

Carlisle City Council

Report to:-	Development Control Committee		
Date of Meeting:-	21 st January 2003	Agenda Item No:-	
Public	Operational	Delegated: Yes	
Accompanying Comments and Statements		Required	Included
Environmental Impact Statement:		No	No
Corporate Management Team Comments:		No	No
City Treasurers Comments:		No	No
City Solicitor & Secretary Comments:		Yes	Yes
Head of Personnel Services Comments:		No	No
Title:-	Background report re: Development at Greensyke Farm, Cumdivock, Dalston		
Report of:-	Head of Planning Services		
Report reference:-	P02/03		

Summary:-

The report provides an introduction and background for the consideration of applications at Greensyke Farm, Cumdivock, Dalston, Carlisle

Recommendation:-

It is concluded that Members have two options. Namely, whether to give the applicants further time to resolve matters, or, assess the overall situation based on the available information. In the case of the latter it is considered that the harm caused at this stage outweighs any benefits and therefore, as a consequence, authorise the necessary enforcement action.

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Report to the Chairman and Members of the Development Control Committee P02/03

1.0 Introduction

1.1 This report provides an introduction to and background information for the consideration of the following planning applications in association with the establishment of an educational activity centre:

- 01/1013 Construction of dining/function hall with kitchens, teachers retreat and ancillary accommodation on site of partially constructed chapel.
- 01/1043 Change of use of disused barn to provide two storey accommodation for "laser-tag" and similar indoor facilities.
- 01/1099 Construction of above ground caving system for use by students.
- 01/1151 Change of use from part dormitory, part classroom and part vacant roofspace, to additional dormitory, teachers rooms, toilets and accommodation.
- 02/0019 Proposed challenge course on existing paddock area.
- 02/0068 Change of use from dining room to student accommodation.
- 02/0069 Formation of staff and visitors car park.
- 02/0070 Erection of single storey extension to ICT building for classroom/office use.
- 02/0071 Formation of quad bike track.
- 02/0949 Improvements to and upgrading of existing vehicular access.
- 02/1214 Erection of portal framed dry weather area, for indoor activities.

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- 02/1215 Erection of science block classrooms on existing pad foundation.

1.2 The background information includes an overview of the proposed development of the site, discusses the material issues which are relevant to the consideration of the aforementioned applications, and, highlights other works which require planning permission but are not subject to any application. The report has, as a consequence, been structured around the following headings:

2.0 Site description and planning history

3.0 Overview of the current proposals

4.0 Material considerations

- a) Legal Use of the site
- b) Consequences of refusal
- c) Enforcement

- d) Capacity of existing highways

- e) Security and health

- f) Wildlife
- g) Foul and surface water drainage

- h) Floodlighting

- i) Noise

- j) Economic and social

- k) Access for disabled people

- l) Fire safety

- m) Biosecurity

- n) Character of the area

- o) The Human Rights Act 1998

5.0 Conclusion

1.3 It is concluded that in the context of the work that has already been undertaken, whether or not subject to an application, Members need to decide whether to give the applicants further time in order to try and resolve matters, or, make a decision based on the present position having regard to the fact that the EAC has been in operation since the end of April 2002.

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1.4 On the basis that the majority of the difficulties are not usually insurmountable, and, the applicants have stated their willingness to enter into a Management Plan there is an argument to defer consideration of the applications for a specified period.

1.5 If Members wish to assess the overall situation based on the available information it is considered that the fundamental issue that needs to be addressed is whether the advantages of the proposed EAC outweigh the harm caused. Based on the current position it is evident that, in the absence of a single application for the change of use of the premises, there are a series of matters, which appear not to have been satisfactorily addressed by the applicants. In particular, the noise and disturbance detrimentally harming the amenities of the neighbouring residents. In the absence of any further information it is considered that the harm caused at this stage outweighs any

benefits and therefore, as a consequence, authorise the necessary enforcement action. In relation to the individual applications, Members need to consider whether to refuse permission on the basis that each facility will lead to cumulative harm to interests of acknowledged importance.

2.0 Site Description and Planning History

2.1 Greensyke House is a substantial Victorian property set within attractive grounds to the east of a farmhouse and outbuildings associated with the original steading. A cottage is to the immediate north of Greensyke House. The property is located on the northern side of the Cumdivock Road, opposite Holly Oaks and the junction with the Broomfield Road. The White House lies approximately 120 metres to the east of the driveway serving Greensyke House, whilst Bellgate is 320 metres to the north-west of the main access serving Greensyke Farmhouse and Greensyke House. Broomfield House is situated approximately 375 metres south-west of Greensyke. A public footpath runs through field number 2874 which lies between Bellgate and Greensyke and to the west of Holly Oaks.

2.2 The property is subject to a relatively extensive planning history comprising:

- In February of 1988, under application 88/0007, planning permission was given for the conversion of the farm buildings to provide classroom, dormitory and other facilities for a junior school.

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- In June of 1988, under application number 88/0386, planning permission was also given to use the premises at Greensyke House as boarding accommodation for children attending Lime House School.

- In 1989, application number 89/0616, planning permission was granted to convert the existing barn and garages into classroom and staff accommodation.

- In 1993, application 93/0630, planning permission was given for the erection of an assembly hall and girls dormitory.

- In 1995/96, application numbers 95/0092 and 95/0879, planning permission was given for the erection of a chapel/function building and science labs.

- In 1997, application 97/0312, permission was given for a dormitory annexe.

2.3 When considering the planning history of the site, illustrated on plans 1-4, it is apparent that:

- Those elements given permission and implemented as approved comprise classrooms and a new driveway (88/0007); boarding accommodation (88/0386); dormitory annexe and dining room/multi-purpose area (91/0236); and, assembly hall and dormitory (93/0630). Work had also commenced on the buildings approved under application numbers 95/0092 and 95/0879.

- Some classrooms, storage, w.c. facilities, and, dining room (88/0007); dormitory annexe (96/0998); and, dormitory annexe (97/0312) were not

implemented.

- Certain elements approved under application numbers 88/0007 and 89/0616 were not implemented in accordance with the approved plans.
- The possible use of the two storey link to Greensyke House as dormitory/staff accommodation, and, the creation of a playing field have not been subject to an application.

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- The use of the farmhouse to provide accommodation for the headmaster, and, the cottage as a dwelling for staff would not have required planning permission.

2.4 In seeking to establish the level, nature and period of use by Lime House School of Greensyke, information has been sought from the available planning records, a former Chairman of the School's Board of Governors, the Secretary and Headmaster of Lime House School, and, the data forwarded by the School to the Department of Education and Independent Schools Information Service.

2.5 In looking at the submitted information accompanying the various applications, the number and type of accommodation provided can be broken down accordingly:

- 24 students and at least two staff (88/0386).
- 8 students (89/0616).
- 2 dormitories, a single room for members of staff (two storey link to Greensyke House).
- 18 students and a single staff room (91/0236).
- 12 students and a single staff room (93/0630).
- Staff accommodation at the farmhouse and cottage.

2.6 A former Chairman of the Board of Governors to Lime House School, and current owner of the property, has stated that: the site operated as Lime House Junior School with boarding units; and, at its peak there were 107 junior pupils plus 100 boarders.

