularly dangerous at peak times when the mist is down. The risk attached to water run off is a concern especially because diseased larch trees have been felled in Steart Wood. He also points out the likelihood that parents and visitors will park on the old A39 on the south side of the current route, when attending events. Crossing the road will be dangerous as the County Council are unwilling to lower the speed limit below 60mph. He notes that the school site at Steart Farm will have insufficient space for proper sports provision. Any pupils attending team games such as cricket, football or rugby will have to travel elsewhere by bus.
182. **Paul Hartley** has an education background and says the school should be able **to create their own 'AONB' environment** wherever they are located. There is no need to be located within the AONB to benefit from it. The Government encourages core subjects; environmental science is no longer offered as a subject and rural studies are being reduced. **Sue Bradburn** is a resident of Waytown and has serious concerns about traffic management because drivers accelerate past the site and take risks to overtake, causing accidents. The expectation that 90% of pupils will access the site by bus is not a real world scenario. Parents cannot be forced to use the school bus when it may be cheaper to use a car. It is very unlikely that staff can be forced to car share. Parents are

likely to use the old A39 to drop children off, leaving them to cross a 60mph road.

183. **Michael Bamborough**⁴⁴ is currently a governor at Great Torrington School, formerly the Chairman of Governors. He was until last September, a member of the Executive Board of the Devon Association of Governors as well as being one of the two Secondary Academy members on the Devon Education Forum, that is the Board that oversees all aspects of education within the Devon local authority area and is answerable to the Devon Cabinet.
184. He does not comment on whether Route 39 academy should or should not be sited, but whether it should exist at all. This secondary school is in the middle of an area that is already supported by five existing and well supported publicly maintained schools. As there is only a small population in the immediate area surrounding Bucks Cross it does not and will not provide many pupils. To meet the R39 projected pupil figures the majority will have to be 'imported', that is 'bussed in', from the larger surrounding towns and villages. As one of the early arguments used in support of their case, R39 claimed that having a secondary school between Bideford and Bude would reduce the amount of pupil traffic commuting to and from school along part of the North Devon corridor. As it turns out this is not the case as pupils still have to travel to get to the school as it is sited away from centres of population. As the local authority (LA) retains the legal responsibility for ensuring that pupils are able to attend a suitable school, wherever necessary through the provision of free transport, this has added to the overall County Council school transport bill. However, the LA is not obliged to transport a pupil past a suitable school in order to deliver them to their parents' school of choice; that remains the responsibility of the parents. Put simply there is a reason that schools are usually situated within or on the edge of the community they support, rather than located in the middle of the countryside, and that is down to maximising the efficient use of funding the educational resource and minimising transportation requirements. Regrettably this usually means that those children who live in the countryside are the ones who have to travel the furthest. Unless a school that is sited in the countryside away from centres of population can support itself with pupils from the immediate surrounding area, then to remain viable it has to draw pupils from further afield. This does not reduce the transport requirement, it means that the buses are moving in the opposite direction than before.
185. Despite claims that they would recruit 100 pupils per year, R39 has, since opening, failed in both years to sign-up and retain the number of pupils as forecast in their extensive publicity and funding submission to the DfE. Furthermore, from the school pupil allocation figures provided by Devon County Council they will also fail to meet their projected recruitment figure for the 2015-16 school year.
186. Taxpayers are funding the provision of education for our community's children. This includes the provision and maintenance of school buildings as well as the employment of teaching and support staffs. Unfortunately, the decline in the local secondary pupil population has already meant that the established schools have had to impose savings measures to account for their drop in income. Inevitably

⁴⁴ This submission was accepted after consultation with all the parties

this means that fewer pupils require fewer teachers and this has already meant introducing redundancy measures. Furthermore, fewer pupils and teachers also means a reduction in the range of subjects that can be offered and supported within a curriculum; this is a situation that R39 has admitted to also experiencing. Maybe it is considered that this is not all bad because unless a lot more teachers suddenly come onto the market (which is unlikely) the government's recent declaration of intent to open another 500 Free Schools will be unachievable. So, from my point of view, as an individual taxpayer, he is currently looking at paying for teachers, then contributing to funding the redundancy payments for a number of them in Torridge so they can then return to the public payroll somewhere else. Apart from being distressingly disruptive to the individual teachers affected, this does not make economic sense.

187. With regard to sustainability, as a school's main income stream is based directly on the number of pupils on its books, there is a minimum number beneath which the school's finances simply will not meet the necessary expenditure against staff costs as well as those for buildings and grounds maintenance, utilities and the myriad of other support expenses. This is the situation being experienced today by several of the local schools, one that is exacerbated by R39 academy through it also drawing from a depleted pool of secondary phase pupils. Furthermore, with insufficient pupils within a small school, such as R39 academy, there is probably insufficient income to provide enough teachers within each specialisation to meet curriculum requirements and so some teachers would have to teach outside their specialisation, if indeed they have one. If this is the situation within R39 academy it is not considered that this would be giving the pupils the outstanding education the academy advertises, only the best education that they can provide. A measure of this is usually provided by Ofsted; the academy has yet to release the result of their recent inspection.
188. Undoubtedly the increase in the number of the current cohort of primary phase pupils will provide an upturn in the availability of secondary phase pupil numbers; maybe in five years' time. Even with the potential for additional pupils associated with the new house building projects currently planned within the North Devon area, it is going to take many years before the established schools are back in a more stable financial condition. If R39 is running contrary to their funding agreement, and allowed to do so for the foreseeable future, they could be condemning themselves to financial failure. Indeed, the answer to the question of whether R39 academy is financially viable today, and will remain so tomorrow, may make the entire inquiry moot.
189. He believes that it is also worth noting that Devon comes 146 out of the 151 local authority education areas in England. This means that maintained secondary schools in Devon, and academies are maintained schools, are well over £400 per pupil per year below the national average. This is a grossly unfair financial penalty on a largely rural county and further exacerbates the financial hardships currently being experienced by small to medium sized schools. In conclusion, it is all very well for the Government to declare that every parent has the right to send their children to a school of their choice and, if necessary, are able to do so by creating their own school. However, the R39 academy case has clearly demonstrated that the use of public money in this way duplicates extensive existing education facilities to the disadvantage of the established schools and consequently their communities' children. Furthermore, creating a

free school where it is not required to meet an actual shortfall in educational facilities diverts finite national resources from many areas around the country where there is a real and immediate requirement for additional school places to meet a shortfall that, unlike North Devon, is a growing problem; this is especially critical within a number of large and heavily populated inner city areas. It was noted during opening remarks on Tuesday that Bideford College had received a poor Ofsted assessment. That is unfortunate and measures are already in place to correct the situation. However, for instance, unlike a car that is no longer working correctly that can be replaced, a school cannot be dealt with in such a manner. One does not abandon the school and open another one down the road instead, you get in there and fix it. R39 academy has not been of benefit in this area as it is attracting funds that could be targeted at improving not only Bideford's situation but all the other under-performing schools in the county and country.

190. R39 state that if they were to close, the money saved would not be distributed among the other local schools. This is agreed, not for the savings on buildings and infrastructure, but the pupils would move to the established schools and they bring funding with them. In conclusion it is strongly recommended that not only should R39's appeal be rejected but the school be terminated forthwith in order not to waste any more public money on a scheme that is clearly not working in accordance with their commitment under their funding agreement. This would:

a) not subject the unique area in and around Steart Farm to an undesirable development;

b) support the existing secondary schools that are already struggling financially through the effects of the demographic downturn, that is being exacerbated by the presence of R39 academy;

c) and enable limited funding to go to those areas in the country that actually require the provision of additional secondary school places.

191. **Andrew Old** is a farmer and parent of a child at R39 and 2 more at Bradworthy Academy Primary School. R39 offers parents a choice because they want to create an enjoyable experience for students with project based learning, no homework but a longer school day. The concept is of a rural school for rural children. Steart farm is not a farm at all but a campsite. There is nothing romantic about modern farming. Modern dairy farms employ bright LED lights to encourage oestrus. It is likely that the school will have dimmer lights than a cattle shed. **Cllr Alison Boyle** is a member of Torrridge District Council and her ward is Kenwith in which Steart is sited. She is also appointed as a Community Representative of the AONB. From 2009 — 2013 she was the County member which governed this area and was on the AONB. The section of A39 by Steart, after Horns Cross heading in the direction of Clovelly, is a wider stretch of road than the previous narrow roads and includes a sharp, blind corner. There is a tendency for drivers to accelerate on this stretch and there have been many accidents in this section. The location coincides with sea mists which severely reduces visibility. The occurrence of these mists is well known to local people. Should a development be made at Steart traffic problems would be aggravated by the numbers of buses and cars transporting pupils and staff to the school.

192. There have been specific concerns about the impact on the water courses flowing through Bucks Mills. Sewage is already a problem as some of the houses

discharge into the streams which flow onto the beach — where there are many signs regarding unsafe water. There are already problems with flooding and the addition of treated effluent from the prospective school — which would be sited at the top of a very steep hill — would increase flooding and cause possible land slip. Due to disease, larch trees have had to be felled by the Woodlands Trust. Having spoken with the Trusts Contract Manager/Creation Adviser at the start of felling, she was advised that it was vital to replant trees. This was not only to preserve important woodland and the visual beauty but because the root system protects and reinforces the ground from further slippage. It is not acceptable to desecrate this narrow stretch of AONB land when there could be available sites near to the AONB but which are not sited within it.

193. **Lucie Cullen** is mother to a year 9 pupil (Francesca Buckingham) at R39 academy. Since moving to R39 she has become a confident and academic young lady, with a real passion for learning and a renewed enthusiasm to the social side of school. She has excelled with all that the school have offered, promoting independence, confidence, awareness and compassion. The children need a permanent site and with some pupils, her daughter included, coming towards their GCSEs, a speedy conclusion to the planning uncertainty is needed.
194. Steart Farm seems to tick all the boxes of the ethos of the school. A local rural secondary school, small by comparison to its neighbouring counterparts, is ideal for the children from local rural primary schools. There would be a decrease on journey times instead of travel to Bideford and beyond. Set in the heart of the Devon countryside would allow the use of the natural surroundings as an 'outdoor classroom', making learning memorable and relevant especially for those who do not learn in traditional classrooms, and would equip students with skills for living in the area after the school years are over, by working towards sought after vocational qualifications in partnership with Duchy College. A horticultural and agricultural academy that teaches about land management should be in the AONB where it can teach children about the importance of land management within the AONB.
195. She says there could not be a better way to place emphasis on caring for the natural environment than igniting all the children's senses by being located in the heart of our wonderful natural environment. She feels some sympathy for the AONB...but there would not be mass tree destruction, or desolation of flora that carpets the area, or the destruction of fauna and their habitats. This is an ex-campsite with hard standings and modern manmade outbuildings.
196. The alternative sites are not realistic. Planning decisions in the area have been dictated by local politics and popularity contests for recent elections. She says she has no confidence left in the local council. There is a fear of change, a fear that allowing a change will lead to a destruction of that natural beauty which is loved by many on both sides of the argument. Fear itself is no reason to hold back progress, and sometimes change itself is what allows progress to occur allowing the good work of the AONB, alongside the areas future generations, to continue rather than being left to lapse when the children of the future have no interest in local conservation. It should not be a sterile museum piece with which our children have no real identification.
197. **Stephen Home** is a dairy farmer with a son at R39 and is delighted that children have a choice. He considers it is an excellent school and a model of how

good state education can be. Whilst in the AONB, plenty of large steel framed agricultural buildings have been erected on green field sites and this is brown field. He is concerned that delay will affect the education of children already at the school. **Philip Spittles** considers the application was flawed from the start. Consultation was inadequate and there never really was an alternative to Steart farm in the eyes of the school. A copy of the consultation letter is attached to his statement⁴⁵. The community has become divided. There is very little land that is protected in the UK and the damage inflicted on the AONB would be permanent. **Sam Doncaster** is an ex-teacher and youth tutor at Bideford Community College with a degree in outdoor education. He considers that all the arguments used by R39 in support of their case are specious- "looking good at first sight; plausible, but wrong or inaccurate in reality". In countless examples of their published materials R39 make great claims for the location, the curriculum and the educational outcomes of their scheme. They then use these self-same arguments to justify their choice of site, which is Steart Farm. He argues, based upon a life time spent in education, all of it in science teaching and much of it outdoors, that;

- 1) The entire concept of a "rural education for rural children" is fundamentally flawed. One might just as well make such grandiose claims for other specially defined groups such as "urban children" or "mining education" for children in S Wales or Yorks. Rural children do not require a specific curriculum — they are just kids who happen to live in a rural environment.
- 2) Based upon this questionable concept R39 have chosen a location around which to build a dubious curriculum "Rural Science" as an examination subject went out of fashion many years ago — is there not a message here?
- 3) In attempting to justify their concept they have constantly denigrated local schools in ways that fly in the face of evidence. They seem to believe that by providing this (untested) theory of rural education they will provide their children with a skill-set that will keep their children in North Devon. It is in this belief that real evidence will contradict their views.

