



Dr. South's C.E. Primary School
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Faith, Hope and Love

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From the Governors

Sunday 4th October 2015

Linda Griffiths
Senior Planner
Cherwell District Council
Bodicote House
Bodicote
Banbury OX15 4AA

Dear Ms.Griffiths,

Planning Application Ref. 14/00204/DISC: consultation response and pre-action letter under the protocol for judicial review

1. I write on behalf of the governors of Dr South's CE (VA) Primary School ("Dr South's") in Islip. This letter follows your consultation letter dated 17 September 2015 (although not received until 19 September 2015), our extended email correspondence with you and colleagues since December 2014 and our letter, on behalf of the governors, to the original consultation on this application which was dated 7 October 2014.
2. Allow me to begin by emphasizing that the governors have no desire to delay the opening of the new rail service from Oxford Parkway to London Marylebone. We understand that the Consortium behind the project hope to obtain your discharge of the condition imminently so they may begin scheduled services late in October. So we appreciate their urgency. However, we are extremely mindful that now is the only opportunity we have to prevent a decision being taken which, without appropriate mitigation, is likely to cause unquantifiable and very substantial harm to the education of the children of our village school, over an indeterminate period. We must therefore object to the discharge of condition 19(2) of the Chiltern Railways (Bicester to Oxford) Improvements Order ("condition 19(2)") in circumstances where – in our view – it cannot be said, on a rational and fully informed basis, that the Promoter has yet complied with its own noise and vibration policy.
3. The decision before Cherwell District Council ("CDC") is to determine whether or not the Promoter has complied with condition 19(2). This condition requires the presentation of an adequate scheme of noise and vibration mitigation. To make their determination, CDC must satisfy itself that the scheme is adequate. This is more than just confirming that the Promoter's calculations in forecasting noise and vibration are robust (the questions that appear so far to have been put to the Independent Assessor). CDC must also be content that the Promoter is proposing a scheme of mitigation that complies with the Promoter's own policy, since that was the basis on which the Secretary of State provided conditional consent under the Transport and Work Act. We contend, for reasons we will show, that the Promoter has failed to do this.
4. It appears that the lawful options are as follows:
 - a. that CDC declines to discharge the condition pending proper application by the Promoter of its published policy; or
 - b. that CDC only partially discharges the condition upon the Promoter undertaking to take steps which its own policy, rationally interpreted, necessarily requires, which are set out in paragraph 8 below.

5. Nor do we consider that, in fairness, the planning condition can be completely discharged without such mitigation in the absence of fair consultation of the governing body and parents of Dr. South's. As you are well aware and partly for the regrettable reason that two of those involved in this exercise have been on long-term sick leave, there has been a very considerable delay between the raising of concerns as part of the original consultation and

the publication of the supplementary material by the Promoter and the Independent Expert's report. The original consultation closed on 8 October 2014 and the new material was published on your website on 16 September 2015. You have accepted – by sending consultation letters to parents, residents and the governing body – that this further technical information requires consultees to be given a fair opportunity to respond. It is therefore only proper that those most affected by these issues now do have adequate opportunity to comment, to make informed representations, and for their views to be addressed. So we welcome the chance now to respond, while noting that the process of producing the reports took 11 months and we were originally given eight calendar days (10 from the date of your letter, which was not received for two days) to respond to them.

6. We do recognize that, following a request for an extension of the deadline for comments by seven days, you granted this. However, we also note that the delay in publishing this detailed technical material, and consulting upon it, means that this latest round of consultation is not a fair one. We have done our best to respond to the letter in the time available. As it happens, in my day job, I am a British Airways pilot, which gives me some understanding of noise measurement, and our governing body also contains an expert on public administration and a Queen's Counsel specializing in public law. But that must surely be unusual: the individual parents and residents who have received the 'consultation' letter have had no meaningful chance to consider it or to respond; and we have had no chance to obtain our own expert sound evidence, on a point which is of crucial importance to the education of current and future pupils at the School. (Our further observations on the consultation failures are set out below).

