

Committee	Strategic Planning Committee	
Report Title	Former car parks, Tesco Store, 209 Conington road, SE13	
Ward	Lewisham Central	
Contributors	Michael Forrester	
Class	PART 1	17 <sup>th</sup> July 2018

Reg. Nos.

DC/17/101621

Application dated

15.05.2017

Applicant

Ms H Phipps (Lichfields, on behalf of Meyer Homes)

Proposal

Construction of three buildings, measuring 8, 14 and 34 storeys in height, to provide 365 residential dwellings (use class C3) and 554.sqm gross of commercial/ community/ office/ leisure space (Use Class A1/A2/A3/ B1/ D1/ D2) with associated access, servicing, energy centre, car and cycle parking, landscaping and public realm works at the former car parks, Tesco Store, 209 Conington Road SE13.

Applicant's Plans and Documents.

10472-EPR-ZA-ZZ-TP-A-0100 rev 02; 10472-EPR-ZA-ZZ-TP-A-001 rev 02; 10472-EPR-ZA-AA-TP-A-002 rev 02; 10472-EPR-ZA-BB-TP-A-003 rev 02; 10472-EPR-ZA-CC-TP-A-004 rev 02; 10472-EPR-ZA-ZZ-TP-A-0101 rev 04; 10472-EPR-ZA-B1-TP-A-102 rev 02; 10472-EPR-ZA-GF-TP-A-103 rev 04; 10472-EPR-ZA-01-TP-A-104 rev 04; 10472-EPR-ZA-T1-TP-A-0105 rev 04; 10472-EPR-ZA-RF-TP-A-106 rev 05; 10472-EPR-ZA-AA-TP-A-0500 rev 03; 10472-EPR-ZA-BB-TP-A-0501 rev 04; 10472-EPR-ZA-CC-TP-A-0502 rev 04; 10472-EPR-ZA-DD-TP-A-0503 rev 03; 10472-EPR-ZA-EE-TP-A-0504 rev 02; 10472-EPR-ZA-FF-TP-A-0505 rev 04; 10472-EPR-01-GF-TP-A-0200 rev 04; 10472-EPR-01-01-TP-A-0201 rev 04; 10472-EPR-01-T1-TP-A-0202 rev 05; 10472-EPR-01-GF-TP-A-0203 rev 06; 10472-EPR-01-01-TP-A-0204 rev 04; 10472-EPR-01-T1-TP-A-0205 rev 04; 10472-EPR-01-15-TP-A-0206 rev 04; 10472-EPR-01-30-TP-A-0207 rev 04; 10472-EPR-01-T2-TP-A-0208 rev 04; 10472-EPR-01-33-TP-A-0209 rev 04; 10472-EPR-01-RF-TP-A-0210 rev 05; 10472-EPR-01-RF-TP-A-0211 rev 05; 10472-EPR-01-XX-TP-A-0212 rev 01; 10472-EPR-01-XX-TP-A-0213 rev 01; 10472-EPR-01-NO-TP-A-0400 rev 04; 10472-EPR-01-EA-TPA-0401 rev 04; 10472-EPR-01-WE-TP-A-0402 rev 04; 10472-EPR-01-SO-TP-A-0403 rev 04; 10472-EPR-01-XX-TP-A-0404 rev 03; 10472-EPR-01-XX-TP-A-0405 rev 03; 10472-EPR-01-XX-TP-A-0406 rev 03; 10472-EPR-01-XX-TP-A-0407 rev 03; 10472-EPR-01-XX-TP-A-0408 rev 03; 10472-EPR-01-XX-TP-A-0409 rev 03; 10472-EPR-01-XX-TP-A-0410 rev 03; 10472-EPR-01-XX-TP-A-0411 rev 03; 10472-EPR-01-XX-TP-A-0412 rev 03; 10472-EPR-01-XX-TP-A-0412 rev 03; 10472-EPR-01-XX-TP-A-0413 rev 04; 10472-EPR-01-XX-TP-A-0414 rev 04; 10472-EPR-01-AA-TP-A-0500 rev 04; 10472-EPR-01-BB-TP-A-0501 rev 04; 10472-EPR-02-B1-TP-A-0299 rev 04; 10472-EPR-02-GF-TP-A-0200 rev 07; 10472-EPR-02-01-TP-A-0201 rev 06; 10472-EPR-02-02-TP-A-0202 rev 06; 10472-EPR-02-03-TP-A-0203 rev 06; 10472-EPR-02-04-TP-A-0204 rev 06; 10472-EPR-02-05-TP-A-0205 rev 06; 10472-EPR-02-06-TP-A-0206 rev 06; 10472-EPR-02-07-TP-A-0207 rev 06; 10472-EPR-02-08-TP-A-0208 rev 06; 10472-EPR-02-09-TP-A-0209 rev 06; 10472-EPR-02-10-TP-A-0210 rev 06; 10472-EPR-02-11-TP-A-0211 rev 06; 10472-EPR-02-12-TP-A-