His argument is that there is no educational model or rationale for a school to be built in a rural location. Schools are built on the edge of towns for a very good reason; it provides the school with a base population who can reach it by foot, bike or public transport. They are at the heart of, and draw strength from, their community to which it relates through pupils, parents, grandparents, community groups, sporting groups. If Bideford College had had to rely on people travelling from a distance then not many community events would have happened.

198. Councillor Roland Cooke is a parent governor at R39. He has a son of 15 who attends Bideford College and a daughter of 12 at R39. He does not believe that **the 'No' campaigners are simply against Steart Farm, else all the banners and signage would reflect that and they would have supported the temporary classes at the Milky Way.** He sincerely believes they have been against R39 since its concept and would oppose any planning, as to delay any building of a new school. If the Steart Farm site was virgin pasture land he could understand their objection, but after all it is a caravan site. All houses, churches, bricks, blocks and mortar are on land that was once fields.

⁴⁵ Doc 15

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199. **Sally Salvidant** lives in Bucks Mills in a cottage about 200 years old. It is the first property reached by the watercourse after the appeal site. It is unique in the village as its foundations actually stand in the stream. After a fatal accident involving a milk tanker and a car some years ago, the stream ran white with milk and chemicals all day as the road was hosed down and the fluids entered the stream. There are two bridges over the stream leading directly up to the doors of her house giving access to the property. There was considerable erosion of the stream bed right beside the house in the bad weather last winter and it now is both deeper and wider below the kitchen than it was a year ago. In spite after heavy rain the water level rises right up to the bridges and the speed of flow is quite frightening. If debris washes down the stream and lodges under the bridges the water level backs up and then washes over the bridge. Some years ago the fire brigade was called to release the build up of debris, because the property was flooding.
200. Any extra runoff from hard standing, parking and the large expanse of roof of the school will inevitably exacerbate this problem and will increase the depth and speed of the stream, as well as the chance of debris coming down the valley and so the likelihood of flooding and further damaging erosion. Conversely during a hot summer the flow stops. The only flow in the stream at these times will be the treated discharge from the sewage plant of the school that will flow into this watercourse, estimated at between 13 million and 25 million litres per annum- 69,000 litres per day, based upon the applicants' figures. However this figure only takes into account usage during the school day, it ignores the evening, weekend and holiday community use being proposed by the applicant.
201. As a result her family will be very vulnerable to any malfunction of the sewage system as, should this happen, sewage will leak directly into the watercourse, and straight down the valley, past our house and into the village. The Environment Agency (EA) confirm that they granted the licence to discharge into the watercourses without actually visiting the site. The school's agents likewise have not visited her property to see our proximity to the stream. All the assumptions about the watercourses have been arrived at using theoretical constructs, rather than actual observations and real measurements taken throughout the year.
202. The camp site is never full, it is a quiet site used mainly by couples or families with younger children. There are no facilities for entertainment on site, no restaurant, cafe or bar, no disco or central clubhouse. It does not therefore have much appeal for older teenagers, or for stag or hen parties. Campers tend to leave the site during the day to visit the beach or local attractions, leaving it almost deserted. When driving by one rarely sees vehicles accessing or leaving the site, it is not a busy place. The appellant considers that the tranquillity of the AONB and the village, should the school go ahead, will be no worse than now. However this opinion is based on the numbers of pitches licensed at the site and the number of months the site is licensed to open. The reality is that the owner has, since she has lived here, made available just 70 pitches for caravans and tents. Assuming full occupancy and four people in each unit that is a maximum of 280 people, a fraction of the numbers using the fully functioning school.
203. She is surprised that the owner has not been asked for the booking records in order to obtain the facts about usage. The owner stated in the marketing information that the site opened between April (Easter) and September, a period

of 6 months. She has never in my time as a resident heard any sound from the campsite at Steart. The only noises are the voices of walkers coming down the valley to the village. This tranquillity will change if there is a school for 700 teenagers on the site.

204. Ms Salvidant is a former educational professional, a head teacher for 26 years, twenty of those in an inner city school, rated outstanding in 2010. Her view is that it does not matter where the location of a school is, it is the quality of teaching that is crucial. There are wonderful inner city schools teaching excellent land based subjects, utilising parks, wasteland, canals, rivers, rooftop gardens, allotments and city farms. Their pupils are passionate about conservation, ecology and the environment and are also keen custodians of the countryside. They, as much as rural children, go on to careers in land based professions. Children do not need to be educated in a rural area or an AONB to be passionate about looking after their planet.
205. Expert witnesses say that the children of R39 are lucky to have very good, committed teachers. These teachers will therefore ensure, wherever the school is eventually sited, that their pupils will achieve their potential, whatever their talents. These teachers will give them many and various experiences, challenges and opportunities. Their careers will be very varied. They would more than likely have been enthused by the passion of an outstanding teacher.
206. **Sam Robinson** is a Torridge District councillor for Bideford East and a member of Bideford Town Council for the Bideford East Ward, having previously been district and town councillor for Northam and member of Devon County Council for the Bideford East Division. He has taught, and been resident housemaster and headmaster, in state and independent schools both here and abroad. He says it has been claimed by the appellants that the proposed setting is so that an agricultural and horticultural focus can be given to the curriculum. In his own experience that is fallacy - one of his schools was located in the centre of a large town, but that did not prevent there being on the curriculum an excellent theoretical and practical course in Rural Science which ensured that the teaching of Chemistry, Physics and Biology could be done in the rural context.
207. Much play has been made by the appellants on the less than excellent present standing of Bideford College. Measures are now well in hand to remedy this situation. It disturbs him greatly that a school such as that proposed here can:
- set its own pay and conditions for staff and employ teachers without qualified teacher status, thereby serving to undermine teachers' professional status and their pay and conditions;
 - determine their own admissions arrangements and decide upon their own curriculum, thereby undermining the local authority's ability to plan and manage school places;
 - set the length of terms and school days and operate independently of the local authority and outside the local family of schools, thereby undermining democratic local accountability of schools to their communities. As an elected representative for the most deprived ward in the whole of Devon, he strongly resents the fact that free schools are getting a disproportionate share of capital and revenue funding for schools at a time when education budgets are being cut.

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208. All northern Devon schools are suffering from demographics which means that none of them are full (even while they cater for the 400+ that the appellants claim are moving outside Bideford for their education as a result of the Bideford College issue now being addressed, while that college has very substantial spare capacity). It is disingenuous of the appellants to suggest by their reference to pupils going outside the Torridge area for their education; as with other facets of life, the two districts of Torridge and North Devon function as an homogenous entity in education provision.
209. Government guidance stresses the need for full and effective use of land within existing urban areas, to relieve pressure on the countryside while protecting valuable open space from development." LP policy ENV6 requires: "a proven national public interest". Nowhere is this proven national public interest authenticated or supported by credible evidence. Specifically in regard to the AONB, the policy and provisions also apply to adjacent development. Incompatible developments in the AONB, as this one would be, include the following development that would have an adverse impact on the landscape, on the public enjoyment of the area, or on the local community and large-scale development that could be accommodated elsewhere, or the need for which could be resolved in some other way.
210. Policy ENV5 says: "Development will be expected to conserve or enhance the natural and historic character, natural beauty, and amenity of the Torridge landscape on the basis of local landscape character, historical and cultural associations, and the landscape priorities defined in schedule E. Schedule E is clear that the Torridge Estuary and its setting's priorities are: conservation and enhancement and restoration.
211. The whole crux of the inappropriateness of this proposed development is summarised in paragraph 6.58, page 138, which stresses the need to restrict coastal development to that which requires a coastal location ... the open rural character of the unspoilt coast (and hinterland) needs to be protected against unnecessary development. Paragraph 6.59 re-emphasises: "and resisting development that does not require a coastal location". The ruse of including a particular curriculum in this proposed development is simply that — a ruse by which to try to justify a rural location.
212. Paragraphs of the NPPF are also germane. To summarise, the whole crux of this matter is that, whereas it is recognised that it is the present (and recent coalition) Governments' drive towards the widespread creation of Free Schools that has led to this planning application, its refusal and the present appeal, this cannot be equated with a matter of national importance; the life and well-being of the nation is not under threat were this appeal to fail.
213. Therefore, in the simplest of terms, the justification to ride rough-shod over the protection that is afforded by the national designations of an AONB, a CPZ, an SSLI, and being placed within the curtilage of a listed property (and, indeed, doing violence to that ensemble by the intended total or partial demolition of listed properties within the demesne), and itself located far from any settlement, cannot be sustained. Placed in the balance, as any planning application should be, the demonstrable irreparable harm that the granting of this appeal would deliver, far outweighs the arguments for the present proposed siting of this school.

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214. **Maria Barraclough** is a local resident and teacher and says she is not against free schools but the local schools are good and offer plenty of choice. It is wrong to place a new school in the AONB; the big issue created sends the wrong message to children. She considers it is wrong to ride roughshod over the wishes of the local community. **Julia Nicholls** live in Bucks Mills and frequently walks along the coast path between Bucks Mills and Peppercombe. Apart from the stunning views of both the coastline on the one side, and of fields, hills and woods on the other, a significant joy of walking the path is being able to hear the sea, the streams and the birds. Another sound, although not intrusive, is the traffic on the A39 in the far distance. Steart Farm lies between the A39 and the coast path. The AONB website states: *'An AONB is exactly what it says it is: an outstanding landscape whose distinctive character and natural beauty are so precious that it is safeguarded in the national interest.'*
215. She believes that 'natural beauty' is not only visual but also auditory, and months and months of construction work followed by the shouts and screams of 700 children, whistles, bells, coaches, delivery vehicles and other noises from the school including 5 a-side football, rounders, volleyball, rugby, cricket, skateboarding, mountain biking and amphitheatre activities (as proposed in R39's document 'Outdoor Play statement'), all of which will be clearly heard from the coast path and would be intrusive, will totally destroy the peace and quiet, and auditory beauty of this sensitive area. The only reason there is tranquillity there is because it is tranquil, and should be safeguarded in the national interest.
216. Agricultural barns in the area are used to house some chickens, or some cows, farm machinery, bales of straw or other farm accoutrements. They do not contain 700 secondary school pupils plus staff. It might be said that the barns exist therefore one more large building doesn't matter, but they cannot be compared. However incongruous and alien the building itself would be if sited at Steart Farm, I believe it is the function of that building that will have the greatest adverse impact on the character of the area, and on the local communities of Bucks Cross and Bucks Mills.
217. By declaring their passion for siting the school within the AONB and making it central to their argument it seems to her that R39 have got themselves into a sort of 'Catch 22' situation. If the Secretary of State gives them permission to build on Steart Farm he is saying this free school has greater value than the AONB, thereby diminishing the status of the AONB. As self-proclaimed protectors of the AONB, R39 should be horrified as being the cause of this diminution and the honourable thing to do would be to withdraw their application. If, on the other hand, they go ahead with their plan, they have shown that it is self-interest rather than caring about the AONB that is the more important. It is impossible to be both protector and detractor.
218. **Trevor Silverton** is a resident of Bucks Mills and has concerns regarding the surface water run-off which has the potential to exacerbate channel erosion and destroy aquatic habitats. The vulnerability of Bucks Mill stream flood events has been demonstrated recently with two events occurring the past 5 months upstream and downstream of St. Anne's church. The upper event comprised a failure of the stream bank and undercutting of and partial failure of the road surface. This required emergency works to be carried out on behalf of Devon County Council, without which the road would have been further compromised.

