

## PLANNING COMMITTEE A

Date of Meeting: **WEDNESDAY, 15 NOVEMBER 2023**  
TIME **7.30 PM**

PLACE: **ROOM 1 & 2, CIVIC SUITE, LEWISHAM TOWN  
HALL, CATFORD, SE6 4RU**

Members of the Committee are summoned to attend this meeting:

**Membership  
Councillors:**

**Peter Bernards (Chair)**  
**Liam Curran**  
**Will Cooper**  
**Sian Eiles**  
**Rosie Parry**  
**Jacq Paschoud**  
**Stephen Penfold**  
**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.



**Jeremy Chambers**  
**Monitoring Officer**  
**Lewisham Town Hall**  
**London SE6 4RU**

**Date: Tuesday, 7 November 2023**

**For further information please contact:**  
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**Catford Road SE6 4RU**

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## Planning Committee A

### Declarations of Interest

**Date:** 15 November 2023

**Key decision:** No

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Chief Executive

### Outline and recommendations

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

## 1. Summary

1.1. Members must declare any personal interest they have in any item on the agenda. There are three types of personal interest referred to in the Council's Member Code of Conduct:

- (1) Disclosable pecuniary interests
- (2) Other registerable interests
- (3) Non-registerable interests.

1.2. Further information on these is provided in the body of this report.

## 2. Recommendation

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

### 3. Disclosable pecuniary interests

3.1 These 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.

### 4. Other registerable interests

4.1 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.

## 5. Non registerable interests

- 5.1. 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).

## 6. Declaration and impact of interest on members' participation

- 6.1. 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 not 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**
- 6.2. 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 6.3 below applies.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.

## 7. Sensitive information

- 7.1. 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.

## 8. Exempt categories

- 8.1. 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).



**Planning Committee A**

**Minutes**

**Date:** 15 November 2023  
**Key decision:** No  
**Class:** Part 1  
**Ward(s) affected:** All  
**Contributor:** Committee Officer

**Outline and recommendations**

Members are asked to consider minutes of the meeting of Planning Committee A  
Meeting held on 18 July 2023

**1. Recommendation**

It is recommended that minutes of those parts of the meeting of Planning Committee A which were opened to the press and public on 18 July 2023 be confirmed and signed.

**Monitoring Officer**  
**Lawrence House**  
**Catford SE6 4RU**

**7 October 2023**

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# MINUTES OF THE PLANNING COMMITTEE A

Tuesday 18 July 2023 at 7.30pm

PRESENT: Councillor Bernards (Chair), Councillor Curran, Councillor Eiles, Councillor Parry, Councillor Paschoud, Councillor Penfold

Also present: Angus Saunders (Presiding Officer), Alfie Williams (Presenting Planning Officer) Michael Rhimes (Senior Planning Lawyer, Legal Officer), Sarah Assibey (Committee Officer)

In attendance, virtually: Thomas Simnett (Presenting Planning Officer), Dean Gibson (Presenting Planning Officer)

Apologies: Councillor Sheikh and Councillor Cooper

## 1. Minutes

The Minutes of 16 March 2023 were agreed as an accurate record.

## 2. Declarations of Interest

No Interests were declared.

## 3. Marvel's Club

3.1. The Planning Office presented this application for the demolition of the former Marvels Lane Boys Club, Balder Rise SE12 and dwelling-house at 41 Le May Avenue SE12, and the construction of 3 three storey and 2 two storey blocks comprising 28 self-contained residential flats accessed from Le May Avenue, in addition to associated landscaping including a central courtyard, refuse and recycling facilities, disabled parking bays and cycle stores.

3.2. The Planning Officer gave an illustrative presentation of the proposal. The key considerations were Principle of development- it was determined by officers that there was no loss of social and community infrastructure, and that housing was supported in the borough and neighbourhood plan; Design and scale- it was determined by officers that the proposed was nice contemporary design and that for the 13 trees to be removed, 13 trees to be placed on site so there was no loss of greenery.

3.3. Housing provision and standard of accommodation- it was determined by officers that the proposed accommodation was acceptable; Neighbour Amenity- officers were satisfied that the amenity of neighbours would be protected and there would be no loss of privacy or light; Highways matters- the proposed development would be accessible by public transport and car free. There would also be a controlled parking zone on the main road, with the nearest station a 10-minute walk away; Biodiversity and Ecology- the assessment was submitted within the report, and there was no loss of greenery.

- 3.4. It was the officer recommendation to grant the application, subject to conditions and section 106.
- 3.5. Members asked about affordable housing, stating that the compensation outline would not be enough to provide affordable housing.
- 3.6. The presenting officer stated that the applicants went through a viability assessment through consultants who determined that there would be a £221,000 small profit. It was agreed that no on site affordable housing that would make the scheme viable. The compensation goes towards Council's general pool of affordable housing. Officers were satisfied that the assessment was robust and that the development does provide a high amount of family housing.
- 3.7. It was also asked that objectors have raised the issue of the height of the proposed development. The presenting officer responded that the previous application was refused due to the mass of proposal. The gardens on neighbouring roads are long gardens so there is considerable distance between the properties. Block C is 2 storeys in height which is the nearest to Balder Rise- the setbacks on the roof help to minimise the massing of the development. He stated that the height and mass of the proposal is not totally out of character for the area as there are other 3 storey developments in the area.
- 3.8. Objectors have drawn attention to section 106 issue and Members asked if the grove park neighbourhood plan was going to be referenced under section 106. The presenting officer stated that this was addressed in the principal section of the report. The recommendation considered the changes in wider planning policy, and the essence report sets out clearly the arguments.
- 3.9. Members asked to what extent the existing sporting facilities were used to which the officer responded that the space is vacant and derelict.
- 3.10. Members mentioned that there was no specification of the outdoor space available. The officer responded that the committee report refers to communal space and children's play area and that they were certain it will be meeting the minimum m2 size.
- 3.11. Members asked if the £62,000 contribution for carbon onsetting take into consideration the lack of any renewable heating on site. The officer responded that the contribution was secured by the section 106 agreement, but there are also sustainability conditions outlined in the report, including gas boilers, green roofs and soft landscaping which would mitigate the overuse of heating.
- 3.12. The agent for the application then gave their presentation. Their key points were as follows:
- 3.13. The Planning Officer set out the various considerations. The site is earmarked for residential led development. It was youth boxing club which has relocated elsewhere in Lewisham so there is no loss of community facilities. The applicant has sought to make full use of the residential development in line with strategic policies. The vendor who sold site had discussed developing

nine dwellings which did not make very full and effective use of site. All the dwellings proposed are dual aspect. The highways access will be big improvement on current access. The agents had attended a virtual local meeting- there were issues raised concern from a resident on Le May Avenue. He was met with, and agents addressed concerns about access. They also met with other residents to discuss their concerns with overlooking.

- 3.14. They have worked very closely with the planning department to get to this proposal, including 20% reduction in accommodation. When the scheme is completed the nearest windows on Le May Avenue will be 42m apart from the proposed development. Balder Rise would be 20m apart but is only 2 storeys high, so there would be no issue of overlooking. The living room windows will look onto central courtyard. 43% of the development are family homes. The building would be separated into 4 separate blocks with a minimum of 8m to boundaries. There will be more greenery by completion. The height of the proposed development is comparable with the existing building.
- 3.15. The objector then gave their presentation. Their key arguments were:
- 3.16. They were speaking on behalf of 40 residents. Their main points for refusing the application were: - the height and separation distance they believe made the proposal unacceptable; they proposal does not adequately address the constraints of the site- it is too enclosed and overdeveloped; the noise and nuisance would be significant with of 90 new residents; vehicular access-deliveries and people with mobility/access issues had not been taken into account. Objectors also stated that the section 106 proposal was unclear and vague and that the grounds for refusal had been mitigated but not resolved.
- 3.17. Members asked for clarification from the objector about the policies 32 and 33 they mentioned. The objectors stated the DM policies require 21m of separation distance. Although some flexibility can be given, a greater separation distance needed where taller buildings involved, and objectors stated that they considered this a taller building. The Presenting Officer confirmed that the distance is compliant.
- 3.18. It was also asked by Members to Officers if this was considered a small site. Officers responded that although it is technically not small, and it has characteristics of small site.
- 3.19. Objectors also mentioned that the design of the proposed cycle storage would not be accessible to disable users which would then mean it does not meet London Plan standards.
- 3.20. Councillor Jackson spoke under standing orders. His main points were that the site was in need of development and that he supports the principle. The applicant made several variations from last year. However, residents have contacted ward Councillors with their concerns. He agreed that affordable housing is needed in the borough. The Neighbourhood Policy Plan indicates that proposals for the development will be supported where they compensate for the loss of a sporting activity and the old boys club provided youth provision which is not being compensated. He stated that parking provision and cycle

storage proposed was inadequate and that there were already on street parking pressures that the proposal will add to.

3.21. Members expressed concern that the design, although not mandatory, had not gone through a design review panel. They also felt that the distance between the development and other buildings may be in breach as some distances are less than recommended. They also expressed that the lack of social housing was not satisfactory.

3.22. It was MOVED, SECONDED and RESOLVED to refuse the application.

#### **4. 1-3 Ashby Road, SE4 1PR**

4.1. The Planning Officer present this application for the construction of part single-storey and part two-storey roof extensions to create 3 self-contained flats, together with the conversion of an existing studio to provide additional living accommodation at 1-3 Ashby Road SE4, with associated cycle storage, refuse storage and a new green roof. All material considerations were addressed in the committee report.

4.2. They gave an illustrative presentation. The key points for consideration were Principle of Development; Residential Quality; Urban Design & Heritage Impact; Transport Impact; Living Conditions of Neighbours; Natural Environment; Sustainable Infrastructure. The officer stated that they were satisfied that there was no adverse impact on these material planning considerations. It was the officer's recommendation to grant the application.

4.3. Members asked about the daylight/sunlight report carried out by the applicant which assessed that the vertical sky component of 21% and the BRE guidelines suggest 27%. The present officer stated that the assessment was done within industry guidelines and best practice and was not unique in the fact that it was undertaken without a site visit. He explained that BRE guidelines were not policy it is guidance and that this did not necessarily mean there was harm to the dwelling. The application was refused initially because harm was identified in terms of the percentage loss.

4.4. It was also asked single occupancy space and Members commented that the studio was an extremely small for living space. The presenting officer stated that open plan living is common and is unavoidable in a studio. Studio Flat 11 is 42m<sup>2</sup> which exceeds recommendation in London Plan, is dual aspect and has an external amenity space, hence why it was deemed acceptable.

4.5. The agent for the application then gave their presentation. Their key points were as follows:

4.6. The proposed development would optimise the building, providing high quality new homes in an accessible location in Lewisham. The proposal includes design amendments from the last application to resolve the concerns regarding the amenity of Flat 2. The Planning inspector found there was no harm to the heritage assets in the Brockley conservation area. In response to the inspector's concerns, the applicant ensured that rooflights maintained,

reconfigured the proposed upper floors to ensure that the southern aspect of the rooflights is maintained. The findings of the daylight report highlights the development comfortably meets the BRE guidelines and that the amendments to Flat 2 successfully overcome harm identified by appeal decision by ensuring that the no skyline and daylight distribution values would be compliant with the BRE guidelines.