7. Given that failure to consult fairly, and the importance of the issues, we further request that any decision on the application should come before the Planning Committee chaired by Cllr. Clarke – if necessary in an extraordinary meeting akin to that held by Oxford City Council West Area Planning Committee to deal with the application to discharge condition 19(2) in respect of section H – so that residents of the District may have the chance at least to hear the case made by the Promoter and the deliberations on it by elected members and to make representations directly to the elected members.

8. Our comments fall into three parts: addressing the ongoing failure by the Promoter to follow its own published Noise and Vibration Policy and observations on substance of the supplementary report by the Promoter; requesting that the Planning Authority considers very carefully its duties towards a publicly-maintained educational establishment both now and in the future; and reviewing the process that has been followed to date and might be adopted going forward. We believe many of the points in our letter of 7 October 2014 still stand and – not least since a number were directed to CDC as the Planning Authority – have not been addressed through the supplementary material provided by the Promoter and the Independent Expert. We are therefore reattaching this letter and requesting that its contents be fully considered as part of the deliberation over this application for discharge.

9. In short, for reasons we explain below, on the facts as they have emerged we do not consider that the Planning Authority can safely or properly discharge the planning condition without:

- a. requiring noise mitigation measures to be implemented in respect of Dr South's School;
- b. requiring that the frequency of services (both passenger and freight) running in the line does not exceed those used for the purposes of modelling the noise and vibration impacts; and
- c. imposing a monitoring condition and a provision for remedial measures if noise exceedances prove to rise above estimated future levels.

10. If these requests are not met, we are presently minded to challenge the discharge of the planning condition by way of judicial review.

Noise and vibration affecting Dr South's

11. We believe that there are inconsistencies between the Promoter's proposed scheme for section E; Condition 19(2) and their stated policy. We also believe that, as a result of the material failure to identify Dr South's as a school at an earlier stage, the Promoter has not yet complied with its own policy as to how it will discharge condition 19(2). The following are taken from the policy:

“2.2

The Promoter is committedto design the railway so as to avoid significant noise and vibration impacts at existing sensitive receptors (e.g. ... educational buildings ...).”

“2.3.

The Promoter will consult with landowners and occupiers who may be affected by noise and vibration to explain the mitigation measures that are proposed.”

12. In breach of these policy commitments, fulfilment of which is a condition of discharge of Condition 19(2), the Promoter has not consulted the governing body of Dr South’s, which is responsible for the school, at any stage. Indeed, it is particularly significant that the report does not address the existence of Dr. South’s as a noise sensitive receptor in its own right. Whereas other noise sensitive receptors were identified by the Promoter when the railway was first considered, it appears that Dr. South’s was not. Had Dr. South’s been consulted, we could have drawn the Promoter’s attention to the particular issues concerning noise and schools. The sensitivity of a school to noise is different from other sensitive noise receptors (it is not susceptible, for example, to night noise). However, what is a matter of particular sensitivity for a school is maximum noise and rises in noise above ambient levels. The failure to address this matter separately is a material failing, and a matter which needs to be addressed before the condition can properly be discharged.

13. We wish to substantiate further our view, expressed in the letter of 7 October 2014, that the Promoter has consistently failed to take account of Dr South’s as a school. The Promoter submitted two key documents to the Secretary of State in 2011 as part of its application for an order under the Transport and Works Act: an Environmental Statement (‘the statement’) and a Noise and Vibration Mitigation Policy (‘the policy’). The statement contended on page 6-7: “It is recognised that some schools may hold classes outside during the summer months, where maximum noise levels from trains have the potential to interrupt speech. Schools that may be affected have been identified in Section 6.4.1 and 6.4.2.” In section 6.4.1 (dealing with noise impacts of construction), the statement referred to the impact of road measures on SS Philip and James VA Primary School. In section 6.4.2 (dealing with noise impacts of operation), the statement referred to that school and also to Wolvercote Primary School. Both schools have a very similar proximity to the track to Dr South’s but Dr South’s was not mentioned. We believe that this omission, combined with the labelling error on the map of Islip submitted as part of the application for the discharge of condition 19(2) Section E, indicates that the Promoter failed to identify Dr South’s building as a school building. Furthermore, we believe that the Secretary of State would have legitimately believed – as a result of the statement on page 6-7 – that all schools potentially affected had been considered by the Promoter and that the Promoter would take account of the impact of maximum noise levels from trains on outdoor classes when bringing forward their schemes.