2.7 The Secretary to Lime House School has explained that at Greensyke the maximum number of boarding students was 75 and the maximum number of students using the classrooms was 105. The Headmaster of Lime House School has also indicated that the maximum number of students using the Greensyke premises were 105 between 09.00 hours and 16.15 hours. There was a maximum of 75 boarders who resided at the premises from 18.30 hours until 09.00 hours. At

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09.00 hours 60 older boarders would have been transported to the main School site at Holm Hill. The remaining 15 younger boarders would have been joined by 90 day pupils all of which attended the Junior School.

2.8 The more specific data provided by Lime House School to the Department of Education and the Independent Schools Information Service has been summarised in the following Tables 1-3.

TABLE 1: STUDENTS ATTENDING LIME HOUSE SCHOOL AT GREENSYKE FARM, CUMDIVOCK 1988 – 1991

YEAR (JANUARY)	NO. OF BOARDERS AT THE OAKS AND GREENSYKE FARM	TOTAL NO. OF STUDENTS AT GREENSYKE FARM (DAY & BOARDER STUDENTS)	NO. OF BOARDERS TAUGHT AT GREENSYKE FARM
1988	Not known	84	Not known
1989	Not known	91	Not known
1990	Not known	95	Not known
1991	Not known	95	Not known

NOTES FOR TABLE 1:

a) 1988 figures based on data provided by Lime House School to the Department of Education

b) Not able to provide data which differentiates between terms although there were fluctuations

c) Between 1990-1991 the total number of students is thought to have exceeded 100 students during the Summer Term

TABLE 2: STUDENTS ATTENDING LIME HOUSE SCHOOL AT GREENSYKE FARM, CUMDIVOCK 1992-1996

YEAR (JANUARY)	NO. OF BOARDERS AT THE OAKS AND GREENSYKE FARM	TOTAL NO. OF STUDENTS AT GREENSYKE FARM (DAY & BOARDER STUDENTS)	NO. OF BOARDERS TAUGHT AT GREENSYKE FARM
1992	86 boarding girls 35 junior boys	80	25 junior girls 35 junior boys
1993	Not known	71	Not known
1994	68 boarding girls 6 junior boys	53	13 junior girls 19 junior boys
1995	62 boarding girls 6 junior boys	45	4 junior girls 6 junior boys

	57 boarding girls	38	11 junior girls
1996	7 junior boys		7 junior boys

P02/03**TABLE 3: STUDENTS ATTENDING LIME HOUSE SCHOOL AT GREENSYKE FARM, CUMDIVOCK 1997-2001**

YEAR (JANUARY)	NO. OF BOARDERS AT THE OAKS AND GREENSYKE FARM	TOTAL NO. OF STUDENTS AT GREENSYKE FARM (DAY & BOARDER STUDENTS)	NO. OF BOARDERS TAUGHT AT GREENSYKE FARM
1997	42 boarding girls 4 junior boys	35	7 junior girls 4 junior boys
1998	40 boarding girls 3 junior boys	41	5 junior girls 3 junior boys
1999	37 boarding girls 7 junior boys	41	5 junior girls 7 junior boys
2000	34 boarding girls 6 junior boys	41	4 junior girls 6 junior boys
2001	35 boarding girls 2 junior boys	40	4 junior girls 2 junior boys

NOTES FOR TABLES 2 AND 3:

a) 1992-2001 figures based on data provided by Lime House School to the Independent Schools Information Service together with the Department of Education.

b) From 1992 until and including 1998 any fall in the number of junior boys was "topped up" by senior boys to maintain maximum occupancy at Greensyke Farm. However, no figures are available for the number of senior boys who resided at Greensyke Farm.

c) From 1998 onwards teaching and accommodation at Greensyke Farm was downsized and moved to the main site.

d) In 1998 there was a change in ownership leading to the non-use by Lime House School of The Oaks i.e. the figures provided from 1998 onwards just relate to Greensyke Farm.

e) In 1987 under application number 87/0437 planning permission was given for creation of residential annexe for children attending Lime House School at The Oaks, Hawksdale, Dalston. The Committee report indicates that the accommodation was for 24 students together with 4 members of staff.

2.9 By way of a summary the planning history shows that:

- the boarding accommodation approved at Greensyke House was intended to be in addition to any accommodation at Greensyke Farm.
- Dormitory accommodation was approved and implemented, albeit

not as indicated on the approved plans, at Greensyke Farm under 91/0236.

- A boundary fence between Greensyke House and Greensyke Farm was removed.

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- The facilities at Greensyke House and Greensyke Farm were jointly served by a main entrance with a new driveway, and, foul sewage treatment works.

2.10 It is also apparent that Lime House School operated from three properties within the District, namely:

- a) The Senior boarding school at Holm Hill.
- b) Dormitory accommodation for upwards of 24 girls at The Oaks.
- c) Greensyke.

2.11 The premises at Greensyke were used as a junior school, and, to provide boarding accommodation for students attending the Junior and Senior Schools.

2.12 In 1998 and respectively in August 2001, the use of The Oaks and Greensyke was closed down with activities concentrated at Holm Hill. The nature and level of use at Greensyke has varied over the years. For example, in 1992 there appears to have been total of 121 boarders residing at The Oaks and Greensyke; a total of 80 students attending the Junior School; of which 60 students were boarders residing either at The Oaks or Greensyke. By way of comparison, in the year 2001 there were 37 boarders residing at Greensyke; and a total of 40 students attending the Junior School of which 6 were boarders.

3.0 Overview of current proposals

3.1 The applicants, Kingswood Educational Activity Centres, have been in existence for almost two decades with residential study centres located in Norfolk, the Isle of Wight, Wales and Staffordshire. The applicants offer courses to school children, accompanied by their teachers, which are designed to support primary school teaching in the 5-14 National Guideline framework. In the summer the applicants also provide Camp Beaumont activity holidays at their premises.

3.2 In Autumn 2001 the applicants acquired a 10 year lease with a view to establishing an Educational Activity Centre (EAC) at Greensyke. The applicants solicitor and architect have stated that: there would be 35-40 staff employed at the site, with

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accommodation provided for 196 students; on average, Kingswood Centres operate at no more than 70-75% capacity across the term as a whole. The accommodation has been formed in a series of dormitories which the applicants have formally broken down in the following manner:

Ullswater: 56 students and 4 teachers

Lakerigg Annexe: 58 students and 3 teachers

Lakerigg: 58 students and 3 teachers

The Green: 22 students and 3 teachers

Windermere: 44 students and 5 teachers

3.3 The EAC involves the re-use of existing buildings and augmentation by a number of new facilities, including a dining/function centre (01/1013), above ground caving system (01/1099), a challenge course (02/0019), a car park (02/0069), a classroom/office extension (02/0070), the formation of a quad bike track (02/0071), the upgrading of an existing access (02/0949), a "dry weather" building (02/1214), and, a science block (02/1215).

3.4 The applicants have also indicated that changeover days for students arriving at and departing from the centre are usually on a Friday and Sunday; the students arrive in either coaches or mini-buses; the intention being that all coach traffic would be routed off the M6 at junction 41 and via the B5305 and B5299; and, traffic approaching the Greensyke site from the south-east could pick up the B5305 off the A595. Plans showing the aforementioned route and relationship to the national cycleway have been attached to the report.

3.5 A Traffic Report has been prepared by MVA on behalf of the applicants which highlights that:

- In general the Centre will cater for children within the 6-12 year age group with the season running from early February through to late November.
- Changeover days are usually Fridays and Mondays, though some groups will arrive on a Sunday. The changeover times are staggered with departures usually occurring between 12.00 hours – 14.00 hours and arrivals between 14.00 hours and 16.00 hours.

