

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)

**Appeal by Alban Developments & Alban Pearson,
CALA Homes (Chiltern) & Redington Capital Ltd**

**LAND SOUTH OF CHISWELL GREEN LANE,
CHISWELL GREEN, ST ALBANS, HERTFORDSHIRE**

EDUCATION MATTERS
Education Provision in Chiswell Green, St Albans, Hertfordshire

Hertfordshire County Council

PROOF OF EVIDENCE (CD 3.21A)

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BA DipMS

PINS Reference: APP/B1930/W/22/3313110 & 3312277

LPA Ref: 5/2022/0927

Date: 20th March 2023

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1 Background

- 1.1 My name is Ben James Hunter. I hold a Bachelor of Arts and Diploma in Management Studies. I have been an Education Consultant for Education Facilities Management Ltd (EFM) since September 2017, and Associate Director of EFM since April 2022. Prior to this I was a Development Management Project Manager for Northamptonshire County Council (as was) since 2012, responsible for negotiating and securing Section 106 planning obligations for Education. Prior to this I was responsible for negotiating, securing and managing Section 106 planning obligations, predominantly Education-related, in an Officer role between 2008 and 2012. The majority of my professional career has been related to the provision of development infrastructure.
- 1.2 I am experienced in giving evidence for Planning Inquiries including Local Plan Inquiries and Public Examinations. I am therefore aware of the application of the planning system in relation to these matters from both a developer and local authority perspective. I confirm that I understand that notwithstanding my instructions my primary duty is to help achieve the overriding objective by giving objective, unbiased opinion on matters within my expertise.
- 1.3 I am instructed to act for the Appellants in respect of this Appeal.
- 1.4 I confirm that the opinions expressed are my true and professional opinions.
- 1.5 If called to give evidence, I can confirm that I will confirm that the opinions expressed are my true and professional opinions.
- 1.6 EFM was instructed by Alban Developments & Alban Pearson, CALA Homes (Chiltern), and Redington Capital Ltd (**“the Appellants”**) in November 2021. I was appointed to review the Education landscape in order to establish whether harm was likely to be caused by this development proceeding, whether the existing facilities were able to accommodate the expected number of children that will be resident in the new housing, whether there was the ability of the existing facilities to grow should a need for new provision be established, and whether new infrastructure would be required on site to accommodate the children resident.

- 1.7 I was subsequently instructed by the Appellants to prepare this written Proof of Evidence (CD 3.21A) to assist the Inspector in determining whether any harm is likely to arise in Chiswell Green, from an Education perspective, if this development was to receive a positive determination. This Proof also discusses the clear and demonstrable benefits of having School Land reserved within the development, for both the pupils who will live on this development site, and the wider population of St Albans.
- 1.8 The Appellants and Hertfordshire County Council (“HCC”) are in agreement in relation to the level of Education development mitigation necessary to accommodate the pupils that will be living on this development site. This is reflected in the Section 106 Agreement, which is not a matter of dispute, and is also confirmed in the HCC Statement of Case (CD 2.41A), which will be discussed further throughout this Proof.
- 1.9 This document will demonstrate the following: a) the development has the opportunity to provide a substantial benefit to the wider area through the provision of new School infrastructure, which is flexible enough to be able to accommodate either Primary School provision, Special Education Needs and Disabilities provision, or a combination of both, which is consistent with paragraph 95 of the National Planning Policy Framework (“NPPF”); b) the level of development mitigation agreed between the Appellants and HCC is appropriate and consistent with the tests of Community Infrastructure Levy (“CIL”) Regulation 122 (2); and c) there is demonstrably no Education-related reason to refuse this development application.

2 Introduction

- 2.1 This Appeal relates to an outline planning application (5/2022/0927) made by Alban Developments & Alban Pearson, CALA Homes (Chiltern), and Redington Capital Ltd, (“the Appellants”) for a development of up to 391 dwellings (Use Class C3), provision of land for a new 2FE primary school, open space provision and associated landscaping. Internal roads, parking, footpaths, cycleways, drainage, utilities and service infrastructure and new access arrangements, on Land South of Chiswell Green Lane, St Albans, Hertfordshire.
- 2.2 The approximate outline of the development site can be seen below in Map 1:



Map 1: Approximate Site Boundary of land South of Chiswell Green Lane, Chiswell Green, Hertfordshire (via Google Earth)

2.3 The Application was being considered by St Albans City and District Council (“**SAC&DC**”), who are Local Planning Authority (“**LPA**”). The education and children’s services authority for the area is Hertfordshire County Council (“**HCC**”). The term Local Education Authority (“**LEA**”) is no longer used by virtue of a 2010 statutory instrument (No. 1158) The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010.

2.4 SAC&DC is not a Community Infrastructure Levy (“**CIL**”) charging authority. On that basis the securing of Education development mitigation planning obligations is undertaken through Section 106 legal agreement.

2.5 The first Reason for Refusal (“**RfR**”) states:

The proposed development comprises inappropriate development, for which permission can only be granted in very special circumstances, these being if the harm to the Green Belt and any other harm is clearly outweighed by other considerations (paragraph 148 NPPF 2021). We do not consider that the benefits outweigh the harm caused by this proposed development due to the harm to the Green Belt openness and purposes relating to encroachment to the countryside, urban sprawl and

merging of towns. The harm also relates to landscape character and the loss of agricultural land. The proposal is therefore contrary to the National Planning Policy Framework 2021, Policy S1 of the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 1 of the St Albans District Local Plan Review 1994.

2.6 This Proof of Evidence will demonstrate that the provision of land for new School infrastructure on this site is a clear benefit to the wider, existing population of Chiswell Green. HCC has stated that there is a likely to be a need for new Primary School provision in the area for which this development could fulfil that need. Furthermore, HCC has identified a significant deficit in Special Education Needs and Disabilities (“SEND”) places with no clear strategy to accommodate that requirement. Again, this development could provide that solution, which would be a substantial benefit to the area.

2.7 The second RfR states:

In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure the provision of 40% affordable housing provision; 3% self-build dwellings; 10% biodiversity new gain; provision of open space and play space; health contributions (towards ambulance services and GP provision); education contributions (primary, secondary and Special Education Needs and Disabilities); library service contribution; youth service contribution; leisure and cultural centres contribution; provision of highways improvements and sustainable transport measures; and safeguarding of land at the site for a new two form entry primary school, the infrastructure needs of the development and benefits put forward to justify Very Special Circumstances would not be met and the impacts of the proposal would not be sufficiently mitigated. The proposal is therefore contrary to the National Planning Policy Framework 2021, the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 143B (Implementation) of the St. Albans District Local Plan Review 1994.

2.8 The completion of the Section 106 Agreement (CD 3.13) will remove this objection. This Proof of Evidence will demonstrate further that the Appellants and HCC are in agreement in relation to Education development mitigation on this site. This is further confirmed through the completion of a Statement of Common Ground (CD

3.16) between the Appellants and HCC in relation to Education. This Proof of Evidence will demonstrate clearly and unambiguously that there is no Education related reason for this development not to progress. Further, for the reasons explained in this Proof, the appeal scheme in fact provides substantial education related benefits which contribute to the package of VSC.

2.9 Firstly, however, this document will outline the Statutory and Policy Matters that govern Education, in order to put the site in to context:

3 Statutory & Policy Matters

3.1 There is a covenant between the State and its populace that has had statutory force for 148 years.¹ Namely that; wherever <my emphasis> a child shall live, who is not otherwise provided for, the State will provide a school in accordance with the statutory arrangements.² The covenant is not caveated by considerations of transience, fixed or temporary abode, nationality, residential status or home education authority and means that however children arrive within an area or are housed within an area, the local authority’s statutory duty has to be met and is not a function of planning permission criteria.

3.2 **The Education Act 1996 (as amended) (“EA96”) (CD 7.9):** The primary Act relating to education is the Education Act 1996, which is; (a) a consolidating Act and (b) an Act amended from time to time by subsequent legislation. Unless otherwise indicated in this Proof as applying to education, all references are to the Education Act 1996 (as amended).