- 4.7. Members asked the agents how satisfied they were with daylight/sunlight report to which they responded that they were very satisfied and has been doing such reports for many years.
- 4.8. It was asked what consultation had been had with neighbours. The applicant stated that there has been public consultation with the Brockley society and neighbours which had resulted in changes such as ensuring the design was modest, there was appropriate screening, the elevation was set back and there was screening to balcony.
- 4.9. Members also asked about distance from neighbouring buildings. It was responded that there is a distance of 32m from Manor Avenue, and from Upper Brockley Road a distance of 35m.
- 4.10. The objector then gave their presentation. their key arguments were:
- 4.11. The light assessment carried out by the applicant requires further due diligence and a number of assumptions had been made in the light assessment as there was no site visit to assess it. They appreciated the guidance says a site visit is not needed, but it also says where it's contentious they would recommend a site visit, why was a light assessment not undertaken given this projection was previously dismissed.
- 4.12. The light assessment on flat two models the windows being located on vertical walls, which is not true as they are skylights assessed within a metre within the ceiling and an assessment would undoubtedly have a different outcome if it were based on reality. Recent plans submitted on the 7th of July showed that privacy screens were put on balconies which will increase overshadowing in the affected properties including Flat 2 but also some of the other properties. The light assessment was a desktop assessment undertaken months ago and therefore the light assessment does not reflect the most up-to-date plans. They ask that a fair and true assessment is made after a site visit.
- 4.13. Objectors also highlighted potential impact on traffic and safety concerns. The developer had not adequately assessed the impact on Ashby Road and Ashby Mews, particularly pedestrian safety.
- 4.14. The agent clarified that vertical sky component is unit of measurement. He stated that the horizontal rooflights had been modelled as such and the units are shown in vertical sky components. He also said that the phrase "desktop study" gives the impression that not much care is given to it, but if models are built to exacting standards and according to plans, the assessment will be very good.

- 4.15. It was asked by Members if the impact on the existing residents of the building had been considered to which it was responded that Condition 3 outlines the construction management plan which includes hours of work, should the application be approved.
- 4.16. The Legal Officer explained to Members that the secretary of state, appointed by the planning inspector, found that the only respect in which the previous scheme was unacceptable was because of the impacts on Flat 2 because there was no assessment on the vertical sky component. Officers have had regard to the principle of consistency and assessed the inspector's decision and concluded they agree with it. They consider that the impact on Flat 2 is acceptable in planning terms and it would be up to Members what weight they place on that assessment and are entitled to their own views. He went on to say that however, if they choose to depart from the Inspector assessment, they will need good reason to do so.
- 4.17. Councillor Lahai-Taylor made representations on behalf of residents under standing orders. She summarised that when the freehold of 1-3 Ashby Road was sold, it was not given first refusal to leaseholders, and although this was not a planning consideration, it is currently being investigated. The applicants submitted new drawings in July 2023, and they have changed some aspects of the plan in ways that require daylight and sunlight reassessing. She also stated that the consultation period should be reopened so that residents have the right to comment on the changes. She stated that the transport and highways impact if the small residential area, needed greater consideration, considering the road is used by many cyclists.
- 4.18. Members expressed their concerns with the light assessment being undertaken without a site visit to do so.
- 4.19. It was **MOVED**, **SECONDED** and **RESOLVED** to defer the proposal until an in-person daylight and sunlight.

## **5. Blackheath Hospital, 40-42 Lee Terrace, SE3 9UD**

- 5.1. The Planning Officer gave an illustrative presentation of the proposed application which was for the variation of condition to planning permission DC/21/123944 dated 27 April 2022 to vary the wording of Condition 2 (approved plans) in order to cover alterations to the size of some of the equipment on the rear flat roof, install 3m high visual screening and provide a steel walkway on the rear flat roof to provide maintenance access to the equipment at Blackheath Hospital, 40-42 Lee Terrace SE3
- 5.2. The key planning considerations were Urban design and impact on living conditions of neighbours- of which officers stated the was no considerable impact and it was their recommendation to approve the application.
- 5.3. Members had no questions for the officer.

- 5.4. The agent representing the hospital then gave their presentation. the amendment was solely in relation to the size and visual appearance of the equipment previously granted planning permission in Area A and not its noise output. The site benefits from boundary screening and additional screening around the plant has been provided by the hospital following neighbour and planning feedback. it had been asked by residents why the noise surveys did not take measurements from the façade of their homes. Given the practicalities of gaining access standard practice to take noise readings from the boundary of the application site, this is an accepted and robust method. They summarised their argument stating the proposed development gave no visual harm, and the impact would remain in accordance with noise level.
- 5.5. There were no questions for the applicant. The objector spoke and the following were his key points:
- 5.6. Although the size of the new unit was a surprise when it went in, the hospital has attempted to screen this off and their efforts are appreciated. With regard to the resubmission of the amendment, the objector stated that, it appeared that the resubmission was the result of the applicant submitting a plant noise commission survey. In their opinion, the survey does not meet the criteria of condition 3 relating to the noise assessment of the original planning application. This condition states that the rating level of noise emitting from the plant should be 5 decibels lower than the existing background level. The results show that the units operating in 1 single decibel below the daytime limit set by the condition.
- 5.7. The Legal Officer advised that this was a section 73 application, and is retrospective, and when considering these applications, the Act is clear that Members are to only consider the conditions. He stated that the only condition being applied to vary is condition 2 which just relates to the approved plans. Noise impact had already been considered in the previous application.
- 5.8. It was asked by the objector why one of the units was not operational when the noise test was carried out to which it was responded that the unit was not functioning at the time. A post-insulation noise assessment was not required and condition 3 is a compliant only condition.
- 5.9. Councillor Eiles abstained from the vote as she had briefly left the meeting during part of the presentations. It was **MOVED, SECONDED and RESOLVED** to approve the application.

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## Planning Committee: A

### Application details

**Application reference number(s):** DC/23/130234

**Application Date:** 4 April 2023

**Applicant:** Ashby Road Properties Limited

**Proposal:** Construction of part single-storey and part two-storey roof extensions to create 3 self-contained flats, together with the conversion of an existing studio to provided additional living accommodation at 1-3 Ashby Road SE4, with associated cycle storage, refuse storage and a new green roof.

**Background Papers:**

- (1) Submission drawings
- (2) Submission technical reports and documents
- (3) Internal consultee responses
- (4) Statutory consultee responses

**Designation:** Air Quality Management Area  
Brockley Conservation Area  
Brockley Conservation Area Article 4 Direction  
PTAL 4

**Screening:** N/A

### Outline and recommendations

This report sets out the Officer's recommendation of approval for the above proposal. The report has been brought before Committee for a decision due to the submission of 19 individual objections, a petition against signed by 6 residents and an objection from the Brockley Society.

# 1 INTRODUCTION

- 1 This report sets out Officers recommendation in relation to the proposed development at 1-3 Ashby Road. The application has been returned to members as the application was deferred at a previous meeting of Planning Committee A held on Tuesday 18 July 2023. For a detailed overview of the site, the proposal, the site history and consultation undertaken for the application please see the original Committee Report (Appendix 1).
- 2 The application was deferred by members due to a concern with the methodology employed to model the daylight and sunlight impacts of the development. It is a desk-based study and does not include a site visit and in-person internal survey of the existing flats. The Daylight and Sunlight Report (Daylight & Sunlight UK Limited, January 2023) was carried out in accordance with standard practice which uses a computer model to assess likely impacts, based on the existing floor plan, elevation and section drawings of the building. It concluded that the impact would be compliant with the relevant BRE standards for daylight and sunlight. Nevertheless, members considered that they were unable to reach a conclusion on the impact to two adjacent roof lights serving Flat 2. For a detailed overview of the daylight and sunlight impacts see paras 129 – 141 of the original Committee Report (Appendix 1).
- 3 For the above reasons, Members resolved that the application be deferred to allow the applicant to undertake a site survey at Flat 2 to review the reports findings and if necessary to inform a revised report. Following the committee meeting the applicant agreed to undertake the survey and to revise the report. Officers then made several attempts to contact the owner of the property by email, between 20 July and 10 October 2023, in order to facilitate access and allow the survey to be carried out. These attempts include emails sent on 20<sup>th</sup> July, 31<sup>st</sup> July, 7<sup>th</sup> August, 9<sup>th</sup> August, 18<sup>th</sup> August, 31<sup>st</sup> August and 10<sup>th</sup> October.
- 4 Unfortunately, at the time of writing these efforts did not prove successful as regrettably the owner did not initially agree to provide access to the property. Officers ceased requesting access to the property on 13 October 2023, which is approaching three months since the committee date, and further contact was considered unlikely to elicit a response. It has therefore not so far been possible to comply with members resolution to undertake the survey of the property. This is despite the best efforts of Officers and the application team. It is therefore considered reasonable to return the application to committee for a decision without further delay.
- 5 On 2 November 2023, following being advised that the application would be returned to committee, the owner of Flat 2 has now offered to grant access to the Flat on 9 November in order to allow the application team to carry out the survey of the rooflights and bedroom. The application team have agreed to this offer and at the time of writing Officers are in the process of arranging the visit with both parties.
- 6 At this stage Officers have no reason the question the accuracy of the existing drawings and therefore, maintain the recommendation to grant permission for the proposed development for the reasons set out within the original Committee Report (Appendix 1). However, the Council reserves the right to reassess this impact should the site survey bring to light new information which would materially change the outcome of the assessment. A summary of the impact to daylight levels at Flat 2 as modelled within the

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Daylight and Sunlight Report (Daylight & Sunlight UK Limited, January 2023) submitted with the application is provided at paras 16-22 below.

## **2 POLICY CONTEXT**

### **2.1 LEGISLATION**

7 Planning applications are required to be determined in accordance with the statutory development plan unless material considerations indicate otherwise (S38(6) Planning and Compulsory Purchase Act 2004 and S70 Town & Country Planning Act 1990).

8 Planning (Listed Buildings and Conservation Areas) Act 1990: S.66/S.72 gives the LPA special duties in respect of heritage assets.

### **2.2 MATERIAL CONSIDERATIONS**

9 A material consideration is anything that, if taken into account, creates the real possibility that a decision-maker would reach a different conclusion to that which they would reach if they did not take it into account.

10 Whether or not a consideration is a relevant material consideration is a question of law for the courts. Decision-makers are under a duty to have regard to all applicable policy as a material consideration.

11 The weight given to a relevant material consideration is a matter of planning judgement. Matters of planning judgement are within the exclusive province of the LPA. This report sets out the weight Officers have given relevant material considerations in making their recommendation to Members. Members, as the decision-makers, are free to use their planning judgement to attribute their own weight, subject to aforementioned directions and the test of reasonableness.

### **2.3 NATIONAL POLICY & GUIDANCE**

- National Planning Policy Framework 2023 (NPPF)
- National Planning Policy Guidance 2014 onwards (NPPG)
- National Design Guidance 2019 (NDG)

### **2.4 DEVELOPMENT PLAN**

12 The Development Plan comprises:

- London Plan (March 2021) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013) (SALP)
- Lewisham Town Centre Local Plan (February 2014) (LTCP)

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## 2.5 SUPPLEMENTARY PLANNING GUIDANCE

13 Lewisham SPD:

- Alterations and Extensions Supplementary Planning Document (April 2019)
- Brockley Conservation Area Supplementary Planning Document (December 2005)
- Small Sites Supplementary Planning Document (October 2021)

14 London Plan LPG:

- Small Site Design Codes (June 2023)
- Optimising Site Capacity: A Design-led Approach (June 2023)
- Housing Design Standards (June 2023)
- Air Quality Neutral (February 2023)

## 2.6 OTHER MATERIAL DOCUMENTS

- Brockley Conservation Area Character Appraisal (August 2006)

## 3 PLANNING CONSIDERATIONS

15 The main issues are:

- Principle of Development
- Residential Quality
- Urban Design
- Impact on Adjoining Properties
- Transport
- Sustainable Development
- Natural Environment

16 The above is a list of the main planning considerations, which remain relevant to this application. However, for the purposes of this report Officers will focus on the impact to daylight at Flat 2 as this is the sole matter relating to the deferral. The original Committee Report (Appendix 1) concluded that the impact to daylight would be acceptable as the results of the Daylight and Sunlight Report (Daylight & Sunlight UK Limited, January 2023) showed compliance with the relevant BRE standards for Daylight Distribution (DD) (also known as No Sky Line) and Vertical Sky Component (VSC).