14. We understand that the Promoter contends that they did appropriately model for the physical premises of Dr. South’s. Their supplementary information provides daytime (only) L_{Aeq} estimates of noise impact on three receptor points on the school building. However, they have not addressed the points raised in our letter of 7 October 2014 regarding the requirements placed on them – and accepted through their own stated policy – to take particular account of the needs of Dr South’s as an educational establishment. That appears to us to be a material oversight of a highly relevant consideration

15. In the analysis, there is no consideration of the school as an educational establishment. **It is well documented that in schools it is not necessarily the L_{Aeq} that has a detrimental effect on learning but the maximum noise and its frequency, and this is our particular concern.** There is no reference to maximum noise levels in the Promoter’s submission.

16. Furthermore, the Promoter has failed in any way through its noise and vibration mitigation scheme to deal with its own policy regarding outdoor lessons in summertime. This is evident from the fact that it has not taken or estimated readings for the outdoor premises of Dr. South’s but only estimated for receptors on the school building. We therefore have only the Promoter’s noise contour map to work from, which certainly suggests that the noise impacts will be greater in the play and outdoor areas closer to the railway than the school buildings. This is of particular concern to us given the physical limitations of Dr. South’s site which constrains the range of locations for outdoor teaching. We are also concerned that the location of the play equipment in the playground is adjacent to the railbridge and therefore that there is a material risk that, when maximum noise is experienced, children will be unable to hear

safety instructions from teachers. Since the play equipment involves significant heights and therefore we are required as governors to ensure the risk of injury to children is effectively managed, this is a real concern.

17. There are many other aspects that lead us to conclude that a detailed assessment of Dr South's as an educational establishment NSR have not been carried out:

- i. A detailed survey of the school grounds was not carried out and we have reason to believe that the Promoter has not visited the site of Dr. South's to inform itself about the school's situation. In the supplementary analysis, the Promoter's agents state their analysis "has been based on inspection of imagery taken from the road." Furthermore, they state they are unaware whether or not a new building has been built (it has; and has been in use since January 2015).
- ii. There has been no assessment of the expected reverberation times within the school buildings due to the increased noise that is regarded as important for learning.
- iii. There has been no consideration of the vulnerable groups of children such as those with learning difficulties or who are more sensitive to noise and whether increases in noise will especially adversely affect their ability to participate in education.
- iv. There has been no consideration of the Noise Policy Statement for England.
- v. There is no consideration of the relevant guidance, published by the Education Funding Agency as BB93: "Acoustic Design for Schools", which would be applied as building control in the event of the refurbishment or rebuilding of the school.
- vi. There is no consideration of increases in noise levels in the playground, despite stating in its Environmental Statement (p 6-7) that "It is recognised that some schools may hold classes outside during the summer months, where maximum noise levels from trains have the potential to interrupt speech."

18. In light of these omissions, we believe that the scheme proposed is not adequate and, specifically, that CDC should conclude that the position of the Promoter that no noise barriers are required at Dr. South's is not supported since the evidence provided is incomplete.

19. The impact and significance of any noise is not solely due to the magnitude of the impact but also the sensitivity of the receptor to that noise. Since noise is simply unwanted or 'annoying' sound, the impact will depend on both the type of NSR and the time period in question. Or put another way noise pollution depends not just on the physical aspects of the sound itself, but also the human reaction to it. Therefore any detailed assessment needs to be both quantitative and qualitative.

20. Guidance published by the [Department for Communities and Local Government](#) states that Local Authority "decision making should take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved."

21. [The Noise Policy Statement for England](#), which applies to all forms of noise other than occupation noise, makes clear that in determining the effects of noise that "...the noise level is likely to vary depending upon the noise source, the receptor and the time of day/day of the week, etc."