3.3 EA96 (at section 14(1)) states,

¹ The Elementary Education Act 1870 (section 5) thereafter Education Act 1921 (section 17), Education Act 1944 (section 8), Education Act 1996 (section 14)

² The Act actually says, “5. *There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as “public school accommodation,” the deficiency shall be supplied in a manner provided by this Act”.*

A local education authority³ shall secure that sufficient schools for providing – (a) primary education and (b) secondary education... are available for their area.

- 3.4 Sections 14(2) to 14(6) go on to explain what is meant by sufficient schools and that it includes implicitly that the requirement is for sufficient appropriate school places.
- 3.5 EA96 (at Section 7) imposes a duty on “*every parent of every child of compulsory school age to cause him to receive efficient full-time education either by regular attendance at school or otherwise*”.
- 3.6 Section 14(1), together with s7, derives directly from s5 Education Act 1870 via s17 Education Act 1921 and s8 Education Act 1944. There have been no material changes over time, merely consolidating legislation, changes to school leaving ages and changes to terminology from time to time. It is, thus, a longstanding duty for the Council as successor to the local school boards.
- 3.7 EA 96 Section 11 requires the Education Secretary of State (i.e. the State) to exercise their powers in respect of those bodies in receipt of public funds which carry responsibility for securing school provision for promoting school education. The duty of the education authority (to secure sufficiency of provision) is to enable the State to discharge its responsibilities within the covenant. Thus, the original premise still holds true: for all children of statutory school age, who are not otherwise provided for, **the State provides a school**, <my emphasis> in accordance with the prevailing statutory provisions.
- 3.8 EA96 Section 14 Subsection 3A is a more recent modification to its duty through a requirement for the education authority to exercise its functions under this section with a view to increasing: (a) diversity in the provision of schools, and (b) increasing opportunities for parental choice, and was inserted into Section 14 by Section 2 Education and Inspections Act 2006 with effect from 25th May 2007.

³ The local education authority has since 2010 been somewhat confusingly renamed ‘local authority’ to take account of the authority incorporating the duties of the children’s services authority. For the purposes of clarity throughout this proof the term ‘education authority’ is used as the generic title to keep a clear separation from the planning authority.

- 3.9 Thus, the duty of the education authority is to enable the State to discharge its responsibilities within the covenant: but, with sufficient headroom to allow for the discharge of its S14 (3A) duties.
- 3.10 The Education Secretary of State has determined that those ‘otherwise provided for’ include those whom provision is made via a Section 106 agreement or the Community Infrastructure Levy. This makes legitimate planning obligations to fund or provide additional school places.
- 3.11 In securing sufficient schools for its area, an Education Authority assesses existing capacity and pupil numbers, data on births and migration, and how parental preferences are manifested. It forecasts (usually with a reasonable degree of accuracy) the need for additional capacity in each school planning area for the ensuing five years for primary schools and seven years for secondary schools.
- 3.12 The Education Authority then passes this information to the State [currently the Education and Skills Funding Agency (“ESFA”) being the school’s operational arm of the Department for Education (“DfE”) by way of the School Capacity Returns (“SCAP”) and the State allocates additional school places as and where shown to be necessary. Each additional school place is accompanied by a formula driven capital funding associated with that place. This is known as Basic Need funding. Basic Need allocations to an education authority are aggregated into a single capital sum to be dispensed by the education authority to each project according to its needs. In calculating a Basic Need requirement, the ESFA allows a 2% headroom across the School Planning Area to allow for within year incidental movement of pupils.
- 3.13 Basic Need funding on a per-pupil-place basis covers increases in pupil numbers forecast, by the Education Authority, beyond existing and planned capacity, to arise because of rising birth rates, rising survival rates, rising inward migration rates and new housing (except when covered by Section 106 agreements or CIL).
- 3.14 The Basic Need pupil place funding system recognises, that whether or not a Section 106 agreement or a CIL charge has been applied by an LPA to a planning permission, is a matter purely for the LPA. It recognises the duty of the LPA to secure sufficient housing for its population and its growth agenda. The State holds that the ability or not of a planned housing scheme to fund school places necessary should not sway the determination of that application by the LPA. The disapplication of Basic Need

provision where there is a Section 106 agreement or CIL charge is simply to avoid double-funding.

3.15 **Securing developer contributions for education April 2019, updated November 2019) (CD 7.8):**

3.16 In order to provide further clarity to education authorities, the DfE produced and published a Guidance document related to delivering schools to support housing growth under the Education Act 1996. This is a non-statutory guidance document for local authorities planning for education to support housing growth and seeking associated developer contributions known as securing developer contributions for education. This document states at paragraph 3 the following:
It is important that the impacts of development are adequately mitigated, requiring an understanding of:

- *The education needs arising from development, based on an up-to-date pupil yield factor;*
- *The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries;*
- *Available sources of funding to increase capacity where required; and*
- *The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.*

3.17 The non-statutory Guidance is reinforced because it is endorsed by PPG's 007 Reference ID: 23b-007-20190315 and 008 Reference ID: 23b-008-20190315:

What funding is available for education?

Government provides funding to local authorities for the provision of new school places, based on forecast shortfalls in school capacity. There is also a central programme for the delivery of new free schools.

Funding is reduced however to take account of developer contributions, to avoid double funding of new school places. Government funding and delivery programmes do not replace the requirement for developer contributions in principle.

Plan makers and local authorities for education should therefore agree the most appropriate developer funding mechanisms for education, assessing the extent to which developments should be required to mitigate their direct impacts.

The Department for Education has published [guidance for local education authorities on developer contributions for education](#).

Paragraph: 007 Reference ID: 23b-007-20190315

Revision date: 15 03 2019

What contributions are required towards education?

Plans should support the efficient and timely creation, expansion and alteration of high-quality schools. Plans should set out the contributions expected from development. This should include contributions needed for education, based on known pupil yields from all homes where children live, along with other types of infrastructure including affordable housing.

Plan makers and decision makers should consider existing or planned/committed school capacity and whether it is sufficient to accommodate proposed development within the relevant school place planning areas. Developer contributions towards additional capacity may be required and if so this requirement should be set out in the plan. Requirements should include all school phases age 0-19 years, special educational needs (which could involve greater travel distances), and both temporary and permanent needs where relevant (such as school transport costs and temporary school provision before a permanent new school opens).

Plan makers should also consider whether pupils from planned development are likely to attend schools outside of the plan area and whether developer contributions may be required to expand schools outside of the area.

When local authorities forward-fund school places in advance of developer contributions being received, those contributions remain necessary as mitigation for the development.

The Department for Education has published [guidance for local education authorities on developer contributions for education](#).

- 3.18 HCC has adopted Guidance in relation to Education planning obligations entitled Hertfordshire County Council Guide to Development Infrastructure Contributions (“the Guide”). The Guide was approved by Hertfordshire County Council Cabinet on 12th July 2021, and was subsequently adopted for use on 19th July 2021.
- 3.19 In order to calculate the likely population to arise from any given development, HCC has developed a census-based model, the Hertfordshire Demographic Model (“the Model”). The Model projects the average number of people, based on the specific service requirement, likely to emerge from different types, sizes and tenures of dwellings over time.
- 3.20 HCC state in their statement in support of planning obligations (paragraph 3.5) the following:
- The modelled yields are calibrated against observed yields from recent new developments in Hertfordshire, which have been assessed as part of a recent, detailed, pupil yield study (further information on the Hertfordshire County Council Pupil Yield Survey is included in Appendix F). This ensures that the Hertfordshire Demographic Model is based on the most up-to-date information. In terms of education requirements, it also means that the Hertfordshire Demographic Model adheres to paragraph 8 of the Department for Education (DfE) Guidance.*
- 3.21 The planning obligations that were originally requested against this development from an Education perspective were consistent with the HCC Guide, and are agreed in the Section 106. There is a mechanism in the Section 106 Agreement to establish the actual child yield of the development following Reserved Matters to ensure that what is ultimately delivered is commensurate to the impact the development is expected to have, and thus fulfil the tests of CIL Reg 122 (2).
- 3.22 The costs originally requested in the consultation response that went to Committee have changed due to the time that has passed since their drafting. These revised costs are reflected in HCC’s statement in support of planning obligations (paragraph 2.20). The Section 106 reflects the revised figures.
- 3.23 Turning now to the Education landscape in the vicinity of the development site:

4 Primary School Provision

4.1 Schools should be operationally full to meet the financial audit requirement for best value from public assets. This is demonstrative of a properly functioning school system. School funding is predicated on the number of pupils that are on a school’s roll, so it is in the best interest of schools to maximise intake within their capacity. Accordingly, many schools take from a wide catchment area and some enrol over capacity.