0212 rev 06; 10472-EPR-02-13-TP-A-0213 rev 06; 10472-EPR-02-RF-TP-A-0214 rev 06; 10472-EPR-02-ZZ-TP-A-0215 rev 02; 10472-EPR-02-ZZ-TP-A-0216 rev 02; 10472-EPR-02-ZZ-TP-A-0217 rev 02; 10472-EPR-02-ZZ-TP-A-0218 rev 02; 10472-EPR-02-ZZ-TP-A-0219 rev 02; 10472-EPR-02-ZZ-TP-A-0220 rev 02; 10472-EPR-03-ZZ-TP-A-0221 rev 02; 10472-EPR-03-ZZ-TP-A-0222 rev 01; 10472-EPR-03-ZZ-TP-A-0223 rev 01; 10472-EPR-03-ZZ-TP-A-0224 rev 01; 10472-EPR-03-ZZ-TP-A-0225 rev 01; 10472-EPR-ZA-ZZ-TP-A-0226 rev 01; 10472-EPR-02-EL-TP-A-0400 rev 04; 10472-EPR-02-EL-TP-A-0401 rev 04; 10472-EPR-02-EL-TP-A-0402 rev 05; 10472-EPR-03-EL-TP-A-0403 rev 03; 10472-EPR-03-EL-TP-A-0404 rev 03; 10472-EPR-03-EL-TP-A-0405 rev 04; 10472-EPR-03-EL-TP-A-0406 rev 04; 10472-EPR-02-XX-TP-A-0407 rev 04; 10472-EPR-02-XX-TP-A-0408 rev 03; 10472-EPR-02-XX-TP-A-0409 rev 03; 10472-EPR-02-XX-TP-A-0410 rev 03; 10472-EPR-02-XX-TP-A-0411 rev 02; 10472-EPR-02-XX-TP-A-0412 rev 02; 10472-EPR-03-XX-TP-A-0413 rev 05; 10472-EPR-03-XX-TP-A-0414 rev 04; 10472-EPR-03-XX-TP-A-0415 rev 02; 10472-EPR-02-XX-TP-A-0416 rev 01; 10472-EPR-02-XX-TP-A-0417 rev 01; 10472-EPR-02-XX-TP-A-0418 rev 01; 10472-EPR-02-XX-TP-A-0419 rev 01; 10472-EPR-02-XX-TP-A-0420 rev 01; 10472-EPR-03-XX-TP-A-0421 rev 01; 10472-EPR-03-XX-TP-A-0422 rev 01; 10472-EPR-02-GS-TP-A-0500 rev 04; 10472-EPR-02-GS-TP-A-0501 rev 04; 10472-EPR-03-GS-TP-A-0502 rev 04; 10472-EPR-02-EL-TP-A-0503 rev 03; 10472-EPR-02-EL-TP-A-0504 rev 04; 10472-EPR-02-EL-TP-A-0505 rev 04; BMD.200.DR.P001 rev c; BMD.200.DR.P101 rev c; BMD.200.DR.P102 rev c; BMD.200.DR.P103 rev a; BMD.200.DR.P104 rev c; BMD.200.DR.P106 rev a; BMD.200.DR.P107 rev B; BMD.200.DR.P108 rev a; BMD.200.DR.P201 rev b; BMD.200.DR.P202 rev a; BMD.200.DR.P300 rev a; BMD.200.DR.P301 rev c; BMD.200.DR.P302 rev b