17 In response to the matters raised at the committee meeting in relation to the accuracy of the Daylight and Sunlight Report, the applicant issued a Final Statement to the Committee dated 16 August 2023. The statement acts as an addendum to the Daylight and Sunlight Report and considers whether the perceived inaccuracies in the drawings raised at the committee meeting including the room area, absence of the centralised pillar and depth of the roof would have a significant impact on the results on the assessment. The statement concludes that even adjusting for these factors the impact to daylight would remain compliant with the BRE guidance for DD and VSC.

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18 It is also necessary to consider BRE guidance within the proper policy context as neither the NPPF nor the Development Plan express a specific minimum standard for daylight and sunlight. Indeed, the NPPF at para 125 (c) states that, where there is an existing or anticipated shortage of land for meeting identified housing need, LPAs should take a flexible approach to policies or guidance relating to daylight and sunlight when considering applications for housing, where they would otherwise inhibit making efficient use of a site.

19 The GLA support this flexible approach stating at para 1.3.45 of the Housing SPG that:

*“An appropriate degree of flexibility needs to be applied when using BRE guidelines to assess the daylight and sunlight impacts of new development on surrounding properties, as well as within new developments themselves. Guidelines should be applied sensitively to higher density development, especially in opportunity areas, town centres, large sites and accessible locations, where BRE advice suggests considering the use of alternative targets. This should take into account local circumstances; the need to optimise housing capacity; and scope for the character and form of an area to change over time.”*

20 Therefore, even if a transgression beyond the BRE guidance was identified, it would not automatically follow that the impact would be unacceptable as the proper test should not be whether the impact is noticeable but whether it would be unacceptably harmful to the living conditions of neighbouring residential properties. This assessment of harm should take account of context which, as the GLA make clear, should include the character and accessibility of the area.

21 Finally, if unacceptable harm is identified this would need to be considered within the overall planning balance weighted against the merits of the scheme, which for this development include the delivery of three additional residential units to local housing targets and the improvement to the quality of an existing studio unit.

22 In this case it is not necessary to undertake this balancing exercise as the Daylight and Sunlight Report demonstrates compliance with relevant BRE guidance. Officers are satisfied that this assessment is robust and has been carried out in accordance with industry best practice and the relevant guidelines. The Final Statement to the Committee submitted by the applicant is informed by internal photographs of Flat 2 and confirms that this would remain the case even in the event of minor inaccuracies with the drawings used to model the impact. It is also relevant that the *BRE Report Site layout planning for daylight and sunlight: a guide to good practice (BR209)* does not advocate an on-site assessment for either VSC or DD. Nevertheless, the applicant has agreed to undertake survey of Flat 2 on 9 November 2023 following the outcome of the committee meeting on 18 July 2023. Should the site visit lead to new information which would lead Officers to reconsider their advice to Members, the Council will consider appropriate next steps.

## 4 LOCAL FINANCE CONSIDERATIONS

23 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:

- 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

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- sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

24 The weight to be attached to a local finance consideration remains a matter for the decision maker.

25 The CIL is therefore a material consideration.

26 £21,760.54 Lewisham CIL and £14,377.50 MCIL is estimated to be payable on this application, subject to any valid applications for relief or exemption, and the applicant has completed the relevant form. This would be confirmed at a later date in a Liability Notice.

## 5 EQUALITIES CONSIDERATIONS

27 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.

28 In summary, the Council must, in the exercise of its function, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and persons who do not share it.

29 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.

30 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>

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

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making

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- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

32 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>

33 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.

## 6 HUMAN RIGHTS IMPLICATIONS

34 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:

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

35 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.

36 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above 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.

37 This application has the legitimate aim of providing a extending a building with residential uses. The rights potentially engaged by this application, including Article 8 and Protocol 1, Article 1: Right to peaceful enjoyment of your property are not considered to be unlawfully interfered with by this proposal.

## 7 CONCLUSION

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

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- 39 At the time of writing it has not been possible to undertake the site survey requested by members in deferring the application on 18 July 2023. The application team have engaged proactively with Officers in attempting to facilitate the survey in the weeks and months immediately following the committee and have agreed to undertake the survey on 9 November now that access to Flat 2 has been offered. Furthermore, the applicant has submitted a statement that attempts to address the concerns raised by members in regard to the perceived limitation of the methodology employed within the Daylight and Sunlight Report (Daylight & Sunlight UK Limited, January 2023).
- 40 The NPPF, at para 11, states “Plans and decisions should apply a presumption in favour of sustainable development... For decision-taking this means: ...(c) approving development proposals that accord with an up-to-date development plan without delay;” With that in mind, sufficient time has now elapsed to progress towards a decision on the basis that significant errors with the surveying of the building are unlikely and therefore the outcome of survey on the 9 November 2023 would likely not require a reassessment of Officers conclusions on daylight and sunlight matters. Therefore, Officers remain satisfied that there is currently sufficient information provided to conclude that the reduction to the massing at the rear of the extension would successfully address the harm to light and outlook to the bedroom of Flat 2. Accordingly, the application is recommended for approval subject to conditions. Members will be updated should the site visit yield new information which would lead Officers to reconsider that position.

## 8 RECOMMENDATION

- 41 That the Committee resolve to **GRANT** planning permission subject to the following conditions and informatives:

### 8.1 CONDITIONS

#### 1. Time Limit

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

**Reason:** As required by Section 91 of the Town and Country Planning Act 1990.

#### 2. Approved Plans

The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

EX.001 Rev A;  
EX.100 Rev B;  
EX.101 Rev A;  
EX.102 Rev A;  
EX.103 Rev A;  
EX.104 Rev A;  
EX.105 Rev A;  
EX.106;  
EX.107;  
EX.108;  
PA 001;

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PA.100 Rev B;  
PA.101 Rev E;  
PA.102 Rev E;  
PA.103 Rev C;  
PA.104 Rev B;  
PA.105 Rev B;  
PA.106 Rev E;  
PA.107 Rev C;  
PA.108 Rev B;  
PA.109 Rev A;  
PA.110 Rev A;  
PA.111;  
PA.112 Rev E;  
PA.113 Rev D;  
PA.114;  
OS.01 Rev A.

**Reason:** To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

### 3. **Construction Management Plan**

No development shall commence on site until such time as a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall cover:-

- (a) Dust mitigation measures.
- (b) The location and operation of plant and wheel washing facilities
- (c) Details of best practical measures to be employed to mitigate noise and vibration arising out of the construction process
- (d) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:-
  - (i) Rationalise travel and traffic routes to and from the site.
  - (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction relates activity, such vehicle trips to avoid the 30mins before and after Myatt Garden Primary School drop-off and pick-up times.
  - (iii) Measures to deal with safe pedestrian movement.
- (e) Security Management (to minimise risks to unauthorised personnel).
- (f) Measures to ensure no construction activity (including works and deliveries taken at or despatched to the site) shall take place other than between the hours of 8 am and 6pm on Mondays to Fridays and 8 am and 1 pm on Saturdays and not at all on Sundays or Public Holidays.
- (g) Details of the training of site operatives to follow the Construction Management Plan requirements

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The measures specified in the approved details shall be implemented prior to commencement of development and shall be adhered to during the period of construction.

**Reason:** In order that the local planning authority may be satisfied that the demolition and construction process is carried out in a manner which will minimise possible noise, disturbance and pollution to neighbouring properties and to comply with Policy SI1 Improving air quality and Policy T7 Deliveries, servicing and construction of the London Plan (March 2021).

#### 4. **Materials & Design Quality**

(a) No above ground works shall commence on site (excluding demolition) until a detailed schedule and specification including manufacturer's literature or detailed drawings including horizontal and vertical cross sections at suitable scales (e.g. 1:5, 1:10 or 1:20 where relevant), in respect of the following:

- (i) brickwork, mortar, bond and pointing (sample panel on site);
- (ii) exterior cladding materials, joins and junctions;
- (iii) windows and reveals
- (iv) external doors;
- (v) rainwater goods;
- (vi) balconies and balustrades

has been submitted to and approved in writing by the Council.

(b) The works shall then be carried out in full accordance with the approved details prior to the first occupation of the development, and retained thereafter.

**Reason:** To ensure that the high design quality demonstrated in the plans and submission is delivered so that local planning authority may be satisfied as to the external appearance of the buildings and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character.

#### 5. **Refuse & Recycling Facilities**

(a) Prior to the first occupation of the development further plans and elevations showing the design and dimensions of the bin store for the approved residential accommodation as shown on drawing PA.001, shall be submitted to and approved in writing by the local planning authority.

(b) The refuse and recycling facilities shall be installed in accordance with the details approved under Part (a) prior to occupation of the development and shall thereafter be permanently retained and maintained.

**Reason:** In order that the local planning authority may be satisfied with the provisions for recycling facilities and refuse storage in the interest of safeguarding the amenities of neighbouring occupiers and the area in general, in compliance with Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character and Core Strategy Policy 13 Addressing Lewisham waste management requirements (2011).

#### 6. **Cycle Parking Facilities**

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- (a) Prior to first occupation, full details of the design and specification of the cycle parking store and facilities for 8 long-stay spaces, as shown on approved drawing PA.001, shall be submitted to and approved in writing by the local planning authority.
- (b) All cycle parking spaces shall be provided in full accordance with the details approved under part (a) and made available for use prior to occupation of the development and maintained thereafter.

**Reason:** In order to ensure adequate provision for cycle parking and to comply with Policy T5 cycling and Table 10.2 of the London Plan (March 2021) and Policy 14: Sustainable movement and transport of the Core Strategy (2011).

## 7. Living Roof

- (a) Notwithstanding the specification submitted with the application, prior to the commencement of the development details of an extensive biodiversity living roof system (substrate depth of 80–150mm) to include specification, drawings and maintenance details for the living roof and details of any structural works required, laid out in accordance with drawing PA.101 Rev D, shall be submitted to and approved in writing by the local planning authority.
- (b) The living roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair or escape in case of emergency.
- (c) Evidence that the roof has been installed in accordance with (a) shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved.

**Reason:** To comply with Policy G5 Urban greening in the London Plan (2021), Policy 10 managing and reducing flood risk and Policy 12 Open space and environmental assets of the Core Strategy (June 2011), and DM Policy 24 Biodiversity, living roofs and artificial playing pitches of the Development Management Local Plan (November 2014).

## 8. Tree Protection Plan

Any trees shown to be retained on the drawings hereby approved shall be protected in accordance with BS 5837:2012 (Trees in relation to design, demolition and construction - Recommendations) the entirety of the construction period including demolition and site preparation, such protection to include the use of protective barriers to form a construction exclusion zone, employ suitable ground protection measures, and any additional measures needed to protect vulnerable sections of trees and their root protection areas where construction activity cannot be fully or permanently excluded.