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219. These works initially required complete closure of the road but were carried out over a 3-week period of restricted access in late February/early March, 2015. It would seem likely that these two events were a consequence of increased run-off, possibly associated with felling of the larch infected with phytophthera ramorari and associated activities flanking the stream. Trees act as a buffer in the hydrologic cycle and help soak up rain and slow runoff and these stream events highlight the sensitivity of this environment to subtle changes in land usage and associated ground and surface water flow. It is suggested that the basis of the EA consenting to the proposals was based on assumptions (regarding run-off) that are no longer valid and that there is a high likelihood that a hydrology study and risk assessment would show that there are risks to the environment that would be deemed unacceptable.
220. It is noted that the EA have permitted the sewage treatment system intended to serve R39 Academy (ref EPR/AB3096RE⁴⁶). This is for direct discharge into a watercourse of up to 70 cubic metres/day of secondary treated sewage effluent subject to emission limits and monitoring requirements. These conditions are based on assumptions regarding stream flow which although reasonable, are theoretical and are not appropriate for the stream to which the discharge would be made (the stream to the East according to Hydrock drawing 250/C-01) which is ephemeral. This means that the resultant flow during dry conditions would not reach drinking water standard.
221. There is also a real risk that further felling of larch (and possibly other trees such as beech) will be required to control the spread of Phytophthera and this will have further impacts on surface water run-off (as well as visibility and noise attenuation). He believes the scale of development constitutes urbanisation within the AONB (4.14 hectares (ha) out of 6.89 ha will be physically impacted with 0,59 ha of building plus hard surfaces) and that the risks to the area of this proposed development would be unacceptable.
222. **Stephen Pitcher** is Chairman of the North Devon Coast AONB and represents the AONB Partnership. He is a retired member of the RTPI and the CIHT. The Partnership is opposed to the proposal. The primary purpose of the AONB designation is to conserve and enhance the natural beauty of the AONB and in its opinion the proposed development neither conserves nor enhances this special, valued and protected landscape and therefore it is duty bound to oppose the application. During the course of this Inquiry much has been made about the ethics of the school and the need to locate within the AONB to fulfil this. Whilst the school may be keen to promote the environment, we need to be careful that we do not "kill the goose that laid the golden egg" by permitting this development within the AONB boundary.
223. With regard to the school engaging in environmental activities and undertaking work that fulfils the aims and objectives of the AONB Management Plan, the Partnership would argue that this should carry little weight because of the school's limited ability to actually deliver on it. Whilst the school could actively contribute towards the management and enhancement of the AONB, in our opinion, there would be limited opportunities for engagement outside of the school grounds themselves. It should be noted that all land surrounding the

⁴⁶ Doc 44

school is privately owned and the school would require permission from the landowner to engage in any management activity on private land. In addition, some of the land is designated, for example as a Site of Special Scientific Interest (SSSI) or a SAM, which means that management activities have to be strictly approved, controlled and supervised by the appropriate authority. With regard to managing the rights of way network, for example the SWCP or other public footpaths, this is normally done by the statutory undertaker, in this case the Highway Authority and so the school could only undertake these activities in a limited way.

224. Whilst the school may act in a voluntary capacity, this work must be approved and overseen by others and increasingly countryside organisations such as ours, have less capacity to organise and supervise this work, which makes it more difficult to achieve. This is not to say that the school could not engage with their environment and organisations such as the National Trust (NT) and the AONB Partnership do work with volunteers. However, this tends to be for specific projects, when funding and project staff are available. In the case of the AONB we have only two full time members of staff and so the opportunities to engage are currently quite limited.
225. However, many of the schools that both the AONB and NT engage with frequently come from outside the designated AONB. In the case of our Clean Marine Project, students from Ilfracombe School and Bideford School, both located adjacent to the AONB, have actively assisted in our work. In addition, the NT, which has major landholdings within the AONB, frequently engages with local schools such as Parkham and Woolserly, who are also located outside of the AONB.
226. Therefore, there is no reason why the school could not actively engage in assisting in the management of the designated area if it was located outside the AONB, as do many other schools across North Devon and Torridge. There are more suitable sites located outside of the AONB that should be considered for the new school. The proposed development at Steart Farm would harm the natural beauty of the AONB and whilst the school may actively engage in the management of the AONB environment by delivering elements of the AONB Management Plan, for the reasons specified above this would be largely confined to the small area of land that the school would potentially own.
227. As the school's ability to conserve and enhance the natural beauty of the AONB is limited, it could not outweigh the harm done to the AONB by permitting this proposed development in the first place. Our concern is that it, if given permission, it could open the door for further large scale developments in this outstanding landscape, which is nationally protected for the nation to enjoy.
228. **Jane Whittaker** is a District Councillor and Leader at Torridge DC. Speaking personally, she endorsed others who objected and raised similar issues.

Written Representations

229. A large number of written representations are submitted both for and against the proposal. The points made generally fall in line with those made by others at the Inquiry. The following paragraphs reflect concerns that are not already summarised above or are of particular interest.

230. **Geoffrey Cox** QC, MP for Torridge and West Devon writes⁴⁷ to say that he has met local residents and visited the school and the proposed site. He has seen first-hand the exciting educational opportunities offered and very much supports the new free school and wants it to succeed. He believes there is considerable force in the suggestion that the proposed position on the A39, at least without significant adaptation to the road layout is unsuitable to accommodate the extra demands of hundreds of pupils attending a new school. A great deal of expenditure will need to be allocated to improve the roads around the site, and the speed of vehicles using the A39 would need to be further controlled. He remains of the view that there are likely to be more suitable locations, and that a less controversial alternative should be considered. He is particularly concerned about the divide this issue has caused between supporters and non-supporters of the school. The safety of pupils and the ongoing relationship between the school and the local community are important factors in this decision, and in his opinion both will benefit from a different location.

231. Councillor **David Lausen** represents Winkleigh Ward and was initially supportive of a different type of rural school but now considers the site to be in the wrong place because of its impact on the AONB, the risks of landslip on a steep site, the discharge of treated effluent in small watercourses, and the effect on the educational environment in the area generally, particularly the impact on existing schools. **Mark Turner** is Headmaster at Shrewsbury School. He regards his family home to be in Bucks Mills village. He points out that there is no shortage of school places in the area and no evidence of wholesale underperformance in state schools. He considers that of all the sites considered, the Steart Farm site is the most inappropriate, being within an AONB, close to a village, in a region that depends almost entirely on tourism and visible from the coast path. He considers the A39 to be fast and uncompromising. The R39 talk of environmental concerns but the travel plan expects most pupils to be bussed in, contrary to the encouragement to walk and cycle. Schools should be at the heart of their communities. **Chris Thain**, Foundation Trust Governor at Holsworthy Community College, draws attention to the surplus of spaces currently in local secondary schools and points out that Holsworthy College and Great Torrington School are at significant risk of closure due to a reduction in financial viability if the R39 school goes ahead. He attaches an Impact Assessment in support of this contention. He considers the local demand for the school is underwhelming and that the cost of educating small numbers of pupils is uneconomic and wasteful. Amongst other points, he also points out that the Senior Road Safety Engineer at DCC indicated that in winter months children will need to cross a national speed limit road with no illumination; something that drivers are unlikely to expect. **David Fitzimmons**, Principal at the same school, makes similar points and draws attention to the environmental harm and highway safety issue.

232. The owner of the village store and post office at Bucks Cross objects because of the potential loss of custom from campers and caravanners who seek out unspoilt locations. **Chris and Kate Jones** of Bucks Mills make a number of points including that the building would be of inappropriate and insensitive design and that there would be a detrimental impact on the dark skies that currently prevail.

⁴⁷ Doc 5, see also letter to the SoS 12 December 2015

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233. A large number of **parents** with children at the school (or planning to attend) point out that the proposed school site is much easier to reach than the alternatives in Bideford or Bude and represents a unique opportunity for children to learn in a special rural environment. They draw attention to the small classes and the quality of the learning experience; and the benefits of not having to travel so far. On the other hand, some **parents** of pupils at other schools object because of the reduction in public funds that may result and the threat of closure.
234. **Paul Hartley** of Bude says that Steart Farm is the only touring site listed in the SWCP Guide between Morthoe and Boscastle, a distance of 80 miles. Its loss would impact on the tourist economy which is vital to the area. **Alan Lewis** of **Bucks Mills and others echo Ms Salvidant's comments on the water** flow in the stream coming down from Steart farm and the potential effect of the proposed effluent treatment at the school. **Dr Jonathan Wood** is local GP who considers that the school will have a severe effect on the provision of health services and emergency services because of the poor local infrastructure. The potential impact on the abundant wildlife is raised by some because of the increase in built form, hard surfaces, artificial lighting and traffic.
235. **The National Trust's** statutory purpose is to conserve places of historic interest or natural beauty which it holds for the benefit of the nation. **The NT's** primary interest in this case is its ownership of the coastal strip from Bucks Mills to Peppercombe which includes the hill fort on the high ground to the east of Bucks Mills which is within 0.5 km of the site and is a SAM. In relation to the **principle of development, the NT was concerned that in the officer's report to TDC** planning committee of 4 September 2014, whilst it was recorded that great weight needed to be given to the creation of new schools in line with paragraph 72 of the NPPF, it failed to identify that great weight also needs to be given to conserving landscape and scenic beauty in the AONB in accordance with paragraph 115. In terms of the presumption in favour of sustainable development the officers report did not highlight the fact that where specific policies in the NPPF indicate development should be restricted the presumption does not automatically apply (paragraph 14); footnote 9 highlights that this includes policies relating to AONB.
236. A High Court judgment in relation to a planning application for a major development of affordable housing in the Cornwall AONB⁴⁸ found in that case that the committee could not perform a simple balancing exercise and could only approach the application on the basis of paragraphs 115 and 116 of the NPPF; ***"they had to find exceptional circumstances, and then giving conservancy of the AONB great weight, determine what other factors... meant that the public interest was nevertheless in granting planning permission"*** (paragraph 58). The judgement in that case was that the Committee failed to give conservancy of the AONB great weight.
237. In the officers committee report for the A39 School there was no indication that conservancy of the AONB should be given great weight. The officers report, under 'Impact on the Character and Appearance of the Area', deemed the proposal to represent 'major development' in terms of paragraph 116 of the

⁴⁸ The Mevagissey Case, 21 November 2013 Case ref: CO/6597/2013

NPPF, and sought to apply the tests in the NPPF set out for such development. However, the NT did not feel that the assessment in the committee report, under paragraph 116 of the NPPF, was adequate in terms of considering the scope for developing outside the AONB or the detrimental effects on the environment, particularly the impact on tranquillity.

238. The NT also has sustainability concerns in transport terms, raised by such a development in the open countryside. With regard to the impact on the setting of Bucks Mill SAM, the Cultural Heritage chapter of the ES states that the school building will not be visible from the SAM, which is within 0.5km of the site, and it concludes that there will be 'negligible' impact on this heritage asset (paragraphs 6.9.30 and 6.9.31). However, the potential visibility of the proposed building from the monument is open to question and it needs to be tested with further assessment. The environmental statement should be clearer on the extent to which the existing vegetation around the edge of the site, referred to in paragraph 9.6.30, will screen the view of the building, in order to determine both the level of likely visibility of the school building with the vegetation retained, but also the extent of reliance on that vegetation, and how much of it is actually within the applicants control. HE guidance on 'The Setting of Heritage Assets' (2011) states "*The permanence or longevity of screening in relation to the effect on the setting also requires consideration. Ephemeral features... may be removed or changed during the duration of the development, as may woodland or hedgerows, unless they enjoy statutory protection. Management measures secured by legal agreements may be helpful in securing the long-term effect of screening.*" (page 22)
239. The NT says the design resembles a monolithic industrial shed. The building is likely to be visible along the "green lane" owned by the NT, from sections to the east of the scheduled monument. The ES assessment in the main body of the report places a reliance on the hedges along the lane, in restricting the views (paragraph 7.5.23), being maintained permanently as existing, which cannot be certain.
240. Turning to impacts from foul water discharge, the NT's ownership includes the beach at Bucks Mills. The NT is concerned that there remains uncertainty about likely effects as the exact methods of treatment of sewage are not yet known. The NT is mindful of the range of considerations associated with the proposed development, but is concerned that the conservancy of the AONB is given great weight, and the tests for major development, under paragraph 116 of the Framework, are demonstrably applied. It has not been convinced that this major development is appropriate in the AONB, and is concerned about potential impact on the environment, particularly the impact on tranquillity, and water quality at Buck's Mills beach.
241. **DW Rose** is a former Head of Department at Budehaven Community School and resident of Northam who considers the school to be superfluous and detrimental to the local community as well as to the AONB and to built heritage. Amongst other things, he considers the location to be a security risk because it would be so easily accessible. He suggests that views of a secondary school with the accompanying noise would not be a tourism asset and would spoil Bucks Mills as an unspoilt special place. **Andrew Fryatt** lives half a mile from the site and points out amongst other things that with no proposed speed limit being desired by the County Council, adding together children being dropped off, vehicles

slowing down to turn and people hurrying to get to work on time, there would be a significantly increased hazard in an area where there have already been accidents.