Map 2: Two- and three-mile radius of the development site (via Google Earth)

4.2 The statutory rules on enrolment are that whilst schools may have a catchment area and ordered criteria for admissions, the rules only apply if the school is oversubscribed. Otherwise, whoever applies is admitted irrespective of where they live. This is known as ‘More Open Enrollment’. It fosters the expression of parental preferences for schools that are not necessarily those closest to home.

- 4.3 HCC operates under a statutory duty (S14 Education Act 1996) (CD 7.9) ‘to secure sufficient schools’. The term ‘sufficient’ is not defined and thus reliance is placed on the dictionary definition – enough – adequate – not too little and not too much. Thus, as set out above, the normal state for a school is that it is operationally full.
- 4.4 The remainder of this document will be looking at the Education landscape, and discuss the benefits that the development can offer the residents in the new housing, and the wider area.
- 4.5 Because of the statutory requirement (s444 EA 96) to fund or provide transport to and from school when the nearest available school is beyond the statutory walking distance, the standard assessment is to consider all children under 8-years of age within a 2-mile walking distance, and all children 8-years and old within a 3-mile walking distance of the development (see Map 2). The 2 and 3-mile criteria are the distances prescribed in the Education Act beyond which local authorities are required to provide/fund transport where the nearest available school is further away. It is the intention of the planning system and the provision of state-funded schools that the ideal mode of travel to and from school is walking or cycling. Most Education Authorities don’t draw the distinction based on age, and utilise 2-miles for Primary pupils, and 3-miles for Secondary pupils. However, it is also accepted that local authorities have a duty to provide school transport to the nearest available education establishment in the event that places are not available within the distances stated above.
- 4.6 There are eight non-selective, independent, non-fee-charging, state funded schools accommodating Primary School aged pupils within a two-mile radius of the development site. All of the schools are within the HCC administrative area, and are organised across three Primary Planning Areas.
- 4.7 The location of the schools in relation to the development site can be seen below in Map 3:



Map 3: Primary Schools in relation to the development site (via Google Earth)

4.8 The latest school roll data in the public domain (2021/22 academic year) for these schools can be seen below in Table 1:

| Primary School Name | Postcode | LA Name | Distance (miles) | Capacity | PAN | NoR | Yr R | Yr 1 | Yr 2 | Yr 3 | Yr 4 | Yr 5 | Yr 6 |
|------------------------------------|----------|---------------|------------------|--------------|------------|--------------|------------|------------|------------|------------|------------|------------|------------|
| Killigrew Primary School | AL2 3HD | Hertfordshire | 0.7 | 432 | 60 | 385 | 60 | 49 | 44 | 60 | 54 | 60 | 58 |
| How Wood Primary School | AL2 2HU | Hertfordshire | 1.1 | 210 | 30 | 202 | 30 | 30 | 30 | 27 | 30 | 25 | 30 |
| Park Street Primary School | AL2 2LX | Hertfordshire | 1.2 | 210 | 30 | 146 | 20 | 19 | 18 | 18 | 23 | 24 | 24 |
| St Adrian's Primary School | AL1 2PB | Hertfordshire | 1.5 | 210 | 30 | 208 | 27 | 30 | 28 | 30 | 31 | 31 | 31 |
| Mandeville Primary School | AL1 2LE | Hertfordshire | 1.6 | 420 | 60 | 401 | 47 | 58 | 57 | 59 | 60 | 60 | 60 |
| Mount Pleasant Lane Primary School | AL2 3XA | Hertfordshire | 1.9 | 315 | 45 | 279 | 35 | 30 | 44 | 44 | 43 | 44 | 39 |
| Prae Wood Primary School | AL3 4HZ | Hertfordshire | 1.9 | 450 | 60 | 411 | 59 | 58 | 60 | 60 | 59 | 60 | 55 |
| St Peter's School | AL1 1HL | Hertfordshire | 2.1 | 210 | 60 | 263 | 57 | 56 | 30 | 30 | 32 | 28 | 30 |
| TOTAL | | | | 2,457 | 375 | 2,295 | 335 | 330 | 311 | 328 | 332 | 332 | 327 |
| Surplus | | | | | | | 40 | 45 | 34 | 17 | 13 | 13 | 18 |
| Available Surplus % | | | | | | | 11% | 12% | 9% | 5% | 3% | 3% | 5% |

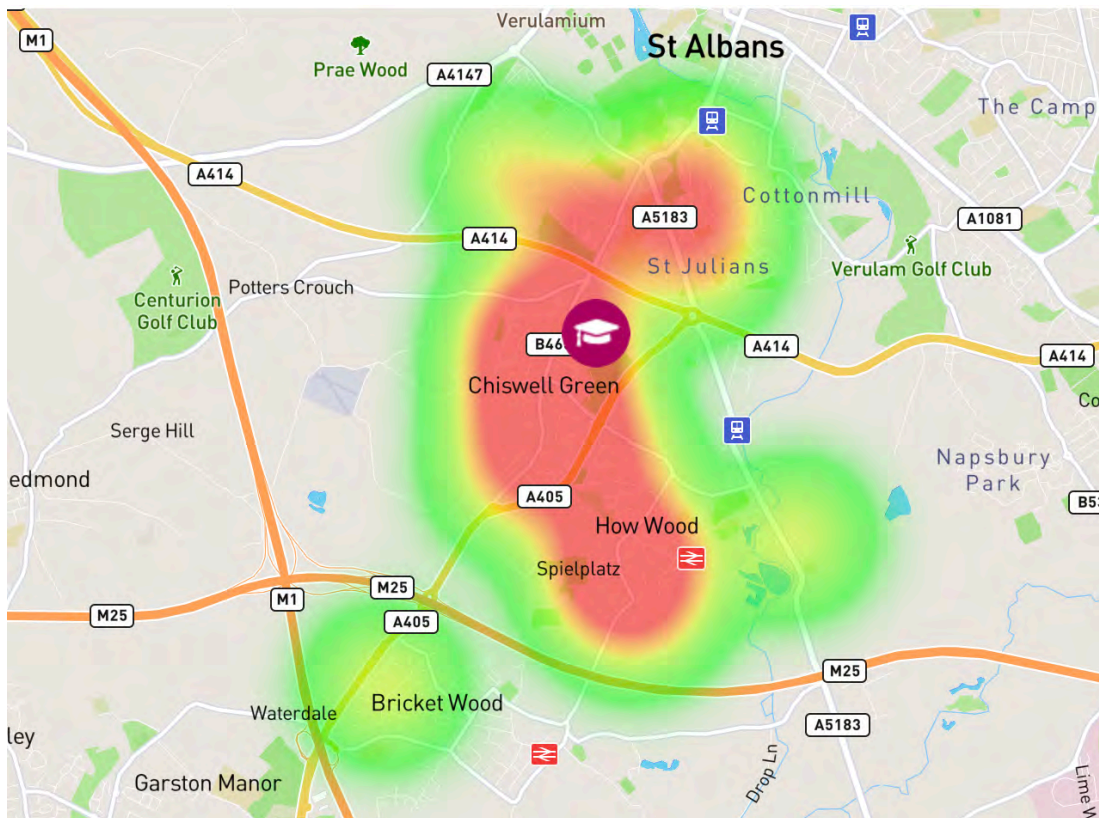
Table 1: School Roll (January 2022) (via Open Government License)
PAN = Planned Admission Number; NoR = Number on Roll

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- 4.9 The closest school to the development site, which is also the only school in Chiswell Green itself, is Killigrew Primary School. This is a 2FE Primary School (Ofsted “Good”) approximately 0.7 miles walking distance along a safe walking route from a central point of the development site. The school accepted a full 60 pupils in to Reception Year in the 2021/22 academic year, and was essentially full in four of the seven Year Groups.

