

PLANNING COMMITTEE B

Date of Meeting: **THURSDAY, 25 APRIL 2019 TIME 7.30 PM**

PLACE: **COMMITTEE ROOMS 1 & 2 - CIVIC SUITE**

Members of the Committee are summoned to attend this meeting:

Membership

Councillors:

Aisling Gallagher (Chair)

Alan Smith (Vice-Chair)

Suzannah Clarke

Silvana Kelleher

John Muldoon

Abdeslam Amrani

Leo Gibbons

Mark Ingleby

Jim Mallory

Pauline Morrison

Sakina Sheikh

The public are welcome to attend our committee meetings, however, occasionally committees may have to consider some business in private. Copies of reports can be made available in additional formats on request.

Janet Senior
Acting Chief Executive
Lewisham Town Hall
London SE6 4RU
Date: Tuesday, 16 April 2019

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Order Of Business			
Item No	Title of Report	Ward	Page No.
1.	Declarations of Interests		1 - 4
2.	Minutes		5 - 14
3.	1 LAWN TERRACE, LONDON, SE3 9LJ	Blackheath	15 - 30
4.	50-52 RUSHEY GREEN, LONDON, SE6 4JD	Rushey Green	31 - 46

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Committee	PLANNING COMMITTEE (B)	
Report Title	DECLARATIONS OF INTERESTS	
Class	PART 1	Date: 25 April 2019

Members are asked to declare any personal interest they have in any item on the agenda.

(1) Personal interests

There are three types of personal interest referred to in the Council's Member Code of Conduct :-

- (a) Disclosable pecuniary interests
- (b) Other registerable interests
- (c) Non-registerable interests

(2) Disclosable pecuniary interests are defined by regulation as:-

- (a) Employment, trade, profession or vocation of a relevant person* for profit or gain.
- (b) Sponsorship –payment or provision of any other financial benefit (other than by the Council) within the 12 months prior to giving notice for inclusion in the register in respect of expenses incurred by you in carrying out duties as a member or towards your election expenses (including payment or financial benefit from a Trade Union).
- (c) Undischarged contracts between a relevant person* (or a firm in which they are a partner or a body corporate in which they are a director, or in the securities of which they have a beneficial interest) and the Council for goods, services or works.
- (d) Beneficial interests in land in the borough.
- (e) Licence to occupy land in the borough for one month or more.
- (f) Corporate tenancies – any tenancy, where to the member's knowledge, the Council is landlord and the tenant is a firm in which the relevant person* is a partner, a body corporate in which they are a director, or in the securities of which they have a beneficial interest.
- (g) Beneficial interest in securities of a body where:-
 - (a) that body to the member's knowledge has a place of business or land in the borough; and
 - (b) either
 - (i) the total nominal value of the securities exceeds £25,000 or 1/100 of the total issued share capital of that body; or

- (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person* has a beneficial interest exceeds 1/100 of the total issued share capital of that class.

*A relevant person is the member, their spouse or civil partner, or a person with whom they live as spouse or civil partner.

(3) Other registerable interests

The Lewisham Member Code of Conduct requires members also to register the following interests:-

- (a) Membership or position of control or management in a body to which you were appointed or nominated by the Council;
- (b) Any body exercising functions of a public nature or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party;
- (c) Any person from whom you have received a gift or hospitality with an estimated value of at least £25.

(4) Non registerable interests

Occasions may arise when a matter under consideration would or would be likely to affect the wellbeing of a member, their family, friend or close associate more than it would affect the wellbeing of those in the local area generally, but which is not required to be registered in the Register of Members' Interests (for example a matter concerning the closure of a school at which a Member's child attends).

(5) Declaration and Impact of interest on member's participation

- (a) Where a member has any registerable interest in a matter and they are present at a meeting at which that matter is to be discussed, they must declare the nature of the interest at the earliest opportunity and in any event before the matter is considered. The declaration will be recorded in the minutes of the meeting. If the matter is a disclosable pecuniary interest the member must take no part in consideration of the matter and withdraw from the room before it is considered. They must not seek improperly to influence the decision in any way. **Failure to declare such an interest which has not already been entered in the Register of Members' Interests, or participation where such an interest exists, is liable to prosecution and on conviction carries a fine of up to £5000**
- (b) Where a member has a registerable interest which falls short of a disclosable pecuniary interest they must still declare the nature of the interest to the meeting at the earliest opportunity and in any event before the matter is considered, but they may stay in the room, participate in consideration of the matter and vote on it unless paragraph (c) below applies.

- (c) Where a member has a registerable interest which falls short of a disclosable pecuniary interest, the member must consider whether a reasonable member of the public in possession of the facts would think that their interest is so significant that it would be likely to impair the member's judgement of the public interest. If so, the member must withdraw and take no part in consideration of the matter nor seek to influence the outcome improperly.
- (d) If a non-registerable interest arises which affects the wellbeing of a member, their, family, friend or close associate more than it would affect those in the local area generally, then the provisions relating to the declarations of interest and withdrawal apply as if it were a registerable interest.
- (e) Decisions relating to declarations of interests are for the member's personal judgement, though in cases of doubt they may wish to seek the advice of the Monitoring Officer.

(6) Sensitive information

There are special provisions relating to sensitive interests. These are interests the disclosure of which would be likely to expose the member to risk of violence or intimidation where the Monitoring Officer has agreed that such interest need not be registered. Members with such an interest are referred to the Code and advised to seek advice from the Monitoring Officer in advance.

(7) Exempt categories

There are exemptions to these provisions allowing members to participate in decisions notwithstanding interests that would otherwise prevent them doing so. These include:-

- (a) Housing – holding a tenancy or lease with the Council unless the matter relates to your particular tenancy or lease; (subject to arrears exception);
- (b) School meals, school transport and travelling expenses; if you are a parent or guardian of a child in full time education, or a school governor unless the matter relates particularly to the school your child attends or of which you are a governor;
- (c) Statutory sick pay; if you are in receipt;
- (d) Allowances, payment or indemnity for members;
- (e) Ceremonial honours for members;
- (f) Setting Council Tax or precept (subject to arrears exception).

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Committee	PLANNING COMMITTEE (B)	
Report Title	MINUTES	
Ward		
Contributors		
Class	PART 1	Date 25 April 2019

MINUTES

To approve the minutes of the meeting of Planning Committee (B) held on the 10th January 2019 and 28th February 2019.

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the PLANNING COMMITTEE (B) held in ROOMS 1 & 2, CIVIC SUITE, LEWISHAM TOWN HALL, CATFORD, SE6 4RU on 10th January 2019 at 19:30.
PRESENT: Councillors Suzannah Clarke (Chair), Tom Copley (Vice-Chair), Obajimi Adefiranye, Tauseef Anwar, Andre Bourne, Liz Johnston-Franklin, John Muldoon, John Paschoud and James Rathbone

OFFICERS: Mehdi Rezaie - Presenting Officer Planning Service, Jeremy Ward – Case Officer, Christopher Dale – Service Group Manager, Paula Young – Legal Services and Jesenka Ozdalga – Committee Co-ordinator

APOLOGIES: Cllr Silvana Kelleher, due to other Committee commitments would arrive later.

1. Declaration of interests

1.1 No declarations of interests.

2. Minutes of the meeting held on 15 November 2018.

2.1 *Cllr Copley* asked for minutes to be corrected under Section 1 Declaration of interests to read: The Campaign for Real Ale.

RESOLVED: That the minutes be approved subject to the above changes.

3. 1 Waldram Park Road, SE23

3.1 The Chair clarified that the application is in Perry Vale Ward and not Forest Hill as listed.

3.2 The presenting officer introduced the details of the application. The case officer then presented an addendum report and amendments to the application: Recommendation B was to give authority to the Head of planning, once legal agreements are in place, to grant permission subject to the conditions outlined in the original report. Amendments and additions to conditions were also included within the addendum. These related to hours of operation and road safety. The addendum also clarified that a Section 278 Agreement would be used to secure highways works.

3.3 In response to a question the case officer clarified that a Section 278 Agreement is an agreement between the developer and planning and highways authority regarding improvements to the highway.

- 3.4 In response to further questions the case officer clarified that the addendum report proposed to replace condition 13 of the original report relating to the hours of the operation and not condition 14 as stated. The reason for requiring the condition was unchanged.
- 3.5 The presenting officer introduced further details of the application and noted that, during the initial statutory consultation period, no objections had been raised by Highways or Environmental Health and Protection. Thames Water, The Metropolitan Police, London Fire and Emergency Services and Transport for London were also consulted and raised no objections. 12 objections were received by local residents and businesses regarding highways matters, air quality, loss of retail unit, scale, design and principle of development.
- 3.6 In response to a question, the case officer clarified that, despite reference having been made to Co-op, the proposal is for the premises to be used as Class A1 retail and the unit could potentially be occupied by any retail occupier.
- 3.7 Cllr Paschoud asked for his interest as a Labour and Co-operative Party member to be recorded. Cllr Muldoon and Cllr Copley asked for their interests as Labour and Co-operative Party members to be recorded as well.
- 3.8 In response to questions from members of the Committee officers clarified a number of points relating to bin collection, design of the lift plant space and landscaping. It was confirmed that footpath would be approximately 3m wide with a colonnade that creates an additional area.
- 3.9 The Committee received a verbal representation from the applicant who represented his family business which he advised was well established in the local area. The applicant confirmed that he had been involved in discussions with the Council, community and Forest Hill Society in relation to an appropriate land use and decided on a hotel scheme to provide a community meeting space, café, bar and casual dining. From the commercial perspective, the applicant confirmed they had spoken to a number of hotel providers including the IHG and Hilton Groups. As a family business they are committed to the area and chose an architect who has experience working in Lewisham. When choosing materials and style for the building they wanted something that would be an asset to the area so brick and re-constituted stone for detailing around windows was proposed. At the same time they wanted to add something modern which is reflected in the colonnade and glazed front at the ground floor. The scheme would also deliver wider benefits as it would add 170 sq. m to the public realm and double the number of jobs on the site.
- 3.10 *Cllr Muldoon* declared a personal interest as member of IHG and Hilton loyalty scheme.
- 3.11 Following concerns being raised with respect to traffic the applicant clarified that they had conducted a Parking survey which is in line with Lewisham Policy and which found parking provision to be sufficient. They considered an underground car park but hotel providers did not recommend it. In addition, a feasibility study was carried out which supported the location of the hotel and looked at the potential for Perry Vale car park behind the station to provide additional parking capacity if required.
- 3.12 In response to a question from a Councillor the applicant confirmed that they run this size of convenience store around the south east, it would be operated by them and there would be an equivalent offer including fresh food and ready meals and other provisions.
- 3.13 The applicant's architect advised that the Waldram Park Road pedestrian route would be 3m wide. The refuse storage would be located at the very northern part of the site to be out of the way but between the supermarket and the hotel is a 3.5m wide strip and bins would be brought out during servicing days.
- 3.14 The members received verbal representations from the objector, Mr. Peter Sullivan, a local resident, living on a Rockbourne Road with his house parking on Stanstead Road. The