**Reason:** To safeguard the health and safety of trees during building operations and the visual amenities of the area generally and to comply with Policy 12 Open space and environmental assets of the Core Strategy (June 2011), and DM Policy 25 Landscaping and trees and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

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## 9. Screening

(a) The residential units hereby approved shall not be occupied until full details of the siting and specification of the screening to all of the roof terraces and balconies, to comply with approved drawings PA.101 Rev E and PA.102 Rev E, have been submitted to and approved in writing by the local planning authority.

(b) The privacy screens shall be installed in full accordance with the details approved by part (a) prior to the occupation of any of the residential units and retained for the lifetime of the development.

**Reason:** To avoid the direct overlooking of adjoining properties and consequent loss of privacy thereto and to protect the privacy of the approved residential accommodation and to comply with DM Policy 32 Housing design, layout and space standards of the Development Management Local

## 10. Air Source Heat Pumps (ASHP)

(a) No ASHP shall be installed until details of the location, specification and appearance of the ASHP equipment, which shall include details of the equipment's noise rating and measures to alleviate visual impact, noise and vibration, have first been submitted to and approved in writing by the local planning authority.

(b) The facilities as approved under part (a) shall be provided in full prior to occupation of the residential accommodation and shall thereafter be permanently retained and maintained.

**Reason:** In order to safeguard local air quality and the amenities of the residential occupiers and to minimise the visual impact in compliance with Policies D14 Noise and S11 Improving Air Quality of the London Plan (March 2021) and Policies 26 Noise and vibration, 30 Urban design and local character and 37 Non-designated heritage assets including locally listed buildings, areas of special local character and assets of archaeological interest of the Development Management Local Plan (November 2014).

## 11. Window Opening Restrictions

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the windows to be installed in the eastern elevation of the extensions (annotated as fixed on drawings PA.101 Rev E and PA.102 Rev E) hereby approved shall be fixed shut and retained as such in perpetuity.

**Reason:** To avoid the direct overlooking of adjoining properties and consequent loss of privacy thereto and to comply with DM Policy 31 Alterations and extensions to existing buildings including residential extensions, DM Policy 32 Housing design, layout and space standards, DM Policy 32 Housing design, layout and space standards, and Policy 33 Development on infill sites, backland sites, back gardens and amenity areas of the Development Management Local Plan (November 2014).

## 12. Water Efficiency

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Mains water consumption shall be compliant with the Optional Requirement set out in Part G of the Building Regulations of 105 litres or less per head per day.

**Reason:** In order to minimise the use of mains water and to comply with Policy S15 Water infrastructure of the London Plan (March 2021).

### 13. Unit Mix

The development hereby approved, shall provide six residential units comprised of 1 one-person studio, 1 one-bedroom two-person, 1 two-bedroom four-person and 1 three-bedroom five-person flats.

**Reason:** To comply with the unit mix assessed under this application.

## 8.2 INFORMATIVES

- A. **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.
- B. As you are aware the approved development is liable to pay the Community Infrastructure Levy (CIL) which will be payable on commencement of the development. An '**assumption of liability form**' must be completed and before development commences you must submit a '**CIL Commencement Notice form**' to the council. You should note that any claims for relief, where they apply, must be submitted and determined prior to commencement of the development. Failure to follow the CIL payment process may result in penalties. More information on CIL is available at: - <http://www.lewisham.gov.uk/myservices/planning/apply-for-planning-permission/application-process/Pages/Community-Infrastructure-Levy.aspx>
- C. The applicant be advised that the implementation of the proposal will require approval by the Council of a Street naming & Numbering application. Application forms are available on the Council's web site.

## 9 BACKGROUND PAPERS

- (1) Submission Drawings
- (2) Submission technical reports and supporting documents
- (3) Internal consultee responses
- (4) External consultee responses

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## 10 REPORT AUTHOR AND CONTACT

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## Planning Committee: A

### 1-3 ASHBY ROAD, LONDON, SE4 1PR

**Date:** 18 July 2023

**Key decision:** No.

**Class:** Part 1

**Ward(s) affected:** Brockley

**Contributors:** Alfie Williams, Senior Planning Officer

### Outline and recommendations

This report sets out the Officer's recommendation of approval for the above proposal. The report has been brought before Committee for a decision due to the submission of 20 individual objections, a petition against signed by 6 residents and an objection from the Brockley Society

## Application details

**Application reference number(s):** DC/23/130234

**Application Date:** 4 April 2023

**Applicant:** Ashby Road Properties Limited

**Proposal:** Construction of part single-storey and part two-storey roof extensions to create 3 self-contained flats, together with the conversion of an existing studio to provide additional living accommodation at 1-3 Ashby Road SE4, with associated cycle storage, refuse storage and a new green roof.

**Background Papers:** (1) Submission drawings  
(2) Submission technical reports and documents  
(3) Internal consultee responses  
(4) Statutory consultee responses

**Designation:** Air Quality Management Area  
Brockley Conservation Area  
Brockley Conservation Area Article 4 Direction  
PTAL 4

**Screening:** N/A

## 1 SITE AND CONTEXT

### *Site description and current use*

- 1 The application site comprises a modern brick-built part single/part two-storey residential building located at the junction of Ashby Mews and Ashby Road. The building was formerly used by Lewisham Council as offices and was converted to residential use following a change of use granted in 2014. To the east, the site adjoins the rear gardens of properties in Manor Avenue. The site has a 25m wide main frontage onto Ashby Road and to the west, the site has a 28m deep side return into Ashby Mews. Ashby Mews is a private road.
- 2 On the northern side of Ashby Road, directly opposite the application site, is Royston Court. Royston Court is a modern two storey housing development constructed on a former commercial site.

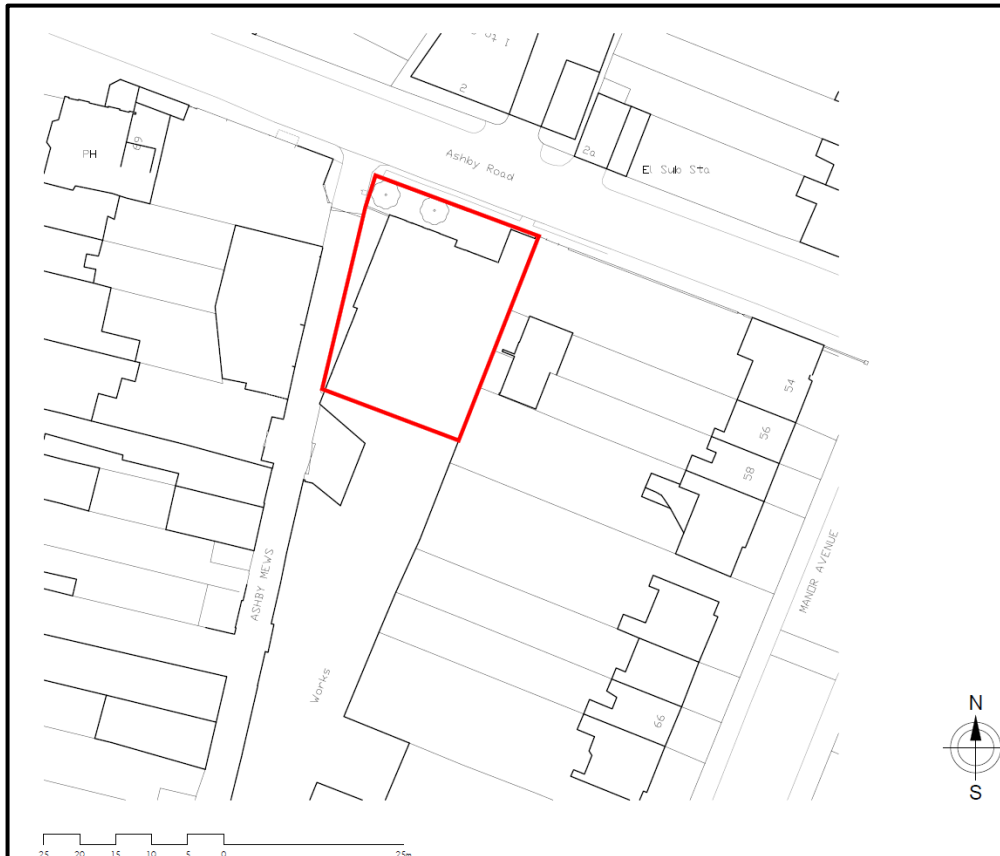
**Figure 1. Site Location Plan**

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### **Character of area**

- 3 The surrounding area is predominately residential and is characterised by grand three storey Victorian buildings that line the roads running north to south. Between these roads are a series of lower-scale Mews. The Mews' generally serve residential garaging and commercial workshops, which are mainly single storey in height. Ashby Road runs east to west and is mainly a thoroughfare with sporadic areas of piecemeal residential development at the ends of gardens.

### **Heritage/archaeology**

- 4 The site is located within the Brockley Conservation Area which is covered by an Article 4 Direction. The site lies within Character Area 1 of the Brockley Conservation Area and has a neutral impact. The building is not listed, and neither is the site located within the vicinity of a listed building.

### **Transport**

- 5 The site has a PTAL of 4, which is a good level of public transport accessibility. Brockley Station (550m to the south-west) and St John's Station (600m to the north-east) are within walking distance of site. The site is also within walking distance of the bus routes that serve Lewisham Way and Brockley Road.

## **2 RELEVANT PLANNING HISTORY**

- 6 In February 2006, applications for planning permission and conservation area consent (this being a requirement prior to 2013 for the demolition of a building in a conservation

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area) were submitted for the demolition of the building and the construction of a part single/part three storey plus basement building to provide a 22-bedroom care home. The planning application was proposed for refusal on the grounds of 1) its excessive height and bulk and its generally poor design; 2) its close proximity to the rear gardens of properties in Manor Avenue and; 3) the lack of outdoor amenity space and poor outlook to the ground floor bedrooms adjoining the Mews.

- 7 The conservation area consent application was also recommended for refusal on the basis that the demolition of the building in advance of an agreed scheme of redevelopment would fail to preserve or enhance the character and appearance of the conservation area and would be contrary to Council policy. These applications were withdrawn at the applicant's request before determination.
- 8 In September 2006 further applications for planning permission and conservation area consent were submitted for the demolition of the former Council offices and the construction of a part two/part three storey building, to provide an 18-bedroom care home, together with associated landscaping, provision of a refuse store, bicycle spaces and 3 car parking spaces. This planning application was refused on the grounds of 1) its excessive height and bulk and its generally poor design and 2) the close proximity to the rear gardens of properties in Manor Avenue. The conservation area consent application was refused for the same reason as the previously withdrawn conservation area consent submission.
- 9 Further applications for Conservation Area consent and planning permission for a 16-bedroom care home at the site were refused in August 2007. These were refused for the same reasons as the previous applications. Appeals in respect of these decisions were also dismissed. The Inspector considered that the existing building had a neutral impact on the character and appearance of the Conservation Area and that the height of the existing building allowed views through to the trees and vegetation in the rear gardens of Manor Avenue. The Inspector's decision letter (dated 18 August 2008) concluded the bulk and mass of the proposed building would be overly prominent and discordant in the streetscene.
- 10 On 9 June 2014, the Council determined that Prior Approval under Class J of Part 3 of Schedule 2 of the General Permitted Development Order 1995 (as amended) for the change of use of the premises (Class B1a) into residential use (Class C3) to form 3 x 1 bed and 3 x 2 bed self-contained flats was not required (the development could proceed) (reference DC/14/87239).
- 11 On 17 August 2015, the Council determined that Prior Approval under Class O of Part 3 of Schedule 2 of the General Permitted Development Order 2015 for the change of use of the premises (Class B1a) into residential use (Class C3) to form 6 x 1 bed and 3 studio contained flats was not required (reference DC/15/92810).
- 12 On 15 October 2015 the Council determined that Prior Approval under Class O of Part 3 of Schedule 2 of the General Permitted Development Order 2015 for prior approval in respect of change of use of 1-3 Ashby Road SE14, from office use (Class B1(a)) to residential (Class C3) to create 9 self-contained units was not required (reference DC/15/93310).
- 13 On 12 February 2016, planning permission was granted for alterations to the existing office building at 1-3 Ashby Road SE4, comprising the introduction of light wells to the rear part of the building and a new light well adjoining the boundary with 54 - 60 Manor Avenue, together with minor alterations to the external elevations of the building and

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new landscaping of the Ashby Road and Ashby Mews frontages (reference DC/15/93717).