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- Maximum utilisation of the centres is forecast to occur approximately 4 years after opening, with occupancy rates usually averaging only 80% of the total bed spaces.
- The majority of activities provided at the centres are contained within the site, though some courses will necessitate off-site field trips.

- Forecast staffing levels are: resident manager (and family); approximately 30 activity staff; approximately 10 catering staff; and, approximately 6 cleaning staff.

3.5 Members may also recollect that when they undertook their site visit it was verbally indicated by the then Site Manager that the total number of bed spaces was 242 with the breakdown being:

Ullswater: 65 beds

Lakerigg Annexe: 16 beds

Lakerigg: 70 beds

The Green: 36 beds

Windermere: 55 beds

3.6 At the end of April 2002 it became apparent that the applicants had commenced the use of Greensyke as an EAC with the work subject to application numbers 01/1043, 01/1099, 01/1151, 02/0019, 02/0068 and 02/0071 completed. In November 2002 work commenced on the provision of the facilities subject to application 01/1013. Work has also been undertaken involving the provision of an external climbing wall, the installation of floodlighting, the enclosure of a series of mechanical ventilation/extraction units, the "temporary" erection of a marquee, "temporary" siting since May 2002 of an electricity generator, low ropes and "nightline" courses, an archery area including a shelter and shed, creation of a compound and container store, two aeroball towers with associated shelters, and, utilisation of the former farmhouse as an office, first aid centre, store and staff rest rooms all of which have not been subject to an application for planning permission. There is, however, a "winter" break in the present use as an EAC until February/March 2003 and the marquee is no longer on site.

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4.0 Material Considerations

4.1 In response to the formal notification of neighbours and advertisement of the current applications, approximately 120 letters and two petitions (with a total of 724 signatures) objecting to the proposals have been received. The neighbouring residents have also organised a public meeting which was reported in the local press. A letter of support has been received and verbal support expressed by an advisor to an educational trust. In order to consider the relevant matters and material in a rational manner, the issues raised have been sub-divided into the following headings.

a) THE LEGAL USE OF THE SITE

4.2 Discussions on this issue have evolved and progressed on the basis of answering the following four questions:

- i) whether any Camp Beaumont use during the summer holidays falls outside Use Class C2?
- ii) whether the use of Greensyke Farm falls within a separate Class to the use of Greensyke House?
- iii) whether any intensification of use would, by itself, amount to a material change of use?
- iv) whether the use of the site at Greensyke is a composite use which does not fall within any Use Class?

These matters will now be individually discussed.

i) Camp Beaumont use during the summer holidays

4.3 Based on the information available at the time, the planning consultant and solicitor acting on behalf of local residents originally maintained that:

- The authorised use of Greensyke is a residential educational establishment i.e. within Use Class C2 of the Town and Country Planning (Use Classes) Order 1997.

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- Raised concerns over the nature of the residential element of the applicants activities because it appears to be different from the traditional residential school/college in that those attending the courses reside generally between one term or a full year. At first sight this has the characteristics of a hotel as opposed to a boarding educational establishment. However, bearing in mind that the characteristic of Class C2 is the delivery of care and a service, it is arguable that this element of the proposal would fall within this use.
- It was, nevertheless, argued that the use to which the applicants intend to put the site divided into two parts. Namely, the "Kingswood" element during term times which could be a use within Class C2; and, the Camp Beaumont element during the summer offering themed holidays which is the nature of a hotel use, i.e. Use Class C1. The C1 use being considered more than de minimus.

4.4 In response, the applicants solicitor stated that:

- The enquiries with other local authorities whose area the existing Kingswood Centres fall, have accepted that all of Kingswood's and Camp Beaumont's activities fall within Use Class C2. One authority, North Norfolk, did raise questions about the proposed use at the West Runton site, at which time the Opinion of Jeremy Sullivan QC was obtained – see attached copy.
- It is common practice for residential schools up and down the country to allow

activities to be conducted on their premises during summer vacations. He is not aware of any appeal case or High Court case which has considered this position which suggests that local authorities generally must be satisfied that these kinds of activities fall within the general run of activities which apply to residential schools. In the opinion of the applicants solicitor it is suggested that use of the Greensyke site for "Camp Beaumont" type activities would fall within the current lawful use of the premises.

- However, given the level of public concern about the proposed activities, Kingswood have decided to take no bookings, at this stage, for Camp Beaumont activity holidays at Greensyke. The applicants solicitor states that this is put forward in the spirit of compromise and does not imply any acceptance of the legal arguments which have been put forward.

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4.5 At an Officer level it is considered doubtful that a Camp Beaumont use could be properly categorised as falling with Use Class C2. The subsequent question is whether the Camp Beaumont use could be considered de minimus or ordinarily incidental to the proposed EAC. In light of the applicants decision not to take any bookings for Camp Beaumont holidays at Greensyke it is considered more prudent to reserve judgement at this stage.

ii) Whether use of Greensyke Farm was separate to Greensyke House

4.6 In response to this query, the applicants solicitor considers that the land and buildings at Greensyke have been authorised and used as a single planning unit.

4.7 The solicitor representing local residents has also confirmed that there is no intention to assert separate uses on distinct and separate areas of land.

iii) Whether any intensification of use amounts to a material change of use

4.8 In the case of a use falling within a class of the (Use Classes) Order 1987, the doctrine of intensification is qualified by the 1987 Order and notes which state:

"Despite a process of intensification which would normally constitute development, there will be no development involved if the intensified use is still within the same use class as the former use (see, e.g. Brooks and Burton vs Secretary of State for the Environment (1978) 1 All E.R 733)"

(Part 3B-959/4)

4.9 Based on relevant case law it is apparent that mere intensification, if it fell short of changing the character of the use, does not constitute a material change of use.

4.10 It is, however, considered that this debate has been over-taken by events concerning iv).

iv) Whether the use of Greensyke is a composite use which does not fall within any Use Class

4.11 The local residents solicitor (Peter Wilbraham) highlighted that a residential school and day school are in different Use Classes. If, on the evidence, there is use of the

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site for day pupils at such a level to constitute a use within Class D1, it is argued that such use would be identifiably separate from the boarding school use within Class C2. In that case, the authorised use of Greensyke would be a composite use and not fall within any Use Class. Any subsequent use must be judged against that composite use in determining whether the new use is a material change from the authorised use. On the basis of the information currently available it is contended that the actual use carried on at Greensyke was a composite use that has become the lawful use by the passage of time. The re-working of Tables 1-3 (by deducting the number of boarding girls at The Oaks and the omission of the senior girls) shows that, on the years for which there is data, the day element at Greensyke was never less than 25% and was as much as 85%. For the whole of the last eight years it was never less than 40%.

4.12 By way of response, the applicants solicitor (Geoffrey Searle) has stated that the principal activity on the site is the education of children, some of whom were in residence. It is alleged that to try to construct two principal uses from this simply because a non-residential school falls into a separate Use Class from a residential school is wholly artificial. It is maintained that from the language of the Use Classes Order, Class D1 is intended to cover schools where a boarding element does not exist and C2 is intended to cover the rest. This is different from the situation where two distinct uses exist on the same site without physical separation.