objector asked for a correction of distance of 50m between the hotel and the rail station. The Chair clarified that PTAL ratings are formally set for how close and easily accessible a site is to public transport. The objector, raised a question in relation to the number of disabled parking spaces in the hotel for employees and guests and raised concerns about a lack of parking in the area generally. He also queried if there is need for another bar and hotel in the area, especially as a similar establishment nearby had closed due to a lack of business.

- 3.15 Committee Members discussed the issue of parking for people with disabilities at some length and expressed sympathy with the concerns raised by the objector, noting that the hotel would contain 89 bedrooms. The presenting officer confirmed that, whilst there is no policy requirement to provide a disabled parking space, one is being provided here. To justify a refusal of planning permission without a policy justification is difficult for the Council to defend in an appeal. The Council's Highways department and Transport for London had been consulted and neither had raised any objection to the proposal on parking grounds.
- 3.16 A Member expressed concern that if a lorry arrives for delivery at the supermarket at the same time as somebody is dropped off at the hotel there is not going to be enough space. However, it was also noted that Rockbourne Road and Stanstead Road are borough roads and Waldram Park Road is a TfL road. If the Council can identify need for more parking bays for disabled users on those roads, creating appropriate marked bays, it is not necessarily something that would be connected to or influenced by this development. It was noted that, as the local plan is currently under review, maybe this issue could be looked at afresh.
- 3.17 Overall it was acknowledged that the proposal would be of benefit to the local economy, that there is a need for more hotel rooms across London and there did not appear to be any valid grounds for refusing planning permission for the application under planning law.
- 3.18 *Cllr Rathbone* moved a motion to approve officer's recommendation. This was seconded by Cllr Paschoud. Members voted as follows:
- For: Councillors Copley, Adefiranye, Clarke (Chair), Anwar, Bourne, Johnston-Franklin, Kelleher, Muldoon, Paschoud, Rathbone.
Against: None
The vote was unanimous.
RESOLVED: Approve application DC/18/106467 subject to conditions from the officer's original and addendum reports.

4. Rear of 110 Wood Vale, SE23

- 4.1 The presenting officer introduced the details of the application and brought Members' attention to the addendum which clarified that the committee report should have made reference to DM Policy 33. This did not affect the officer recommendation. During the consultation period, no objections were raised from Highways (subject to conditions) or Environmental Health and Protection. The Forest Hill Society made no comments. Five objection letters were received from local residents raising concerns about overshadowing, overdevelopment, overlooking, parking, design and loss of employment. Officers considered the principle of development acceptable and commented that the design and architectural detailing were of a high quality and in context and the applicant had overcome previous reasons for refusal.
- 4.2 In response to concerns raised by Members, the presenting officer confirmed that Highways officers had carried out the appropriate assessments and did not raise any concerns with regard to the width of Moonlight Drive in terms of accommodating emergency vehicles. The officer estimated the width of the drive to be 5-6m which is wider than an average car.

- 4.3 In response to Members' concerns with respect to potential loss of privacy to neighbouring properties, the presenting officer advised that officers were satisfied with the distances in terms of privacy issues. There would be approximately 20m if not more to the end of the curtilage of the neighbour's site and then 15m or more from there onwards.
- 4.4 Some members expressed concerns in relation to the fact that 4 out of 7 units would not have a dual aspect and a number of bedrooms would be served by angled windows. The presenting officer clarified that there would also be skylights placed in the roof which would complement angled windows. In response to a further question it was confirmed that the dual aspect windows would only be included within dual aspect flats.
- 4.5 The Committee received verbal representations from the planning consultant who was the agent for the application. She explained this was the second application submitted for the residential redevelopment of this site. The first was refused in March 2018 and had a single reason for refusal relating to the impact of the additional height of the development and its consequent overbearing impact to 8 Langton Rise to the southwest. The current application did not include the projecting second floor element immediately behind 8 Langton Rise. Regarding the concerns raised by local residents on Wood Vale, the proposal was sensitively designed to ensure that no material adverse impacts would arise. The proposal would see change of use of a vacant industrial unit, following an unsuccessful two year marketing exercise. This is partly due to poor vehicular access and proximity to residential neighbours as well as the poor visibility from the road. The restoration of the existing industrial use would be more harmful to the neighbours in terms of noise and disturbance whilst the proposed land use would make a positive contribution to the borough's housing needs. The proposal would preserve and enhance the conservation area. The site has good access to public transport and sufficient parking on the street.
- 4.6 A member of the Committee raised concerns regarding land contamination as the site had previously been in industrial use. The agent clarified that there is a condition in the report regarding land contamination that requires relevant assessments to be done.
- 4.7 Following a query from a Committee Member the architect clarified that there is no need to provide a lift on the development of this scale and ground floor units are specifically designed to be wheelchair accessible.
- 4.8 The members received a verbal representation from the objector who lives immediately adjacent to the proposed development. He stated that local residents were disappointed to see that the developer did not take into consideration their objections. In the previous application the sunlight and daylight report is misleading and ignores impacts on the gardens of Wood Vale. The end of the objector's garden is used to grow vegetables and with the proposed development in place it would be completely shaded. The objector also raised concerns about the proposed balconies and windows potentially overlooking neighbouring gardens as well as noise impacts arising from people on the balconies.
- 4.9 Following a query on this issue the planning officer confirmed the planning guidelines were concerned with overlooking to windows rather than rear gardens.
- 4.10 The Chair pointed out paragraph 6.74 of the officer report which gives details in relation to sunlight and daylight Impacts.
- 4.11 Cllr Copley moved the motion to approve officer's recommendation. This was seconded by Cllr Muldoon. Members voted as follows:
- For: Councillors Copley, Adefiranye, Clarke (Chair), Anwar, Bourne, Johnston-Franklin, Kelleher, Muldoon, Paschoud, Rathbone.
Against: None
The vote was unanimous.

RESOLVED: Approve application DC/17/107209 subject to conditions from the officer's report.

5. 59 Quentin Road, SE13

- 5.1 The presenting officer introduced the details of the application. The application received 4 objection letters from local residents raising concerns on material planning issues including overshadowing and noise and disturbance and non-material issues including land ownership, access for maintenance personnel, trespass and loss of view. Paragraph 5.2 of the officer's report responds to these concerns.
- 5.2 A Member asked for a clarification on the issue of land ownership and the ability to build on someone else's land. The Chair pointed out that it is possible to apply for planning permission on someone else's land, but issues would arise when a scheme was built out and this was a Civil Matter.
- 5.3 In response to a question the presenting officer clarified that potential overlooking and overshadowing issues raised by objectors are valid objections. The legal officer further clarified that it is the number of objections that sends applications to the committee.
- 5.4 Cllr Adefiranye moved the motion to approve officer's recommendation. This was seconded by Cllr Johnston-Franklin. Members voted as follows:

For: Councillors Copley, Adefiranye, Clarke (Chair), Anwar, Bourne, Johnston-Franklin, Kelleher, Muldoon, Paschoud, Rathbone.

Against: None

The vote was unanimous.

RESOLVED: Approve application DC/18/107273 subject to conditions from the officer's report.

The meeting ended at 21.20.

10 January 2019.

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the PLANNING COMMITTEE (B) held in ROOMS 1 & 2, CIVIC SUITE, LEWISHAM TOWN HALL, CATFORD, SE6 4RU on 28th February 2019 at 19:30.
PRESENT: Councillors Suzannah Clarke (Chair), Tom Copley (Vice-Chair), Obajimi Adefiranye, Tauseef Anwar, Andre Bourne, Liz Johnston-Franklin, Silvana Kelleher, John Paschoud and James Rathbone

OFFICERS: Christopher Dale - Presenting Officer Planning Service, Vincent Murphy – Case Officer Planning Service, Paula Young – Legal Services and Jesenka Ozdalga – Committee Co-ordinator.

APOLOGIES FOR LATENESS: Cllr John Muldoon

1. Declaration of interests:

- 1.1 Cllr Rathbone declared that the third application on the agenda (93 Effingham Road, SE12) is in his ward.
- 1.2 Cllr Adefiranye declared that his grandson attends St Dunstan's College (first application on the agenda).

2. Minutes of the last meeting:

- 2.1 Three sets of minutes of the previous committee meetings held on 23 May 2018, 11 October 2018 and 15 November 2018 were agreed.
- 2.2 Minutes from the meeting held on 10 January 2019 were deferred for the next committee meeting.
- 2.3 The presenting officer clarified that the Government has published revised version of NPPF on 19th February 2019. Officers had reviewed the revised document and confirmed that none of the changes are considered material to the assessment of the any applications on the agenda of this meeting.