242. **The Bucks Mills Society** draws together many of the objections voiced by others and residents of the village but also states that 11 species of bats have been recorded at Steart Farm and that these would be affected by the construction process and the noise and movement of children; there are dormice in Bucks Mills Wood and an otter in the stream, both of which are UK Biodiversity Action Plan priority species. It also says that developers will wish to build houses in the location and that rurality will be lost.

Planning Conditions

243. The wording of the suggested conditions is generally that agreed at the Inquiry and is covered here without prejudice to my consideration of the issues. I report only on conditions that attracted controversy and drew comments at the Inquiry, or because they require explanation or important rewording. All other conditions are necessary and should be imposed for the reasons stated. I have considered the suggested conditions in the light of planning guidance and Appendix A to Circular 11/95 *The Use of Conditions in Planning Permission*. They have been adapted in accordance with the recommendations therein where appropriate, to ensure the wording is precise, necessary, relevant and enforceable.
244. **Condition 2** has been amended to include the application plans. **Condition 3** is amended to include sample panels of the external facing materials in view of the sensitive location. **Condition 4** concerns the timing of construction activities **and has not been altered, in view of the site's sensitive location**. **Condition 5** is altered to include the requirement for an earthworks specification to reduce the risk of landslip during construction in accordance with Doc 48. **Condition 6** is amended to include a timetable for measures to protect bats and bat roosts and references are added referring to the recommendations in the ES. **Condition 9** amalgamates suggested conditions 9, 10 and 11 on biodiversity as discussed at the Inquiry. **Conditions 11-14** concerning landscaping are adapted to conform more closely to the model conditions. Suggested conditions 17, 18 and 20 are combined into new **condition 17**. A Travel Plan is the subject of the s106 Undertaking and **condition 18** is necessary to ensure that it is in place before occupation. However a condition could not reasonably prevent the use of the lane south of the A39 for the dropping off or picking up of pupils. **Condition 19** requires the implementation of the bus lay-bys on the A39, the pedestrian crossing facilities and pedestrian access to the site, before occupation. These facilities need to be in accordance with the revised plan ref 13092/T12 submitted at the end of the Inquiry⁴⁹ which avoids, as far as possible, blind spots caused by waiting vehicles.
245. **Conditions 20 and 21** control the installation and times of operation of external lighting, which is essential to limit the impact on the night time environment and for wildlife. **Condition 22** brings together suggested conditions 19, 25-28 to control surface water and includes the provision of timetabled implementation to ensure surface water is properly and safely carried away during construction. **Condition 23** controls the treatment and discharge of foul

⁴⁹ Doc 49

drainage. A condition requiring details of measures to protect public safety and prevent crime and disorder on this scheme is unnecessary because of other legislation that seeks to protect the interests of schoolchildren and staff. The suggested condition requiring a school management plan setting out the objectives and aspirations of the school to assist with its contribution towards the management and enhancement of the North Devon AONB is no more than a statement of intent. It has **never been the appellants' case that a location within the AONB is a necessity, but a benefit and a longstanding objective.** It requires the co-operation of the AONB management board and other agencies. Whilst this is unlikely to be withheld, and contributing to the AONB is an important objective for the school and the reason for the chosen location, it cannot be enforced and is therefore contrary to an important principle for all planning conditions.

Condition 29 is necessary if the Secretary of State considers it desirable to ensure that buildings 2 and 3 are retained in the interests of the setting of the listed building. **Condition 30** is necessary to ensure that the school activities in the building at night do not unduly affect the prevailing darkness and character of the AONB. **Conditions 31-34** control noise levels at the nearest dwellings and I have adopted the appellant's suggested wording.

246. Suggested conditions attached to the listed building consent are those above that are relevant to the works.

Planning Obligation

247. A signed and dated Unilateral Undertaking (UU)⁵⁰ has been provided, with the objective of providing, implementing and maintaining a Travel Plan and Bus Management Plan. This was the subject of discussion at the Inquiry and the **targets have been redefined to more closely relate to the Highway Authority's and the School's aim that car trips should amount to no more than 10% of total student trips to and from the School.** The responsibility for implementing the Travel Plan also falls to an individual, the Travel Plan Co-ordinator appointed by the School, who will engage the student body through a Travel Plan Working Group. The s106 contains mechanisms by which the Travel Plan will be monitored and reviewed and changed as necessary in order to more towards the targets.

248. The Framework sets out at paragraphs 203 and 204 national policy on planning obligations which are governed by s106 of the Act and regulation 122 of the Community Infrastructure Levy Regulations 2010 (CILR). It advises that decision makers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests:

- **necessary to make the development acceptable in planning terms;**
- **directly related to the development; and**
- **fairly and reasonably related in scale and kind to the development.**

249. The provisions of the Undertaking are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be

⁵⁰ Doc 16

necessary to make the development acceptable. They meet the tests set out in Paragraph 204 of the NPPF and Regulation 122 of the CILR.

Inspector's Conclusions

In this section, numbers in brackets [] refer to the main paragraphs in this report that are of relevance to my conclusions

250. Following from the reasons for refusal, the main issues that will be of interest to the Secretary of State are as follows:

- *The effect on the character and appearance of the area, which is in the North Devon Coast Area of Outstanding Natural Beauty; and*
- *The effect of the proposal on the setting, architectural character and special interest of Steart Farmhouse, which is listed at Grade II.*

The Rule 6 party and others also raise other concerns including the need for the School; the sustainability of the location; the impact on highway safety; noise; and flooding in Bucks Mills.

Planning policy

251. It is common ground that the application constitutes a departure from the Development Plan because it is major development in the AONB, which would detract from the character and appearance of the area and would not fall within any of the categories in policy DVT2C. The language used in policies DVT2C and ENV6 is more restrictive than paragraph 116 of the NPPF, which advocates a criteria based approach and does not rule out development which may harm character and appearance. The test to be adopted in considering the appeal proposal is whether, given the great weight to be given to the promotion of schools and the conservation of landscape and scenic beauty, exceptional circumstances apply and it is in the public interest, having regard to the 3 bullet points set out above at paragraph 24.[26]

Landscape and visual amenity

Landscape character

252. In view of the importance of the landscape designation and the need to properly assess its sensitivity to the proposed development, I set out in some detail the relevant character assessments. The appeal site and the alternative sites lie within Landscape Character Area (LCA) 4 Bideford Bay Coast⁵¹. This is described amongst other things as comprising deep combes cloaked in oak woodland winding inland from wooded cliffs; narrow lanes with high fern covered banks provide access to sheltered combe villages of Bucks Mills and Clovelly. On higher land behind and between the combes is a lush landscape with a rolling patchwork of fields, a peaceful settled feel, and views of the woodlands and the sea. Distinctive characteristics include an attractive landscape with pleasing compositions of woodland, farmland and coastal scenery, coastal settlement of scattered farms and picturesque linear villages running down steep valleys to the sea; and impressive Iron Age defensive sites which include a promontory fort at Bucks Mills.

⁵¹ Ms Mitchell's Appendix 3 (also in Mr Leaver's appendices but Ms Mitchell's reference given for convenience)

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253. Special qualities and features are listed and include exceptionally high scenic quality; a localised sense of remoteness, seclusion and intimacy, particularly in wooded combes; and strong recreational appeal including Clovelly and Bucks Mills 'honeypot' sites and the SWCP. **Forces for change include the high numbers of visitors and the visual impact of large tourism sites such as the Bideford Bay Holiday Park⁵²; intensification of agriculture; localised loss of hedgerows; and farm diversification schemes such as campsites and conversions.** The strategy for the LCA includes protecting open skylines, vistas and views; characteristic qualities of seclusion and remoteness in combes; protecting the undeveloped character of the coast where it remains; protecting dark night skies; and protecting locally distinctive vernacular building styles, ensuring that any new development is sympathetic in style, form and function.
254. At a more detailed level, the appeal site itself lies north of the A39 in a small outcrop of Landscape Character Type (LCT) 5B ***Coastal Undulating Farmland***, (according to the 2010 Joint Landscape Character Assessment for North Devon and Torridge Districts by Land Use Consultants⁵³) above two converging steep wooded combes leading down to Bucks Mills⁵⁴. Special qualities of the LCT as a whole include open, uninterrupted sea views, strong field patterns (including medieval fields) with frequent crooked hedgerow trees, productive, rolling farmland – a working landscape, and peace, tranquillity and low levels of **development. The overall strategy for the LCT is to protect the area's role as a working agricultural landscape with open sea views providing a distinctive sense of place. High levels of tranquillity and dark night skies are to be protected through the careful siting of new development; the landscape's** archaeological heritage including prehistoric defensive sites at Godborough Castle, Clovelly Dykes and on the eastern slopes **above Buck's Mills** are to be protected and **managed. The landscape's high levels of tranquillity and dark night skies are to** be protected through the control and management of development, including highways.
255. The immediate area to the north where the site meets the wooded combes above Bucks Mills lies in LCT 4D ***Coastal Slopes and Combes***. Key characteristics include 'very lightly settled, with small groups of dwellings and historic hamlets of local stone and whitewash with slate and sometimes thatched roofs, often sited at stream crossing points. Low levels of access, with minor roads generally crossing valleys and only occasionally along them, whilst footpaths and bridleways snake alongside streams. High levels of tranquillity – often the only sounds to be heard are from birdsong, the fast-flowing water of the combe streams, and the distant roar of the sea'. Special qualities are listed as: secluded, intimate and small-scale landscapes; the contrast between sheltered woodlands and open vistas framed by the sea; ancient woodland and rich biodiversity shaped by salt-laden winds; historic fishing village at Bucks Mills; **'olde worlde' village charm and a strong historic sense of place.** The overall strategy for the LCT is to protect the secretive and historic character of the coastal combes, with characteristic glimpses of the sea and surrounding coastline; features relating to past industry are protected and sympathetically restored, and ancient woodlands are to be actively managed and re-created

⁵² On the headland north of Bucks Cross. Not visible from the appeal site.

⁵³ Ms Mitchell's Appendix 4

⁵⁴ See sections in the site evaluation in the design and Access Statement page 34

where they have been replaced over the last century by conifer plantations. Opportunities are to be sought to re-link and enlarge semi-natural habitats (to strengthen climate change resilience), surrounded by a working farmed landscape of fields enclosed by an intact network of Devon hedges.