4.13 The Opinion of Christopher Lockhart-Mummery QC has been sought by the applicants in relation to the Greensyke site. Mr Lockhart-Mummery states in paragraph 4 of his Opinion that: ***"The former School was established pursuant to planning permission dating back to 1988. Those permissions permitted the conversion etc of buildings for school purposes, with "dormitory" and "boarding" accommodation. It is entirely clear that the intention of the applications, and the effect of implementation of permissions, were to create a single planning unit.***

There is also some confusion as to the precise balance between the number of boarding, and day, pupils attending the school. For the purposes of this Opinion, I am content to proceed on the basis that the numbers may have been approximately equal.

I am instructed that the school was run as a boarding school with day pupils. The day and boarding pupils were taught together in the same classes, all of

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the four Houses included both boarding and day pupils, and all other activities (other than the usual evening and early morning activities

usually carried out by boarders) were run for both"

Mr Lockhart-Mummery goes on to argue that the planning unit was not used for a purpose falling within Class D1 (non-residential institutions) because the provision of education of junior pupils included a residential use. Instead, it was used for a purpose falling within Class C2. Mr Lockhart-Mummery's Opinion concludes that:

"the presence of the day pupil element within the overall purpose of the single planning unit cannot have constituted a use falling with Class D1 ... Such use demonstrably was not identifiably separate from the boarding school use within Class C2".

This Opinion has subsequently been re-iterated in a letter from Mr Searle dated the 26th April 2002.

4.14 Peter Wilbraham has responded by highlighting that the advice of Mr Lockhart-Mummery is based upon the premise that, despite the ratio of residential day pupils (on the assumption of equality of numbers) there was no material change of use. The starting point for that calculation is to have regard to all pupils boarding on the site, even though a substantial number (and in most years a majority) had their formal education at a different planning unit. Mr Wilbraham is, however, strongly of the opinion that the decision whether or not that ratio of day pupils is such as to constitute a mixed use is a matter of fact and degree. In every year where figures are available, the percentage of day pupils is significant. A proportion which is capable of being a material change of use. Whether it is, is a decision for the planning authority. Mr Wilbraham goes on to explain that in those cases involving a mixed use and one element ceases, if the remaining use intensifies it may amount to a material change of use. In the present case, one of the two constituent elements ceased upon the Applicants taking control of the site; the property now accommodates more than twice as many children as it did when in its mixed use; the children arrive and depart on a more frequent basis generating traffic of a different magnitude; and, the noise emissions from the site are significantly different from those previously experienced. All of those planning consequences must be considered by the local planning authority.

4.15 In such circumstances the question Members need to address is whether the previous day school use of the site can be considered ancillary to the boarding

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element. As such the independent Opinion of Mr Richard Humphreys was sought from which the following conclusions have been reached:

- Whilst it is accepted that the 1988 permissions, taken together, were capable of being embraced by Class C2 of the 1987 Order, on the evidence before the authority, it is considered that the last use of Greensyke by Lime House School is more accurately categorised either as a composite or sui generis use. On any view, day juniors exceeded boarding juniors, even if the use by senior boarders (who were not educated on site) might be categorised as C2 – residential accommodation. It is not accepted that any residential use, however

small, that precludes reliance on Class D1 automatically gives rise to a Class C2 use.

- It does appear that even in 1992 the percentage of day juniors to boarding juniors (25%) was sufficiently high that the former could be regarded as not merely ancillary or ordinarily incidental to a C2 use – residential school. Furthermore, whilst the Educational Activity Centre use appears to fall within Class C2, the land would have to be used in accordance with the 1988 permissions as a C2 use before benefit could be derived from the Use Classes Order to change to the Kingswood use.

4.16 On the basis of the foregoing the applicants were formally invited to submit an application for a material change of use in a letter dated the 14th May 2002.

b) CONSEQUENCES OF REFUSAL

4.17 In considering the applications a potential issue is the likelihood or probability of development which could take place even if a current proposal was to be refused. In the case of the planning applications currently under consideration Mr Humphreys has advised, as already indicated, that the last use of Greensyke was a composite use. Mr Humphreys has also gone on to explain that the property must be used as a residential school before a change within Class C2 can occur. In the light of the current circumstances such a reversion could be considered hypothetical rather than realistic. As such, the C2 use of the premises should not properly be regarded as a "fall-back" position against which to judge any planning application.

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c) ENFORCEMENT

4.18 Ministerial advice contained in PPG18 "Enforcing Planning Control" states that whilst enforcement action should remain within the discretion of planning authorities, the integrity of the system depends on their willingness to take effective enforcement when it is essential. The guidance, however, advises planning authorities not to proceed with enforcement action in cases of a trivial nature, without having tried to persuade the perpetrator to remedy a breach of control by negotiation, and, without having considered whether the submission of an application could result in a planning permission.

4.19 Circular 8/93 "Awards of Costs incurred in Planning and other Proceedings" also advises that it will generally be regarded as unreasonable for a planning authority to issue an enforcement notice solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice.

4.20 The applicants solicitor has written to explain that the majority of the work

carried out has related to internal alterations which do not in themselves require planning permission. The applicants appreciate that the work has been carried out entirely at their own risk and should not influence, whether positive or negative, the deliberations of Committee Members.

d) CAPACITY OF EXISTING HIGHWAYS

4.21 It is understood that full regard needs to be made to the capacity and safety of the existing road infrastructure to carry any additional traffic and whether this would lead to increased hazards in terms of vehicle/vehicle or vehicle/pedestrian. Any assessment would need to look at whether the approaches to the site are adequate to cater for any additional traffic or the type of likely vehicles not only because of its physical capacity but also due to the current level of use i.e. its environmental capacity.

4.22 Interested parties have also referred to the present condition of the road and the possibility that increased traffic may damage the surface. Members need to be aware that this issue is not usually considered to be a concern of the planning system. This is because if it is established that the highways are adequate to deal

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with the traffic generated by any proposal, it is usually part of the duty of the Highways Authority to maintain those roads.

4.23 Nonetheless, the Ramblers Association has pointed out that this is a relatively peaceful area served by narrow country lanes and a number of linking footpaths. The nature of the road makes it ideal for walking, cycling and horse riding. It is alleged that these practices would be threatened should there be any increase in traffic which the proposal is bound to bring.

4.24 In response to the Transport Report prepared on behalf of the applicants by MVA, the Highways Authority have not raised any objections. The Highways Authority have highlighted the considered need to impose a series of conditions concerning the provision by the applicants of a "green" Travel Plan; the making of a Traffic Regulation Order to restrict access to coach traffic from West Curthwaite to Greensyke; the blocking up of an existing access; road signs; the payment of a commuted sum; and, the submission of details showing the provision of vehicle turning, loading and unloading facilities.

4.25 In reply to the recommendations of the Highways Authority, the applicants have:

- Agreed to voluntarily discuss and prepare a Travel Plan but since they consider the EAC does not require permission it is not felt to be appropriate for it to be subject to a condition.
- Re-iterated the intention not to use the road through West Curthwaite. It is noted that there is an existing weight restriction of 7.5 tonnes at a bridge about 2km from Greensyke which would already restrict the 56 seater coaches. This route is also used by school buses, which are able to pass over the bridge as they are under 7.5 tonnes. If a lower weight restriction were to be promoted to

include smaller coaches, such a restriction would also cover the school bus.

- The emergency access point has been fitted with a lockable gate. The only times it is unlocked is to facilitate access of a heating oil tanker and a slurry tanker.