3. St Dunstan's College and Jubilee's sports ground, SE6

- 3.1 The case officer presented the details of the application. The case was brought to the Committee for the reason of being in a prominent location and for the size of the proposal. The main school building is a locally listed building. The application related to two sites; the main school site and the Jubilee sports ground site.
- 3.2 The proposal was to construct a 2-4 storey building to the west of the school site to accommodate a new nursery and junior school, replace some facilities with modern ones and to include new landscaping.

19:50 Cllr Adefiranye left the room.

3.3 On the Jubilee site, 4 new courts with a hockey pitch would be provided. There would be no net loss of court facilities serving school and community as a result of the development.

3.4 The application had been through an extensive pre-application procedure, the proposal was supported by the Council's design and conservation officers. The proposal would result in minimal

intrusion to urban green space and would reduce exposure to the South Circular Road as the proposed building would be located further away from it.

3.5 There would be no harm to the Jubilee site or nearby residential buildings as a result of this proposal. There were no objections from Sport England subject to the conditions set out in the report and the community use agreement.

3.6 In conclusion, there were no material inconsistencies with planning policies and the proposal was supported on urban design, character and heritage grounds. The proposal would replace existing facilities and there would be no increase in staff numbers.

3.7 Members raised questions regarding:

- Implications for CIL (Community Infrastructure Levy) of this development; (The case officer clarified that CIL would be payable);

- Location in terms of the nursery and junior school in terms of the closeness to the South Circular Road;

- Pollution issues and planting at the front and boundary of the sports fields with very few trees there at present. (The case officer explained that school is already very concerned about pollution, trees were planted in the last few months and further planting is secured by Condition 19)

- Construction vehicles access (The Presenting Officer explained that construction access would be sequenced and the condition for Construction Management Plan is in the report)

- The parking provision on the site (The Case Officer explained that cars would go through the main entrance around the school complex to the staff parking area. Officers were of the opinion that it would be slow moving traffic and a reason for refusal on safety issues would therefore not be justified).

3.8 The members received a representation from the applicant's representative Claire Wilkins. The applicant explained that they have worked with professionals and experts on this scheme for about 18 months. There has been a pressure from parents for the improvement of the junior school in regards to air pollution. The applicant had submitted a number of applications with no success mostly because of loss of urban green space. The proposed design has been improved thanks to input from Lewisham officers. The current school facilities are inadequate, modular buildings are unattractive with a lifespan of 10 years but are there for 50 years and the technology and science department is too small to accommodate new equipment. The proposed new buildings would provide a completely new junior school in a modern building that will sit well with the locally listed building. The number of classrooms would not increase and the junior school would have a playground. The applicant confirmed that they have consulted the local community and are not aware of any objections.

3.9 Members acknowledged and the applicant confirmed that the proposed location of the junior school and playground would move further away from the South Circular Road and therefore significantly reduce exposure to air pollution. The proposed design was based on the data collection.

3.10 Members asked for clarification on whether the applicant envisaged any changes in community use of the facilities after the proposed development is completed. The applicant confirmed that most of the school facilities are open during and after school hours for community use and that use will remain after construction as well.

3.11 Members asked for more details on the planting proposal. The applicant confirmed that 14 trees are already planted on the perimeter of the fields with additional screening and they would protect parents and children during pick up and drop off.

3.12 The Members wanted to clarify why nursery and reception classrooms were located closest to the entrance area. The applicant clarified that parents of younger children come to classrooms more and interact with teachers. For that reason, as a safety measure to prevent parents walking around the

school, the nursery and reception classrooms were located close to the entrance area. However, the data shows that at that point the air quality is the same as further back on the site.

3.13 Members asked for more clarification on car movements on the site. The applicant explained that the school already have vehicles going through the site and that is something they are used to managing. Visitors are not allowed to come in and park on the site, that is also why there is a U-shaped drop-off path to prevent obstruction on South Circular Road. Parents are allowed to park for free at the Jubilee site. The applicant confirmed that vehicular access and arrangements would remain the same after construction. Furthermore, the applicant clarified that the majority of the construction vehicles would go through the existing gates.

3.14 It was acknowledged that the applicant informed owners of the houses located next to the school gate about the development and that no objections were raised.

3.15 The applicant wanted to add that they have information that education is excluded from the Community Infrastructure Levy.

3.16 The Members agreed that CIL would be resolved separately.

3.17 There were no objectors for this application.

3.18 The Committee received representations from Cllr Walsh under Standing Orders. Cllr Walsh is an alumni of St Dunstan's College and a member of The Dunstonian Association but also a local ward councillor. Cllr Walsh clarified that Headmasters house is actually a junior school that is very old and raises health and safety and air quality concerns and this proposal to push the junior school away from South Circular Road is something that should be supported.

3.19 Cllr Walsh explained the benefits of the proposal to Jubilee ground will help unlock some pitches for community use and that the soccer league play football there. Furthermore, new theatre space and bookable space for meetings would be available for community use. The transport management plan is important and is something that the school is very mindful of. Cllr Walsh considered this proposal an excellent piece of work that has been through a lot of pre-application meetings and change of design. The community involvement was outstanding and no concerns or objections were raised.

3.20 Cllr Paschoud moved a motion to approve this application according to the officer's recommendation. This was seconded by Cllr Bourne.

Members voted as follows:

For: Councillors Copley, Clarke (Chair), Anwar, Bourne, Johnston-Franklin, Kelleher, Paschoud, Rathbone.

Against: None

The vote was unanimous.

RESOLVED: Approve application DC/18/109716 subject to the conditions in the officer's report.

Cllr Adefiranye returned to the room at 20.30.

Cllr Muldoon arrived at 20.30.

4. 109-111 Kirkdale, SE26

4.1 The presenting officer presented the details of the application. The application proposed demolition of existing buildings and replacement by part three part four storey buildings to provide two retail units at the ground floor level and four flats above. Previous applications submitted for this location were, among other reasons, refused by reason of excessive height and bulk in relation to adjacent buildings. The currently proposed building would match the height of the existing building with front elevation flush to the adjacent buildings. The height of the proposed building would step down to the rear and would incorporate green roofs. There had been some minor revisions to the current proposal, mostly internal modifications, removal of front lightwells and access re-arrangement.

4.2 As a result of these changes, The Sydenham Society had withdrawn their objection. There was one remaining objection from a local resident. Overall, officers considered that the design, massing and scale of the proposed scheme were appropriate for the context with good quality accommodation and met the requirements of policies.

4.3 On a Member's request, the presenting officer confirmed that drawings published for this application are to scale and any deviation from the approved drawings could be subject to enforcement action.

4.4 A Members asked for clarification on the location of the bin storage and it was confirmed by the planning officer that it was part of the amendments and bin and cycle storage are now located to the rear of the proposed building.

4.5 In response to questions from Members, the presenting officer confirmed that The Sydenham Society's objection was withdrawn on the morning of the Committee meeting, that the means of fire escape is not a planning issue and that the proposed building can be accessed from the front and the rear.

4.6 The Committee received representations from the applicant, Sajaid Shaukat and architect, David Mansoor.

4.7 This application was submitted after a pre-application meeting and plans were amended with officers' input. The proposed flats would be for rent. The parade itself needs more investing and improvement. This proposal would provide 2 commercial units and employ local people and there is already some interest for them. The proposal would provide a green roof for wildlife and would be in keeping with the area and the parade.

4.8 The Committee received representations from a local resident, Jamie Davis living opposite the proposed building on the second floor and objecting to the application. The objector clarified that he is not against development in principle as this site has not been looked after for many years. However, he raised concerns in terms of direct overlooking, increased parking demand in the area and the viability of the proposed shops.

4.9 Following a query from a Member of the Committee, the objector clarified that he objected to the introduction of two sets of French doors directly overlooking his lounge and in principle, had no objection to the development.

4.10 Cllr Copley pointed out that the area has been neglected, the proposed building itself is an improvement, high quality retail space may revitalize the parade and moved the motion to approve this application.

4.11 This was seconded by Cllr Paschoud.

Members voted as follows:

For: Councillors Copley, Clarke (Chair), Anwar, Bourne, Johnston-Franklin, Kelleher, Paschoud, Rathbone, Muldoon and Adefiranye

Against: None

The vote was unanimous.

RESOLVED: Approve application DC/18/106154 subject to the conditions in the officer's report.

21:00 Cllr Johnston-Franklin left the meeting.

5. 93 Effingham road, SE12

5.1 The presenting officer presented the details of the application. The application was in The Lee Manor Conservation Area and proposed construction of two dormer windows with a mansard link on the rear roof slope and insertion of two rooflights to the front roof slope and replacement of the existing roof tiles with natural slate. The application followed a previous refusal from June 2018. Two neighbouring

properties on either side feature two rooflights on the front roofslope. The adjacent property at no.95 has an existing rear dormer granted in 2005. Planning permission was granted in January 2019 for a similar scheme at no.90.

5.2 A further objection had been received by The Lee Manor Society after publication of the committee agenda. Officers considered that the proposal had overcome the previous reason for refusal as the massing had been reduced and the mansard link had been pulled in further away from the eaves. The proposed new natural slate roof covering was considered an enhancement and therefore, the officer's recommendation was to approve this application subject to the conditions in the report.

5.3 On a Member's request, the presenting officer clarified that bulk and scale of this application and the approved application at no.90 were similar with differences in windows and cladding details.

5.4 The members received representations from the applicant, John Camp. The main reason for the roof extension was his growing family and commitment to the area. There are at least 15 loft conversions on Effingham Road and this application intends to enhance the area and maintain the Victorian character of the property. The initial application was refused, even though it replicated the extension of the neighbour at no.90 approved by the Planning Committee. The proposal would not be visible from the public realm and particular care was taken to reduce the scale as much as practicable.