Impact on landscape character

256. LCA and LCT boundaries drawn on plans are indicative. In practice, landscape characteristics merge and flow together and seldom demonstrate clearly defined edges. The former farmland at Steart still has a small scale field pattern based on its traditional layout⁵⁵. Some 230m of hedge bank has been removed for camping use but the field pattern is still clearly evident, although new hedges have not generally been planted using the original species. The current owners have added mixed new plantations which have added to a generally well vegetated appearance that provides a gradual transition between the wooded combes and the more managed surrounding open farmland. There are much larger fields on the southern side of the A39 and to the east. The farmstead and field pattern on the site together with the plantations contribute to a strong sense of place.
257. All the school functions would be housed in one new 2 storey building of around 100m in length and 36m wide with a height of about 9.36m to the ventilation terminals. This is to reduce its footprint as far as possible. The Design and Access Statement (DAS) explains how the least vulnerable part of the farm in terms of topography and ecological value is proposed for the building itself. In order to reduce its visual impact as much as possible, the ground floor would be substantially cut into the landform so that on the higher south side, the 1st floor would be level with the car park which would be broadly on the existing contour line at around 170m above ordnance datum (AOD). A bridge about 12m long would connect the car park to the 1st floor main entrance across a hedged and 'meadow' planted retaining slope. Excavated material from the school building site and the car park area would be deposited elsewhere on the site, mostly in a horseshoe configuration facing east which is intended to be sympathetic to the existing landform. A substantial amount of additional fill would be brought in to bring ground levels up to the northern elevation of the school⁵⁶. A large part of the site area to the north and east of the school building would consist of built up ground planted with a wildflower meadow or recreational grass mix.
258. Some 270m of Devon hedge bank would be removed to accommodate the academy building and car park. Much of this would be more recent and not native to Devon, and the appellants propose new planting of an equal amount of new native hedging and an additional 110m of single species native planting near the academy building. This would not follow any field boundary lines but reflect the new contours created⁵⁷.
259. It is suggested that the existing campsite use reduces the sensitivity of the site to new development and that the campsite area does not possess outstanding natural beauty. However, Steart Farm is very different from larger developments

⁵⁵ See **Figure 2 of Mr Leaver's Appendix 2**; hedge plans at Doc 42 and 1840 Parkham Tithe map provided by Ms Burley in Appendix 29; also Figures 1-3 in Appendix 9 of the ES

⁵⁶ See Doc 41 for cut and fill volumes supplied at the Inquiry

⁵⁷ See drawing L9-007 rev 5 '**Soft Landscape Strategy**'

with semi-permanent accommodation such as the Bideford Holiday Park at Bucks Cross. **It is 'previously developed land' by virtue of its caravan and camping use,** but this is carried out at a low intensity. There are no entertainment buildings, shops, sports facilities or holiday chalets, only a small number of small static caravans in one area north of the farmhouse and a small toilet block. The campsite is mostly unoccupied in the winter months. It was unoccupied at the site visit, but the arrangement of pitches in small fields, the planting and small scale topography⁵⁸ mean that intermittent camping and caravans would always be subservient to the farmhouse and farmstead in physical terms. It is clearly part of the tourism function which relates directly to the beauty of, and immediate access to, the surrounding area. As such it retains all the characteristics of a diversified farm use that does not appear out of place or particularly incongruous, and it does not impact at all significantly on the high quality key characteristics of landscape character. Moreover, the AONB management plan acknowledges tourism to be a vital part of the local economy. It is to be expected in the locality. Whilst not as sensitive as the combes themselves or the cliff top, I consider the landscape in and around the appeal site to retain a high value which would be highly susceptible to major built development. [50,51,66]

260. The appellants suggest that the distinctive characteristics of LCT 5B and set out in the AONB Management Plan are poorly represented on the existing campsite and that new measures as part of the development will compensate for what is lost, restore elements that are weak, ensure their long term future maintenance and thereby enhance. The site lies at the edge of the LCT and the AONB but it is difficult to find a special quality that is poorly represented; it also contributes to the quality of the coastal LCT 4D as a backdrop to the wooded combes. The influence of traffic of the A39 on the sense of seclusion is mitigated by barrier planting and lessens considerably away from the road. The exceptionally high scenic quality is self evident, as is a strong sense of tranquillity. Whilst the removal of caravans and tents would lessen human activity and would be a benefit, their replacement with a large institutional school building and the concomitant comings and goings would be many times greater. [39,137,215]

261. Although set into the slope, it would remain a horizontal built form of very substantial bulk. The suggested resemblance to large agricultural buildings in the area does not lend weight to the argument in favour in this particular location. In addition to the accompanying activity and commotion of children, staff and visitors, which have nothing to do with agriculture or the prevailing land uses, the building itself would have an almost flat roof and extensive windows which would be highly unusual on a farm building. The car parks, bus turning area and mown grass surroundings would be untypical of buildings normally encountered for agricultural purposes. Moreover there are no comparable agricultural buildings of this size within the AONB or LCA 5B nearby⁵⁹. [55,120-1,136, 232-7,235-7]

262. The design of the building takes little inspiration from the surrounding landscape, acknowledged to be of exceptional quality, or the intimate setting of Steart Farm. Recognising that the internal layout follows contemporary

⁵⁸ See SLR drawing 01342.00001.16.036.0 in Ms Mitchell's rebuttal

⁵⁹ Taking account of Mr Bence's submissions on this point at Doc 4

educational thought and would provide an excellent learning environment, the external appearance is institutional and uninspiring; with a form and materials which would be more typical of a suburban environment and which could be found **almost anywhere**. In close questioning of the appellant's planning witness on this point, the only concession in the design in response to the rural AONB location is stated to be the timber cladding on the 1st floor. No clear reason for the extensive red brick ground floor treatment was forthcoming except its longevity and resistance to wear. Red brick is not common in the local area and does not feature at Steart except in some corbel and eaves details. The suggestion at the Inquiry that this could be changed by means of a condition indicates that some of the finishes may not reflect local distinctiveness.

263. The NPPF says that the Government attaches great importance to the design of the built environment and that developments should respond to local character and history and reflect the identity of local surroundings; and should be visually attractive as a result of good architecture and appropriate landscaping. The small scale landscape at Steart has to be severely modified and a large amount of fill imported to accommodate the car park, bus turning area and proposed building, which is of unremarkable urban appearance. It would result in the loss of key characteristics of the landscape and would not be well integrated into the natural environment. Proposed mitigation in the form of additional and reinforced planting and new hedgerows would not seriously reduce the negative impact of this development, which would have a locally high magnitude of effect. [39,47-8,49-50,112,135,143,239]

Visual amenity

264. Turning to the effects of the development as it would be perceived by those who pass through, live, walk, work or holiday in the area, who are acknowledged to have high sensitivity, the places from where it could be seen are limited⁶⁰. ZTV⁶¹ plans indicate that the roof and end of the building would be visible briefly travelling along parts of the A39 around Bucks Cross, modified by trees and vegetation depending on the time of year⁶². There would be visibility from gateways in Devon hedges on the country lane at Higher Worthygate Farm and the public right of way (PROW) at Lower Worthygate Farm to the east. Moving closer, the building would be a stark and conspicuous element seen from a gateway in a PROW between Higher Worthygate and Bucks Mills⁶³. In the views from the east, the fenestration and institutional form of the building would be clearly visible. A PROW passes directly through the site entrance and along the site boundary before descending into the combe. In winter, there would be some visibility of the school through trees and shrubs from the Bucks Mills hillfort SAM and from a very small part of the SWCP. Whilst no tree clearance is proposed which would increase this, it cannot be ruled out⁶⁴. [56,57,238]

265. In any of these views, the building would be an incongruous urban element, even when seen against other buildings such as dwellings in the village at Bucks Cross which are conspicuous on the skyline; and/or farmstead buildings of

⁶⁰ See ES Appendix 7.4 Visual Effects table Parts 1 and 2, publicised separately on 5 May 2015

⁶¹ Doc 39 was provided for use at the site visit

⁶² See also VP7, indicating visibility of roof from the footway (in DAS)

⁶³ See **photomontages at the second Section 3 of the ES together with locational plan in Ms Mitchell's rebuttal**; Mr Leaver's VP 9 in his Appendix 2

⁶⁴ Doc 19

various sizes. The rectangular, bulky architectural form of the building would be discordant despite being dug into the landscape; its only mitigating factor being the timber cladding on the most visible 1st floor. It would be unexpected in the context of the wooded combes descending to the sea and the predominant agricultural fields, large or small, all of which are important features of the AONB⁶⁵.

266. Notwithstanding the limited public views available of the building, it would be noticeable in other ways and I deal with noise here because it is a contributing factor in the perception of tranquillity. The tranquillity of the area, due to the woodland and the intimate nature of the combes, is marked. **The appellant's** noise impact assessment assesses the likely impact of plant in the building on the nearest dwellings to the south on the opposite side of the A39 and to the north at Bucks Mills. Existing noise levels on the site were measured in the morning from 0857 to 1206. [137,215]
267. The A39 is the most dominant noise source but traffic varies from a fairly constant level during morning and evening rush hours to a more intermittent feature during most of the day, then dying away to a very low level at night. The appellants assume a conservative attenuation factor for the woodland north of the site of -10dB. Assuming a nominal target of 25dB at dwellings at Bucks Mills, then on this basis, plant should be limited to 73dB at a point 3m from all the façades of the school. Providing that a level of 25dB can be achieved by condition at Bucks Mills, then it is unlikely to lead to a complaint from here due to plant noise⁶⁶. It is less certain that the existing levels of tranquillity at night can be assured for the occupants of dwellings south of the A39, bearing in mind that the air source heat exchangers would be located on that side, but given the potential for attenuation of plant, the same condition could be imposed with a reasonable degree of assurance that complaints would be unlikely.
268. **The position in relation to children's voices is less clear because of the variable** nature of this type of noise depending on the activity undertaken, where it takes place and the local topography. It is accepted that the occupiers of dwellings to the south would not be troubled by this during the day as it would be less than traffic noise and attenuated by the building itself. At Bucks Mills, however, it is less certain. The noise assessment predicts that playground noise will 'most likely' be inaudible, but this assumes the noise is generated from the centre of the playground and is at a level of 60dB at 1m for 30-35% of the time per child, a level considered typical of general playground conditions. The school is keen to use the outdoor space for organised games with the inevitable and necessary noise. If children are being encouraged to take advantage of the site location and its surroundings, as envisaged by the school, it is more likely that they will be nearer Bucks Mills and in the woodland itself, almost certainly in groups.
269. Moreover, one small **dwelling on the hillside at Bucks Mills, 'The Berries'** is accessed by footpath, at a considerably higher level on the side of combe and nearer to the school than those houses at the confluence of the streams. Here, there is substantially less woodland screening from the school site and much less noise from flowing water, which is in any case not always present. I do not give

⁶⁵ AONB Management Plan p31 'On higher land behind and between the combes is a lush landscape with a rolling patchwork of fields, a peaceful settled feel, and views of the woodland and the sea'

⁶⁶ Taking account of the comments from residents that the streams run dry on occasion

substantial weight to the fact that currently, it is not occupied full time. It is capable of full time occupation. I consider it very likely that the current tranquillity of the combes would be affected by noise from time to time which would diminish the tranquillity of the AONB.

270. Turning to lighting, the school is very conscious that car park lighting would be incongruous in this area of dark skies and external lighting would be designed to reduce unnecessary overspill. Conditions could be imposed to ensure that external lighting is time limited, but evening activities would necessitate its operation. There would be reflected light, more noticeable when mists occur, something local people draw attention to in connection with road safety. The appellant acknowledged the need to control light emitted from the classrooms at the Inquiry, and this could be controlled using blinds. Nevertheless the development would lead to a general increase in artificial light which would be undesirable in the AONB. [52,191]
271. For all these reasons, the development would fail to meet the requirements of LP policies ENV1, ENV5 and ENV6; the NPPF at paragraphs 17, 56, 58 and 115; and would conflict with the policy aims of the AONB.

The effect on the listed building

272. The existing farmhouse has been repaired over recent years and one building has been sympathetically restored as a dwelling, but other farmstead buildings have gradually deteriorated, to the extent that they do not now provide any useful shelter. Nevertheless, their stone walls remain largely intact and the shape and purpose of the original farmstead is still evident. The previous existence of a horse engine, a feature of old Devon farms, can be clearly seen. Despite their general dereliction, the contribution the curtilage buildings make to the setting of the listed building and hence heritage significance is still considerable. The caravanning and camping activity does not detract from its heritage value. Buildings 2 and 3, in particular, are the first seen on entering the farm. Some details remain that are typical of ownership by Mark Rolle, a 19th century landowner and philanthropist; but these are not unique to Steart. The cartshed retains a large recess in its gable where it is almost certain that a clay **tablet with Mark Rolle's initials was originally placed (it is now safeguarded inside the farmhouse).**
273. **The appellant's preferred option is to remove all the ancillary farm buildings** except for a workshop near the farmhouse. Given their existing condition and the lack of any particularly unusual or special architectural interest, the removal of most of the buildings that supported the function of the listed building as a farmhouse would cause a degree of harm to its setting **that would be 'less than substantial', in the terms of the NPPF. However, the new building would be a significant new institutional addition to the surroundings.** Sited nearby at a considerably higher level and accompanied by substantial alterations in land contours, it would completely dominate the listed building and its setting. The farmhouse would have subsidiary educational use which would have benefits to the schoolchildren but the farming history of the holding would be hard to appreciate **'on the ground'**. The design of the new building would have no appreciable farming associations.
274. In these circumstances, the public benefit of the proposal has to be placed in the final balance. Just before the Inquiry, the appellant offered to retain

buildings 2 and 3 in a stabilised and safe condition, that is without restoring their timber roofs or rebuilding demolished or collapsed walls. Retaining these elements in the farmhouse setting would make the function of the listed building much clearer. It would leave open the door to future restoration, though that is **not part of the school's plans. Moreover, the location of buildings 2 and 3** approaching the farmhouse is important and retaining them would help to put the new building into context, even though some careful landscaping would be necessary to accommodate the change in levels. An additional benefit could emerge in the educational value to the curriculum of the stone walls themselves, which support considerable plant, insect and animal life; and could be used for bat boxes. The proposal to retain buildings 2 and 3 reduces the level of harm to heritage significance and has no impact on the school development. [95-108,114,139-141]