Background Papers

Case File LE/150/E/TP  
Local Development Framework Documents, SPG/SPD, The London Plan (Consolidated with Alterations since 2011) (2016), and Mayor of London's SPG & Best Practice Guidance

Designation

London Plan – Opportunity Area, Regeneration Area, Major Town Centre. Core Strategy – Regeneration and Growth Area, Lewisham Town Centre, Lewisham Town Centre Local Plan – 'Edge of Centre', Conington Road site S6 (allocation for residential-led mixed use development). Flood Zone 1 and Air Quality Management Area.

EIA Screening/Scoping

The Local Planning Authority (LPA) advised that an Environmental Statement (ES) would need to accompany a planning application in response to a scoping request made under Regulation 13 of the Town and Country Planning (EIA) Regulations 2011 (as amended) decision dated 6 December 2016, application reference DC/16/99000.

## **1.Introduction**

- 1.1. This paper which is presented to Members and should be read in conjunction with the background papers of the 12 December 2017 Strategic Planning Committee Report and addendum report and the 3<sup>rd</sup> April 2018 Strategic Planning Committee Report.

## **2.Background**

- 2.1. The application for the redevelopment of the former Tesco Car parks was submitted by Meyer Homes in July 2017 for the construction of three buildings, measuring 8, 14 and 34 storeys in height, to provide 365 residential dwellings (use class C3) and 554.sqm gross of commercial/ community/ office/ leisure space (Use Class A1/A2/A3/ B1/ D1/ D2) with associated access, servicing, energy centre, car and cycle parking, landscaping and public realm works.
- 2.2. This application was presented to the Lewisham Strategic Planning Committee on the 12<sup>th</sup> December 2017 with a recommendation for approval. This was deferred for the following reasons:
  1. A review of the affordable housing mix to ensure that it is locally sensitive (Reason for Deferral 1).
  2. A review of Building B1 to ensure that it is able to provide public benefit (Reason for Deferral 2).
  3. A review of the landscaping to ensure creative, and innovative spaces are created (Reason for Deferral 3).
  4. Transport capacity (Reason for Deferral 4)
  5. Improved consultation with neighbours from the Developer (Reason for Deferral 5).
  6. Consultation on small mitigation measures to Silk Mills Path (Reason for Deferral 6).
  7. Evidence of demand for workspace (Reason for Deferral 7).
  8. Impact on Infrastructure (Reason for deferral 8).
- 2.3. On the 3<sup>rd</sup> April 2018, an amended scheme was presented to the Strategic Planning Committee again with a recommendation from officers for approval. The applicant in revising the scheme has provided a public rooftop on a controlled access basis, further information with regard to landscaping, consultation, Silk Mills Path, workspace demand and infrastructure. Further information was submitted in relation to transport capacity including how the scheme would be developed in context of the long term Lewisham Interchange project.
- 2.4. Following a deliberation by Members, the application was refused permission on two grounds set out below.