5.5 The Committee received representations from Charles Batchelor, on behalf of The Lee Manor Society objecting to this application. While the improvements of the scheme were appreciated, the Society objected to the precedent that was being set by approving these roof extensions. The Council's policies state that two separate dormers should be proposed but recently applications were coming with a link which was considered to form a big block on the house, the connecting element slopes back and it still appears to start at the face of the dormer. The emerging Alterations and Extensions SPD that has been on consultation for 6 months doesn't allow this extension in conservation areas.

5.6 On a Member's request, the presenting officer clarified that Alterations and Extensions SPD carries only limited weight at this stage. The character of the area, what has been allowed in the area and recent planning decisions are important planning considerations.

5.7 Following another question from a Member, the presenting officer clarified that the roof plan showed how far the dormers would project and it is a wide linking section. Officers did not consider it was significantly different to another scheme approved recently.

5.8 The legal representative clarified that the SPD carries little weight and it is for the Members of the Committee to decide whether the proposal would enhance or harm the Conservation Area.

5.9 Cllr Bourne considered that the roof extensions would be enhancements to the Conservation Area and, considering other applications for similar proposal have been approved, moved the motion to approve this application.

This was seconded by Cllr Kelleher.

Members voted as follows:

For: Councillors Copley, Clarke (Chair), Anwar, Bourne, Kelleher, Paschoud, Rathbone, Muldoon and Adefiranye

Against: None

The vote was unanimous.

RESOLVED: Approve application DC/18/107882 subject to the conditions in the officer's report.

Meeting ended at 21:27.

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Committee	PLANNING COMMITTEE B	
Report Title	1 Lawn Terrace	
Ward	Blackheath	
Contributors	Alfie Williams	
Class	PART 1	25 April 2019

Reg. Nos. DC/18/108388

Application dated 06.08.2018

Applicant Mr Smillie

Proposal An application submitted under Section 73 of the Town & Country Planning Act 1990 for the variation of Condition (7) of planning permission (DC/99/044289) dated 6 May 1999 for the change of use of the ground floor of 1 Lawn Terrace SE3 to a bar/restaurant :- **in order to use the forecourt as a customer eating/sitting out area.**

Plan Nos LC/BH/500/01; Heritage Statement; Design And Access Statement

Background Papers

- (1) Case File LE/407/C
- (2) Core Strategy (June 2011)
- (3) Development Management Local Plan (November 2014)
- (4) The London Plan (March 2016)

Designation Blackheath Conservation Area
PTAL 5
Blackheath District Centre

1.0 Summary

This report sets out officer's recommendation in regard to the above proposal. The report has been brought before members for a decision as:

- Permission is recommended to be approved and:
 - there are 3 or more valid planning objections

2.0 Property/Site Description

2.1 Lawn Terrace is a 2-storey detached property used as a restaurant and bar (use class A3), situated on the south side of Lawn Terrace close to the junction with Blackheath Village and Lee Road. On the western side of the building is a vehicle and pedestrian access leading to the rear of the building. The main restaurant

area is at first floor level. At ground floor level is a private dining room, an ancillary office and the toilets.

- 2.2 Selwyn Court, a three to five storey block with flats on the upper floors, is situated to the east and rear of the application site. The ground floor of Selwyn Court is used commercially and is mainly in retail use. To the west are residential dwellings fronting Lawn Terrace.
- 2.3 The property is located within the Blackheath Conservation Area but is not subject to an Article 4 Direction. The site is within the Blackheath District Centre and has a PTAL of 5.

3.0 Planning History

- 3.1 Planning Permission was granted on 16 June 1997 for the change of use of the first floor from light industrial purposes to a restaurant together with the erection of an extension at first floor level at the rear. A condition of the approval required that the rear yard be retained for servicing and for a disabled parking facility only, and that no customer seating or service shall be provided outside the building.
- 3.2 Planning permission was granted in May 1999 (DC/99/044289) for the change of use of the ground floor to a bar/restaurant in connection with the use of the existing first floor restaurant, along with alterations to the front elevation and the erection of a refuse/general store at the rear.
- 3.3 That permission included a number of conditions similar to those imposed on the earlier planning permission for the use of the first floor. Condition 7 states that the forecourt area should not be used as a customer sitting/eating out area at any time.
- 3.4 In July 2001, planning permission was granted for the use of part of the ground floor for retail purposes together with new doors in the front elevation.
- 3.5 By letter dated 29 September 2003, the Council refused permission for the retention of the area at the rear of 1 Lawn Terrace as a terrace for dining in connection with the existing restaurant. The Council's reason for the refusal of planning permission was:
- 3.6 *"The proposed retention of the rear terrace for outdoor dining is considered to represent an unneighbourly form of development leading to excessive noise and light disturbance to neighbouring residential occupiers, contrary to policy HSG.18: Residential Environment and SHP 14 Restaurants and Takeaway Hot Food Shops of the adopted Unitary Development Plan (July 1996) and Policies STC 9 Restaurants, A3 Uses and Take Away Hot Food Shops and HSG 3 Residential Amenity of the Revised Deposit Draft Unitary Development Plan (August 2001) and also results in the loss of the rear service area and disabled parking for the restaurant ."*
- 3.7 The applicant appealed against this refusal of planning permission and the appeal was dismissed.
- 3.8 In February 2004, advertisement consent was granted in respect of the display of 1, projecting sign, 1, free-standing menu board, 1, wall-mounted menu display,

various graphic images fixed externally to existing windows and fascia signs, together with the installation of 4, floodlights at ground level.

- 3.9 In July 2004 planning permission was refused for retention of the area to the rear of 1 Lawn Terrace SE3 as a terrace for dining in connection with the existing restaurant, trading from 20 March to 30 September 2004, during the hours of 12 noon to 3 pm on Saturdays, 12 noon to 4 pm on Sundays and 6 pm to 8 pm Tuesdays to Saturdays, together with the construction of a pergola and trellis above the existing boundary wall to a height of 2.85 metres. The application was refused on the following grounds:
- 3.10 *"The use of the rear terrace for outdoor dining, even on the restricted hours now proposed, would be an un-neighbourly form of development leading to excessive noise disturbance to neighbouring residential occupiers, contrary to policies HSG 18: Residential Environment and SHP 14: Restaurants and Takeaway Hot Food Shops in the Council's adopted Unitary Development Plan and STC 9 Restaurants, A3 Uses and Take Away Hot Food Shops and HSG 3 Residential Amenity in the Revised Deposit Draft Unitary Development Plan (August 2001)".*
- 3.11 In January 2006, planning permission was allowed on appeal for the non-determination of application reference DC/05/59363 for construction of a terrace extension at first floor level to the front in connection with the existing restaurant, together with the construction of a frameless glass front ground floor entrance lobby.
- 3.12 In December 2009, planning permission (reference DC/09/72752) was refused and dismissed on appeal for the variation of Condition (7) of the planning permission dated 06 May 1999 to allow the existing forecourt area at the front of 1 Lawn Terrace SE3, to be used as a customer eating/sitting out area. The application was refused for the following reason:
- 3.13 *"The use of the forecourt for customer seating is inappropriate and would result in an un-neighbourly and incompatible use, giving rise to excessive noise disturbance to neighbouring residential occupiers, contrary to policies HSG 4: Residential Amenity and ENV.PRO 11 Noise Generating Development in the Council's adopted Unitary Development Plan 2004."*
- 3.14 In November 2017, planning permission and advertisement consent were granted for the construction of a steel and timber pergola entrance and replacement signage (reference DC/17/102099 & DC/17/102100).
- 3.15 In May 2018, an enforcement case (ENF/18/00155) was opened for the breach of condition 7 of permission DC/99/044289 in respect of use of external area to the front for customer seating/eating.

4.0 Current Planning Applications

The Proposal

- 4.1 The application is for the variation of Condition 7 of planning permission DC/99/044289 for the change of use of the ground floor of 1 Lawn Terrace SE3 to a bar/restaurant. Condition 7 states that:

- 4.2 *'The use of the forecourt area to the front shall not be used as a customer eating/sitting out area at any time.'*
- 4.3 The proposal seeks to amend condition 7 to allow an alfresco dining area to the left side of the front entrance until 20:00 on any day of the week. The area measures 16m wide by 2.5m deep and would facilitate the provision of four tables providing sixteen covers.
- 4.4 The area to the right of the front entrance would remain as a smoking area. The planters on the boundary of the forecourt would remain and no alterations are proposed to the external elevations of the building.

5.0 Consultation

- 5.1 This section outlines the consultation carried out by the Council following the submission of the application and summarises the responses received. The Council's consultation exceeded the minimum statutory requirements and those required by the Council's adopted Statement of Community Involvement.
- 5.2 A public notice was displayed on 26 September 2019 and letters were sent to residents and business in the surrounding area and the relevant ward Councillors. The Council's Highways and Environmental Health Departments were also consulted in addition to the Blackheath Society.

Written Responses received from Local Residents and Organisations

- 5.3 Objections were received from four local addresses. The main planning consideration raised in the objection relates to disturbances to the living conditions of local residential accommodation by way of noise. Reference was also made to planning history of the property, in particular the application for a similar proposal refused and dismissed at appeal in 2010 (reference DC/09/72752).
- 5.4 Consistency errors in the Design and Access Statement and Heritage Statement relating to the size of the forecourt and the number of tables/covers proposed were noted within the objections. These have subsequently been addressed.
- 5.5 The Blackheath Society commented on the proposal to state that a period of pre-application consultation with the neighbouring residential properties should have been undertaken prior to the submission of the application. Whilst the Council encourage applicants to consult with neighbours as part of the pre-application process, it is not a requirement and as such would not be a reason to refuse the application.

Environmental Health

- 5.6 The Environmental Health Department commented to state that they had no objection to the application.

Highways and Transportation

- 5.7 The Highways Department raised no objections to the application.