22. Throughout Section E the choice of NSRs is limited to one type, that of residential despite there being several types within the section. Best practice advice, for example from RiCS, The Environment Agency and The Scottish Government suggests that, whilst it is accepted that when selecting receptors, it is neither practical nor desirable to include every single receptor, a variety of different receptors should be selected to ensure a full representation is made of the environment. Any choice of NSRs should then be clearly justified and rationalised. We can find no justification made by The Promoter for considering only one type of NSR. To satisfy condition 19 and specifically 19(2) a detailed scheme of assessment of the predicted noise impacts must include both a quantitative and qualitative assessment on a representative number of NSRs. Simply stating of L_{Aeq} values is not sufficient as quantitative and qualitative assessment, without identifying this very particular and different form of NSR so close to the route.

23. The additional information provided by the Promoter gives L_{Aeq} values for Dr South's, but does not accurately represent the actual impact of noise that the school will experience:

- a. Firstly, the L_{Aeq} (or A-weighted equivalent continuous noise level) is a measure of the total noise energy over a stated time period and includes all the varying noise levels and then re-expresses this as an 'average', allowing for the length of time for which each noise level was presented. The time period used starts at 7am and finishes at 11pm and it is hard to see how this is representative of the actual L_{Aeq} experienced by the school. It is material for CDC to recognise here that the units recognised and recommended by both the World Health Organisation (WHO) and BB93 are $L_{Aeq(30\text{ mins})}$ and not $L_{Aeq(0700-2300)}$ as used by the Promoter. Since the Promoter does not adopt the recognised unit for noise in educational establishments, neither we nor CDC can know whether these values are comparable and therefore cannot be satisfied that the noise mitigation requirements for an educational establishment have been met.
- b. Secondly, on its own, any L_{Aeq} value doesn't fully represent the noise impact the school will experience. By definition, L_{Aeq} is the A-weighted equivalent continuous noise level whereas trains produce individual, distinct noise events and there is no indication of this level of noise, L_{Amax} at appropriate times of the day for the school.

24. There are clear reasons why L_{Amax} is important to this type of NSR. i.e educational establishment:

- a. The Promoter itself states that "The provision for noise mitigation will be based on two sets of absolute noise levels" and that these "relate to disturbance of building occupants, and do not relate to specific effects such as speech interference." (Noise Assessment Scheme for Section E, p5). Moreover it recognises that "maximum noise levels from trains have the potential to interrupt speech" (Environmental Statement, p6-7) Given the importance of speech in an educational establishment, it is evident that maximum values should have been given significant consideration.
- b. The proposed frequency of trains during the daytime period and resultant high L_{Amax} are likely to mean that it will simply not be possible to open windows for ventilation (in a building without air conditioning); nor for meaningful teaching or sports lessons to take place in the school grounds as is the case at present. There will be a high frequency of high noise events. It will be impossible to maintain a reasonable sound to noise ratio of 15dB as is widely accepted as the minimum required. This would mean that a material change in teacher's behaviour would be required and represent a Significant Observed Adverse Effect.
- c. In addition, high levels of noise have been shown to be detrimental to children's learning. Cognitive tasks such as reading, attention, problem solving and memorization are among the cognitive tasks most affected by noise.

25. We would draw to your attention the following further inconsistencies and material gaps in the supplementary analysis provided by the Promoter with regard to Dr South's:

- a. There is no indication of the robustness of the readings and what tolerances have been applied, and no explanation for why it can be said that the noise and monitoring scheme after implementation – which is a provision in the Promoter's own policy – is no longer considered appropriate or necessary.
- b. It is not stated – as it is in all other data provided – whether the impacts estimated are after Phase 1A/B or Phase 2 of the scheme.
- c. The supplementary analysis is only partial. Compared to that provided for other noise sensitive receptors, it does not include a baseline and therefore fails to demonstrate effectively the impact of the scheme. As explained earlier, it should also include an estimate of maximum noise since this is a key factor for buildings – like schools – that are used during the day. As a comparator, Table 6.13 of the scheme submitted for the discharge of condition 19(2) with respect to section H of the track, contains these values for Wolvercote School.
- d. The forecast noise and vibration effects are averages, predicated on certain assumptions about the frequency of trains along this line. Since those forecasts were made, further plans have emerged which may mean that there is substantial additional use of the track, including the intention to create an East-West link, with attendant increase in train frequency. This might be expected to significantly

increase the average noise impact. For this reason, we think it is very important for the Council to note that the forecasts of noise levels made by the Promoter are done on the “worst case” assumption of eight passenger trains per hour (four in each direction) and no daytime freight trains, only one per hour at nighttime. The Council should have no confidence in the forecasts if the frequency of services were to rise above this level.

26. We therefore continue to believe that the monitoring proposals in the Promoter’s policy remain essential, and that mitigation measures for Dr South’s are appropriate and necessary.

27. In particular, we restate our view that any protections afforded to the music studio at 45 Lakeside should also be extended to Dr South’s. The reference to BB93 and its requirement that classroom noise levels be not higher than 35dB $L_{Aeq(30\text{ min})}$ clearly applies to a primary school as readily as it does to a music studio adjacent to the line. We further continue to believe that the Promoter should have treated Dr South’s as a “sensitive receptor” and that, by failing to do so, they have contravened their own stated policy at paragraph 2.3 by failing to consult the governing body. Failure to take that inconsistency of treatment of Dr South’s, and the Promoter’s breach of its own stated policy into account are, in our view, material oversights.

28. Furthermore, we submit that the Promoter has not treated Dr South’s fairly or consistently with its stated policies. On the one hand, the Promoter – in the most recent supplementary material – has not provided night-time noise forecasts. This is consistent with the Environment Statement which proposes “Schools and offices are only noise sensitive during the daytime and therefore impacts at night have not been considered.” However, the same section goes on “It is recognised that some schools may hold classes outside during the summer months, where maximum noise levels from trains have the potential to interrupt speech. Schools that may be affected have been identified in Section 6.4.1 and 6.4.2.” As argued above, we believe this would have led the Secretary of State legitimately to believe (a) that the schemes which came forward would address this issue; and (b) that the Promoter would have identified all the relevant schools in sections 6.4.1 and 6.4.2. In fact, the Promoter has proposed no schemes to address this issue and has also failed to identify Dr South’s as a relevant school. For it to be acceptable for the Promoter to exclude Dr South’s from mitigation for night-time impacts, the Promoter should *also* recognize that a school is not the same as a residential home and therefore has particular sensitivities and needs during the daytime, and it cannot be assumed that the noise assessments which are apt for a home apply without differentiation for a primary school. The Promoter has not to date done this and simply applies the standard daytime noise thresholds by reference to houses.

29. In light of the Promoter’s failure to engage with Dr South’s as a school, we suggest there are only two rational options open. The first is to treat the school as any other residential property – in which case sound barriers should be erected due to the noise level at night-time being over 45dB and having more than two peak events of 82dB according to the noise contour map provided by the Promoter. The second (required by the Promoter’s Environmental Statement but not enacted through the Promoter’s scheme for section E) is to recognize the special noise sensitivities of the school as an educational establishment – in which case Dr South’s should be treated as a separate NSR with a detailed assessment carried out; and it should be recognized that the relevant daytime threshold to trigger the need for mitigation measures should be that stated in BB93 (35dB $L_{Aeq(30\text{ min})}$). (We cannot draw direct inferences from the supplementary analysis since it uses $L_{Aeq(0700-2300)}$ and since certain assumptions must be made about whether windows to the classroom facing the railway will be open. However, we can attest that these must be regularly opened during the warmer months to make the temperature tolerable.) Hence, since the BB93 threshold will be exceeded by up to 21dB, on this second approach, sound barriers should be erected. Whichever approach is taken, sound barriers should be erected before condition 19(2) can properly be discharged.