- 14 On 7 March 2022, planning permission was refused for the construction of part single-storey and part two-storey roof extensions to create 3 self-contained flats, together with the conversion of an existing studio to provided additional living accommodation at 1-3 Ashby Road SE4, with associated 8 cycle spaces, refuse storage and a new green roof (DC/21/124306). The application was refused for the following reason:

*The proposed extension, by reason of its height, bulk, scale, massing and design, would introduce an unsympathetic and visually intrusive form of development that would fail to respect the historic spatial character and pattern of development. The proposed development would therefore fail to preserve or enhance the character and appearance of the Brockley Conservation Area contrary to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Part 16 Conserving and Enhancing the Historic environment of the NPPF, Policy HC1 Heritage, Conservation and Growth of the London Plan (March 2021), Policies 15 High quality design for Lewisham and 16 Conservation areas, heritage assets and the historic environment of the adopted Core Strategy (June 2011), and DM Policies 30 Urban design and local character, 31 Alterations and extensions to existing buildings, 33 Infill, backland, back garden and amenity area development and 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 of the Development Management Local Plan (November 2014).*

- 15 On 18 November 2022, an appeal (Appeal Ref: APP/C5690/W/22/3296443) against the refusal of application DC/21/124306 was dismissed with the inspector reaching the following conclusion at para 22. It is notable that the inspector's assessment of the visual impact of the extension was clear that the bulk and massing of the extension would not introduce harm to conservation area, therefore the Council's reason for refusal was not upheld. As set out above, the appeal was dismissed on the ground that the extension would be harmful to the living conditions of Flat 2.

*"Based on the evidence before me, I therefore find that the proposed development would cause significant harm to the living conditions of occupants of flat 2 in terms of outlook and light. It would therefore be contrary to Policy 15 of the Lewisham Core Strategy (2011), DM Policies 31 and 32 of the Lewisham Development Management Local Plan (2014) and Policies D3 and D6 of The London Plan (2021). These policies require, amongst other things, that developments including extensions; have no significant loss of amenity (including sunlight and daylight) to adjoining houses, provide a satisfactory level of outlook and natural lighting for neighbours, deliver appropriate outlook and amenity, and provide sufficient daylight and sunlight to surrounding housing that is appropriate for its context, whilst avoiding overshadowing."*

### **3 CURRENT PLANNING APPLICATION**

#### **3.1 THE PROPOSALS**

- 16 The construction of a roof extension to facilitate the provision of three additional self-contained residential units and the conversion of an existing studio unit to provide a three-bedroom self-contained flat.

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- 17 The proposed roof extension would be part-single, part-two storey to the front (facing Ashby Road), raising the height of the building to three storeys. At first floor level the extension would feature facing brickwork to match the existing. At second floor level the extension would be set back and would be clad in zinc. The extension also includes an additional storey to the rear facing onto Ashby Mews. This section of the extension would also be clad in Zinc. The extensions would have shallow pitched roofs which would incorporate rooflights.
- 18 The additional residential accommodation would be comprised of a one-bedroom flat at first floor level with one two-bedroom and one studio flats at second floor level. The floor area of an existing studio unit (Flat 09) at first floor level would be increased from 30sqm to 94sqm to provide a three-bedroom flat. The layouts of the remaining eight existing flats would be unaltered. All three additional units and the extended flat would be provided with balconies.
- 19 Refuse and recycling facilities would be provided within a store to be located in the front garden. A cycle store would be installed adjacent to the western elevation with access onto Ashby Mews.

### 3.2 COMPARISON WITH PREVIOUS SCHEME

20 The proposed development is broadly the same as the scheme refused in March 2022 (Ref DC/21/124306) with the only changes connected to addressing the impact to light and outlook to Flat 2, which was the sole reason given by the Inspector for dismissing the appeal. The key changes are listed below:

- Reduction to the depth of the two-storey extension to the eastern portion of the building and associated reduction in internal floorspace as shown on Figure 2 below.
- Alteration to the layout of Flat 10 from a two-bedroom three-person flat to a one-bedroom two-person unit.
- Alteration to the layout of Flat 11 from a one-bedroom two-person flat to a single person studio.
- Additional window in the western side elevation serving Flat 9.
- Additional screens to the balconies of Flats 9 and 10

**Figure 2. Drawing showing change to the depth of the extension and relationship to the rooflights serving Flat 2 with the massing removed highlighted in red.**



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## 4 CONSULTATION

### 4.1 APPLICATION PUBLICITY

21 Site notices were displayed and a press notice was published on 1 March 2023. Letters were sent to residents and business in the surrounding area as well as to the relevant ward Councillors and Brockley Society on 20 February 2023.

22 21 representations were received in response, comprising 20 objections and one comment in support. One petition against the development was also received with six signatures.

#### 4.1.1 Comments in objection

Comment	Para where addressed
Principle of development	
Principle of residential development	46
Lack of affordable house contribution	48
Housing mix	49
Overdevelopment	50
Residential quality	
Accessibility of the flats	71
Urban design and heritage matters	
Adverse impact to the Conservation Area	89-97
Adverse impact to Ashby Mews	89-95
Design of extensions	89-95
Impact of ASHP	93 & 152
Impact to the public realm	94
Transport	
Increase traffic	102
Waste & bin management	105
Deliveries and servicing	106
Parking stress	113-114
Living conditions of neighbours	
Overbearing enclosure	123-128
Loss of outlook	123-128
Loss of privacy	131-133
Loss of light	142-146

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Noise and disturbance	151-152
Disturbance from construction	151
Sustainable development	
Loss of soft landscaping	158
Flood risk & urban drainage	162

23 The Brockley Society also submitted comments raising the following objections:

Comment	Para where addressed
Principle of Development	
Unit mix	49
Accessibility of the flats	71
Urban Design & Heritage	
Harm to the Conservation Area	89-95
Harm to Ashby Mews	89-95
Transport Impact	
Waste management	105
Cycle parking	108-110
Living Conditions of Neighbours	
Loss of outlook	124-128
Loss of privacy	131-133
Loss of light	142-146
Increased noise & disturbance	151-152
Sustainable Development	
Flood risk & urban drainage	162

24 A number of other comments were also raised that are not material to this application for the following reasons:

- Impact house prices: it is generally accepted that the impact of development to neighbouring land values is not in and of itself a consideration that can be given weight. Although, the material impacts to neighbouring land and properties can be assessed.
- Rainwater leakage: roof leakage would be adequately addressed by Building Regulations.
- Structural impact: structural matters are adequately addressed by Building Regulations.
- Leaseholder rights: leaseholder matters are subject to a separate legislative framework so are not material to this planning application.
- Right to mews access: right of access on to Ashby Mews is a civil matter which is not considered to be a material planning consideration.

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- Fire Safety: is addressed by building regulations for this scale of development.
- Inadequate pre-application engagement: pre-application engagement with residents is encouraged, but is not a requirement; and that engagement does not relate to the planning merits of the scheme itself. .
- Loss of industrial uses: the building is not in industrial use
- Age of the building: in this case the incorrect reference to the age of the building does not have a material impact on the assessment of the application.

#### 4.1.2 Comments in support

Comment	Para where addressed
High quality design	89-96

25 The comment also praised the extent of the pre-application engagement. This is welcome but is not a requirement and therefore cannot be attributed any positive weight in this assessment.

#### 4.1.3 Local Meeting

26 Due to the number of submissions received, a virtual Local Meeting was held on Tuesday 6th June 2023. The meeting was chaired by Councillor Lahai-Taylor. A record of the Local Meeting is contained in Appendix 1 of this report. The issues raised at the Local Meeting were consistent with the matters raised in the written submissions as summarised above.

## 4.2 INTERNAL CONSULTATION

27 The following internal consultees were notified on 20 February 2023.

28 Conservation: raised no objections in light of the appeal decision for application DC/21/124306 subject to imposing a condition for the materials and design detailing.

29 Highways: raised no objections subject to conditions, see the Transport Section for details.

## 5 POLICY CONTEXT

### 5.1 LEGISLATION

30 Planning applications are required to be determined in accordance with the statutory development plan unless material considerations indicate otherwise (S38(6) Planning and Compulsory Purchase Act 2004 and S70 Town & Country Planning Act 1990).

31 Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990: impose particular duties on the LPA in respect of listed buildings and conservation areas, respectively.

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## 5.2 MATERIAL CONSIDERATIONS

- 32 A material consideration is anything that, if taken into account, creates the real possibility that a decision-maker would reach a different conclusion to that which they would reach if they did not take it into account.
- 33 Whether or not a consideration is a relevant material consideration is a question of law for the courts. Decision-makers are under a duty to have regard to all applicable national policy as a material consideration.
- 34 While there is no duty to follow a previous planning decision, which includes a decision taken by an Inspector appointed on behalf of the Secretary of State to determine a planning appeal, there is a principle of consistency in planning law. Where a subsequent decision would essentially depart from a previous decision (or, in other words, in reaching that decision the decision-maker was necessarily disagreeing with that previous decision), the decision-maker would be expected to give cogent reasons for that departure.
- 35 The weight given to a relevant material consideration is a matter of planning judgement. Matters of planning judgement are within the exclusive province of the LPA. This report sets out the weight Officers have given relevant material considerations in making their recommendation to Members. Members, as the decision-makers, are free to use their planning judgement to attribute their own weight, subject to aforementioned directions and the test of reasonableness.

## 5.3 NATIONAL POLICY & GUIDANCE

- National Planning Policy Framework 2021 (NPPF)
- National Planning Policy Guidance 2014 onwards (NPPG)
- National Design Guidance 2019 (NDG)

## 5.4 DEVELOPMENT PLAN

36 The Development Plan comprises:

- London Plan (March 2021) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013) (SALP)
- Lewisham Town Centre Local Plan (February 2014) (LTCP)

## 5.5 SUPPLEMENTARY PLANNING GUIDANCE

37 Lewisham SPD:

- Alterations and Extensions Supplementary Planning Document (April 2019)
- Brockley Conservation Area Supplementary Planning Document (December 2005)
- Small Sites Supplementary Planning Document (October 2021)

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38 London Plan LPG:

- Small Site Design Codes (June 2023)
- Optimising Site Capacity: A Design-led Approach (June 2023)
- Housing Design Standards (June 2023)
- Air Quality Neutral (February 2023)

## 5.6 OTHER MATERIAL DOCUMENTS

- Brockley Conservation Area Character Appraisal (August 2006)

# 6 PLANNING CONSIDERATIONS

39 The main issues are:

- Principle of Development
- Residential Quality
- Urban Design
- Impact on Adjoining Properties
- Transport
- Sustainable Development
- Natural Environment

## 6.1 PRINCIPLE OF DEVELOPMENT

### *General policy*

40 The National Planning Policy Framework (NPPF) at paragraph 11, states that there is a presumption in favour of sustainable development and that proposals should be approved without delay so long as they accord with the development plan.