6.0 Policy Context

Introduction

- 6.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-
- (a) the provisions of the development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and
 - (c) any other material considerations.
- 6.2 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) makes it clear that any determination under the planning acts must be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for Lewisham comprises the Core Strategy, Development Plan Document (DPD) (adopted in June 2011), and policies in the London Plan (2015). The NPPF does not change the legal status of the development plan.
- 6.3 A development which an application under s73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. These applications should be determined in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, but local planning authorities should, in making their decisions, focus their attention on national or local policies or other material considerations which may have changed significantly since the original grant of permission, as well as the changes sought.

National Planning Policy Framework (NPPF) 2019

- 6.4 The NPPF, originally published in 2012, was revised on 19th February 2019 and is a material consideration in the determination of planning and related applications.
- 6.5 It contains at paragraph 11, a 'presumption in favour of sustainable development'. Annex 1 of the revised NPPF provides guidance on its implementation. In summary, this states in paragraph 213, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the revised NPPF and in regard to existing local policies, that '...due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 6.6 Officers have reviewed the Core Strategy and Development Management Local Plan for consistency with the revised NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 213 of the revised NPPF.

National Planning Practice Guidance 'NPPG' (2014 onwards)

- 6.7 On 6th March 2014, DCLG launched the National Planning Practice Guidance (NPPG) resource. This replaced a number of planning practice guidance documents, and is subject to continuous periodical updates in difference subject areas

The Development Plan

- 6.8 The London Plan, Lewisham's Core Strategy, together with the Site Allocations DPD, the Lewisham Town Centre Local Plan and the Development Management Local Plan and together constitute the borough's Development Plan.

London Plan (March 2016)

- 6.9 The Mayor of London published a draft London Plan on 29 November 2017 with minor modifications before the EIP were published on 13 August 2018. The EIP commenced on 15 January 2019. As such, this document now has some limited weight as a material consideration when determining planning applications. The relevant draft policies are listed below and discussed within the report. These are limited to policies that are materially different to existing London Plan policies.

The emerging London Plan policies relevant to this application are:

D1 London's form and characteristics
D2 Delivering good design
D12 Agent of change
D13 Noise
HC1 Heritage conservation and growth
HC6 Supporting the night-time economy

The policies in the current adopted London Plan (2016) relevant to this application therefore are:

Policy 2.15 Town centres
Policy 4.7 Retail and town centre development
Policy 7.4 Local character
Policy 7.8 Heritage assets and archaeology

Core Strategy (June 2011)

- 6.10 The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Spatial Policy 5 Areas of Stability and Managed Change
Core Strategy Policy 6 Retail hierarchy and location of retail development
Core Strategy Policy 15 High quality design for Lewisham
Core Strategy Policy 16 Conservation areas, heritage assets and the historic environment

Development Management Local Plan (November 2014)

- 6.11 The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Development Management Local Plan as they relate to this application:

- 6.12 The following policies are considered to be relevant to this application:

DM Policy 1 Presumption in favour of sustainable development
DM Policy 14 District centres shopping frontages
DM Policy 17 Restaurants and cafés (A3 uses) and drinking establishments (A4 uses)

DM Policy 26	Noise and vibration
DM Policy 30	Urban design and local character
DM Policy 36	New development, changes of use and alterations affecting designated heritage assets and their setting: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens

7.0 Planning Considerations

7.1 The main issues to be considered in respect of this application are:

- Principle of Development
- Impact on Adjoining Properties
- Impact on the Blackheath Conservation Area

Principle of Development

7.2 Guidance for determining s73 applications is set out in the NPPG, which states that a minor material amendment is one “whose scale and nature results in a development which is not substantially different from the one which has been approved”.

7.3 It is further stated that the development, which the application under s.73 seeks to amend, will by definition have been judged to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations are somewhat restricted and only the amendments being applied for should be considered at this stage. When determining the application the local planning authority have to consider the application in the light of current policy. The local planning authority therefore has to make a decision focusing on national or local policies, which may have changed significantly since the original grant of planning permission as well as the merits of the changes sought.

7.4 Officers are satisfied that the impact of the proposed amendments are minor material in the context of the original application.

7.5 Policy HC6 *Supporting the Night-time economy* of the emerging London Plan is also relevant to this application. Policy HC6 states that when considering planning decisions councils should have regard to protecting and supporting evening and night-time venues. The proposal to allow the forecourt to be used for outdoor dining would support the existing restaurant/bar business and given that the property is located within the Blackheath District Centre is considered to accord with this principle.

Impact on adjoining properties

7.6 The Council’s policy relating to Restaurants is DM Policy 17. DM Policy 17 states that applications for restaurants should demonstrate there is no harm to the living conditions of nearby residents, including that created by noise and disturbance from users and their vehicles, smell, litter and unneighbourly opening hours.

7.7 A proposal to vary condition 7 to allow the use of forecourt for outdoor dining has previously been proposed as part of application DC/09/72752. The application was

refused and dismissed on appeal as it was determined that outdoor seating would result in an un-neighbourly impact by virtue of excessive noise disturbance. In dismissing the appeal the inspector concluded that “customers/diners would bring noise disturbance not only of voices but from other factors like serving, use of cutlery on crockery and possibly scraping chairs as people fit into seating” and rejected the idea that this impact could be managed or the impact mitigated by a restriction of the hours of use.

- 7.8 The current proposal has been revised from the application refused and dismissed on appeal in 2010. The new proposal restricts the seating area to the left side of the front entrance next to Selwyn Court and Blackheath. The proposal would also restrict the hours of use to between midday and 8pm and reduce the number of covers from 24 to 16.
- 7.9 Lawn Terrace is predominantly residential however, the eastern end of the road at the junction with Blackheath Village is within the boundaries of the Blackheath District Centre and includes both Selwyn Court and 1 Lawn Terrace. The Blackheath District Centre was designated as part of the spatial strategy established by the Lewisham Core Strategy adopted in June 2011, subsequent to the refusal of application DC/09/72752. The application site is therefore no longer considered to be residential in character and as such the principle of an outside dining area at the property would now be considered appropriate given the current policy context. However, an assessment of the impact on the living condition of the residential accommodation located in the vicinity of the site is required.
- 7.10 The revisions made to the application restrict the dining area to eastern side of the forecourt, away from the residential part of Lawn Terrace. The seating area would be located approximately 12m from No.5 Lawn Terrace and would not directly adjoin the property as was the case with the previous application in 2009. Officers consider that this distance and the restricted operating hours would prevent any unacceptable impacts to the living conditions of the residential properties on Lawn Terrace by way of noise disturbance.
- 7.11 The distance between the forecourt and nearest window at Selwyn Court is approximately 7.5m. These windows serve the communal staircase for the entrance on Lawn Terrace and are located at first floor level and above. Selwyn Court addresses both Blackheath Village and Lawn Terrace. The building is mixed use with commercial premises at ground floor and is located within the Blackheath District Centre. The restrictions to the operating hours of the forecourt and the distance to the nearest residential windows are also considered sufficient to ensure a neighbourly impact to the residential accommodation on the upper floors.
- 7.12 It is noted that the objections from local residents reference a history of complaints relating to noise and other antisocial behaviour deriving from customers leaving the restaurant and entering Lawn Terrace. However, it is not clear that formalising the use of the forecourt would add to this problem given that the forecourt would have an increased staff presence to provide table service for the dining area, and would not be open for customer business later than 8pm in the evening. It is also noted that the Council’s Environmental Health Department did not raise any objections to the proposal.

- 7.13 Officers consider that the revisions made to the 2009 application would mitigate potential noise disturbances and other unneighbourly impacts to the surrounding residential properties. The proposal would therefore comply with DM Policy 17.

Impact on the Blackheath Conservation Area

- 7.14 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that (in summary) with respect to any buildings or other land in a conservation area, the Council is required to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area.
- 7.15 Chapter 16 of the revised NPPF relates to conserving and enhancing the historic environment. The principles and policies set out in Chapter 16 apply to the heritage-related consent regimes for which local planning authorities are responsible under the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as to plan-making, decision-taking and design.
- 7.16 The proposal does not include any external alterations to the property beyond the four tables to be located to the eastern side of the forecourt. Alfresco dining areas are an established part of the Blackheath District Centre and as such, the proposal is considered appropriate for a restaurant. The proposal is therefore considered to preserve the character of the Blackheath Conservation Area in accordance with DM Policy 36.

8.0 Local Finance Considerations

- 8.1 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:
- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown; or
 - (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).
- 8.2 The weight to be attached to a local finance consideration remains a matter for the decision maker.
- 8.3 The applicant has completed the relevant form however; CIL is not payable on this application

9.0 Equalities Considerations

- 9.1 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.2 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

- (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
- (c) foster good relations between people who share a protected characteristic and persons who do not share it.

9.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

9.4 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11, which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

9.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

9.6 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

9.7 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

10.0 Human Rights Implications

10.1 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way, which is incompatible with the European Convention on Human

Rights. "Convention" here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including

- Right to a fair trial
- Respect for your private and family life, home and correspondence
- Peaceful enjoyment of one's property

10.2 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as Local Planning Authority.

10.3 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with Convention rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

11.0 CONCLUSION

11.1 This application has been considered in the light of policies set out in the development plan and other material considerations.

11.2 Officers consider that the proposal would have an acceptable impact on the surrounding residential properties given the restrictions to the area of the forecourt being used for alfresco dining and the proposed operating hours. The modest changes to the exterior of the property would ensure that the development would preserve the character and appearance of the Blackheath Conservation Area. Therefore, the proposed development is recommended for approval.

RECOMMENDATION

GRANT PERMISSION subject to the following conditions:-

- (1) The ground floor bar area shall not be used other than as ancillary accommodation to the first floor restaurant and shall not be used as a separate trade or business.

Reason: In order that the Council may be satisfied as to the intensity of the use and to safeguard the amenities of adjoining occupiers and the area generally in accordance with DM Policy 17 Restaurants and cafés (A3 uses) and drinking establishments (A4 uses).