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- Previously indicated that they would be willing to pay the commuted sum and for the recommended road signs. The applicants, however, have not felt it to

be appropriate to await installation of the road signs by themselves before the commencement of use because they maintained that it can already take place.

- The revised access arrangements for Greensyke are subject to application number 02/0949.

e) SECURITY AND HEALTH

4.26 Fear about security and anti-social behaviour are capable of being a material consideration. In response to this issue the applicants have explained that Kingswood EACs merely provide residential courses for state schoolchildren and their teachers, together with foreign students and their supervisors; they do not cater for "problem children" from sources such as Borstal or other approved school institutions. This aside, it is the case that if the breaking of the law did take place this would be a law and order matter. During the summer, Greensyke was rented to members of the Jewish community. Kingswood staff were not involved in any supervisory capacity. The Constable for the area has verbally stated that he was called out once because of problems associated with litter and trespass.

4.27 It is a similar situation with regard to the provision of care by the Health Authority. The applicants have also explained that in an average year there will be no more than one or two minor injuries per week sustained by students at any of the Kingswood Centres. These injuries are normally treated in-house by fully trained staff.

(The applicants response to the comments made by the other Parish Councils are contained in their architect's letter dated the 28th January 2002).

f) WILDLIFE (BATS)

4.28 Government advice contained in PPG9 "Nature Conservation" emphasises in paragraph 3 that the conservation of nature is essential to social and economic well-being. Paragraphs 45 and 46 also explain that under the Wildlife and Countryside Act 1981 it is an offence to kill, injure or disturb any protected species found without first notifying English Nature. The presence of a protected

species is a material

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consideration when a local planning authority is considering a development proposal which, if carried out, would be likely to result in harm to the species or its habitat.

4.29 In order to address this matter the applicants have employed the services of a consultant recommended by English Nature to undertake a site investigation. The aforementioned investigation revealed that Greensyke House has evidence of bat roosting in the roof space although there were no bats at the time the survey was carried out. No evidence was found of bats in the remaining buildings but a full survey has yet to be undertaken with regard to the former headmaster's house.

4.30 English Nature have not, as a result, raised any objections but recommend that a scheme for the protection of bats and their roost should be produced by the developer and either agreed prior to determination of the application or attached as a condition to any decision notice.

4.31 The applicants have explained that since they offer environmental field studies it would be extremely bad for their credibility were they to do or allow anything which harmed the habitat of the bats. At the time of preparing this report it is unclear whether the applicants have produced and carried out a scheme for the protection of bats and their roost.

g) FOUL AND SURFACE WATER DRAINAGE

4.32 Circular 3/99 ("Planning requirement in respect of the use of non-mains sewerage incorporating septic tank in new development") states that: "**... the suitability of the use of such sewerage systems is likely to be a material consideration in reaching planning decisions. Local planning authorities should aim to satisfy themselves on the basis of – a) any information provided by the developer, b) comments provided by other appropriate bodies and c) their own considerations, that the sewage proposals for a development are suitable, and that significant environmental and amenity problems which might justify refusal of planning permission are unlikely to arise**" (paragraph 2).

Annex A to Circular 3/99 goes on to explain that:

"The responsibility for demonstrating that a new development is effectively

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served by a sewerage system rests primarily with the developer. Before deciding a planning application, the local planning authority needs to be satisfied that the sewerage arrangements are suitable. If the non-mains sewerage and sewage disposal proposals are assessed as being

unsatisfactory, this would normally be sufficient to justify refusal of

planning permission".

4.33 The applicants have provided an engineer's report confirming that the existing Bio Tank has been surveyed with assistance from Klargester Engineers. It was found that remedial work in the form of new bearings and seals would suffice to bring the tank and system up to full working specification. The tank and system being designed to adequately deal with up to 300 people. The report also identifies the need to clean the drainage channel and redirect existing surface water drains so no surface waters will enter the foul water system. On the basis of the foregoing the report concluded that the system would operate to meet requirements.

4.34 However, in a letter to the Council dated the 2nd December 2002 the Environment Agency have explained that the site currently has problems with regard to sewage treatment and disposal.

h) FLOODLIGHTING

4.35 In November of last year it became apparent that the applicants had installed a series of external floodlights. The Council subsequently expressed concern to the applicants architect over the glare from the floodlights potentially harming highway safety, the character of the countryside, and, their use enabling evening activity to the detriment of the amenity of neighbouring residents. The Council have not received a relevant planning application.

i) NOISE

4.36 PPG1 (paragraph 54) and PPG24 "Planning and Pollution Control" recognise that the impact of noise is a material planning consideration in determining planning applications. Paragraph 10 of PPG24 states:

"Much of the development that is necessary for the creation of jobs and the construction and improvement of essential infrastructure will generate noise. The planning system should not place

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unjustifiable obstacles in the way of such development. Nevertheless, local planning authorities must ensure that development does not cause an unacceptable degree of disturbance. They should also bear in mind that a subsequent intensification or change of use may result in greater intrusion and they may wish to consider use of appropriate conditions"

4.37 Paragraph 13 of PPG24, which relates to ways of reducing noise impact, identifies three measures that may be taken; i) engineering; ii) layout and, iii) administrative. Engineering measures are defined as including the reduction of noise at point of generation, such as would ensue from using quiet machines or methods of working, the insulation of noise generating buildings or the provision of purpose built barriers around sites or the insulation of the affected buildings. Lay-out is defined as adequate distance between the sources and noise-sensitive buildings or screening

by natural barriers including other buildings or non-critical rooms within a building. Administrative measures are stated to be limits on the operating time of the noise source or the specification of an acceptable noise limit.

4.38 In relation to this issue information has been sought and received from the Head of Environmental Services; a Noise Assessment Report prepared by Waterman Environmental; correspondence from Applied Acoustic Design; and, two reports commissioned by the local planning authority from Sound Advice. Neighbouring residents have also submitted the equivalent of a diary alleging when noise from Greensyke has affected enjoyment of their properties.

4.39 Based on the information available at the time, and in the case of application numbers 01/1013, 01/1043, 01/1099, 02/0019 and 02/0071, the Head of Environmental Services has not raised any objections but recommended the imposition of a condition concerning noise levels.

4.40 A Noise Assessment Report prepared in March 2002 on behalf of the applicants by Waterman Environmental has been submitted which highlights:

- The ambient noise levels were monitored during the afternoon of the 5th March 2002. The LA90 background noise levels representing the periods of quiet in between the traffic noise peaks were, at the White House 54dB, at Bellgate House 52dB, and, at Holly Oaks 51dB.

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- The quad bike noise would be substantially lower than measured background noise levels. As a consequence, no further mitigation measures would be required to the height of the earth bund walls proposed around the quad bike pad.
- The Rating Level due to noise from the children's voices remains below the measured background noise level to the extent that there is generally a positive indication that complaints would be unlikely.

4.41 In response, to noise measurements undertaken by the Environmental Services Section on the 14th February 2002 and the report by Waterman Environmental, the local residents commissioned a Mr A Holdich of Applied Acoustic Design who, in letters dated the 22nd May, 21st August, 1st October and 9th December, states amongst other things that:

- In his opinion Waterman's noise level information is untrustworthy by reason of inadequate instrumentation, inappropriate surveying techniques and specious calculation procedures. Further, it is alleged that Waterman's background noise levels measured proximate to Bellgate House are considerably less believable than the limited quantity of noise level data successfully acquired at the same location on behalf of the Head of Environmental Services.
- Conclusions drawn by Environmental Services although based upon alternate and, to a limited extent, more appropriate calculation

techniques than those used by Waterman, nevertheless rely upon Waterman's unsafe noise source data.