Duty on the Planning Authority to consider educational establishments’ needs

30. Our second concern is directed towards CDC as the Planning Authority. As stated in our letter of 7 October 2014, we believe that the discharge of this planning condition (placed on the Promoter by the Secretary of State following the original planning inquiry) requires the Planning Authority to be satisfied that it can rationally consider the condition to have been discharged, given its purpose. In performance of that function, the Planning Authority must ensure that its actions proposed are consistent with its statutory duties, not only with regard to planning matters but also with regard to its duty of care towards young people in its educational establishments and its obligations

under the Human Rights Act 1998 with respect to the effect of noise on the environment, and in particular those – such as children – who cannot choose to move away from it.

31. We restate our deep concern that the level of noise forecast by the ERM analysis is higher than that deemed acceptable by DfE's School Buildings Guidance (BB93), and yet has not apparently generated dissatisfaction or concern on the part of CDC. Dr South's is a thriving school, of around a hundred pupils. It is presently oversubscribed. There is a possibility of substantial further residential development in Islip. We very much want to avoid the situation in future where no rebuilding or development of the premises of Dr South's is possible because noise levels exceed the DfE guidance and hence either building control is withheld or the school has to find substantial additional capital resources to meet the costs of sound insulation required as a result of the Promoter's scheme. This is particularly relevant given the small size of Dr South's grounds and limited scope for building in other areas in a village surrounded by the green belt.

Concerns about process

32. We recorded in our letter of 7 October 2014 our grave concerns that the errors in listing of the planning application might have denied Islip residents and those in the school community with a suitable chance to comment on the application, and the failure to comply with the law on consultation.

33. Those concerns remain, and are exacerbated by the very late service 'for consultation/comment' of the Independent Expert's report. We note that the application is still incorrectly listed on the Cherwell planning portal as pertaining to Bicester Parish and Bicester East ward, so that no person perusing the portal could be expected to pick it up. We note that many of our parents appear not to have received the short-form consultation letters, and – given the timescale and technicality – cannot reasonably be expected to respond to it. We also note that even the very short timescale given for comments, on this highly technical issue, has in practice been curtailed by late service of consultation letters. Eight days is not a realistic time to enable the Parish Council, let alone most residents or parents, to respond in an informed way to the proposal. The extension of this deadline was appreciated but, by the time that was granted, some had already responded while others may not have appreciated the extension had been offered since from midnight on Sunday 27 September the planning portal stated the opposite.

34. We noted in our letter of 7 October 2014 that the School had not been consulted by the Promoter. It has still not been. This is in direct contravention of section 2.3 of their stated noise and vibration policy, as set out above: "The Promoter will consult with landowners and occupiers who may be affected by noise and vibration to explain the mitigation measures that are proposed." Given these matters, CDC needs to be particularly astute to ensure that *it* complies with its duties to comply with the law on fair consultation (recently confirmed by the Supreme Court in *R(Moseley) v London Borough of Haringey* [2014] UKSC 56 at 23-28). The requirements of fair consultation are obviously particularly great in terms of ensuring adequate access to information at an appropriate time, and community involvement in a sensitive and important environmental context, in the light of the requirements of the Aarhus Convention and the Directives and Regulations adopted in the light of it.

35. We noted with interest the deliberations of the Oxford City Council West Area Planning Committee in respect of section H of the Oxford to Bicester track, which took place on 16 June 2015. In particular, we observe that – faced with similar concern from local residents about the robustness of the analysis and, in particular, its validity under conditions of considerable uncertainty about the future use of the track – Councillors there took three important steps. First, they placed a duty on the consortium to monitor regularly the noise and vibration levels from the railway. Second, they limited use of the railway to the number of services on which the forecasts of noise and vibration were calculated. And, third, they received undertakings from the Promoter to use Tata silent rails to reduce further the anticipated noise and vibration. (These decisions are recorded in the attached decision notice, for information.) There has been no criticism of or challenge to that decision by the Promoter.