- (2) The windows at ground floor level shown on drawing nos.7178/003 and 7178/004 shall not be opened at any time during customer opening hours.

Reason: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with DM Policy 17 Restaurants and cafés (A3 uses) and drinking establishments (A4 uses) and DM Policy 26 Noise

and Vibration of the Development Management Local Plan (November 2014).

- (3) The approved ventilation system shall be permanently maintained in accordance with the approved specification.

Reason: To safeguard the amenities of the adjoining premises and the area generally and to comply with Policy 17 Restaurants and cafes (A3 uses) and drinking establishments (A4 uses) of the Development Management Local Plan (November 2014).

- (4) No music or amplified sound system shall be used which is audible outside the premises or within adjoining buildings.

Reason: To safeguard the amenities of the adjoining premises and the area generally and to comply with Paragraph 120 of the National Planning Policy Framework and DM Policy 26 Noise and Vibration of the Development Management Local Plan (November 2014).

- (5) The premises shall not be open for customer business between the hours of 24:00 and 8.00.

Reason: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with Paragraph 120 of the National Planning Policy Framework and, DM Policy 17 Restaurants and cafés (A3 uses) and drinking establishments (A4 uses) and DM Policy 26 Noise and Vibration of the Development Management Local Plan (November 2014).

- (6) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 2015 or any Order revoking, amending or re-enacting that Order, the premises shall not be used for any purpose other than the sale of food or drink for consumption on the premises, except with the prior consent of the local planning authority.

Reason: To ensure that the use does not result in parking and congestion in surrounding streets, and to safeguard the amenities of adjacent premises.

- (7) The outdoor seating area in the front forecourt shall be used in accordance with plan no. LC/BH/500/01 and shall only be open for customer business between the hours of 12:00 and 20:00.

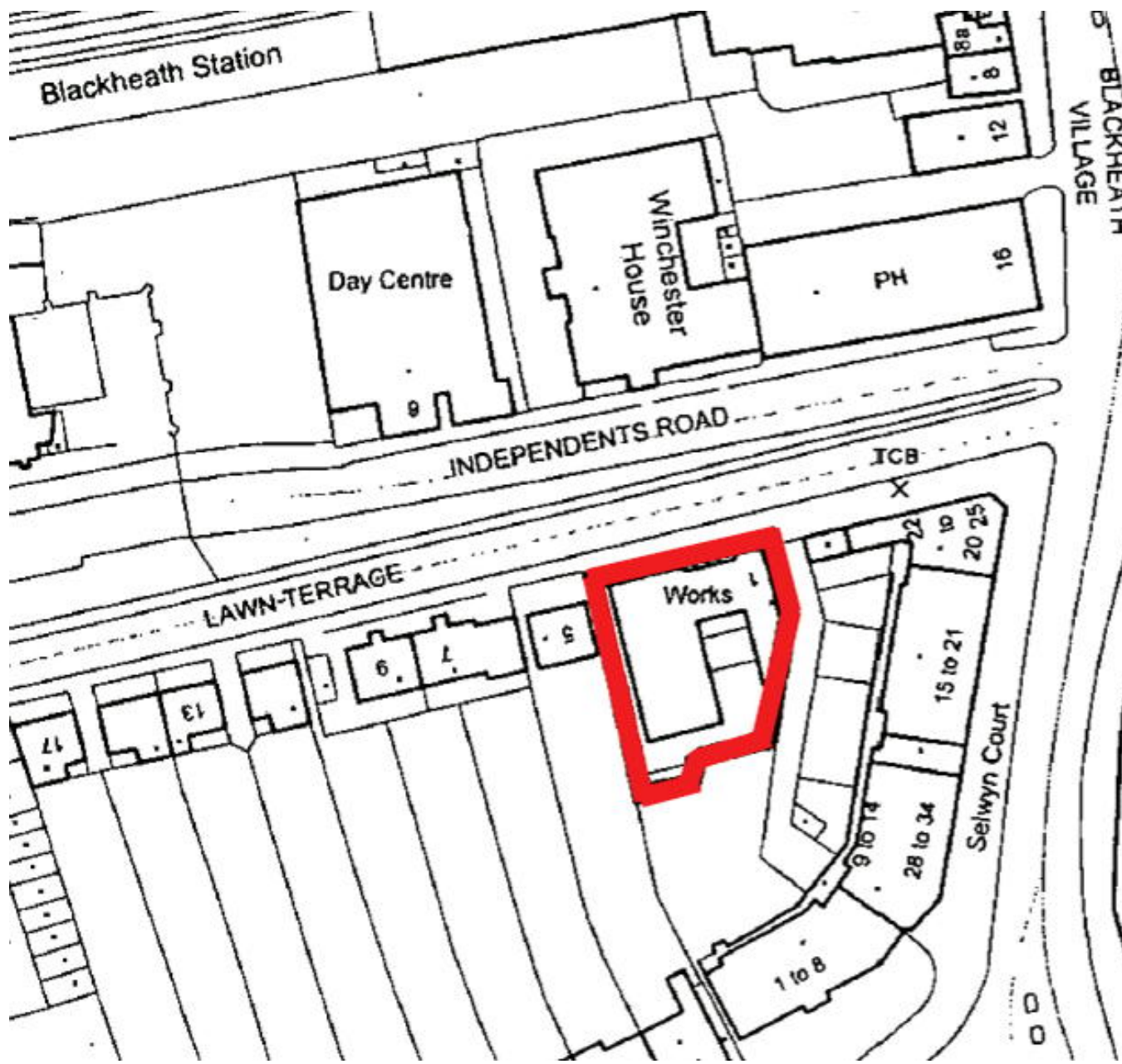
Reason: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with Paragraph 120 of the National Planning Policy Framework and, DM Policy 17 Restaurants and cafés (A3 uses) and drinking establishments (A4 uses) and DM Policy 26 Noise and Vibration of the Development Management Local Plan (November 2014).

INFORMATIVES

- (1) **Positive and Proactive Statement:** The Council engages with all applicants in a positive and proactive way through specific pre-application

enquiries and the detailed advice available on the Council's website. On this particular application, positive discussions took place, which resulted in further information being submitted.

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Committee	PLANNING COMMITTEE B	
Report Title	50-52 Rushey Green SE6 4JD	
Ward	Rushey Green	
Contributors	Amanda Ghani	
Class	PART 1	25 th April 2019

<u>Reg. Nos.</u>	DC/18/108925
<u>Application dated</u>	14/09/18
<u>Applicant</u>	Planning Potential
<u>Proposal</u>	An application submitted under Section 73 of the Town & Country Planning Act 1990 for a variation of the wording of Condition (12) of the planning permission DC/96/40423 dated 21 February 1997 and further amended on appeal in DC/14/88926 dated 14 August 2015 from 'No deliveries shall be taken or despatched from the site outside the hours of 7am and 11pm on Mondays to Saturdays and 9am to 6pm on Sundays and Bank Holidays' to 'No deliveries shall be taken or despatched from the site outside the hours of 7am and 11pm on Monday to Saturday and 9am and 9pm on Sundays and Bank Holidays' at 50-52 Rushey Green, London, SE6 4JD.
<u>Applicant's Plan Nos.</u>	Site Location Plan; Acoustic Consultants Report dated 14 September 2018
<u>Background Papers</u>	(1) Case File LE/857/42/TP (2) Core Strategy (June 2011) (3) Development Management Local Plan (November 2014) (4) London Plan (March 2016)
<u>Designation</u>	PTAL 26A Shopping Non-Core Area Major District Centre Area of Archaeological Priority Not in a Conservation Area Not a Listed Building A Road
<u>Screening</u>	N/A

1.0 PROPERTY/SITE DESCRIPTION

- 1.1 The property is an Aldi supermarket, located on a corner site, bounded by Rushey Green (A21) and Bradgate Road. The property is occupied by a single-storey supermarket building.
- 1.2 The property is within the Catford Town Centre area. It is designated as a secondary shopping frontage in the Lewisham Core Strategy. It is not within a Conservation Area and is not within the vicinity of any listed buildings. There are no Article 4 directions applying to the property.

2.0 RELEVANT PLANNING HISTORY

DC/96/40423: An outline application for the redevelopment of the site of 42/52 Rushey Green SE6 and land at the rear with a single storey food retail store of approx. 1325m² and 102 parking spaces with access onto Bradgate Road. Granted.

DC/06/62935: The construction of extensions to the sides of the Aldi Store, 42-52 Rushey Green SE6, to provide a loading bay, staff room, new entrance/exit and additional retail floor space, together with alterations to the elevations. Granted 20/09/06

DC/06/63931: The display of one internally illuminated freestanding sign and one internally illuminated fascia sign at 42-52 Rushey Green SE6. Granted 5/12/06

DC/06/64257: The construction of extensions to the sides of the Aldi Store, to provide a loading bay, staff room, new entrance/exit and additional retail floor space, together with alterations to the elevations. Amendment to DC/06/62935. Granted 23/01/07. **DC/09/72444** - Planning application for the erection of an extension on the rear of the existing building. Granted 31/05/11.

DC/13/084584 - The construction of two extensions to the gable ends of the existing retail unit at Aldi Stores, 42-52 Rushey Green SE6 to provide additional retail area (277sq.m. gross floor space) together with alterations to the shopfront, main entrance, delivery area, landscaping and other external alterations. Granted 25/02/14

DC/14/86863 – The display of 7 non-illuminated advertisement graphic glazing panels to be fixed to the front and rear elevations of Aldi Store 50-52 Rushey Green SE6. Granted 14/12/18.