- Notwithstanding these important matters, concern exists that Environmental Services are recommending the imposition of noise conditions that would cause an increase from at least 7 to 13 dB above background (depending upon particular property) notwithstanding the fact that, in absolute noise level terms at two properties this would be responsible for causing "moderate annoyance, daytime and evening" Critical Health Effects.
- In the light of Waterman's allegedly insubstantial report, a desk-top noise assessment finds that noise arising at three nearby noise sensitive properties

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gives rise to (Laeq-LA90) difference values in the range +13 to +27 dB or, in absolute terms, from 53 to 67 dBA.

- In respect of controlling noise arising from people this matter most commonly occurs with noise arising from shouting likely to arise pursuant to applications

including the development/refurbishment of places of leisure when located close to residential property. As the Environmental Protection Act only provides for aircraft other than model aircraft as being excluded from classification as statutory nuisance, this means that shouting and other such noise emissions can be statutory nuisances. In the most part, leisure related appeal decisions tend to place restrictions upon "opening hours" times of day and night to limit the duration of noise exposure, restricting the numbers of people (including for residential clubs) to limit level of noise exposure and requiring the imposition of particular noise and disturbance management plans, to restrict behaviour patterns, all of which can be subject to planning conditions and controls.

- With regard to controlling the escape of music noise, there are very clear and established planning rules in use by a number of authorities that simply condition that all music noise emissions must be inaudible at any nearby residential property.

- A better solution by far would be for the local planning authority to obtain from the applicant a substantially more comprehensive and robust noise impact assessment, including mitigation measures and operational procedures demonstrating the absence of an adverse impact upon amenity at properties of acknowledged importance. Failure by the applicant to demonstrate an adequately thorough understanding of assessing and controlling the escape of noise must weight heavily toward refusal.

- In the event that the local planning authority is unable to obtain from the applicant a substantially more comprehensive and robust

noise impact assessment upon which any such analysis and any necessary conditions may be founded, it will be for the authority together with any external expertise required to determine those mitigation measures and operational procedures necessary to avoid adverse impact upon amenity at properties of acknowledged importance. It is not suggested that this would be a straightforward task and also recognise that much of the information

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necessary may need to be painstakingly secured by the Council. This having been accomplished, it is then a matter of imposition either in response to a planning application, or in the absence of same, included in any necessary enforcement action.

- The Cumdivock Group have been advised that there are a number of means at the Council's disposal through which to exercise control over noise emissions, these relating to planning through the imposition of either conditions, enforcement action or breach of condition notices and through environmental protection by serving abatement notices.
- If the Council is in agreement with Mr Houldsworth's conclusion that there was a nuisance then under Chapter 43 of the Environmental Protection Act (EPA) 1990, the Council has (under paragraph 80) a statutory obligation to serve abatement notices imposing requirements to abate, prohibit or restrict occurrence or recurrence of each such nuisance.
- It is understood that a number of planning related matters regarding Greensyke Farm are shortly to be debated by the Council but concern exists that if the Council does agree with Mr Houldsworth's above referenced conclusion then any delay in recognising your Council's obligation to serve statutory notices is likely to mislead or miss-inform those taking part in any such debate which may then result in unsafe decisions.
- Not able to agree with Mr Houldsworth's advice that ... "a suitable condition would require the Greensyke management to take steps to ... not exceed the underlying noise level by 10dB ... ", which would be most unsatisfactory.
- Whilst planning conditions and EPA requirements should take into account local circumstances, it is felt reasonable for a planning condition designed to avoid loss of amenity due to music/entertainment noise to include the term "inaudible at any time" in particular and stated locations. Similar conditions can be imposed to control noise exposure arising from all external activities, particularly cheerleading or chanting.
- Regarding noise standards, do not believe, that the applicant can be relied upon to formulate or implement their own measures to control noise and in

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the event that any permissions are granted, conditions designed to control all potentially excessive sources of noise will be required.

4.42 The relevant advice to the local planning authority from Sound Advice is principally contained in two reports dated the 25th July and 15th November. The initial report dated the 25th July highlighted:

- Despite some inconsistencies in the measuring methodology and calculation procedures, highlighted by the AAD document, the overall conclusions of the Waterman and Carlisle City Council reports are valid in that the quad bikes operated at Greensyke should not create a noise nuisance situation for any resident nearby.
- The other aspect of the general children noise is difficult to quantify since it will vary considerably. However, the Waterman report assessment using BS4142 criteria and WHO guidelines for long-term averaged noise is correct. Any local authority would normally have great difficulty in establishing a noise nuisance case in any court proceedings without numerical justification.
- However, there is also very little doubt that the activities at Greensyke are bound to lead to raised children's voices from time to time during the operational daytime and that these voices will be audible at Holly Oak and The White House above the normal background level of noise. The evening activities involving music would also be audible if they were not contained within buildings. The degree of audibility will vary and it is this that is the crux of the argument here as to whether this noise constitutes a "nuisance".
- The existing local residents around Greensyke have become used to a low level of background noise – when cars are not passing or there is no immediate farm activity – and they do not wish this to change at all. This situation is now compromised to a certain degree but (based on the information at the time) not enough to constitute a nuisance according to standard methods of assessment.
- Nevertheless, the Greensyke development should be operated in such a way as to minimise any disruption. A suitable Code of Practice might contain the following instructions:

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- a) Outdoor activities with a noise potential should be screened from local residents as much as possible and should not take place on the southern side of the buildings.
- b) Outdoor physical activities should be supervised with a mind to reducing any spurious shouting and screaming as much as possible.
- c) Any music activities in the evenings should be contained within

the buildings offering strong resistance to escape of noise. Doors and windows should not be left open at any time.

4.43 However, the second report from Sound Advice indicates:

- The impression on Sunday 22nd September was very similar to previous visits. There was minor noise from occasional children's voices but nothing worth reporting or attempting to measure in detail. A brief study over 15 minutes at each location showed LAeq values around 44dB(+/-2dB) with background noise around 37 dB(+/-2dB). Passing cars were excluded from the measurement. This data is almost identical to the values found in the afternoon of the Sound Advice initial survey and also for the evening observations served to confirm the report conclusions that if the Greensyke activities were managed properly, then it was most unlikely that a noise nuisance could occur.
- However, the visit on 18th September was a different matter altogether. There was very noisy activity with shouting and impact noise in the marquee opposite Holly Oaks. (It is believed that this was the game of Unihok being played from the nature of the noise). A 15 minute average gave 54dB LAeq with regular LAFMax levels up to 65dB. There was uncontrolled screaming and shouting on the White House side of the site. The average level over several minutes was again 54dB(A) Leq(10 minutes) on two separate occasions. There was noisy construction activity and a diesel generator alongside the roadside near Holly Oaks. The average level at the roadside was 56dB(A) Leq(3 minutes).
- It is very clear, that for significant periods in the evening, the residents at Holly Oaks and the White House can be subjected to an average level of noise that is at 19dB above the expected background noise level in the area.

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The conditions at Bellgate House would be reduced due to distance but would still be intrusive.