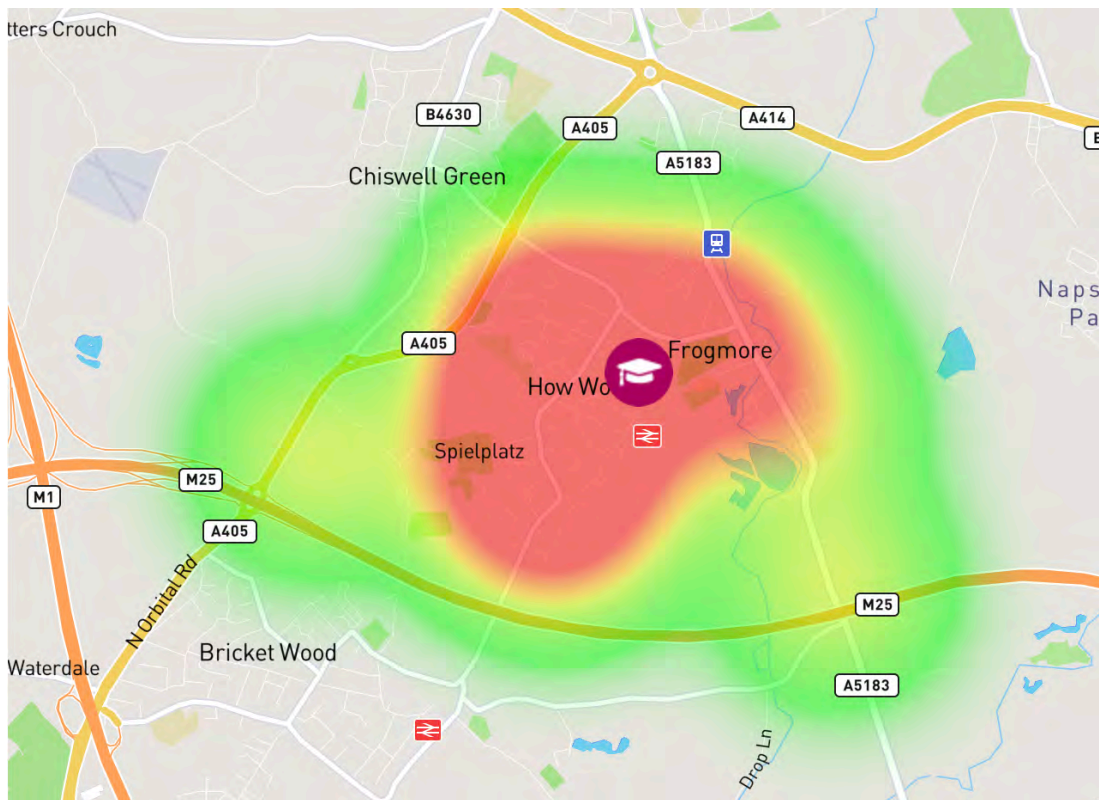
- 4.10 HCC has confirmed that this school could be expanded to accommodate the pupils expected to be living on this development should that be deemed the most appropriate project. That would take the school up to 3FE, which would aid in the financial viability of the school through economies of scale. Also, larger schools are better placed to be able to deal with changes in roll numbers, as they are able to shrink provision and stay a financially sustainable model, which is something that smaller schools struggle with when demand changes over time.

- 4.11 This school accommodates pupils predominantly from the Chiswell Green area, as well as the wider area, including pupils from How Wood, and St Stephens areas:



Map 4: Killigrew Primary School Catchment Area Heat Map (via schoolguide.co.uk)

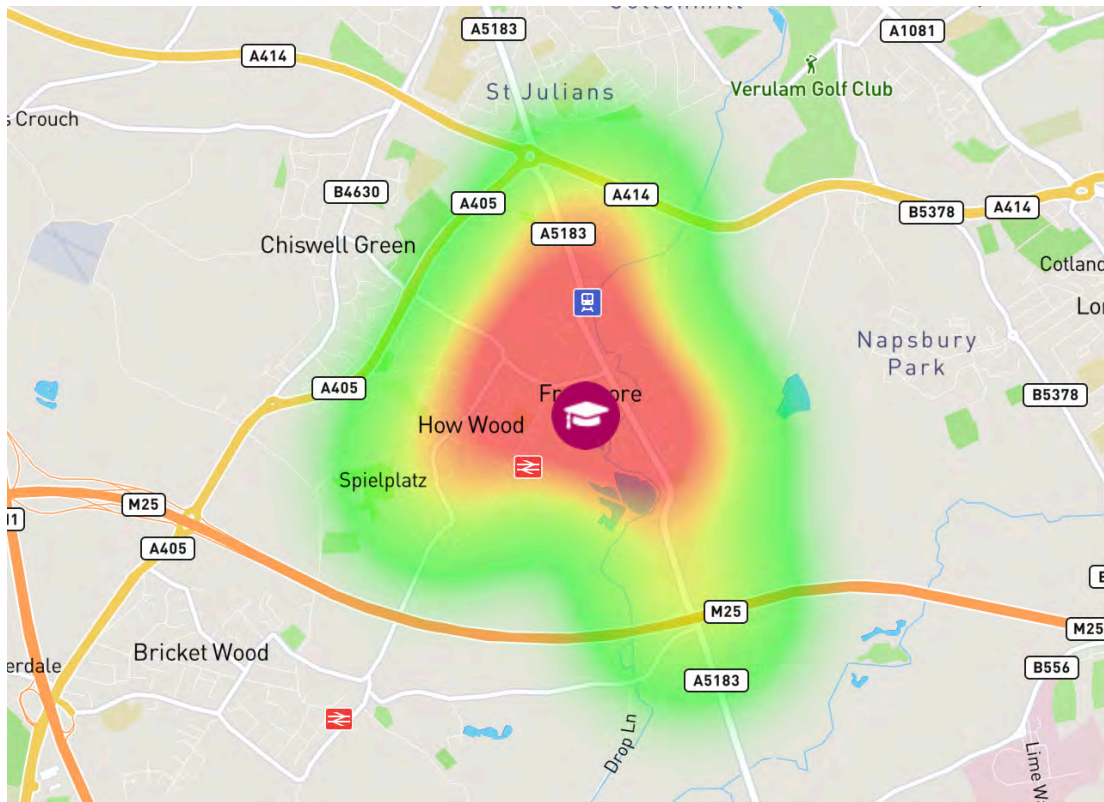
- 4.12 The second closest school to the development site is How Wood Primary School. This is a 1FE Primary School (Ofsted “Good”) approximately 1.1-mile walking distance from the development site. The school was full as of the previous academic year.
- 4.13 This school accommodates pupils from How Wood almost exclusively (there are not sufficient pupils coming from the wider area in sufficient numbers to trigger the Heat Map):



Map 5: How Wood Primary School Catchment Area Heat Map (via schoolguide.co.uk)

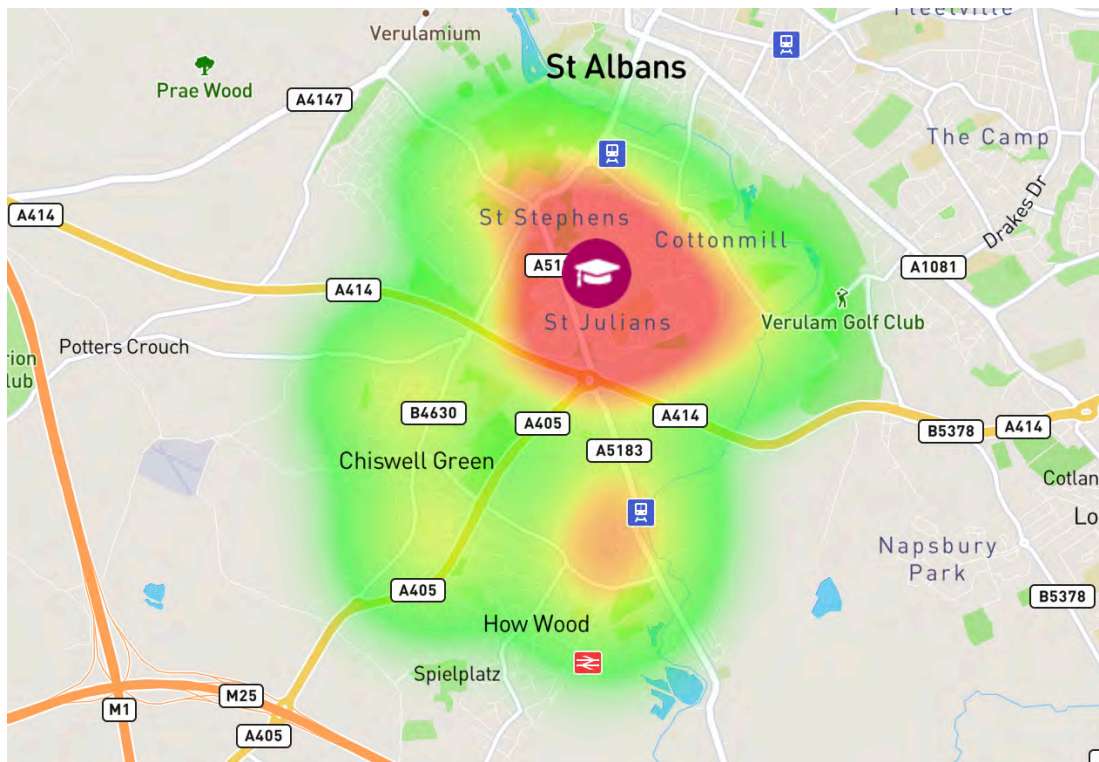
- 4.14 The third closest school to the development site is Park Street Primary School. This is a 1FE Primary School approximately 1.2 miles walking distance from the development site. This school, however, does not accommodate pupils from the Chiswell Green area in sufficient numbers to trigger the Heat Map:

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Map 6: Park Street Church of England Primary School Catchment Area Heat Map (via schoolguide.co.uk)

- 4.15 The fourth closest school to the development site is St Adrian’s Primary School. This is a 1FE Primary School approximately 1.5 miles walking distance from the development site that as of the previous academic year was full.
- 4.16 This school does accommodate pupils from Chiswell Green in small numbers, as demonstrated below:



Map 7: St Adrian's Primary School Catchment Area Heat Map (via schoolguide.co.uk)

- 4.17 The remaining schools are all pushing the “acceptable walking distance” parameter, and are predominantly full.

- 4.18 What the above demonstrates is that while there is sporadic spare capacity in some Year Groups, the general picture of schools serving Chiswell Green is one of little spare capacity. Whilst HCC have indicated that expansion of Killigrew School could be an option, that is unlikely to be able to accommodate the pupils from new housing developments beyond this development site, of which the developments will contribute towards commensurate to their child yields. On that basis, a new school would be a more advantageous option, as it would increase parental preference, would build in surplus capacity to allow for pupil growth, and enable the needs of future developments in the area to be met, thus allowing future planning decisions to be made unconstrained by considerations about school capacity. This could mean that a 1FE school is delivered in the first phase, but then expands to a 2FE as more development comes forward. HCC will have that flexibility.

- 4.19 Whilst the above discusses the quantitative benefits of providing more schools, there are also clear qualitative benefits as well to new provision. New schools are now built to high standards, prioritising the application of low energy, fossil fuel free buildings, which respond to climate resilience and achieve net zero carbon in operation. HCC will be able to manage the design and construction of the new provision to ensure a high-quality end product. As discussed further below, the land reserved is of a size as to mean that space standards need not be compromised, and the pupils who attend the school – both from this development and the wider area – will benefit from the new, modern provision.
- 4.20 New school provision would help to ensure that HCC is able to fulfil its statutory duty of providing sufficient pupil places for the area in to the future, and would remove the need for potential Compulsory Purchase of a school site should the demand outstrip the availability of places in the years ahead.
- 4.21 To discuss the School Site reserved within the development boundary:
- 4.22 **School Site**
- 4.23 A school site has been reserved in order to allow HCC to deliver new Education provision. One option is that this would be new 2FE Primary School provision. This would accommodate the pupils from this development site, as well as building in capacity to the wider area to ensure that HCC were safeguarded against the impact of new development applications/allocations, and also if the child yield is higher than forecast.
- 4.24 The site is consistent with the stipulations of Building Bulletin 103 (“**BB103**”) (**CD 7.6**). HCC has visited the site and is confident that it can accommodate the provision required of a 2FE facility with Nursery facilities. This is confirmed by the inclusion of the site in the Section 106 Agreement.
- 4.25 This development has reserved space on the development for new Education provision equating to 1.89ha. BB103 discusses the minimum and maximum total site areas for new Education provision. The formula for establishing this size requirement is reproduced in the Table below:

| Recommended minimum site areas for all schools | Base area for any: | | Area per pupil place for: | | | |
|---|--------------------|----------------------------|---------------------------|---------------------------|---------------------------|-----------------|
| | primary school | secondary or middle school | Nursery | Reception and Key Stage 1 | Key Stage 2 - 4 & post-16 | 5 to 11 primary |
| 1. Soft outdoor PE | - | 6000 | - | - | 35 | 20 |
| 2. Hard outdoor PE | 400 | 400 | - | 1.5 | 1.5 | 1.5 |
| 3. Soft informal and social area | 600 | 600 | 2 | 2 | 2 | 2 |
| 4. Hard informal and social area | 200 | 200 | 1 | 1 | 1 | 1 |
| 5. Habitat | 0 | 0 | 0 | 0.5 | 0.5 | 0.5 |
| Float | 600 | 800 | 2 | 5 | 5 | 5 |
| Minimum net site area | 1800 | 8000 | 5 | 10 | 45 | 30 |
| Non-net | 200 | 1000 | 1 | 1 | 5 | 3.3 |
| Minimum total site area | 2000 | 9000 | 6 | 11 | 50 | 33.3 |
| Recommended maximum site areas for new schools (minimum for existing schools where available) | | | | | | |
| Maximum net site area | 2000 | 9000 | 6 | 11 | 50 | 33.3 |
| Maximum total site area | 2400 | 11000 | 7.5 | 14 | 63 | 42 |

Table 2: BB103 Total Site Area Calculator (via the DfE)

4.26 When applying the figures above to establish the minimum and maximum total site areas for new 2FE Primary Schools with Nursery provision of 26 children per Form of Entry, you get the following:

4.27 Minimum Total Site Area

- (420 Primary School pupils x 33.3sqm) + 2,000sqm base area = 15,986sqm or 1.6ha;
- 52 Early Years children x 6sqm = 312sqm;
- **15,986sqm + 312sqm = 16,298sqm or 1.63ha.**

4.28 Maximum Total Site Area

- (420 Primary School pupils x 42sqm) + 2,400sqm base area = 20,040sqm or 2.04ha;
- 52 Early Years children x 7.5sqm = 390sqm;
- **20,040 + 390sqm = 20,820sqm or 2.08ha.**

4.29 On the basis of the figures above, the site on the development is the upper end of the Building Bulletin, and certainly of sufficient size to deliver the provision discussed, without the need for any compromises on standards.

4.30 To summarise all of the above:

- There is currently one school in Chiswell Green itself – Killigrew Primary School – that as of the previous academic year accepted a full 60 pupils in to Reception Year, meaning that this Year Group was full. Four of the seven Year Groups were at practical capacity;
- Should it be deemed the best solution, HCC has confirmed that this school can likely be expanded to accommodate the child yield of this development site. However, this expansion is only likely to be able to accommodate the pupil yield of this development, and would not allow for any surplus capacity to be built in to the area;
- HCC and the Appellants have agreed that the best form of development mitigation is the reservation of school land on this development that would have the ability to provide a new 2FE Primary School. This would accommodate the pupils of this development, whilst also safeguarding provision for future growth, should additional sites come forward in the area, which HCC confirmed is likely;
- New Primary School provision would provide additional Primary and Early Years provision for the surrounding areas, would help ensure that HCC is able to fulfil its statutory duty of providing sufficient pupil places for their area, and will

increase the options for the wider community during the annual admissions window. On that basis, this offers a genuine and demonstrable benefit to the people of Chiswell Green and wider population of St Albans;

- The school site is well placed, and of sufficient size to be able to deliver the full 2FE school provision plus Nursery provision without any compromises on space standards;
- Funding towards the build programme, which other developments coming forward that would utilise the school will pay for commensurate to their impact, as well as Government Funding through Basic Need, has been agreed with HCC, who have ten years to draw down the land once the need for the provision has been established.