41 The London Plan (LP) sets out a sequential spatial approach to making the best use of land set out in LPP GG2 (Parts A to C) that should be followed.

### *Policy*

42 LPP H1 seeks to optimise the potential of housing delivery, especially on sites with good public transport access level (PTALs) of 3-6 and close to town centres. The target set for Lewisham in the LP is 16,670 homes between 2019-29, or 1,667 as an annualised average.

43 LPP H2 states that boroughs should increase the contribution of small sites (below 0.25 hectares) to meeting London's housing needs and sets a ten-year target for Lewisham of 3,790 new homes.

44 LPP H5 supported by CSP 1 require contributions to affordable housing on sites capable of providing 10 or more dwellings.

45 LPP H10 advises that schemes should generally consist of a range of unit sizes.

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## *Discussion*

- 46 The existing use of the building is residential and therefore the proposal would not conflict with any employment or commercial uses within the building. As such, the site is appropriate for a higher density of development taking into account the residential character of the area and sustainable location. Therefore, the principle of an additional storey for residential accommodation is accepted.
- 47 The scheme would contribute three additional residential units to both the overall housing targets and the small sites target established by LPP H1 and H2. Furthermore, the development includes an extension to an existing unit to provide a family sized flat (3 bedrooms). The South East London Strategic Housing Market Assessment (SHMA) identifies that the main housing need in Lewisham is for family housing, with the provision of family housing attributed policy weight within the Core at Strategy Objective 3 and CSP 1. As such the contribution to both housing and family housing are identified as planning merits of the scheme and carry positive weight within the overall planning balance.
- 48 The proposed development would increase the number of units in the building to 12 and therefore the requirements of LPP H5 and CSP 1 are considered relevant. Both LPP H5 and CSP 1 are clear that contributions to affordable housing will be sought on sites capable of providing 10 or more dwellings. The conversion of the building was carried out via the prior approval process. Prior approval legislation does not require a contribution to affordable housing and therefore the addition of three properties would not meet the threshold for an affordable housing contribution as set out within CSP 1 and LPP H5.
- 49 The development includes a good range of unit sizes comprising one, two and three bedroom flats. Accordingly, the proposed unit mix would be consistent with the requirements of LPP H10 and is therefore supported.
- 50 The addition of three residential units is not considered to constitute the overdevelopment of the site as the site characteristics justify the increase in density. These characteristics include the large footprint of the building, the good PTAL rating and the proximity to amenities and shopping parades on Lewisham Way and Brockley Road.
- 51 The provision of a single occupancy residential unit necessitates an assessment against DMP 32.4.e, which states that single person units are required to be of exceptional design quality and highly accessible locations. In this case the site is considered highly accessible and therefore suitable for single person accommodation for the reasons set out within para 50 above. The residential accommodation provided by the flat is also considered to be of an exceptional standard given the dual aspect, oversized internal floor area and policy compliant provision of external amenity space. As such, the proposed studio flat is supported.

### **6.1.1 Principle of development conclusions**

- 52 In summary, Officers are satisfied that a contribution to affordable housing is not required as the building was converted via prior approval and the number of additional units would therefore not trigger a contribution. The provision of three additional dwellings and a new family unit would contribute towards local housing targets and an identified housing need, which are considered planning merits. The principle of development is therefore supported.

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- 53 The Planning History section of the report documents that the previous application for this development (ref DC/21/124306) was subject to an appeal, see paras 14-15 above. The Appeal Decision (ref APP/C5690/W/22/3296443) is appended to this report at Appendix 2. In the Inspectors assessment of the application the only significant harm arising from the previous iteration of the development was the loss of outlook and natural light to Flat 2 located on the ground floor level of the host building, see paras 125-128 and 144-146 for a summary.
- 54 The current development is fundamentally the same scheme as the previous proposal, save the modifications that have been undertaken to the massing in order to address the harm to Flat 2. Therefore, the appeal decision is a material consideration which carries considerable weight in the assessment of this application. Officers consider that the application has addressed the harm identified in the Appeal Decision and that that decision should be followed, see paras 125-127 and 144-146 for the detailed assessment.

## 6.2 RESIDENTIAL QUALITY

### *General Policy*

- 55 NPPF para 130 sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users. This is reflected in relevant policies of the London Plan (LPP D6), the Core Strategy (CS P15), the Local Plan (DMP 32) and associated guidance (Housing Design Standards LPG; Alterations and Extensions SPD 2019, LBL).
- 56 The main components of residential quality are: (i) space standards; (ii) outlook, privacy and ventilation; (iii) daylight and sunlight; (iv) noise and disturbance; (v) accessibility and inclusivity; and (vi) air quality.

### 6.2.1 Internal and external space standards

#### *Policy*

- 57 London Plan Policy D6 and DM Policy 32 seek to achieve housing developments with the highest quality internally and externally and in relation to their context and sets out the minimum space standards. These policies set out the requirements with regard to housing design, seeking to ensure the long-term sustainability of new housing provision.
- 58 LPP D6 states that for 1-2 person dwellings, a minimum 5sqm is required, with an extra 1sqm for every additional occupant.

#### *Discussion*

- 59 The table below sets out proposed dwelling sizes.

Flat No.	Unit size	Required GIA sqm	GIA sqm	External sqm
9	3b5p	86	93	8
10	1b2p	50	51	5
11	1b1p	39	42	5
12	2b4p	70	71	7

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60 All six units would either meet or exceed the requirements of LPP D6 with regard to floor space, bedroom size and storage provision. The floor to ceiling heights would be 2.5m for the majority of the residential floor space which meets the London Plan requirement and would contribute to a good standard of internal residential accommodation. All four flats would benefit from balconies that meet the London Plan requirement, which is supported.

### 6.2.2 Outlook, Privacy & Ventilation

#### *Policy*

61 London Plan Policy D6 seeks high quality design of housing development and requires developments to achieve 'appropriate outlook, privacy and amenity'. Policy D6 also seeks to maximise the provision of dual aspect dwellings.

62 This is echoed in DM policy 32 which also states that there should be a minimum of separation distance of 21m between directly facing habitable windows on main rear elevations. The Small Sites SPD guidance revised this figure to 16m

#### *Discussion*

63 All four flats would be dual aspect as a minimum providing good levels of outlook and passive cross ventilation. The cross ventilation would provide adequate mitigation against overheating. In privacy terms all four flats are an appropriate distance from the neighbouring buildings in compliance with the Small Sites SPD guidance. The screening to the side of the balconies for Flats 10 and 11 coupled with the obscure glazing proposed for the southernmost window would ensure there would be no direct views towards the adjacent bedroom of Flat 9. These measures are considered sufficient to ensure acceptable levels of privacy and would be secured via condition.

### 6.2.3 Daylight and Sunlight

#### *Policy*

64 DMP 32(1)(b) expects new developments to provide a 'satisfactory level' of sunlight and daylight for its neighbours.

65 Daylight and sunlight are generally measured against the Building Research Establishment (BRE) standards however this is not formal planning guidance and should be applied flexibly according to context.

66 The NPPF does not express particular standards for daylight and sunlight. Para 125 (c) states that, where there is an existing or anticipated shortage of land for meeting identified housing need, LPAs should take a flexible approach to policies or guidance relating to daylight and sunlight when considering applications for housing, where they would otherwise inhibit making efficient use of a site.

#### *Discussion*

67 A Daylight and Sunlight Report (Daylight & Sunlight UK Limited, January 2023) has been submitted with the application. The report provides an analysis of the internal levels of sunlight and daylight for the residential accommodation against the relevant standards of the BRE *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice 2022* guidance. The results confirm that all of the proposed residential accommodation

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would be complaint with the BRE standard. As such, Officers are satisfied that the proposed development would receive acceptable levels of natural light.

#### **6.2.4 Noise & Disturbance**

##### *Policy*

68 Paragraph 174 of the NPPF states decisions should amongst other things prevent new and existing developments from contributing to, being put at an unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. Paragraphs 186 states decisions should mitigate to reduce a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts to quality of life.

##### *Discussion*

69 The surrounding area is predominately residential save for the commercial uses within Ashby Mews. These uses are compatible with residential accommodation as emphasised by their location at the end of residential gardens. The surrounding roads do not generally experience high levels of traffic and therefore Officers are satisfied that additional mitigation against external noise would not be required.

#### **6.2.5 Accessibility and inclusivity**

##### *Policy*

70 London Plan Policy D7 requires 10% of residential units to be designed to Building Regulation M4(3) 'wheelchair user dwellings' i.e. designed to be wheelchair accessible, or easily adaptable for residents who are wheelchair users; with the remaining 90% being designed to M4(2) 'accessible and adaptable'.

##### *Discussion*

71 The constraints imposed by converting and extending an existing building would prevent the provision of wheelchair accessible and adaptable units as it would not be possible to provide level access. It would not be proportionate to require that a lift be installed given the modest scale of development. Therefore, in this case the failure to provide M4(2) and M4(3) compliant accommodation is considered acceptable taking into account the otherwise high-quality standard of accommodation and positive contribution to housing supply.

#### **6.2.6 Air Quality**

##### *Policy*

72 NPPF para 174 states that planning decisions should among other things prevent new and existing development being put at unacceptable risk from, or being adversely affected by, unacceptable levels of air pollution.

##### *Discussion*

73 The application site is located within an Air Quality Management Area. However, no assessment has been submitted quantifying air quality at the application site. Despite the absence of a report Officers are satisfied that the residential location coupled with

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the distance from the main roads would ensure that the passive ventilation provided by the windows would be adequate to mitigate any harm from air pollution.

### 6.2.7 Residential quality conclusion

74 Overall, the standard of residential accommodation is generally good quality and compliant with the relevant standards and policies.

## 6.3 URBAN DESIGN & HERITAGE IMPACT

### *General Policy*

75 The NPPF at para 126 states the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

### *Policy*

76 Heritage assets may be designated—including Conservation Areas, Listed Buildings, Scheduled Monuments, Registered Parks and Gardens, archaeological remains—or non-designated.

77 Section 72 of the of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the LPA to have special regard to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

78 Relevant paragraphs of Chapter 16 of the NPPF set out how LPAs should approach determining applications that relate to, amongst other things, designated heritage assets. As far as relevant to the present application, that requires an LPA to place great weight on any harm to a designated heritage asset (which includes a conservation area). Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset that harm should be given great weight, and be weighed against the public benefits of the proposal.

79 LPP HC1 states that development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings.

80 LPP D3 states that development proposal should respond positively to the existing character of a place by identifying the special characteristics and features of the locality.

81 CSP 15 to ensure highest quality design and the protection or enhancement of the historic and natural environment, which is sustainable, accessible to all, optimises the potential of sites and is sensitive to the local context and responds to local character

82 CSP 16 ensures the value and significance of the borough's heritage assets are among things enhanced and conserved in line with national and regional policy.

83 DMP 30 requires a site specific response that creates a positive relationship to the existing townscape, natural landscape, open spaces and topography to preserve and / or create an urban form which contributes to local distinctiveness such as plot widths, building features and uses, roofscape, open space and views, panoramas and vistas including those identified in the London Plan, taking all available opportunities for enhancement.