- Several previous visits had not suggested that there was any potential for significant nuisance. New activities involving Quad Bikes were shown to be of little consequence. Some activity from the site was audible but of an intermittent nature and was generally swamped by passing vehicle noise. In the previous report, it was suggested that common sense and a Code of Practice should be adequate to ensure acceptable conditions at the Greensyke site. This was a view shared by local authority Environmental Services personnel based on their separate experiences. This current report forces a change of that view.
- The situation observed on Wednesday 18th September, constitutes a noise nuisance and a significant interference with the comfort and amenity of the local residents. This current noise and any future

possibility of noise should be restricted by the appropriate statutory means.

- The use of the existing facilities can create a real noise nuisance to the residents of Holly Oaks and the White House purely because of the outside playing activities. The existence of this nuisance is easily numerically supportable. If there were brief outside play-times in line with normal school practice and hours, then this should not be a problem. However, on certain days, the activity appears to be a repetitive, sustained noise over several hours. The residents' diaries support this. There has never been any reason to doubt the accuracy of the residents' logging of occurrences. The only question was their interpretation of the level of noise.

- The guidance of BS4142 and the Night Noise Act both suggest that a 10dB difference between the Specific Noise and the Background or Underlying levels represents a certain indication of valid complaints. A suitable condition would require the Greensyke management to take steps to ensure that the average Leq value (5 minutes) of noise from their activities does not exceed the Underlying noise level by 10dB, when measured at the boundary of the residents properties at any time, other than designated lunchtime or short break periods. A condition of this type would not render the noise from Greensyke inaudible but should reduce it to the levels observed for the earlier assessments when a nuisance was not envisaged.

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- The Caving system or Quad Bikes are still unlikely to create a problem in the future. However, if the assault course was used competitively and repetitively with the inevitable loud shouted encouragement from teams and supervisors, then it would certainly create a problem. If small groups working as individuals under suitably qualified supervision used the assault course as a fitness training facility, then that may be acceptable. The above mentioned noise condition should provide a safeguard if it was applied to this facility.

- In a separate letter dated the 17th November 2002 Mr J Houldsworth, the author of the reports from Sound Advice, formally states his personal consideration that the intended operating methods and timescales of some of the outside activities at Greensyke are incompatible with the local residents enjoyment of their properties and that the operating regime needs a serious revision if it is to continue.

4.44 In response to the report by Sound Advice the applicants have confirmed their willingness to enter into a Code of Practice/Management regime.

4.45 Latterly, the Head of Environmental Services has written explaining that following allegations of statutory noise nuisance brought to his Division's attention by Planning Services in early September 2002, arrangements were

made to undertake a noise survey.

"An evening noise survey to assess the presence of any statutory noise nuisance was undertaken by two Officers on the 17th September. The conclusion of this survey was that the noise from the site was not within the definition of a statutory noise nuisance. My Officers certainly do not agree with Mr Houldsworth's conclusion (page 6 paragraph 2 of his report dated 15th November 2002) that there is a statutory noise nuisance. The Council would only be able to take action by way of service of an Abatement Notice if it was satisfied that a statutory noise nuisance which materially interfered with a persons enjoyment of their property existed from activities of Kingswood Leisure Group.

The use of Night Noise Act 1996 is wholly unsuitable as it only relates to noise after 2300 hours in a domestic noise situation. It would not therefore be relevant to make reference to the Night Noise Act in any planning condition. Contact has been made with Westminster City Council to discuss any action

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which they may take as suggested in recent correspondence. Their Officers have sought legal advice as to whether noise from voices etc., outside a premises such as a school could be defined as a statutory noise nuisance. The advice which they were given concurred with our findings in that it would be extremely difficult to prove a noise nuisance due to people's voices etc., whilst participating in outside sporting events at an educational establishment.

I am conscious that the local planning authority have not received an application for a change of use to an educational activity centre. I am also aware that the latest report and letter from Sound Advice highlights that some of the outside activities are incompatible with the local residents. It is also likely to be very difficult to impose a condition controlling noise generated by children who play outside. If it is considered necessary to further assess the potential for disturbance from activities associated with the EAC it would be advisable to request the applicants to submit a Management Code outlining the proposed management of the site with regard to the control, location and periods of use to minimise impact on the residents of the area".

4.46 In considering the matter of noise it is apparent that in comparison to the last use of the site there are additional noisy activities. The indoor activities, if considered in isolation, could be subject to a condition ensuring that any structure is acoustically insulated so that any use does not cause a noise

nuisance to neighbours. In the case of both indoor and outdoor activities there is also the need for careful management. Those outdoor activities could be controlled by careful management restrictions over the hours of use, the siting of specific activities away from neighbouring properties, and, even the provision of noise barriers in accordance with a Code of Practice/Management Plan. In the absence of an application for a change of use of the whole site it is not possible for the local planning authority to control those activities, for example playing outside and by the "campfire", not associated with a specific application. When considering all the activities that take place at Greensyke, whether associated with a facility subject to an application or not, it is apparent that Mr Houldsworth of Sound Advice considers them to be incompatible with the local residents enjoyment of their properties. The diaries kept by local residents re-iterates this opinion.

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j) ECONOMIC AND SOCIAL CONSIDERATIONS

4.47 Ministerial advice contained in paragraph 3.13 of PPG7 "The Countryside – Economic Quality and Economic and Social Development" states that increasing opportunities for people to enjoy the countryside for sport and recreation provides new uses of land in the countryside and is an important source of income and employment. Paragraph 3.14 also highlights that the re-use and adaptation of existing rural buildings has an important role in meeting the needs of rural areas: "It can reduce the demands for new building in the countryside, avoid leaving an existing building vacant and prone to vandalism and dereliction, and provide jobs".

4.48 The applicants solicitor has highlighted that the principal advantages with the proposed EAC are that it will: i) bring to local children the benefits of a well-designed and executed learning programmes by a company that is the leader in its field with a track record of educational provision recognised by Central and Local Government as such and in respect of which over £2m of taxpayers money is spent per annum towards the fees involved; ii) bring about a sensitive refurbishment and re-use of buildings in the countryside for an appropriate use, in line with planning policies; iii) provide local jobs.

k) ACCESS FOR DISABLED PEOPLE

4.49 Following the receipt of revised plans received the City Council's Access Officer is now only concerned with the details accompanying application 02/1215.

l) FIRE SAFETY

4.50 Cumbria Fire Service wrote to the local planning authority in May 2002 to object to the proposal on the grounds that there are insufficient water supplies available on or near the site to ensure the health and safety of both the occupants and fire-fighters. The Fire Service would be happy to withdraw this

objection should the applicants agree to install a fire hydrant on the main immediately outside the property.

4.51 These observations were forwarded on to the applicants at the time but no formal response has yet been received.

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m) BIOSECURITY

4.52 Concerns have been raised that the proposed EAC could compromise the biosecurity of adjoining livestock farms.

4.53 The applicants have responded by pointing out that they operate a very efficient rubbish retrieval regime at each of its sites in order that there will be no spread of litter to adjacent properties.

4.54 The Head of Veterinary Operations at DEFRA has also confirmed in three letters that, providing sensible route hygiene precautions are taken, he can see no added risk to the livestock around the proposed centre.

n) CHARACTER OF THE AREA

4.55 The boundary of Greensyke fronting the highway is delineated by mature deciduous hedging interspersed by trees particularly to the west of the farmhouse. The hedging does not look particularly well maintained and forms a thin screen in places. The northern and eastern boundaries consist of post and wire fencing affording views into and from the site. The surrounding agricultural fields are relatively flat and open.