The Bucks Mills hill fort SAM

275. This presently consists of a raised area of land on the eastern bluff of the combe above Bucks Mills. Just off the SWCP, it would have once commanded a wide view of the sea and countryside, but is now somewhat enclosed by bracken, shrubs and small trees. There is no information board, identification nor any obvious earthworks, and many visitors will not be aware of its existence. If at a future date, the hill fort site was to be better revealed, then it would have a good view of the proposed school inland which would appear anachronistic and out of place in a landscape that has not fundamentally changed. However, only basic scrub clearance is intended at the current time⁶⁷. I conclude that there is a small degree of harm by reason of the limited visibility in winter and the potential for a greater level of harm to the setting of the hill fort if more serious clearance occurred. This would be less than substantial in terms of the NPPF. [235-237]

Alternative sites

Seckington

276. **This site lies outside the school's search area to the south of Clovelly and** would involve greater journey times for pupils coming from the Bideford direction. It consists of a modern farmstead with existing large exposed buildings surrounded mainly by wide open arable fields across which the farm is seen as a prominent feature on the skyline. The addition of a new institutional building here, even with screening, would be obvious and incongruous. [88-9,119]

Swanton

277. Closer to Steart but outside the AONB, this site is in a prominent position on the skyline and is within the setting of the AONB. Notwithstanding its other characteristics, it has been confirmed as unavailable twice; this rules it out as a realistic contender. [83-85,119]

Merry Harriers

278. The highways evidence against this potential location was not seriously questioned at the Inquiry and I concur that coach and bus traffic to and from the

⁶⁷ See Doc 19

site would lead to increased highway safety risks. The site is also exposed to views from the south, with similar visibility issues to Seckington. [86-7,119]

Milky Way

279. The Milky Way site (site 2c in the appellant's LVIA) would be sheltered by Hobby Lodge Wood which lies between it and the A39. This would serve to screen the school from the road and the AONB and form a backdrop from the south. This site has the advantage of being available and having a large developable area which would not constrain the school in terms of parking, outdoor space and playing fields. The owners have planning permission for a 50 unit residential holiday scheme between it and the Adventure Park buildings, not yet commenced. The school would add to the degree of built form in the countryside which is in principle undesirable, but there would remain open land between the different developments and none would be situated conspicuously on the skyline or easily visible from the AONB. It would not necessarily lead to a sense of 'sprawl'. [67,72]
280. Although a school on this site would be open to views from the south and west, it would be seen mainly across open farmland and land used for recreation and of no special quality. Importantly, the site is intrinsically much less sensitive than Steart. There is plenty of scope for screening to reduce the impact on the landscape and such views that are available, such as from the A39 eastwards. The extent of earthmoving required to accommodate the school building (taking Steart as an example, there being no other scheme before me and no doubt Milky Way would generate its own particular influences on design) is likely to be substantially less and there would be a great deal more space to carry it out⁶⁸. A school on this site would benefit from long distance views towards Dartmoor. [60,74]
281. With regard to the access road, this would probably need to be longer than that at Steart but there is no certainty that the carriageway and footway or the minimum level of lighting necessary would be visually unacceptable. In any event, the landform of the AONB immediately on the opposite side of the A39 at Milky Way lacks the small scale of that at Steart and the A39 is already intrusive. Even if the junction of the access road and the A39 is combined with that at the Adventure Park- and there is no certainty on that- and lighting was necessary there, the impact on the character of the countryside and the AONB would be less than it would be at Steart because of the prominence of the Adventure Park and other buildings. In respect of the likelihood that hedgerows may need to be removed to ensure sufficient visibility splays, traffic speeds are significantly lower at Milky Way due to the bends in the A39. At the site visit, this was borne out. Certainly at the existing lay-by and at the existing junction, adequate visibility splays would not require an unacceptable amount of vegetation removal⁶⁹. [73,79]
282. One of the critical criteria used in the ASA is the need for a rural location, later amplified to 'adjacent to or in AONB, NT land or SSSI'. Leaving aside the issue of whether the school should be in a settlement, even if the proposed holiday village

⁶⁸ In assessing this matter, I have taken into account the drainage on the site and the lake

was built, the Milky Way site would still be a strongly rural location, well away from any village. It would be surrounded by woods, fields and recreational land including a lake where wakeboarding takes place. A major difference between **Milky Way and Steart, from the school's point of view, is the accessibility of the AONB.** Whereas at Steart, pupils would be able to pass straight down public footpaths to the combes and woods, access at Milky Way would have to be by motorised transport. Direct access may be desirable but the need for it is unconvincing. The appellant agreed that a rural education in its broadest terms, if it is to retain local young people in the area, has to involve agriculture, crop rotation and animal husbandry as well as ecology, biology, flora and fauna. Locating at Steart would also have to involve motorised transport from time to time. The proposed courses to be run by Duchy College in horticulture and agriculture are successfully run well away from any AONB. In any event, proximity to the AONB would only be necessary for certain practical parts of any course. It is hard to see why, given the wide requirements of the national curriculum, students at R39 need to have immediate access to the AONB.[41,126]

283. Moreover, the woodland and combes next to Steart will only give certain experiences; many other places provide other ecological systems deserving of study, such as the dunes at Braunton. Hobby Lodge Wood next to the Milky Way **site belongs to the Clovelly Estate, who I heard have allowed 'Forest Schools'** before. I give weight to the teacher witnesses from other schools in the area who said that no difficulty was ever experienced taking students to different locations to carry out fieldwork or educating students about the countryside. It is relevant that the appellant admitted that no arrangements or commitments have been forthcoming from the Woodland Trust, the National Trust or the AONB Management Board, all the bodies responsible for the adjoining land, to aid the new school until after planning permission has been granted. They recognise the educational role that their bodies have for future generations, but it is extremely unlikely that in practice, students will have free access to the adjoining land unsupervised. That is partly because of the need to provide proper safeguarding and because the footpaths, which are often steep and/or watercourses at some times of the year, pass through a delicate and sensitive environment. I also give weight to the idea that the benefits of improving the environment around any school, be it located in an urban, suburban, countryside or AONB location are likely to be equally as beneficial.[128-9]

284. During the Inquiry, a list of activities linked to the proximity of the AONB was produced⁷⁰. A few of the activities listed depend on being in or adjacent to the AONB at Steart. For instance, physical education/orienteering using public rights of way (available from the current site). This would be much more restricted at Milky Way but the opportunity for more outdoor sports and more space generally could be regarded as alternative provision. There would be nothing to stop pupils orienteering using a minibus; indeed, that would allow unfamiliar terrain to be used, which is largely the point of the sport. Many of the collaborative projects envisaged with local agencies such as monitoring water quality, maintaining and enhancing the PROW network, a marine litter programme, developing opportunities for recreation, may have more immediate relevance to pupils

⁷⁰ Doc 34. In response to questions from the Inspector

because of their school location, but are also the sort of projects engaged in by many other schools. [182-90,197,204,206]

285. Inspirational views and the diversity of nature, flora and fauna are available at other sites including Milky Way, which has the added potential of a water resource. The opportunity to develop bespoke orchards, woodland and horticultural project areas would be greater at Milky Way because more space is available, albeit it might take longer to become properly established- but educational value can be derived from a scheme in its earliest phases. Accepting that motorised transport would be needed by the school in any event, transport by minibus to many local sites could be easily supervised and quick because the school would be so close to the coast.
286. The advantages of the Milky Way site are its location within the area of search with availability, limited landscape and visual harm, no harm to heritage interests and greater potential for outdoor activities on site. No planning permission exists and the appellant claims this as an additional uncertainty. However I give weight to the withdrawal of objections to the Steart scheme by the Council on sustainability grounds. There is a reasonable prospect that an application would be favourably received.
287. I conclude that the Milky Way site has the potential to meet the need for a new school in another way, outside the AONB.

Other matters

Need for the school

288. No weight is attached to arguments that the school, which is promoted as a free school under the Academies Act 2010 and supported by the Government, is inappropriate in principle. Whilst there are spaces currently available in existing secondary schools in the area, undisputed estimates of population growth show that there is likely to be unmet need sometime in the next decade. Moreover, planning policy at NPPF paragraph 72 says 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. The presumption in favour of state-funded schools and the need to establish and develop them attracts significant weight. There is clearly deep felt appreciation of what this school has achieved so far by local parents and students at the school. [38,40,123]

Highway safety

289. The AAPWPC draws attention to the highway risks and the logic of the location. I accept that on the evidence that the number of journeys to and from other school locations undertaken presently may well balance out with journeys to Steart, providing that R39 restricts its intake, as planned, to the desired area between Bude and Bideford. I also accept that the proposed bus and travel plan will achieve as much as is possible in reducing individual trips to and from the school by motor car.
290. A more serious concern of many is the 60 mph A39 which sweeps by the school site entrance and the unpredictability of bus arrivals and pupil/staff arrivals by car, which is likely from time to time to lead to occasional congestion in the centre of the carriageway whilst vehicles wait for traffic commuting to Bideford. The Highways Authority considers queuing to access the site would be

controlled/mitigated by the Bus Management Plan, but that would not take account of unanticipated traffic congestion elsewhere. I observed that agricultural vehicles frequently hold up following traffic on the A39, leading to bunching and impatience. Any school traffic waiting to turn right would obstruct visibility for buses and vehicles trying to leave the westbound lay-by; and obstruct the view of oncoming traffic for eastbound drivers. It is also likely to lead to drivers taking chances to turn right in gaps in the 60 mph traffic. Combined with the evidence that drivers routinely travel at 60 mph, looking for opportunities to overtake, the existence of an uncontrolled pedestrian crossing opposite the school entrance, and the propensity of the area to suffer mists and fog coming up the combe⁷¹, I remain uncertain that the junction will be adequately safe without further measures such as a further speed limit, traffic controls or more radical carriageway alterations⁷². [191]

291. These concerns are reinforced by the inability of the school to prevent parents and others dropping off and picking children up in the old A39 which runs parallel to the existing carriageway and which is spacious and easily accessed. A link to this road is to be resurfaced. Using this old road avoids having to enter the school car park with the uncertainties that would involve; and would be perceived by parents as saving time, but it necessitates students crossing the A39 unaided. The doubts are further reinforced by the knowledge that the ability of young people to judge distance and speed may not be as acute as that of an adult. Moreover, pupils waiting on the central refuge crossing to the south to meet parents parked in the old A39 would have their visibility of oncoming westbound traffic, potentially at 60 mph, curtailed by vehicles, possibly buses, waiting to enter the school. [153,160,182]

292. The Highways Authority is satisfied with the proposed layout and does not consider any further restrictions necessary. The layout is based on prevailing guidance and best practice; and the junction design is based on the Design Manual for Roads and Bridges. After the site visit, I expressed my concerns to the **appellant's** highways witness and another layout was produced with repositioned lay-bys allowing greater visibility⁷³. I understand that this is not preferred by the Highways Authority in respect of the western lay-by. In any case it does not address my concerns relating to the refuge. However, in view of the Highways Authority approach, I do not find that the proposed layout forms a reason to recommend refusal, but invite the Secretary of State to examine it closely. [157-8]

293. The site at Milky Way avoids these concerns because the site would not back up onto the A39 and there is no other location where students can be dropped off which involve crossing the A39. There is no footway or lay-by on the north side and traffic speeds are considerably lower.

Flooding and drainage

294. Local occupiers draw attention to the potential for flooding in the combes following sudden heavy rainfall. Dwellings in Bucks Mills lie close to the watercourses, in some cases on top of streams or at a confluence. In previous

⁷¹ Referred to by several witnesses

⁷² See Doc 33 for current layout

⁷³ Doc 49

incidents, water has dislodged debris which has blocked streams and caused flooding in dwellings and on the road through Bucks Mills, which is identified as lying in Flood Zone 3. The appeal site, high above the combes, is not in a flood zone but conditions there have the potential to affect water flow further down.