4.31 On the basis of the above, the reservation of a Primary School site is important to allow HCC to fulfil its statutory duty of providing sufficient pupil places for its area, as well as increasing the choice of schools for parents of Chiswell Green, who currently only have one school in their immediate vicinity. It is certainly clear that there is no Primary School related reason for this development not to progress, as confirmed by HCC.

4.32 It is my professional opinion that the inclusion of a school site on this development should be given substantial weight. This is a rare opportunity, as school land is not easy to come by especially unencumbered, remediated, of an appropriate size, and without the need for Compulsory Purchase Order.

4.33 One final point of clarification: paragraph 5.20 of HCC's statement of case discusses this development generating 39.5% of a 2FE Primary School. HCC then suggest that 39.5% of the school site cost should be discounted from the planning obligation to ensure that the development is not providing provision over and above its child yield. Whilst the principle of this is correct, the calculation is incorrect. If this development generates 39.5% of 2FE Primary School (this will be established after Reserved Matters), then 39.5% of the land for a 2FE Primary School must be provided for a nominal fee, with the remaining 60.5% of land being provided by the developers, and its costs discounted from the planning obligation. This has been

agreed in the Section 106 agreement, and the difference is not significant, but to be accurate and transparent, this correction should be highlighted.

4.34 Any new Primary School provision on site would include an element of Early Years provision. Turning now to discuss Early Years:

5 Early Years

5.1 Under the Childcare Act 2006, local authorities have specific duties to secure:

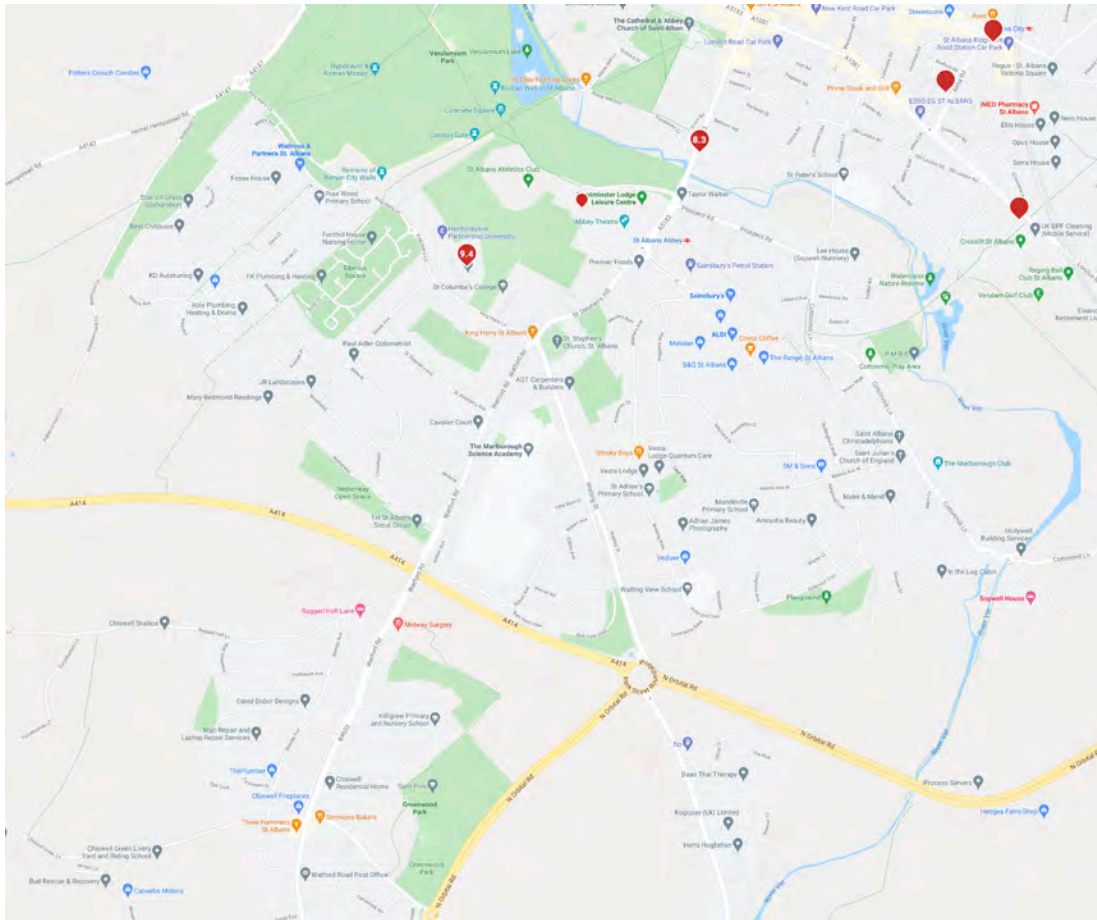
- Sufficient and suitable childcare places to enable parents to work, or to undertake education or training which could lead to employment;
- Sufficient and suitable early years places to meet predicted demand; and
- Free early years provision for all 3 and 4-year olds (and more recently the 40% most vulnerable 2-year olds) of 15 hours per week 38 weeks per year.

5.2 The Childcare Act 2016 includes an extension to the current entitlement and, from September 2017, provides an additional 15 hours (per week 38 weeks per year) of free childcare for 3 and 4-year old children from working families who meet the following criteria:

- Both parents are working (or the sole parent is working in a lone parent family); and
- Each parent earns, on average, a weekly minimum equivalent to 16 hours at national minimum wage and less than £100,000 per year.

5.3 Killigrew Primary School has a Nursery School on site. The nearest Private Nursery is Montessori by Busy Bees, which is in excess of one-mile walking distance in St Albans:

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Map 8: Nurseries near to Chiswell Green (via daynurseries.co.uk)

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| | |
|---|--|
| <p>Busy Bees at Glenalmond 1.1 miles away 14 King Harry Lane, St Albans AL3 4AP Group/Owner Busy Bees Nurseries Ltd</p>  <p>Busy Bees at Glenalmond is a thoroughly resourced and secure setting, designed to make the most of your child's early years learning potential and inspire their imagination. CCTV and a fingerprint entry system are in place, with the service itself...</p> <p>Read more about Busy Bees at Glenalmond ></p> <p>Type of Nursery Day Nursery 116 Places</p> | <p>36 reviews 9.4</p> <p><i>"My child is very happy with Busy Bees at Glenalmond and is never unhappy to go. Our best recommendation for a toddler. Due to Covid-19 it's..."</i></p> <p>Save View Full Details</p> |
| <p>Albany Montessori School 1.3 miles away St Albans Sea Cadet Hall, Westminster Lodge, Holywell Hill, St Albans AL1 2DJ</p> <p>Type of Nursery Nursery School 34 Places</p> | <p>Save View Full Details</p> |
| <p>Fountain Montessori Nursery & Pre-School - St Albans 1.5 miles away 77 Holywell Hill, St Albans AL1 1HF Group/Owner Fountain Montessori Pre-School Ltd</p>  <p>Fountain Montessori Nursery & Pre-School in St Albans lets children explore the world around them and use their imagination to learn and grow. The Montessori method encourages children to take part in activities that build their confidence and independence....</p> <p>Read more about Fountain Montessori Nursery & Pre-School - St Albans ></p> <p>Type of Nursery Day Nursery 65 Places</p> | <p>2 reviews 8.3</p> <p><i>"The E log communication platform is a wonderful link for us to have as it provides that vital insight into the activities our child is..."</i></p> <p>Save View Full Details</p> |
| <p>Ashbourne Day Nurseries at Bricket Wood 1.6 miles away St Stephen's Parish Centre, Station Road, Bricket Wood, St Albans AL2 3PJ Group/Owner Ashbourne Day Nurseries</p>  <p>The Ashbourne Day Nurseries Bricket Wood nursery is a cosy setting with a warm, caring and friendly atmosphere. The nursery is conveniently located close to the local train station which has trains into Watford Junction. They are also close to the...</p> <p>Read more about Ashbourne Day Nurseries at Bricket Wood ></p> <p>Type of Nursery Day Nursery 26 Places</p> | <p>31 reviews 9.8</p> <p><i>"Our little boy has been at Bricket Wood nursery since he turned one in January and has absolutely thrived. He loves going and the staff have..."</i></p> <p>Save View Full Details</p> |
| <p>Monkey Puzzle Day Nursery St Albans 1.8 miles away The Old Station House, London Road, St Albans AL1 1JD Group/Owner Monkey Puzzle Day Nurseries Ltd</p>  <p>Monkey Puzzle Day Nursery, Old Station House, employs an experienced team who are able to make the most of this converted grade-II listed building to inspire learning and creativity in up to forty-six children. Interactive learning indoors combines...</p> <p>Read more about Monkey Puzzle Day Nursery St Albans ></p> <p>Type of Nursery Day Nursery 46 Places</p> | <p>Save View Full Details</p> |
| <p>Toddlers-In Nursery School Ltd 1.9 miles away St.Michael's Memorial Hall, Branch Road, St Albans AL3 4SS</p> <p>Type of Nursery Nursery School 96 Places</p> | <p>Save View Full Details</p> |
| <p>Playschool Nursery (St Albans) 1.9 miles away Playschool House, Alma Road, St Albans AL1 3AR Group/Owner Playschool Nursery</p>  <p>Playschool Nursery (St. Albans) offers a bright and spacious interior and a secure outdoor play area that features natural grass, a wide of range resources and soft-floor surfaces. The setting boasts a central location, with easy access to the main train...</p> <p>Read more about Playschool Nursery (St Albans) ></p> <p>Type of Nursery Day Nursery 82 Places</p> | <p>Save View Full Details</p> |
| <p>Muriel Green Nursery and Pre-School 1.9 miles away Church Crescent, St Albans AL3 5JB</p> <p>Type of Nursery Day Nursery 150 Places</p> | <p>Save View Full Details</p> |