DC/14/087398 - Section 73 application to vary Condition 2 of permission DC/13/84584 for minor material amendments to the permitted scheme including revised canopy (separated into two separate canopies, extended on the east elevation and the chamfer removed), Entrance and Exit with canopy and glazed doors introduced to the Rushey Green elevation, Staff window retained as existing on the Rushey Green elevation, Fire door removed from the east elevation and relocated to the Rushey Green elevation by the staff window, Seven parent and child spaces amended to three, Additional shopfront glazing to the east elevation, Steps revised to a ramp by the fire exit on the car park elevation, Roof access ladder shown by service ramp, Bin store relocated, Disabled car parking spaces reduced from eight to five, Reduced warehouse area to allow for increased retail

area, Hatched path provided for use by parent and child and disabled designated spaces, Steps provided to footpath by service ramp. Granted 26/06/14

DC/14/88520 - The display of 3 X internally illuminated and 2 x non-illuminated canopy fascia signs & 1 x above fascia level internally illuminated sign on Bradgate Road elevation and 1 x non-illuminated & 2 x internally illuminated canopy fascia signs on Rushey Green elevation at Aldi Store 50-52 Rushey Green SE6. Granted 24/01/19.

DC/14/88854 - Installation of two post mounted internally illuminated advertisement signs at the corner of Rushey Green and Bradgate Road. Granted 06/12/18

DC/14/88926 - An application submitted under Section 73 of the Town & Country Planning Act 1990 for a variation of the wording of Condition 4 of the planning permission DC/96/040423 dated 21 February 1997 from ' the premises shall not be open for customer business between the hours of 8pm and 8am on any day of the week to 'the premises shall not be open for customer business between the hours of 10pm and 8am on any day of the week' and a variation of Condition 12 from 'No deliveries shall be taken or despatched from the site outside the hours of 7am and 9pm on Mondays to Saturdays and not at all on Sundays and Bank Holidays to ' No deliveries shall be taken or despatched from the site outside the hours of 6am and 11pm on Monday to Saturday and 7am and 11pm on Sundays and Bank Holidays' at 50-52 Rushey Green, London, SE6 4JD. Refused 26/11/14 due to:-

The extension to the trading and delivery hours have resulted in a significant impact on the amenities of neighbouring residents by way of increased noise, disruption and general disturbance contrary to Saved Policies HSG 4 Residential amenity and ENV.PRO 11 Noise Generating Development of the Unitary Development Plan (2004) and DM Policy 26 Noise and vibration of the Development Management Local Plan - Post EiP Version (July 2014).

The application was subsequently appealed, the appeal was allowed, and planning permission granted on 14th August 2015. The inspector considered in his report that an extension to the store opening times in the evening although likely to marginally increase noise levels, would still be within World Health Organisation daytime guidelines of 55dB.

DC/15/091578 - An application submitted under S73 of the Town and Country Planning Act 1990 for a minor material amendment in connection with the planning permission (DC/96/40423) dated 11 September 1996 for the erection of a single storey food retail store of 1,325sqm together with servicing area and 102 parking spaces with access from Bradgate Road on the site of 42-52 Rushey Green SE6 and land at the rear; in order to amend the wording of Condition (4) from 'The premises shall not be open for customer business between the hours of 8pm and 8am on any day of the week' to 'The premises shall not be open for customer business between the hours of 10pm and 8am on any day of the week'. Refused 25/06/15 due to:-

The extension to the trading hours have resulted in a significant impact on the amenities of neighbouring residents by way of increased noise, disruption and

general disturbance contrary to the National Planning Policy Framework (2012), Policy 7.15 Reducing noise and enhancing soundscapes of the London Plan (2015) and DM Policy 26 Noise and vibration of the Development Management Local Plan (November 2014).

DC/15/091583 - An application submitted under Section 73 of the Town and Country Planning Act 1990 for a minor material amendment in connection with the planning permission (DC/96/40423) dated 11 September 1996 for the erection of a single storey food retail store of 1,325sqm together with servicing area and 102 parking spaces with access from Bradgate Road on the site of 42-52 Rushey Green SE6 and land at the rear; **in order to amend the wording of Condition (12) from 'No vehicular deliveries shall take place to the retail food store other than between the hours of 7 am and 9 pm on Mondays to Saturdays and not at all on Sundays and Bank Holidays' to 'No vehicular deliveries shall be taken or despatched from the site outside the hours of 6am and 11pm on Monday to Saturday and 7am to 11pm on Sundays'. Refused 18/06/15 due to:-**

The extension to the delivery hours has resulted in a significant impact on the amenities of neighbouring residents by way of increased noise, disruption and general disturbance contrary to the National Planning Policy Framework (2012), Policy 7.15 Reducing noise and enhancing soundscapes of the London Plan (2015) and DM Policy 26 Noise and vibration of the Development Management Local Plan (November 2014).

In July 2014, a Section 80 Notice was served on the store because of noise generated from the deliveries, which was witnessed by colleagues from the noise team at that time.

EN/14/00402 – an enforcement case was opened as a complaint was received in October 2014 regarding the Aldi Store operating beyond permitted trading and delivery hours.

Noise from deliveries appears to have been reduced as there have been no further complaints made to either the Environmental Protection or Planning Enforcement teams

3.0 CURRENT PLANNING APPLICATION

3.1 The current application seeks to extend the hours of delivery on Sundays and Bank Holidays by 3 hours from 9am to 6pm to 9am to 9pm.

3.2 Condition 12 of the original planning permission, stated that 'No vehicular deliveries shall take place to the retail food store other than between the hours of 7am and 9pm Mondays to Saturdays and not at all on Sundays and Bank Holidays.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

3.3 Application DC/14/88926 sought to change the wording of condition 12 to ' No deliveries shall be taken or despatched from the site outside the hours of 6am and 11pm on Monday to Saturday and 7am and 11pm on Sundays and Bank Holidays'

3.4 The inspector considered such delivery hours would result in a significant adverse impact on the health and quality of life of occupiers of neighbouring residential properties. However, the appellant in their appeal statement suggested an alternative delivery hours condition, which reads as follows: 'No deliveries shall be taken or dispatched from the site outside the hours of 7am and 11pm Monday to Saturday and 9am to 6pm Sundays and Bank Holidays'. The inspector found this to be acceptable and added the following conditions to the approval.

- No deliveries shall be taken or despatched from the site outside the hours of 07.00 and 23.00 Monday to Saturday and 09.00 to 18.00 Sundays and Bank Holidays.
- The refrigeration of all delivery/collection vehicles shall be switched off prior to arrival at the store between the hours of 22.00 and 08.00
- The reversing alarms and all other audible alarms/warning devices of all delivery/collection vehicles shall be switched off whilst at the store between the hours of 22.00 and 08.00.
- The engines of all delivery/collection vehicles shall be switched off when not manoeuvring and no horns sounded or radios used (except in an emergency) between the hours 22.00 and 08.00.

3.5 The inspector concluded that the conditions would be sufficient mitigation measures for noise reduction. With regards to the current application, the last three conditions are proposed to remain as existing and are numbered as Conditions 12, 13 and 14.

3.6 According to the applicant, the proposal has been submitted due to the existing Sunday and Bank Holiday delivery hours remaining a constraint on ALDI's ability to operate and trade efficiently, in line with customer growth in recent years.

4.0 CONSULTATION

4.1 This section outlines the consultation carried out by the Council following the submission of the application and summarises the responses received. The Council's consultation exceeded the minimum statutory requirements and those required by the Council's adopted Statement of Community Involvement.

4.2 A site notice was displayed and letters were sent to residents and business in the surrounding area and the relevant ward Councillors. Four responses were received objecting to the proposed development. The following concerns are material considerations and are summarised below.

4.3 Councillor Walsh asked this matter to be referred to a planning committee if officers were minded to approve the variation to the condition.

5.0 POLICY CONTEXT

Introduction

- 5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-
- (a) the provisions of the development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and
 - (c) any other material considerations.
- 5.2 A local finance consideration means:-
- a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or
 - b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).
- 5.3 Section 38(6) of the Planning Compulsory Purchase Act 2004 makes it clear that 'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'. The development plan for Lewisham comprises the Core Strategy, Development Plan Document (DPD) (adopted in June 2011), DMLP (adopted in November 2014) and policies in the London Plan (March 2016). The NPPF does not change the legal status of the development plan.

National Planning Policy Framework (NPPF) 2019

- 5.4 The revised NPPF, originally published in 2012, was revised on 19th February 2019 and is a material consideration in the determination of planning and related applications.
- 5.5 It contains at paragraph 11, a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on its implementation. In summary, this states in paragraph 213, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF and in regard to existing local policies, that '...due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 5.6 Officers have reviewed the Core Strategy and Development Management Local Plan for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 213 of the NPPF.

National Planning Practice Guidance 'NPPG' (2014 onwards)

- 5.7 On 6th March 2014, DCLG launched the National Planning Practice Guidance (NPPG) resource. This replaced a number of planning practice guidance documents, and is subject to continuous periodical updates in difference subject areas. Paragraph 180 refers to noise.

London Plan (March 2016)

- 5.8 The London Plan was updated on the 14 March 2016 to incorporate Housing Standards and Parking Standards Minor Alterations to the London Plan (2015).

The Mayor of London published a draft London Plan on 29 November 2017 and minor modifications were published on 13 August 2018. The Examination in Public commenced on 15 January 2019 and is scheduled to conclude on 17 May 2019. This document now has some limited weight as a material consideration when determining planning applications. The relevant draft policies are discussed within the report (DLPP). The policies in the current adopted London Plan (2016) relevant to this application are:

Policy 2.15 Town centres
Policy 4.7 Retail and town centre development
Policy 4.8 Supporting a successful and diverse retail sector
Policy 4.9 Small shops
Policy 7.4 Local character
Policy 7.6 Architecture

London Plan Supplementary Planning Guidance (SPG)

5.9 The London Plan SPG's relevant to this application are:-

Town Centres (July 2014)

Core Strategy

5.10 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together the Development Management Local Plan and the London Plan is the borough's statutory development plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Spatial Policy 1 Lewisham Spatial Strategy
Spatial Policy 2 Regeneration and Growth Areas
Core Strategy Policy 6 Retail hierarchy and location of retail development
Core Strategy Policy 14 Sustainable movement and transport

Development Management Plan

5.11 The Development Management Local Plan was adopted by the Council at its meeting on 26 November 2014. The Development Management Local Plan, together with the Core Strategy and the London Plan is the borough's statutory development plan. The following policies are relevant to this application:-

DM Policy 1 Presumption in favour of sustainable development
DM Policy 13 Location of main town centre uses
DM Policy 14 District Centres shopping frontages
DM Policy 26 Noise and vibration

6.0 PLANNING CONSIDERATIONS

Impact on adjoining properties.