The appellant's Flood Risk Assessment confirms that runoff of surface water would increase and proposes 3 soakaways to contain a total of 620 cubic metres of water. This capacity is sized to provide storage for the 1 in 100 year + 20% allowance for climate change. As such, there is little likelihood that changes in surface water due to the proposal would lead to any additional flooding downstream.

295. Foul sewage would be dealt with by a twin package treatment plant with tertiary treatment using an ultraviolet disinfection unit. The intention is that this would discharge 70 cubic metres a day of treated effluent into the watercourse to the east of the site. The Environment Agency has issued a discharge consent⁷⁴ on this basis setting out the pollution limits that apply and the monitoring necessary. The concerns of local residents are understood but there is no mains drainage in the area or in Bucks Mills, and some untreated sewage currently is discharged onto the foreshore. This matter does not weigh against the scheme.
296. The extent of the cut and fill operations and questions raised at the site visit led to the submission of a Letter Report⁷⁵ on landslip potential. This shows that the risk of generating a failure of the slopes in the area and causing any ground related hazards to Bucks Mills is very low, either during construction or after completion, providing that the earthworks are managed to reduce risk in accordance with a methodology set out in principle on page 5. I consider that providing the methodology is incorporated into the Construction Method Statement by condition, local occupiers can be reasonably assured that no landslip would occur as a result of the development. [92-4,192,199-201,218,240]

Conclusions

297. There is no question that the R39 Academy is a thriving school which provides choice and an inspiring educational experience, in difficult circumstances. The site selection process has fixed on Steart Farm as the best option for a new building.
298. Steart Farm campsite is of high environmental value in unspoilt surroundings; its sensitivity to this development is not significantly reduced compared to surrounding land. Although previously developed, it is essentially grass and vegetation, and contributes to the character of the AONB which in this area consists of a narrow strip along the coast of combes and uneven fields. Extensive changes would be required to the landform to accommodate the chosen form of the new Academy building and associated vehicle parking. The development would be unsympathetic in form and detail design to the landscape which is of a small scale, and would be unlike any agricultural building. It would be visible from relatively few places, but when seen would be an incongruous urban feature that would re-define the character of the landscape for those living, working and visiting the area. The increased level of artificial light would detract from dark skies that are a feature of the area. Noise from students is likely to

⁷⁴ Doc 44

⁷⁵ Doc 48

affect tranquillity. There would be less than substantial harm caused to the setting and heritage significance of a listed building, but this would be overwhelmed by the adjacent bulk of the new school.

299. The core principles of the NPPF underpin decision taking. The most relevant bullet points are:

- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
- Contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;
- Encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
- Conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

300. The subsequent paragraphs of guidance strongly support new schools at **paragraph 72 'Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education....and should give great weight to the need to create, expand or alter schools'** but paragraph 115 says '**Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty'**. There follows a presumption against major development in the AONB, unless exceptional circumstances can be demonstrated. Considering the criteria:

- ***The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy***

The proposed Academy passes this test. [90]

- ***The cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way***

This factor does not distinguish between different parts of designated areas. The appellant sought to agree a location for the new school and a temporary school with the Council in line with paragraph 72, for various reasons without success. The exhaustive site selection process and the process leading up to the Inquiry has led to the identification of other sites, one of which is preferred by the Council. It has not been shown that the main disadvantages of this site,

mainly the ability to walk to the coast without crossing a main road and alleged **diversity of habitat, are so serious as to make the Academy's aspirations and vision difficult to achieve.** It has advantages in terms of access and a larger area of usable land and is in the ownership of a willing seller with which the appellant has previously put forward a temporary scheme. Most importantly, it would not harm the character of a designated landscape.

- ***Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated***

The detrimental effect on the character of the AONB and visual amenity would be permanent. The less than substantial harm to heritage significance would be permanent. The recreational experience of visitors would be diminished. The unattractive design of the building adds significantly to the harm caused. Whilst new planting would mitigate its appearance to some extent, its bulk and form would remain conspicuous.

301. The appellant points out that further delay would have serious implications for **the school because of its lack of accommodation. No 'backup plan' is in place to remedy this, which could be in the form of another temporary permission.** No appeal was submitted after the previous refusal. I understand that that might be **regarded as too uncertain, given the Council's previous** approach, but great weight must attach to the conservation of the AONB and a further delay in procurement is a minor matter compared to harm that would be permanent. [44,144]

302. The advantages of a location with an inspirational setting must not be underplayed. It is likely to encourage children to attend school, enjoy their experience there and relate their studies to future careers in conservation, science and other things. However it has not been demonstrated that the disadvantages to the public interest of a development at Steart Farm within the AONB are outweighed by the greater ease of access to the coast for pupils, which is the essential difference between Steart and Milky Way. Exceptional circumstances have not been demonstrated. The need can be met in another rural location.

Formal Recommendation

303. I recommend that the appeals should not be allowed to succeed. Should the Secretary of State disagree, then I recommend that the conditions set out in Annex 2 to this Report should be attached to any permissions.

Paul Jackson

INSPECTOR

Annex 1

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley	Of Counsel, instructed by the Solicitor to Torridge District Council
He called	
Peter Leaver BA(Hons) Dip LD CMLI	David Wilson Associates Ltd
Nichola Burley MA Dip Cons Arch MRTPI IHBC	Heritage Vision
Mark Wood BA (Hons) BTP MSc MRTPI MCILT	For Torridge District Council

FOR THE APPELLANT:

Matthew Reed	Of Counsel
He called	
Catherine Mitchell BA(Hons) MPHILD CMLI	SLR
Mick Rawlings BA(Hons) MCIFA	RPS
Richard Bence BSc (Hons)	Chair of Governors, R39 Academy
Graham Powell BA (Hons)	The Learning Organisation Ltd
Jocelyn Hayes BA (Hons)	Headteacher, R39 Academy
Kevin Hunt BA (Hons) MTCP MRTPI	Jones Lang LaSalle
James McKechnie BA (Hons) PGDip CMLT MCIHT	Hydrock

INTERESTED PERSONS:

Chris Medland	Local resident
Graham Shackson	Resident of Bucks Cross
Francesca Buckingham	Pupil at Route 39 Academy
Paul Hartley	
Sue Bradburn	Local resident
Michael Bamborough	Resident of Great Torrington
Andrew Old	Local resident
Councillor Alison Boyle	Torridge District Councillor
Lucy Cullen	Local resident
Robin Edmonds	Chairman Woolserly PC representing Rule 6 Party
Stephen Home	Local resident
Philip Spittles	Local resident
Sam Doncaster	Local resident
Robin Julian	Local resident
Councillor Rowland Cooke	Woolserly Parish Councillor
Sally Salvidant	Local resident
Sam Robinson	Torridge District Councillor
Maria Barraclough	Local resident
Julia Nicholls	Local resident
Trevor Silton	Local resident

DOCUMENTS

Listed in the order in which they were submitted

- 1 Heritage Vision comments on proposal to retain buildings 2 and 3
- 2 Copy of correspondence regarding management of the hill fort site, submitted by the Council
- 3 Developments in or around AONB with large curtilage, submitted by Mr Bence
- 4 Large buildings in or adjacent to AONB, submitted by Mr Bence
- 5 Statement from Geoffrey Cox QC MP
- 6 Photographs of current condition of Building 2 at Steart Farm, submitted by the appellant
- 7 **Copy of Planning Practice Guidance 'Conserving and enhancing the historic environment' submitted by the Council**
- 8 Note on intentions of Rule 6 party, submitted by Robin Edmonds
- 9 Note on bats resident at Steart Farm, submitted by Robin Julian
- 10 Note on street lighting from Devon County Council, submitted by the Council
- 11 Note from Hydrock responding to comments from Devon County Council on the highways aspects of alternative sites
- 12 Copy of further representations from the North Devon AONB Partnership
- 13 Representation from Sue Bradburn
- 14 Representation from Graham Shackston
- 15 Representation from Philip Spittles
- 16 Representation from Sam Doncaster
- 17 Representation from Michael Bamborough
- 18 Response from Hydrock on Devon County Council Highways comments on alternative sites
- 19 Quote and plan of proposed scrub removal at NT Hill Fort site, provided by the Council
- 20 Plan of remaining hedgerows supplied by Peter Leaver (see Doc 42)
- 21 Representation from Sam Robinson
- 22 Representation from Julia Nicholls
- 23 Representation from Andrew Old
- 24 Representation from Stephen Home
- 25 Representation from Sallie Salvidant
- 26 Representation from Rowland Cooke
- 27 Technical note on external lighting from Aecom, provided by the appellant
- 28 Statement of Robin Edmonds on behalf of the Rule 6 party
- 29 Representation from Cllr Alison Boyle
- 30 Statement of Robin Edmonds in response to Doc 26
- 31 Representation from Trevor Silverton
- 32 Statement of Stephen Pitcher on behalf of North Devon Coast AONB Partnership
- 33 Drawing 13092/C001 rev C Highways Improvements General Arrangement, provided by the appellant
- 34 Note on outdoor learning in the curriculum at R39, provided by the appellant following a question from the Inspector
- 35 Note on full time courses to be provided by Duchy College at R39, provided by the appellant

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- 36 Response by Devon County Council Highways to Doc 18, dated 5 June 2015
 - 37 Further comment from Hydrock on Doc 36
 - 38 Replacement (correct) appendix 9 to proof of evidence of Mr Wood
 - 39 Expanded ZTV of Steart Farm proposal, requested by Inspector
 - 40 Paper copies of relevant Local Plan policies, supplied by the Council
 - 41 Hydrock drawing 2508/C-02 rev T1 indicating extent of 'cut and fill'
 - 42 Further copy of Doc 20, amended by the appellant
 - 43 Statement of Lucie Cullen
 - 44 Environment Agency Water Discharge Permit ref EPR/AB3096RE
 - 45 Expanded plan of Bucks Mills at 1:2500 showing location of The Berries
 - 46 Signed and dated s106 undertaking
 - 47 Signed statement of common ground
 - 48 Hydrock Letter Report on potential for slope failure
 - 49 Copy of email and enclosures received after the close of the Inquiry concerning lay-by location

Annex 2

Schedule of Suggested Conditions PLANNING

- 1 The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: The time limit condition is imposed in order to comply with the time requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the following plans:
 - PL- 001 B Site Location Plan (but see condition 29 below)
 - PL- 002 B Block Plan (but see condition 29 below)
 - PL- 005 A Topographical Survey
 - PL- 010 A Ground Floor Plan
 - PL- 011 A First Floor and Second Floor Plan
 - PL- 012 A Roof Plan
 - PL- 020 B Elevations 1 of 2
 - PL- 021 B Elevations 2 of 2
 - PL- 030 A Building Sections
 - L9-001_LANDSCAPE_SITE_PLAN_REV_10
 - L9-004_Landscape_Area_Schedule_Rev_03

L9-005_Access_and_Zoning_Strategy

L9-006_Tree_Protection_and_Removal_Plan

L9-007_Soft_Landscape_Strategy_Rev_05

L9-008_Landscape_Site_Sections_REV_04

L9-009_Landscape_Site_Sections_REV_03

Reason: To ensure the development is carried out in accordance with the approved plans.

- 3 Before the commencement of development, details and representative sample panels of the colour and texture of the external facing and roofing materials to be used in the construction of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in to match the approved panels and in accordance with the approved details.

Reason: To enable the Local Planning Authority to consider the suitability of the materials to be used for the development.

- 4 The construction of the development shall not take place otherwise than between 0700hrs and 1900hrs on Mondays to Fridays, Saturdays between 0800hrs and 1300hrs and at no time on Sundays and Bank Holidays.

Reason: To protect the amenities of neighbouring properties.

- 5 No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors;
- ii. loading and unloading of plant and materials;
- iii. storage of plant and materials used in constructing the development;
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v. wheel washing facilities;
- vi. measures to control the emission of dust and dirt during construction; and
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.

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- viii. a specification, method statement and scheme of monitoring rainfall and earthworks on the site to ensure that no landslip occurs during construction.

Reason: ***In the interests of residential amenity, safety and highway safety.***

- 6 Before the commencement of development, a detailed Method and Mitigation Scheme for bats including a timetable shall be submitted to and approved by the Local Planning Authority. The scheme shall include roosts and low level lighting along identified flight lines in accordance with the recommendations in the ES dated 8 February 2014. The development shall then be implemented in accordance with the approved Method and Mitigation Statement and timetable and any required modifications to the Statement as a result of obtaining a European Protected Species Licence must be submitted to and approved by the Local Planning Authority.