36. We draw to CDC's attention the relevant duty on it under the National Planning Policy Framework: para 123 "planning ... decisions should aim to: avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions ...". We contend that CDC

should be alert to material considerations as it reaches its determination and that the requirements of the NPPF are very clearly a material consideration in this matter.

What CDC should do now

37. It is the role of the Independent Expert to comment on the robustness of the Scheme of Assessment. However, it is the Local Planning Authority and not the Independent Expert which must decide upon the adequacy of the Noise Scheme of Assessment. For the reasons stated above, with regard to section E, we do not believe the Planning Authority has adequate information to discharge the conditions. Were the Council and developer nonetheless eager to seek some consensus on an approach (as we hope they are), we believe there are two options open to the Council

38. **First**, and of principal importance, it should place a requirement on the Promoter to provide noise barriers to protect Dr South's from the railway noise identified. We believe it would be appropriate to erect barriers on the precautionary principle since ERM's analysis is too narrow in three respects: (1) it fails to appreciate the particular circumstances of an educational establishment as a sensitive receptor (as at 45 Lakeside) and makes no recognition of the impact of maximum noise levels despite acknowledging that these can interrupt speech; (2) it allows for no margin of error in its forecast of noise effects since the boundary of the school building is within centimetres of a noise contour line that **would** require mitigation; and (3) it makes an absolute prediction of noise impact rather than the more appropriate response of providing a range, which would better recognize the uncertainty over the future use of the track.

39. For this reason, **second**, we also believe the Council should follow Oxford City Council's lead and require the consortium to monitor noise and vibration impacts from the line on a regular basis, to publish these results to the Planning Authority and local residents, and to comply with any further mitigation measures which the Council may require if, as we fear, the existing predictions of noise are over optimistic, or if actual noise levels change in the foreseeable future. Such an approach would be consistent with paragraphs 2.11 and 2.12 of the Promoters' stated policy. We feel sure the Promoter would not have any objection to such an opportunity to test (or vindicate) its approach. Such measurements would allow the Planning Authority to take action if, however, it were to be shown that the noise impacts on Dr South's were in excess of those which had been predicted at this stage. We would propose CDC adopt the same language for this condition as that adopted by Oxford City Council.

40. **Third** and lastly, we believe CDC should make it a condition of discharging condition 19(2) of the planning consent for section E that the frequency of services should not exceed four passenger services per hour in each direction in the day time and one freight service per hour (in total) at nighttime. Clearly, were this underlying assumption to change, it would directly affect the average equivalised noise level. We would propose CDC adopt the same language for this condition as that adopted by Oxford City Council.

41. We very much hope that CDC will see the wisdom of this approach and find a consensual way forward, engaging both us and the Promoter, whereby the condition can rapidly be discharged on these agreed terms. Given the short time limits for environmental judicial review now set out in Civil Procedure Rule 54.5(5), we feel it only right to say that if a decision were taken to discharge the condition without either requiring further consultation and investigation by the Promoter or implementation of these measures, we would consider our position in relation to legal action, including considering the possibility of obtaining an injunction. For those reasons, we would ask you to treat this as a letter under the pre-action protocol. We put you on notice that we consider that this would be a claim to which the costs protections introduced by the Aarhus Convention and now set out in CPR 45.41 and Practice Direction 45 to the CPR would apply.

42. I am copying this letter to Andrew Deacon (ERM), Rob Mole (Network Rail) and Stella Whyte (Bicester-Oxford Consortium) (all on behalf of the Promoter, which would of course be named in any judicial review as an interested party and is therefore entitled to be served with this, which stands as a pre-action letter). I am also copying it to John Howell M.P., Councillors Colin Clarke, Timothy Hallechurch, and Michael Gillard, Islip Parish Council, Jim Leivers (Director of Children, Education and Families Directorate, Oxfordshire County Council), and to Anne Davey (Director of Education, Oxford Diocesan Board of Education).

Yours sincerely,



Tim Fox
Chair, Governors

Enc. Letter dated 7 October 2014 from the Governors of Dr South's to Linda Griffiths;
Decision notice from Oxford City Council dated 30 June 2015 regarding the discharge of condition 19(2) for section H