1. *The proposed 34 storey building, by reason of its excessive height would detract from the established and emerging Lewisham Town Centre skyline and would appear overbearing at ground floor level, contrary to Policy 18 Location and design of tall buildings in the Core Strategy (2011) and LTC 19 Tall buildings in the Lewisham Town Centre Local Plan (2014). Furthermore, the proposals do not provide sufficient public benefit in terms of providing truly publicly accessible rooftop access, affordable housing or undertaking naturalisation of the River Ravensbourne to justify this height in this location.*

2. *The proposal fails to provide an access into Platform 4 of Lewisham Station, and fails to provide a secure commitment to its opening, to the detriment of access into Lewisham Station and its overcrowding issues, contrary to Policy LTC 5 Conington Road Policy Area of the Lewisham Town Centre Local Plan (2014).*

2.5. The Decision Notice also set out a statement of reasons for Members overturning the officer recommendation.

*Members considered that a case had not been made for the height of this development, above the established and emerging skyline, and that there were not sufficient public benefits that would offset the impacts of a building of the height and massing proposed. The level of social housing in particular, was a concern with the level proposed not providing sufficient benefit or social gain to justify the scale of the tower and its impact.*

*Members also recognised that the existing station is subject to overcrowding at times and that there is a desire from the public and in planning policy to open up access into the station. The lack of certainty around the opening up of access from this side of the town centre coupled with the impact from the increase of residents as a result of this proposal was deemed to be unacceptable*

### **3. Current Situation**

3.1. The applicant has submitted an appeal against the refusal of planning permission to the Planning Inspectorate which the Council will need to defend.

3.2. Officers have therefore instructed Counsel opinion as to how the reasons for refusal best be defended at appeal and minimise any award of costs against the Council.

#### **4. Public Interest Test**

4.1 Members are requested to hear counsel's advice under "closed session" excluding members of the public and press. Part 4, Section C, paragraph 27.4 of the Council's constitution provides that committee may pass a resolution at any time excluding the public (including the press) from any meeting during which an item of business whenever it is likely, in the view of the nature of the business to be transacted or the nature of proceedings, that there would be disclosure to them of exempt or confidential information. Counsel's written advice and his oral advice is "exempt information" pursuant to paragraph 5 of Schedule 12A of the Local Government Act 1972 being "Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings".

4.2 In applying this exemption, the council has balanced the public interest in withholding the information against the public interest in disclosure. Information should only be exempt if it is in the public interest to make it so. Here, counsel's advice falls squarely as litigation privilege as it is advice arising out the applicant's planning appeal. The Information Commissioner has advised that litigation privilege would not expect to be waived in cases where disclosure might prejudice the rights of the authority to obtain access to justice.

4.3 Counsel's advice, as members will have read and will hear, speaks to the strengths and weaknesses of the reasons for refusal. Such advice and analysis by counsel to the council should be kept confidential so as not to undermine the council's defence of its position at appeal.

#### **5. Urgency**

5.1 Five clear days before any meeting of the Council, the proper officer is required to publish a report as to the business to be transacted. This has not happened in this case: the reason being, the officer's report could not have been properly finalised without having first sight of counsel's written opinion, which was not received until the morning of 17 July 2018, that is: on the same day as strategic planning committee meeting.

5.2 Part 4, Section C, paragraph 25.1 of the Council's constitution allows members to consider matters of such urgency notwithstanding that the report has not be included in the summons of the meeting.

5.3 This matter is of such urgency that it cannot be delayed to the next strategic planning committee meeting. The reason for this is that further delay would cause the council to be put at risk of incurring costs which it might otherwise avoid. That is: the applicant would have spent further resources, on such things as consultants fees and expert reports, in preparing their appeal, which the council would be liable to pay should those preparations be found to be unnecessary because the council then decides to withdraw or amend the reasons for refusal.

5.4 Part 4, Section C, paragraph 25.3 provides that the Chair of Strategic Planning Committee shall decide on the grounds of urgency as stated, whether or not the report shall be considered or deferred to a later meeting.

## **6. Equalities**

6.1 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.

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.

6.2 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.

6.3 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.equalityhuman-rights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

6.4 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

6.5 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/>

6.6 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.

## **7. Recommendation**

7.1 It is recommended that in accordance with Regulation 4(2)(b) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information)(England) Regulations 2012 and under Section 100(A)(5) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 5, of Part 1 of Schedule 12(A) of the Act, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.