Reason: ***The proposed development will result in destruction of bat roosts, which is an offence under the Habitats Regulations. The proposed works must therefore be carried out under a European Protected Species Licence to be applied for from Natural England. The provision of compensatory roosts will be a requirement under such a Licence).***

- 7 Before the commencement of development, fencing shall be erected in accordance with the approved tree protection plan L9-006. The development shall then be carried out in accordance with the plan and the fencing shall be maintained until the development has been completed and all equipment, machinery and surplus materials have been removed from the site.

Reason: ***To protect the trees to be retained on this site from damage before and during the course of development***

- 8 Before the commencement of development, a slow worm mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority. The development shall not proceed except in complete accordance with the approved strategy.

Reason: ***In order for the development to comply with the duties outlined in the Wildlife and Countryside Act 1981 and Natural Environment and Rural Communities Act 2006, Policies ENV1 and ENV10 of the TDLP, and the requirements of the NPPF.***

- 9 Before the commencement of development, a biodiversity mitigation and enhancement plan including a timetable shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details and timetable; and the mitigation and enhancement plan completed in full prior to occupation of the development. After first occupation, unless otherwise agreed in writing by the Local Planning Authority, the mitigation measures shall be permanently maintained and retained in accordance with the approved details.

Reason: ***To ensure the development enhances habitat for protected species in line with the requirements of ENV10 of the TDLP, the objectives of the NPPF and the requirements of the Wildlife and Countryside Act 1981 (as amended), Natural***

Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010).

- 10 No development shall take place, including demolition, on any existing structures between 1st April and 31st August, unless prior inspection has been carried out by a suitably qualified ecologist whose findings confirm that there are no breeding birds present within the structures and these findings have been reported and acknowledged in writing by the Local Planning Authority.

Reason: ***Nesting birds are protected under the Wildlife and Countryside Act (1981) and as amended by the Countryside and Rights of Way Act (2000). Birds are protected against disturbance during the nesting period, defined as the period from when nest-building commences to the time that nestlings have left.***

- 11 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. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures including furniture, play equipment, refuse or other storage units, signs and lighting; proposed and existing functional services above and below ground including drainage power, communications cables, pipelines indicating manholes; and retained historic features.
- 12 Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme.
- 13 All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 14 If within a period of five years from the date of the planting of any shrub or tree, that shrub or tree, or any shrub or tree planted in replacement for it, is removed, uprooted, destroyed, dies or becomes seriously damaged or defective, another shrub or tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

Reason: ***To ensure that the development is carried out in accordance with the agreed details.***

- 15 Before the commencement of development, the site access road shall be widened to not less than 6.1 metres in accordance with drawing no. 13092/C001 rev C and retained as such thereafter.

Reason: ***To minimise congestion of the access.***

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- 16 Before the commencement of development, visibility splays shall be provided and laid out at the site access in accordance with drawing no. 13092/C001 rev C and retained as such.

Reason: *To provide adequate visibility from and of emerging vehicles in order to provide a safe and suitable access.*

- 17 No occupation of the development shall occur until the access, parking facilities, bus turning area, access drive and access drainage has been completed in accordance with drawing nos. L9-001 Rev 10 and L9-005. These areas shall thereafter be retained and maintained for access and parking and for no other purposes.

Reason: *To ensure that adequate facilities remain available for the traffic attracted to the site.*

- 18 The use hereby permitted shall not commence until a detailed Travel Plan has been submitted and approved in writing by the local planning authority. The Travel Plan shall set out the measures to be taken to encourage the use of modes of transport other than the car by all users of the building, including staff and visitors.

Reason: *To ensure that sustainable travel measures to and from the school are implemented and used.*

- 19 No occupation of the development hereby permitted shall take place until the bus lay-bys on the A39, the pedestrian crossing facilities and pedestrian access to the site as shown on plan 13092/T12 are completed.

Reason: *To maintain highway safety.*

- 20 No external lighting other than that detailed in drawing No. E900 and E901 received 20.02.2014 shall be installed on the site.

- 21 No occupation of the development hereby permitted shall take place until a scheme detailing the times of lighting operation has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any occupation takes place.

Reason: *In the interests of the appearance of the area and ecology.*

- 22 No development shall take place until a scheme for the provision of surface water management has been submitted to and approved in writing by the Local Planning Authority. The design shall include percolation tests to BRE365, soakaways sized for the 100 year storm and a 30% climate change allowance. The details shall include:

- i. details of the drainage during the construction phase and a timetable indicating at what stage each part of the drainage scheme is to be completed relative to the development as a whole;
- ii. details of the final drainage scheme;

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- iii. provision for exceedance pathways and overland flow routes;
 - iv. a timetable for construction;
 - v. a construction quality control procedure; and
 - vi. a plan for the future maintenance and management of the system.

The development shall be completed in accordance with the approved scheme and timetable before occupation. The scheme shall thereafter be managed and maintained in accordance with the approved details.

Reason: To prevent the increased risk of flooding and minimise the risk of pollution of surface water by ensuring the provision of a satisfactory means of surface water control and disposal during and after development.

- 23 No development shall take place until full details of a scheme detailing the method of treatment of waste water and sewage, operation of the school's waste water and sewage system and compliance monitoring of discharge to watercourses has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any occupation of the development hereby approved.

Reason: In order to ensure the quality of the water environment is maintained.

- 24 The development hereby permitted shall not be occupied until a community use scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the wider use of the site by the community. The approved scheme shall include details of pricing policy, hours of use, management responsibilities, a mechanism for review and a programme for implementation. The approved scheme shall be implemented upon the commencement of the school/educational use of the site and shall be complied with for the duration of the use of the site as a school/educational facility.

Reason: To ensure the school promotes inclusive communities as contained in the objectives of the NPPF.

- 25 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), (or any Order revoking and re-enacting that Order) no development of the types described in Part 32; of Schedule 2, other than that hereby permitted shall be carried out without the further grant of planning permission.

Reason: In the interests of the visual amenity of the area.

- 26 No development shall take place until a scheme of investigation, recording and analysis of the historic buildings on the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure that an appropriate record is made of the historic building fabric affected by the development.

- 27 No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that an appropriate record is made of any archaeological evidence and any artifacts that may be found.

- 28 The development shall not be used other than between the following times: 0700 - 2000 hours in the months of October – March (inclusive) 0700 – 2100 hours in the months of April – September.

Reason: To ensure that the operation of the school impacts to a minimal degree on the tranquillity and character of the area.

- 29 Notwithstanding the application plans, Buildings 2 and 3 shall remain in place as per amended plan references PL-002 Rev C, L9-001 Rev 13, L9-007 Rev 7 and the development shall not commence until a scheme of works to stabilise Buildings 2 and 3 has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the setting of the listed building is protected and the heritage interest of curtilage buildings retained

- 30 No development shall take place until a scheme to prevent internal lights being visible from outside during hours of darkness has been submitted and approved in writing by the Local Planning Authority. The scheme shall be implemented and operational before any occupation takes place and shall be retained and maintained as such.

Reason: To ensure that the night time use of the building does not unduly impact on the darkness and character of the AONB.

- 31 In respect of properties to the north of the A39 and outside of the application site boundary, the rating level of the noise emitted from the premises from fixed plant shall not exceed a level of 25dB(A) outside any dwelling, at a distance not less than 1 metre from any façade of that dwelling containing a window to a habitable room, at any time. The measurements and assessment shall be made in accordance with BS4142:2014.
- 32 In respect of properties to the south of the A39: (a) between the hours of 19:00 to 08:00 the rating level of the noise emitted from the premises from fixed plant shall not exceed a level of 25dB(A) and (b) between the hours of 08:00 - 19:00 the rating level of the noise emitted from the premises from fixed plant shall not exceed a level of 5dB(A) below the minimum external background noise, in both cases to be measured outside of any dwelling at a distance not less than 1 metre from any façade of that dwelling containing a window to a habitable room. The measurements and assessment shall be made in accordance with BS4142:2014 and the background level should be expressed in terms of the lowest LA90, 30 mins during 08:00 - 19:00.
- 33 No sound reproduction equipment shall be audible at the application site boundary at any time.

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- 34 The extract and ventilation equipment and passive air inlet grilles shall be maintained in accordance with the manufacturer's instructions. Records of maintenance work shall be retained on site and kept for inspection by the Local Planning Authority.

Reason: To ensure that the use of ventilation plant and amplified sound does not interfere with the tranquillity of the area or unduly disturb nearby residents

LISTED BUILDING

- 1 The works to which this consent relates must be begun not later than the expiration of three years beginning with the date on which this consent is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

PL- 001 B Site Location Plan (see condition 6 below)

PL- 002 B Block Plan (see condition 6 below)

PL- 005 A Topographical Survey

PL- 010 A Ground Floor Plan

PL- 011 A First Floor and Second Floor Plan

PL- 012 A Roof Plan

PL- 020 B Elevations 1 of 2

PL- 021 B Elevations 2 of 2

PL- 030 A Building Sections

L9-001_LANDSCAPE_SITE_PLAN_REV_10

L9-004_Landscape_Area_Schedule_Rev_03

L9-005_Access_and_Zoning_Strategy

L9-006_Tree_Protection_and_Removal_Plan

L9-007_Soft_Landscape_Strategy_Rev_05

L9-008_Landscape_Site_Sections_REV_04

L9-009_Landscape_Site_Sections_REV_03

Reason: To ensure the development is carried out in accordance with the approved plans.

- 3 Before the commencement of development, a detailed Method and Mitigation Statement for bats shall be submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the

approved Method and Mitigation Statement and any modifications to the Statement as a result of requirements of a European Protected Species Licence, must be submitted to and approved by the Local Planning Authority.

Reason: The proposed development will result in destruction of bat roosts, which is an offence under the Habitats Regulations. The proposed works must therefore be carried out under a European Protected Species Licence to be applied for from Natural England. The provision of compensatory roosts will be a requirement under such a Licence).

- 4 No development shall take place, including demolition, on any existing structures between 1st April and 31st August, unless prior inspection has been carried out by a suitably qualified ecologist whose findings confirm that there are no breeding birds are present within the structures and these findings have been reported to the Local Planning Authority in writing.

Reason: Nesting birds are protected under the Wildlife and Countryside Act (1981) and as amended by the Countryside and Rights of Way Act (2000). Birds are protected against disturbance during the nesting period, defined as the period from when nest-building commences to the time that nestlings

- 5 Before the commencement of development, a scheme of investigation, recording and analysis of the historic buildings on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure that an appropriate record is made of the historic building fabric affected by the development.

- 6 Notwithstanding the application plans, Buildings 2 and 3 shall remain in place as per amended plan references PL-002 Rev C, L9-001 Rev 13, L9-007 Rev 7 and the works shall not commence until a scheme of works to stabilise Buildings 2 and 3 has been submitted to and approved in writing by the Local Planning Authority.

Annex 3

Core Documents list

Planning

- CD1 National Planning Policy Framework (March 2012)
- CD2 Torridge District Local Plan 1997-2011 (2004)
- CD3 North Devon and Torridge Draft Local Plan 2011-2031 (2015)
- CD4 2014-19 AONB Management Plan

Landscape

- CD5 Guidelines for Landscape and Visual Impact Assessment 3rd edition
- CD6 Torridge and North Devon Joint Landscape Character Assessment 2010
- CD7 Devon County Council Landscape Character Assessment, 2012
- CD8 Evaluation Framework for Natural Beauty Criterion from Guidance for Assessing Landscapes for Designation as National Park or Area of Outstanding Natural Beauty, Natural England, 2011

Heritage

- CD9 Conservation Principles, Policies and Guidance — EH/HE — April 2008
- CD10 Historic Environment Good Practice Advice in Planning: Note 1 The Historic Environment in Local Plans— HE — March 2015
- Historic Environment Good Practice Advice in Planning: Note 2 Managing Significance in Decision- Taking in the Historic Environment— HE — March 2015
- CD11 Historic Environment Good Practice Advice in Planning: Note 3 The Setting of Heritage Assets — HE — March 2015
- CD12 Barnwell Manor judgment
- CD13 Forge Field judgment
- CD14 Arrangements for Handling Heritage Applications — Notification To Historic England And National Amenity Societies And The Secretary Of State (England) Direction 2015

Other

- CD15 Route 39 Academy application to Department of Education
- CD16 Copy of planning officer's reports on appealed applications



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). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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 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 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.