Table 3: Nurseries near Chiswell Green (via daynurseries.co.uk)

- 5.4 A development of this size is forecast to generate in the region of 24 Early Years children (see paragraph 5.15 of the HCC statement of case). However, any new 2FE Primary School on this development would be expected to deliver 52 Early Years places, building in capacity to the area, and providing more options for the parents of young children in Chiswell Green. 26 Early Years pupils per 1FE is the standard approach in new schools. This additional provision would be a clear and demonstrable benefit.
- 5.5 At present, Chiswell Green residents have one option for Nursery provision. This development has the opportunity to provide new purpose-built provision, on the proposed school land. That should carry substantial weight.
- 5.6 On the basis of the above, there is certainly no Early Years related reason for this development not to progress.
- 5.7 Turning now to discuss SEND provision:

6 Special Education Needs and Disabilities (“SEND”)

- 6.1 The DfE states in their latest PPG on securing education planning obligations (paragraph 10, page 8 – November 2019) (CD 7.8):

We advise you to seek developer contributions for expansions required to sixth form and special educational needs and disabilities (SEN) provision, commensurate with the need arising from the development.

- 6.2 This demonstrates that the best practice guidance of the DfE supports the requesting of SEN contributions if they are needed.
- 6.3 Government statistics suggest that in 2022 4% of children in the UK have an Education, Health and Care (“EHC”) plan/Statement of SEN (up from 3.7% in 2021)⁴. They also state that 12.6% of the UK’s school age child population has some form of

⁴ <https://explore-education-statistics.service.gov.uk/find-statistics/special-educational-needs-in-england>

SEN but no EHC plan. Nationally, there is not sufficient SEN provision to accommodate the demand, which is growing year on year.

6.4 HCC state in the statement of case the following: (paragraphs 7.5 - 7.7):

To meet the rising demand for special school provision and to ensure that there is sufficient capacity for children with special educational needs and disabilities, in high quality local provision that meets their needs the county council have developed a strategy, the SEND Special School Place Planning Strategy 2020-2023.

The Strategy identifies a significant shortfall in places in the Severe Learning Difficulty (SLD) school and Profound Neurological Impairment (PNI) sectors with the forecast showing a rise by 364 places between January 2020 and January 2025. It is a priority of the Strategy to mitigate this increase by creating up to 300 new SLD places to meet demand now and into the future. The forecast shows that 75% of the overall increase in demand across the life of the forecast is for SLD and PNI places.

The county council are currently developing proposals to provide 113 new places for children with SLD in the west of the county, through the relocation and expansion of Breakspeare School, and another 100 SLD places in the east of the county. The earliest these places will be delivered is January 2024 for the places in the west and September 2024 for the places in the east.

6.5 What this demonstrates is that HCC has a clear strategy for new places for children with SLD. However, what is not clear is how HCC will accommodate the need for additional PNI places, of which there is a significant shortfall.

6.6 PNI can include children with neurological disabilities such as epilepsy, learning disabilities, neuromuscular disorders, autism, brain tumours, and cerebral palsy, to name but a few. The Hertfordshire PNI Team support children and young people from 5 upwards with physical and/or neurological impairment. Many of these pupils may need support due to (this list is not exhaustive):

- Some to severe difficulty with fine and gross motor skills, as well as severe mobility needs;

- Some to severe difficulty with attention and memory, including understanding or remembering verbal instructions; and
- Some to severe difficulty with understanding what they see (visual perception).

6.7 The Applicants, in consultation with HCC, have therefore agreed to allow a broad range of choice of Education provision that could be utilised on this development site. This could include SEND provision to accommodate what HCC reports is a significant shortfall in existing provision. If HCC has a need for new PNI infrastructure, this development site offers unencumbered land for this provision, should HCC feel that this is the best use of the land.

6.8 HCC requests funding from all developments that are expected to generate children with some form of SEND. Their adopted Guide states (paragraph 2.21, page 14):

Where existing capacity is unable to mitigate the impact of development, the county council will seek planning obligations to create new provision, whether through the expansion of existing special schools or specialist provision, or through the creation of new special schools or specialist resource provision in mainstream schools.

6.9 The Section 106 Agreement for this site demonstrates this approach through the securing of planning obligations. These contributions can be pooled from developments across the county, as SEND provision does not have catchment areas like mainstream provision, and many parents may have to travel with their children to receive the care they require. This includes many children having to leave the county to be accommodated. On that basis, new provision would help to alleviate many long journeys that have to be undertaken daily.

6.10 To now discuss how the school land may be utilised:

6.11 **School Land for SEND**

6.12 New SEN school provision land area guidelines are published in Building Bulletin 104 (“BB104”) (CD 7.7). The formula for establishing the land areas can be seen below:

| Recommended minimum external areas for all special schools | For special schools without formal team games | | For special schools with formal team games | |
|--|---|--------------------------------|--|--------------------------------|
| | Base area | Area per pupil place (any age) | Base area | Area per pupil place (any age) |
| Soft outdoor PE | - | - | 2800 | 7.5 |
| Hard outdoor PE | 200 | 1 | 400 | 1.5 |
| Soft informal and social areas | 600 | 2 | 600 | 2 |
| Hard informal and social areas | 600 | 2 | 600 | 2 |
| Habitat areas | 200 | 1 | 200 | 1 |
| Float | 2500 | 9 | 2400 | 7 |
| Minimum net area | 3500 | 15 | 7000 | 21 |
| Non-net area | 4500 | 21 | 4500 | 21 |
| Minimum gross area | 8000 | 36 | 11500 | 42 |
| Maximum net area | 5500 | 18 | 9000 | 24 |
| Maximum gross area | 11500 | 42 | 15000 | 48 |

Table 4: BB104 Site Area Guidelines for SEND Provision (via the DfE)

6.13 On the basis of the above, a land parcel of 1.89ha could accommodate at least 80 SEN children in a new facility with formal team games areas, and up to a potential 300 SEN children were the formal games areas not required, as demonstrated in the calculations below:

6.14 **Maximum Gross Site Area with Formal Team Games**

- (80 SEND Children x 48sqm) + 15,000sqm base area = 18,840sqm or 1.884ha

6.15 **Minimum Gross Site Area without Formal Team Games**

- $(300 \text{ SEND Children} \times 36\text{sqm}) + 8,000\text{sqm base area} = 18,800\text{sqm}$ or 1.88ha

6.16 Based on the child yields of HCC, 80-300 SEND children could be generated by between circa 5,000 – 20,000 new dwellings or more, so the provision has the ability to accommodate the needs of vast new developments across Hertfordshire were this to be the option favoured by HCC when assessing what is the best use of the land.

6.17 The benefits of delivering this provision on site cannot be understated. Land is hard to come by, and many Education Authorities are having to explore Compulsory Purchase Orders to acquire school sites. This development makes it very straight forward and cost effective for HCC, whilst maximising their options for safeguarding new provision. This is important when considering the shortfall in available provision highlighted by HCC in their Statement of Case.