4.56 The Council for the Protection of Rural England have written to this authority with regard to a number of the submitted applications in which it is stated:

" ... in the current case, the site lies close to other residential properties and it is immediately adjacent to the roadside, where there is limited natural screening. We note there is also a public footpath in proximity of the site. The proposed intensification of activities, together with staff and visitor's car park and the new equipment including quad bike tracks, challenge course and abseiling tower would therefore be highly visible from the very nearby public vantage points.

The character of the site would also change significantly from one that is largely fairly low key in nature to one that would be intensively used, and would appear to be reliant upon the outside play equipment, which would be both visually intrusive and would cause noise disturbance as well. Our concern therefore is that the combination of all the various proposals

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grouped together on a relatively confined site would lead to a significant intensification of activities. That together with built development would cause

demonstrable harm to the rural character of the area. The intensification of all the activities now being put forward by the applicants would, in our opinion, be insensitive to the location and its setting in the landscape. We consider that the constrained nature of the site means that it is not capable of accommodating all the proposed development satisfactorily, without causing unacceptable harm. Arguably therefore the site is not the most suitable for the intended intensity of use and the range of outdoor equipment now being proposed ... Unless the proposals were to be reduced significantly in scale they should otherwise be refused in this location accordingly".

4.57 In such circumstances it has to be recognised there are individual existing elements, such as the floodlit "challenge", "low ropes" and "nightline" courses, which are visible from public vantage points. The EAC, with its associated facilities, also has a cumulative impact. Needless to say a comprehensive plan and overall landscaping strategy could have accompanied any application for a change of use of the whole site.

o) THE HUMAN RIGHTS ACT 1998

4.58 Several provisions of the above Act can have implications in relation to the consideration of the current planning proposals, the most notable being:

Article 6 bestowing the "Right to a Fair Trial" is applicable to both applicants seeking to develop or use land or property and those whose interests may be affected by such proposals;

Article 7 provides that there shall be "No Punishment Without Law" and may be applicable in respect of enforcement proceedings taken by the Authority to regularise any breach of planning control;

Article 8 recognises the "Right To Respect for Private and Family Life";

Article 1 of Protocol 1 relates to the "Protection of Property" and bestows the right for the peaceful enjoyment of possessions. This right, however, does not impair the right to enforce the law if this is necessary.

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5.0 CONCLUSION

5.1 The current applications have been submitted in order to provide a series of facilities integral to the creation of an Educational Activity Centre (EAC) at Greensyke. The applicants have indicated that there would be approximately 35-40 staff employed at the site with accommodation for 196 students. The applicants commenced use of the site as an EAC at the end of April 2002 with the work subject to application numbers 01/1043, 01/1099, 01/1151, 02/0019, 02/0068 and 02/0071 completed. In November 2002 work commenced on the provision of the facilities subject to application 01/1013. Work has also been

undertaken by the applicants involving the provision of a climbing wall, and associated shelter, floodlighting, enclosure of a series of ventilation units, the "temporary" siting of a marquee, and, "temporary" siting (since May 2002) of an electricity generator, low ropes and "nightline" courses, an archery area including a shelter, creation of a compound and container store, two aeroball towers with associated shelters, and, utilisation of the former farmhouse as an office, first aid centre, store and staff restrooms all of which have not been subject to an application for planning permission. The marquee is no longer on site.

5.2 The local planning authority has sought independent legal advice based upon which it is considered that the planning permissions granted in 1988 were capable of falling within Use Class C2 of the (Use Classes Order) 1987. However, in light of the currently available evidence, it is considered that the last use by Lime House School was a composite or sui generis use. Whilst the proposed EAC use appears to fall within Class C2, the property must be used as a residential school before a change within Class C2 can occur. As such the applicants, in May 2002, were invited to submit an application for a material change of use.

5.3 In the absence of the invited application Members have to consider whether to authorise enforcement action. Ministerial advice contained in PPG18 advises planning authorities not to proceed with enforcement action in cases of a trivial nature, without having tried to persuade the perpetrator to remedy a breach of control by negotiation. Circular 8/93 also advises that it will generally be regarded as unreasonable for a planning authority to issue an enforcement notice solely to

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remedy the absence of a valid planning permission if there is no significant objection to the breach of control.

5.4 When considering the relevant issues it is apparent that:

- It is unclear whether the applicants have produced and carried out a scheme for the protection of bats and their roost.
- A "green" Travel Plan has yet to be submitted by the applicants.
- The Environment Agency have confirmed that the site currently has problems with regard to sewage treatment and disposal.
- The noise consultant commissioned by the Council considers that the operating methods and timescales of some of the outside activities at Greensyke to be incompatible with the local residents enjoyment of their properties.
- Cumbria Fire Service have objected because there is insufficient

water supplies available to ensure the health and safety of both the occupants and fire-fighters.

- There are individual elements which are visible from public vantage points. The EAC, with its associated facilities, also has a cumulative impact upon the character of the area.

5.5 The submission of a Travel Plan, provision of road signs, and, payment of a commuted sum, and, a scheme for the protection of bats could be subject to the imposition of relevant conditions. Any details associated with the means of foul drainage, the provision of a suitable fire hydrant, landscaping, and, a Management Plan would normally be submitted for consideration prior to the determination of any application. In the case of foul drainage, the provision of a fire hydrant, and, landscaping such difficulties are not usually insurmountable but need to be resolved by the submission of appropriate details from the applicants.

5.6 In relation to the matter of noise and disturbance the Head of Environmental Services considers that, based on the available evidence, the noise generated is

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not a statutory nuisance. Members are then in a position of having to establish whether the noise and disturbance is at such a level that it can be considered detrimental to the amenities of the neighbouring residents. As already indicated, and based upon the limited monitoring undertaken, the noise consultant commissioned by the Council considers that the operating methods and timescales of some of the outside activities at Greensyke to be incompatible with the local residents enjoyment of their properties. This position is reinforced by the anecdotal evidence submitted by the local residents. The applicants have, nevertheless, stated their willingness to enter into a Code of Practice/Management Plan although no details have been received to date.

5.7 Members also need to acknowledge that the EAC has economic and social benefits by providing an additional educational facility, has brought about the re-use of existing buildings, and, provides a source of employment.

5.8 In the context of the work that has already been undertaken, whether or not subject to an application, Members need to decide whether to give the applicants further time in order to try and resolve matters, or, make a decision based on the present position having regard to the fact that the EAC has been in operation since the end of April 2002 although there is currently a "winter break" in use until February/March 2003. On the basis that the majority of the difficulties are not usually insurmountable, and, the applicants have stated their willingness to enter into a Management Plan there is an argument to defer consideration of the applications for a specified period.

5.9 If Members wish to assess the overall situation it is considered that the fundamental issue that needs to be addressed is whether the advantages of the proposed EAC outweigh the harm caused. Based on the current position it is evident that, in the absence of a single application for the change of use of the premises, there are a series of matters, which appear not to have been

satisfactorily addressed by the applicants. In particular, the noise and disturbance detrimentally harming the amenities of the neighbouring residents. In the absence of any further information it is considered that the harm caused at this stage outweighs any benefits and therefore, as a consequence, authorise the necessary enforcement action. In relation to the individual applications, Members need to consider whether to refuse permission on the basis that each facility will cumulatively lead to harm to interests of acknowledged importance.