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- 84 DMP 31 states that development proposals for alterations and extensions, including roof extensions will be required to be of a high, site specific, and sensitive design quality, and respect and/or complement the form, setting, period, architectural characteristics, and detailing of the original buildings, including external features such as chimneys, and porches. High quality complementary materials should be used, appropriately and sensitively in relation to the context.
- 85 DMP 33 supports the principle of new development within a street frontage but seeks to ensure that the proposed development would make a high quality positive contribution to the area whilst also providing a site-specific creative response to the character and issues of the street frontage typology.
- 86 DMP 36 echoes national and regional policy and summarises the steps the borough will take to manage changes to Conservation Areas, Listed Buildings, Scheduled Ancient Monuments and Registered Parks and Gardens so that their value and significance as designated heritage assets is maintained and enhanced.
- 87 The Small Sites SPD provides guidance for the redevelopment of small infill sites (maximum 0.25ha). Sections 27, 30 and 33 are of particular relevance and paragraph 30.1.6 within Section 30 warns that that in most cases vertical intensification within Conservation Areas will be resisted.
- 88 Further guidance is given with the Brockley Conservation Area Character Appraisal and SPD.

#### *Discussion*

- 89 In the assessment of the previous application (ref DC/21/124306), Officers identified that an extension would introduce less than substantial harm to the Brockley Conservation Area. This harm was principally attributed to the bulk and massing of the second-floor extension as the following assessment with the Officers Report for application DC/21/124306 makes clear:

*“The proposed third storey extension would be set back from the front façade by 1.5m and set in from both sides by 0.8m. The third storey would measure 16.1m wide with a height of between 2.2m and 2.6m due to the slope of the roof. This would represent a significant increase in additional bulk and massing to the building and would therefore increase its prominence within the streetscene.*

*This section of Ashby Road connects Manor Avenue and Upper Brockley Road, which historically are grander than the side roads and Mews’ located to the rear. Buildings in Ashby Mews and at the entrances of mews’ have historically been lower in height and scale and therefore visually secondary and subservient to the main residential roads. The introduction of the third storey would subvert the historic context and pattern of development by competing with the buildings on Manor Avenue and Upper Brockley Road in terms of height and stature thereby eroding the hierarchical spatial character of the Conservation Area.”*

- 90 Harm to the character and appearance of the Brockley Conservation Area was a main issue for the appeal against application DC/21/124306. This appeal was dismissed; however, the inspector’s assessment of the visual impact of the extension was clear that the bulk and massing of the extension would not introduce harm to conservation area as appeal decision APP/C5690/W/22/3296443 (see Appendix 2) explains at paras 8-11:

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*“On the Ashby Mews elevation, the roof extension would step down as the building progresses into the mews. The plans show that the extension would be lower than the Royston Court development opposite the site and the descent of the resulting building into the mews would sit comfortably with the buildings in the mews whilst drawing on some of the design features of the mews buildings in terms of materials, colours and form.*

*On the Ashby Road elevation the roof extension creates the most perceptible change to the appearance of the building in relation to its surroundings due to the increase in scale and mass. It would however be seen in the context of the three storey terraces of Manor Avenue and Upper Brockley Road, and opposite Royston Court that has accommodation over three levels.*

*I find that the design approach in this case, whereby a distinct separation from the main body of the host building is proposed, would relieve any potential dominance of the building. This is combined with the set-back from the edge of the building on the Ashby Road elevation, would create an extension that would appear as a softer roof addition as opposed to a potentially more overbearing upward continuation of the existing building in terms of design and siting. The overall scale would remain subservient in the context of the terraced properties either side and would not be out of character within the area as a whole. When combined with the separation from the terraces, I do not consider that the resulting building would visually compete with them*

*It follows that I do not consider that there would be harm to any of the non-designated heritage assets in the BCA, including Ashby Mews to the rear of the site. Open views to the rear of properties on Manor Avenue and Upper Brockley Road and across their gardens would remain appreciable following the development.”*

- 91 It is therefore evident that the Inspector found the siting and design of the extension would ensure that the third storey would read as a subservient addition to the townscape. Officers have carefully considered this assessment, and consider that it is correct and there has been no relevant change in policy or guidance since that decision.
- 92 At paras 6 and 7 of the appeal decision the Inspector gives weight to the materials and design quality as a factor in preventing visual harm. As such, it is considered necessary to impose a condition securing details of the materials and design details to ensure that the proposed level of design quality is delivered. This would include details of the brickwork, cladding materials and fenestration as advised by the Conservation Officer.
- 93 A condition is also recommended securing details of the siting and appearance of the proposed Air Source Heat Pump and intakes to ensure that these would be sensitively located to prevent any visual harm to the Conservation Area.
- 94 The impact of the development to the public realm was raised as a concern within the objections to scheme. However, the development would be contained to the curtilage of the property and therefore would not introduce any permanent physical obstructions to any public areas
- 95 Officers are therefore satisfied that the current proposal would lead to no harm to the Brockley Conservation Area.

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### **6.3.1 Urban design conclusion**

96 Officers, having regard to the statutory duties in respect of listed buildings in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the relevant paragraphs in the NPPF in relation to conserving the historic environment, are satisfied the proposal would preserve the character and appearance of the Brockley Conservation Area.

97 Therefore, the proposed development is considered acceptable in urban design terms.

## **6.4 TRANSPORT IMPACT**

### *General policy*

98 Nationally, the NPPF requires the planning system to actively manage growth to support the objectives of paragraph 106. This includes: (a) addressing impact on the transport network; (b) realise opportunities from existing or proposed transport infrastructure; (c) promoting walking, cycling and public transport use; (d) avoiding and mitigating adverse environmental impacts of traffic; and (e) ensuring the design of transport considerations contribute to high quality places. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and a choice of transport modes.

99 Para 111 states “Development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”.

### **6.4.1 Local Transport Network**

#### *Policy*

100 The NPPF at paragraph 106 states that significant impacts on the transport network (in terms of capacity and congestion) should be mitigated to an acceptable degree.

101 LPP T4 states that development proposals should reflect and be integrated with current and planned transport access, capacity and connectivity.

#### *Discussion*

102 The application site has a PTAL of 4, which is a good level of public transport accessibility. Officers are therefore satisfied that the relatively modest scale of development could be accommodated within the existing transport infrastructure and network without any significant additional mitigation.

### **6.4.2 Servicing and refuse**

#### *Policy*

103 CSP13 sets out the Council’s waste management strategy for new development and states that major developments should be designed to incorporate the existing and future long-term needs of waste management and disposal.

104 Storage facilities for waste and recycling containers should meet at least BS5906:2005 Code of Practice for waste management in Buildings.

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### *Discussion*

- 105 An additional bin store would be constructed within the front garden to accommodate the increased requirement generated by the three additional and one enlarged flats. The store would accommodate four bins which would be commensurate with the policy requirement and ensure that bins are unlikely to cause obstructions to the footway. A condition is recommended securing details of the appearance of the store and the provision of the facilities prior to the occupation of the building.
- 106 The servicing demand generated by the proposed residential accommodation is unlikely to be significant given the scale of development. Therefore, Officers are content that the building can continue to be serviced from the roadside consistent with the existing arrangement.

## **6.4.3 Transport modes**

### ***Cycling***

#### *Policy*

- 107 Residential development is required to provide cycle parking in accordance with the requirements of Policy T5 and Table 10.2 of the London Plan.

#### *Discussion*

- 108 A cycle store would be provided to the west of the property providing facilities for eight cycles thereby exceeding the seven stipulated within Table 10.2 of the London Plan. The store would be covered and would accommodate four Sheffield stands which are considered accessible in accordance with the London Cycle Design Standards.
- 109 The objections to the development have questioned whether the store would be safe and accessible given that it would be accessed via Ashby Mews, which is an unadopted road in private ownership with a gated entrance. In response the applicant has confirmed that the cycle store would be accessible even were the gates to be closed. This has been confirmed on site by Officers and it was also apparent that the mews is publicly accessible. As such, Officers are satisfied that the cycle store would be practically and feasibly accessible.
- 110 A condition is recommended securing details of the appearance of the store and the provision of the facilities prior to the occupation of the development.

### ***Cars***

#### *Policy*

- 111 LP Policy T6 supported by CSP 14 and DMP 29 require developments to take a restrained approach to parking provision to ensure a balance is struck to prevent excessive car parking provision that can undermine cycling, walking and public transport use.
- 112 LP Policy T6.1 together with Tables 10.3 set out the parking standards for residential uses

#### *Discussion*

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- 113 No off-street parking would be provided by the development, which is supported given the PTAL rating. The additional residential accommodation would likely generate parking demand within the surrounding streets. There are no on-street restrictions, in the form of a CPZ preventing car parking, so it is not possible to prevent parking in the surrounding area.
- 114 The applicant has not provided a parking survey to document parking capacity in the area. The objections to the development state that parking stress is high. However, a site visit and general knowledge of the area indicates that there is sufficient capacity in the surrounding roads to accommodate what is likely to be a modest amount of additional demand. Therefore, as a matter of planning judgement Officers are satisfied that no additional mitigation is required. In coming to this conclusion Officers have taken into account the scale of development proposed, the good PTAL and the provision of cycling facilities.

#### **6.4.4 Construction**

##### *Policy*

- 115 LPP T7 states that development proposals should facilitate sustainable freight movement by rail, waterways and road. Additionally, LPP T7 requires that construction logistic plans should be developed in accordance with TfL guidance

##### *Discussion*

- 116 The Draft Construction Management Plan (CMP) (Entran, November 2021) indicates that the construction impacts to the local transport and highway network would not be significant with no obstructions necessary other than for deliveries and loading. However, the draft CMP lacks detail and fails to address some crucial features of the surrounding area such as the proximity to Myatt Garden Primary School and the associated school road. As such, a more comprehensive CMP would be secured by condition. It is envisaged that an acceptable CMP would include limits on the timing of deliveries so as to avoid school drop-off and pick-up times.

#### **6.4.5 Transport impact conclusion**

- 117 The proposed development is considered to have an acceptable impact on the surrounding highway and transport network subject to the imposition of the conditions recommended above.

### **6.5 LIVING CONDITIONS OF NEIGHBOURS**

##### *General Policy*

- 118 NPPF paragraph 130 sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users. This is reflected in relevant policies of the London Plan (LPP D3, D6 and D14) and in the Development Management Local Plan (DMP 30, 32 and 33).
- 119 DMP 31 (1) (b) expects new development to provide a 'satisfactory level' of privacy, outlook and natural lighting for its neighbours.

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120 The main impacts on amenity arise from: (i) overbearing sense of enclosure/ loss of outlook; (ii) loss of privacy; (iii) loss of daylight within properties and loss of sunlight to amenity areas; and (iv) noise and disturbance.

### 6.5.1 Enclosure and Outlook

#### *Policy*

121 DMP 32 expects new residential development to result in no harmful increased sense of enclosure and no significant loss of outlook to neighbouring dwellings.

122 The Small Sites SPD (October 2021) in subsection 12.3 provides guidance in respect of separation distances buildings.

#### *Discussion*

123 The Small Sites SPD provides guidance on appropriate distances between new development and existing properties to ensure that impacts to amenity are within acceptable levels. Figure 27 of the SPD states that new development should generally not intercept a 25-degree line from the centre of the ground floor windows nor a 43-degree line from a point 1.6m above ground level 10m from the rear elevation.