6.18 The Section 106 allows options for HCC. This could be new mainstream Primary School provision. This could be new SEND provision. This could be a combination of the two, as circa 50% of all SEND children are accommodated in mainstream schools. What this development offers HCC is options to solve issues that otherwise may not have a solution. The weight, therefore, that this should be afforded is substantial.

6.19 To summarise the above:

- There is a demonstrable shortfall of SEND places currently across Hertfordshire, especially with regards to PNI provision;
- There is no site or strategy agreed to accommodate the demand for new PNI pupil places;
- The Appeal site is of an appropriate size for new provision;
- The funding is being collected from every development expected to generate children with SEND requirements in Hertfordshire through pooled Section 106 contributions; and the land could accommodate a standalone SEND facility or in

combination with mainstream provision, without having to compromise on space standards;

- Accordingly, this should be afforded substantial weight.

6.20 Finally, to discuss the Secondary School phase:

7 Secondary School Provision

7.1 There are seven state-funded, non-selective, non-fee-charging, independent schools accommodating Secondary School aged children that could directly serve this development. The schools are organised across two Secondary Planning Areas, all within the HCC administrative area.

7.2 The location of the schools in relation to the development site can be seen below:

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Map 9: Schools within a Three-Mile Radius of the Development Site (via Google Earth)

7.3 The latest school roll data in the public domain (2021/22 academic year) for these schools can be seen below:

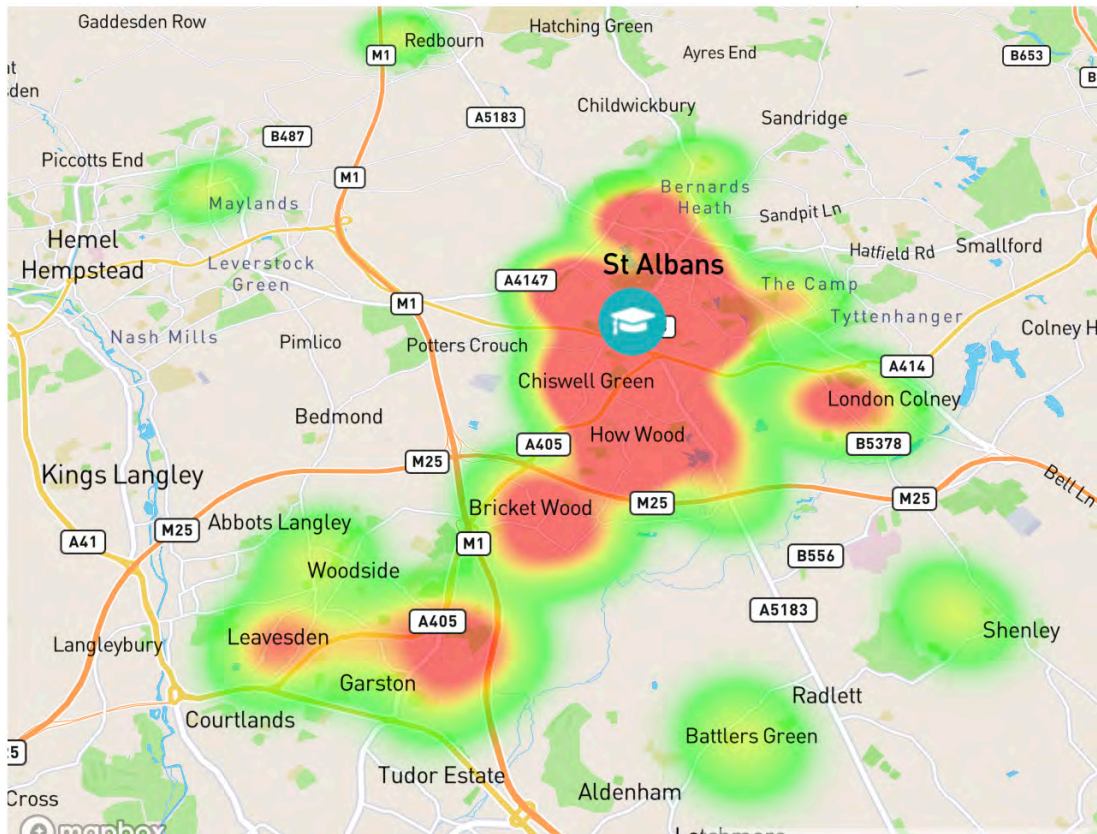
| Secondary School Name | Postcode | LA Name | Distance (miles) | Capacity | PAN | NoR 7-11 | Yr 7 | Yr 8 | Yr 9 | Yr 10 | Yr 11 | Post 16 |
|--------------------------------|----------|---------------|------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| The Malborough Science Academy | AL1 2QA | Hertfordshire | 1.6 | 1,308 | 212 | 1072 | 212 | 233 | 210 | 206 | 211 | 209 |
| St Michael's High School | WD25 0SS | Hertfordshire | 2.4 | 1,100 | 180 | 906 | 182 | 183 | 182 | 180 | 179 | 217 |
| Loreto College | AL1 3RQ | Hertfordshire | 2.6 | 970 | 160 | 796 | 160 | 160 | 160 | 156 | 160 | 159 |
| Parmiter's School | WD25 0UU | Hertfordshire | 2.7 | 1,441 | 208 | 1043 | 208 | 209 | 209 | 209 | 208 | 386 |
| Future Academies Watford | WD25 7HW | Hertfordshire | 3 | 1,350 | 210 | 999 | 216 | 197 | 208 | 194 | 184 | 109 |
| Samuel Ryder Academy | AL1 5AR | Hertfordshire | 3.2 | 1,540 | 180 | 926 | 208 | 190 | 202 | 160 | 166 | 124 |
| Verulam School | AL1 4PR | Hertfordshire | 3.4 | 1,200 | 186 | 854 | 155 | 155 | 179 | 182 | 183 | 227 |
| TOTAL | | | | 8,909 | 1,336 | 6,596 | 1,341 | 1,327 | 1,350 | 1,287 | 1,291 | 1,431 |
| Surplus | | | | | | | -5 | 9 | -14 | 49 | 45 | |
| Available Surplus % | | | | | | | 0% | 1% | -1% | 4% | 3% | |

Table 5: School Roll Data (January 2022) (via Open Government License)

PAN = Planned Admission Number; NoR = Number on Roll

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- 7.4 The closest school to the development site is The Marlborough Science Academy. This is a 7FE Secondary School approximately 1.6 miles walking distance from the development site. The school, as of the previous academic year, was full.
- 7.5 The Marlborough Science Academy serves Chiswell Green, as shown in the Map below:



Map 10: The Marlborough Science Academy Catchment Area Heat Map (via Google Earth)

- 7.6 On the basis of Marlborough Science Academy being at capacity, HCC has stated that this development could contribute financially towards its expansion. This is an option embedded in the Section 106, and confirmed in the statement of case in paragraph 2.20.
- 7.7 When looking at the remaining schools, they are all at or nearing full capacity. HCC, as the Education Authority, has identified that new provision will be necessary to accommodate the growing area, regardless of whether this development comes

forward. However, the contributions from this development will aid in the financial viability of any expansion project that does come forward.

7.8 On the basis of the above, there is no Secondary Education reason for this development not to progress.

8 Summary and Conclusion

8.1 I was instructed by the Appellants to prepare this written Proof of Evidence to assist the Inspector in determining whether any harm is likely to arise in Chiswell Green, from an Education perspective, if this development was to receive a positive determination. The outcomes of my research have been that while this development's progression does not suggest that any harm will arise if it receives a positive determination, on the contrary, it has the opportunity to provide a substantial benefit to the new and existing population through the provision of new Education infrastructure.

8.2 This development has the ability to offer an increase in Early Years provision, Primary School provision, SEN provision, and funding towards expansion of existing Secondary School provision, to serve the residents of Chiswell Green and the wider population. This should be afforded substantial weight due to the clear and demonstrable benefit it provides to the people of St Albans.

8.3 There are no outstanding issues between the Appellants and the Education Authority, as demonstrated in the Statement of Common Ground between the Appellant and HCC Education. A collaborative approach has been consistent throughout the process.