6.1 The application is seeking approval to vary a condition under S.73 of the Town and Country Planning Act 1990. A minor material amendment is one "whose scale

and nature results in a development which is not substantially different from the one which has been approved". Whilst this is not a statutory definition it is acknowledged as appropriate by the Planning Authority.

- 6.2 It is important for the mental health and wellbeing of residents that noise is managed to the right levels in the right areas. The borough contains both noise generating uses and locations that are sensitive to noise and thus DM Policy 26 is required to ensure the interaction between such areas is avoided if possible and mitigated if not.
- 6.3 The site is located within a major town centre within a secondary shopping frontage. The retail unit is located on Rushey Green, with a large car park to the rear that is accessed from Bradgate Road. The site experiences a high level of footfall and vehicular movement. The NPPF promotes competitive town centre environments and recognises that town centres are integral to communities and therefore their viability and vitality should be supported. Given the location, officers consider that the principle of extending the hours of deliveries would be considered acceptable, subject to an assessment of the impact on neighbouring amenity.
- 6.4 The store's car park is surrounded to the north, south and west by residential properties, which back onto the site. The primary entrance for car park users is located to the rear of the store, whilst pedestrians use the entrance to the front, off Rushey Green. The delivery point is to the south of the site.
- The surrounding residential properties are considered to be noise sensitive. Careful consideration therefore needs to be given to the impact of the extended delivery hours on these neighbouring properties.
- 6.5 There are a number of historic complaints that have been made to the Council's Environmental Health Department regarding noise and disturbance, specifically relating to the noise generated by deliveries. Objections have been received with regards to the current application, from neighbouring properties that specifically relate to noise and general disturbance from the comings and goings of customers and by deliveries..
- 6.6 The applicant has provided an Environmental Noise Report. The report outlines the World Health Organisation Guidelines, contains a noise assessment, a noise survey that was undertaken on Sunday 6th August 2018 and the assessment results.
- 6.7 According to the Environmental Noise Report, assessment results show background sound levels on a Sunday to be 49dB L at 18.00 hours reducing to 46dB L by 21.00 hours. Predicted delivery activity noise levels at this time would be 41dB L. It is considered that noise from delivery activity will be perceptible, resulting in a slight/moderate impact, however it would be below existing ambient noise levels and below the World Health Organisation day time guideline of 55dB L.
- 6.8 Aldi Stores use a level dock delivery process whereby vehicles reverse up to the loading bay located at the store. The goods are wheeled in cages directly off the lorry and into the warehouse without the use of a tailgate or any lifting equipment.

The applicant states that this allows any noise resulting from deliveries to be minimised. This arrangement is already established at the subject store.

The proposal does not increase the number of deliveries taking place but rather looks to extend the delivery window.

- 6.9 The Council's Environmental Health Officer has assessed the submitted report and has raised a concern that by extending the delivery window, additional deliveries could be received which could impact on local residents. Restricting the number of deliveries to the store is not something that can be conditioned. The possibility of an increased or decreased number of deliveries therefore would remain as existing. However, In the applicant's covering letter and in the summary section (P.15) of the Environmental Noise Report it states that, "the overall number of deliveries will remain the same".
- 6.10 Whilst the store has not operated in accordance with previously imposed planning conditions in the past, officers can confirm that there have been no recent complaints of such breaches to The Environmental Health Team or Planning Enforcement. However, as pointed out in the Inspectors report (APP/C5690/W/15/3009050) the imposed conditions are enforceable and it is up to the Local Planning Authority to ensure that proper monitoring and enforcement takes place should the need arise.
- 6.11 Having taken all the above in to consideration, officers are of the opinion that the proposed change in delivery hours for Sundays and Bank holidays to be acceptable.

7.0 HUMAN RIGHTS ACT

- 7.1 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way, which is incompatible with the European Convention on Human Rights. "Convention" here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including:
- Right to a fair trial
 - Respect for your private and family life, home and correspondence
 - Peaceful enjoyment of one's property
- 7.2 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as Local Planning Authority. Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with Article 8 rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

8.0 EQUALITIES CONSIDERATIONS

- 8.1 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.2 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- a. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - b. advance equality of opportunity between people who share a protected characteristic and those who do not;
 - c. foster good relations between people who share a protected characteristic and persons who do not share it.
- 8.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 8.4 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 8.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 8.6 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8.7 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

9.0 CONCLUSION

9.1 The Local Planning Authority has considered the particular circumstances of the application against relevant planning policy set out in the Development Management Local Plan (2014), the Core Strategy (2011), London Plan (March 2016) and the revised National Planning Policy Framework (2019).

9.2 The extension to the delivery hours from 6pm to 9pm on Sundays and Bank Holidays would not result in a significant impact on the amenities of neighbouring residents by way of increased noise, disruption or general disturbance and would not be contrary to current planning policy. For these reasons, it is recommended permission is granted

10.0 RECOMMENDATION

Authorise the Head of Planning to **GRANT PLANNING PERMISSION** subject to conditions, including those set out below and with such amendments as are considered appropriate to ensure the acceptable implementation of the development.

- (a) In the case of any reserved matter, application for approval must be made not later than expiration of 3 years beginning with the date of the grant of this outline planning permission dated 21st February 1997.
- (b) The development to which this permission relates must be begun not later than:
 - (i) The expiration of 5 years from the date of the grant of outline planning permission.
If later, the expiration of 2 years from the final approval to the reserved matters or, in the case of approval on different dates the final approval of the last matter to be approved.

- 1) Loading or unloading of goods including fuel, shall only be carried out within the curtilage of the building and/or site, and any such servicing area and shall be retained permanently and left unobstructed at all times.

Reason: To avoid obstruction of neighbouring streets and to safeguard the amenities of adjacent premises.

- 2) The whole of the car parking accommodation shown on the drawing shall be provided and retained permanently for the accommodation of vehicles of the occupiers (including employees using the building and persons calling at the building for the purposes of conducting business with the occupiers thereof), and the premises shall not be occupied until such car parking accommodation has been provided.

Reason: To ensure the permanent retention of the space for parking purposes and ensure that the use of the building does not increase on-street parking in the vicinity.

- 3) The premises shall not be open for customer business between the hours of 10pm and 8am on any day of the week.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

- 4) Access to the development for people with disabilities shall be permanently maintained thereafter to the satisfaction of the local planning authority.

Reason: In order to comply with the requirements of Section 76 of the Town and Country Planning Act 1990 and the Code of Practice for Access of the Disabled to Buildings (BS5810: 1979) which relate to satisfactory access to buildings for people with disabilities.

- 5) The existing car parking spaces designed in accordance with the local planning authority's adopted car parking standards for people with disabilities shall be retained in perpetuity.

Reason: In order to comply with the requirements of Section 76 of the Town and Country Planning Act 1990 which relates to the provision of satisfactory access to buildings for people with disabilities.

- 6) No music or amplified sound system shall be used which is audible outside the premises or within adjoining buildings.

Reason: To safeguard the amenities of the adjoining premises and the area generally.

- 7) Details of any plant machinery to be used on the premises shall be submitted to and approved in writing by the Council before the use hereby approved commences, and any soundproofing considered necessary by the Council shall be installed and maintained permanently to the satisfaction of the Council.

Reason: To safeguard the amenities of the adjoining premises and the area generally

- 8) Details of any extraction, ventilation, air conditioning or refrigeration plant or machinery to be used on the premises shall be submitted to and approved in writing by the local planning authority before the use hereby approved commences, and any soundproofing considered necessary by the local planning authority shall be installed and maintained permanently to the satisfaction of the Council.

Reason: To safeguard the amenities of the adjoining premises and the area generally

- 9) No deliveries shall be taken or despatched from the site outside the hours of 07.00 and 23.00 Monday to Saturday and 09.00 to 21.00 Sundays and Bank Holidays.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

- 10) Details of a scheme of management of the proposed car park to ensure that spaces are occupied solely by the vehicles of customers and staff shall be submitted to any approved in writing by the local planning authority prior to the commencement of development and shall be implemented and maintained permanently to the satisfaction of the local planning authority.

Reason: To ensure that the use of the building does not increase on-street parking in the vicinity.

- 11) Details of any floodlighting and/or security lighting to the building shall be submitted to and approved by the local planning authority before installation.

Reason: To protect the amenities of adjoining residents.

- 12) The refrigeration of all delivery/collection vehicles shall be switched off prior to arrival at the store between the hours of 22.00 and 08.00

Reason: To protect the amenities of adjoining residents

- 13) The reversing alarms and all other audible alarms/warning devices of all delivery/collection vehicles shall be switched off whilst at the store between the hours of 22.00 and 08.00.

Reason: To protect the amenities of adjoining residents

- 14) The engines of all delivery/collection vehicles shall be switched off when not manoeuvring and no horns sounded or radios used (except in an emergency) between the hours 22.00 and 08.00.

Reason: To protect the amenities of adjoining residents

INFORMATIVES

Positive and Proactive Statement: The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application, no pre-application advice was sought. However, the proposal was clearly in accordance with the Development Plan.

The applicant is advised that there are no outstanding conditions attached to DC/96/040423 that still require information to be submitted for approval

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