124 The 25-degree and 43-degree lines have not been modelled by the applicant. However, the rear gardens of the properties on Manor Avenue are approximately 32m in length and the distance from the rear elevations on Upper Brockley Road is approximately 35m. Therefore, exercising planning judgement, Officers consider that the impacts to outlook levels at the surrounding residential properties would be acceptable.

125 Turning to the impact to the existing flats within the application site. The extensions would be built above the level of the majority of the existing flats and would not impede any first-floor windows. The three rooflights being removed to facilitate the development serve a communal corridor, a bathroom and a dual aspect living room for Flat 3. The loss of these rooflights would therefore not be harmful to existing levels of outlook.

126 The appeal decision for previous application DC/21/124306 identified that the extension would have a harmful impact to outlook for Flat 2 due to enclosing the rooflights serving a bedroom. In assessing this impact the inspector reached the following conclusion (Appeal Ref: APP/C5690/W/22/3296443 paras 16 and 17)

*“The second bedroom to the property in terms of daylight, sunlight and outlook, is served solely by two flat rooflights that are recessed into the ceiling of the room. The existing side elevation of the first floor of the appeal building sits immediately adjacent to these rooflights. The proposed development would create two storeys either side of these rooflights, wrapping around them.*

*I accept that the existing outlook from the room is poor, however it nevertheless encompasses a changing sky and would be significantly harmed and worsened by having two storeys either side which would severely curtail the outlook.”*

127 As the paragraph above makes clear the inspector attributes the harmful impact to locating the extension adjacent to the two rooflights. The revision to the siting of the proposed extension would set the extension away from the rooflights meaning that the rooflight would continue to receive largely unimpeded sunlight and daylight from east. There would be some impact from the balconies of the extension, particularly the privacy screens, but these would be set back further than the extension as previously proposed

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with considerably less bulk. Accordingly, Officers are satisfied that the reduction to the massing of the extension has successfully overcome the limited scope of harm identified within the appeal decision.

- 128 The reduction to the massing of the extension would not introduce any additional impacts to the ground floor flats above that assessed for the previous application. As such, Officers conclude that the impact to the outlook of the other ground floor flats would be acceptable. This assessment is consistent with the appeal decision.

## 6.5.2 Privacy

### *Policy*

- 129 DM Policy 32 states that adequate privacy is an essential element in ensuring a high level of residential amenity. Unless it can be demonstrated that privacy can be maintained through design, there should be a minimum of separation distance of 21m between directly facing habitable windows on main rear elevations. This separation distance will be maintained as a general rule but will be applied flexibly dependent on the context of the development.
- 130 The Small Sites SPD guidance revised this figure to 16m and at Figs. 29-31 states that conventional windows serving habitable rooms in new dwellings should be at least 6m from the private garden zone defined as the area of garden 10m from the rear elevation.

### *Discussion*

- 131 The distances between the side elevation windows within the proposed extension and the rear elevation windows and rear garden privacy zones at the adjacent properties on Manor Avenue and Upper Brockley Road would be compliant with the Small Site SPD guidance and therefore the impacts are considered acceptable.

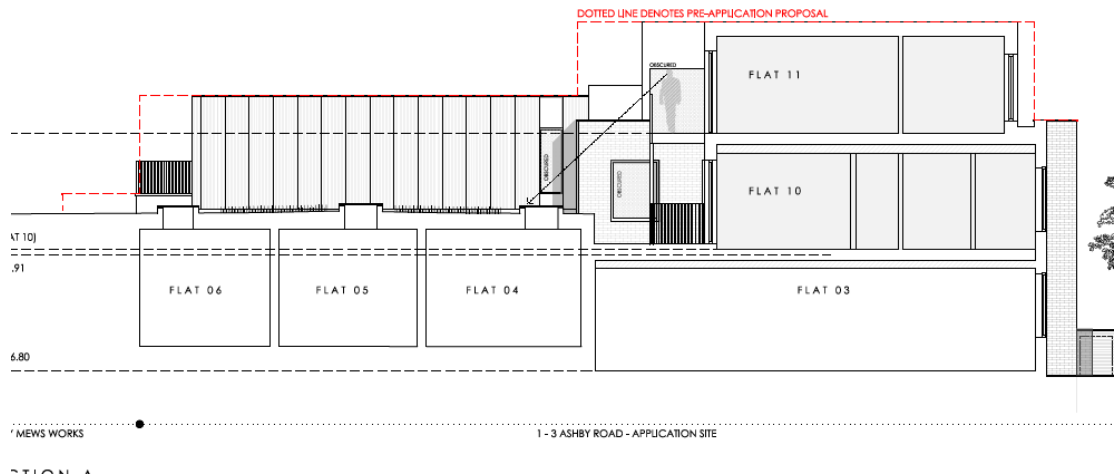
Flats 10 and 11 would feature balconies within close proximity to the rear gardens on Manor Avenue. Screens would be installed to the eastern side of the balconies to prevent views towards the gardens. The balconies would also be screened to the west to prevent overlooking towards adjacent windows at Flat 9. The unusually thick roof coupled with the separation distance would ensure that direct overlooking into the ground floor flats to the rear from the balconies via the rooflights would not be possible, this is illustrated within Figure 3 below.

**Figure 3. Section drawing showing views from the Flat 11 Balcony towards the rear**

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- 132 The two windows in the eastern side elevation of Flat 9 located adjacent to rooflights would be fitted with opening restrictors to prevent the unlikely scenario of a resident leaning out of the window and being afforded direct overlooking to the flats below. The opening restrictors and balcony screening would be secured by condition. A condition is also recommended preventing the use of the green roof as an amenity terrace.
- 133 The proposed balcony for Flat 9 would feature a 1.8m screen to the rear to ensure that the balcony would not have primary outlook entirely over the neighbouring Unit 1 Ashby Mews, given the potential to limit development on that site. The balcony would retain outlook to the sides, which is considered acceptable given the existing unit does not benefit from any external amenity space. The screen would also limit outlook to the adjacent windows and doors serving the living room. This is not considered harmful as the living room is dual aspect with windows with unconstrained outlook to the west. The provision of the screening would be secured by condition.

### 6.5.3 Daylight and Sunlight

#### *Policy*

- 134 DMP 32(1)(b) expects new developments to provide a 'satisfactory level' of sunlight and daylight for its neighbours.
- 135 Daylight and sunlight is generally measured against the Building Research Establishment (BRE) standards however this is not formal planning guidance and should be applied flexibly according to context.
- 136 The NPPF does not express particular standards for daylight and sunlight. Para 125 (c) states that, where there is an existing or anticipated shortage of land for meeting identified housing need, LPAs should take a flexible approach to policies or guidance relating to daylight and sunlight when considering applications for housing, where they would otherwise inhibit making efficient use of a site.
- 137 The three methods for calculating daylight are as follows: (i) Vertical Sky Component (VSC); (ii) Average Daylight Factor (ADF); and (iii) No Sky Line (NSL).
- 138 The VSC is the amount of skylight received at the centre of a window from an overcast sky. The ADF assesses the distribution of daylight within a room. Whereas VSC assessments are influenced by the size of obstruction, the ADF is more influenced by factors including the size of the window relative to the room area and the transmittance

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of the glazing, with the size of the proposed obstruction being a smaller influence. NSL is a further measure of daylight distribution within a room. This divides those areas that can see direct daylight from those which cannot and helps to indicate how good the distribution of daylight is in a room.

139 The BRE guide target value for VSC is 27%. However, where the values are lower than this in the existing situation, the BRE allows a reduction of 20%, subject to mitigating factors. While any reduction of more than 20% would be noticeable, the significance and therefore the potential harm of the loss of daylight is incremental. The following is a generally accepted measure of significance:

- 0-20% reduction – Negligible
- 21-30% reduction – Minor Significance
- 31-40% reduction – Moderate Significance
- Above 40% reduction – Substantial Significance

140 Sunlight is measured as follows: (i) Annual Probable Sunlight Hours (APSH); and (ii) Area of Permanent Shadow (APS)

141 The APSH relates to sunlight to windows. BRE guidance states that a window facing within 90 degrees due south (windows with other orientations do not need assessment) receives adequate sunlight if it receives 25% of APSH including at least 5% of annual probable hours during the winter months. If the reduction in APSH is greater than 4% and is less than 0.8 times its former value then the impact is likely to be noticeable for the occupants. The APS relates to sunlight to open space: the guidance states that gardens or amenity areas will appear adequately sunlit throughout the year provided at least half of the garden or amenity area receives at least two hours of sunlight on 21st March.

#### *Discussion*

142 A Daylight and Sunlight Report (Daylight & Sunlight UK Limited, January 2023) has been submitted with the application. The report provides an assessment of the impact of the proposed development against the relevant BRE standards for the windows and amenity spaces at the following properties

- Royston Court
- 54-58 Manor Avenue
- 69-75 Upper Brockley Road
- 1-3 Ashby Road (Ground Floor)

143 The report concludes that the proposed development would comply with BRE guidelines in terms of the impact to sunlight (where relevant) and daylight levels at windows and overshadowing to amenity spaces for all of the residential accommodation in the surrounding properties.

144 For the residential accommodation located at ground floor level of the host building the report finds that the impact to sunlight (where relevant) and daylight levels would be fully BRE compliant. This differs from the previous scheme where the report found that the NSL (in the Daylight and Sunlight Report, this is referred to as Daylight Distribution (DD)) value for a bedroom within Flat 2 would fall to 49% of the existing level, 31% below the target value of 80%. The harm to light and outlook levels for this room formed the only

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reason for dismissing the appeal for application DC/21/124306 and is summarised at paragraphs 19-21 of appeal decision APP/C5690/W/22/3296443 which are included below:

*“For flat 2, or indeed Ashby House generally, no assessment of the VSC has been undertaken. For bedroom 2 of flat 2 the report states that the DD would be reduced to about half and would fail to meet BRE guidelines. The report continues that the bedroom would still be in excess of the Average Daylight Factor (ADF) Assessment, however the report highlights, this is not one of the principal assessments that is required to be undertaken in order to assess daylight to surrounding buildings.*

*In terms of the resulting impact, the appellant draws comparison with a hotel room in a city centre that looks directly onto another tall building opposite that the room becomes brighter as you move towards the window as more sky is seen. The appellant continues that, the rear of the room is not pitch black just because it cannot see the sky directly, instead it benefits from the reflected (indirect) light. The comparison is, however, quite a different scenario to the appeal proposal, and fundamentally relates to a hotel room as opposed to a habitable room in a dwelling. I therefore give the comparison limited weight in the appeal.*

*I acknowledge that the Council took a different view in their assessment of the effect of the proposed development on the living conditions of existing occupants. The Council acknowledged the failure to meet the BRE target but considered that the harm would not warrant refusal of the application given that this is the only transgression. I appreciate that this is the only transgression and relates to one habitable room in one dwelling, however I do not consider that this justifies causing the significant harm I have identified as a matter of planning judgement. This is despite the room achieving an ADF that would meet the BRE guidance. My assessment also acknowledges the current visual amenity of the dwelling as a whole as outlined above. This reinforces the significance of ensuring that other habitable rooms in the property in respect of living conditions, are not significantly harmed.”*

- 145 The Daylight and Sunlight Report demonstrates that the reduction to the massing of the extension has successfully overcome the harm identified within the appeal decision by ensuring that the NSL/DD value would be compliant with the BRE requirement. The report also provides an assessment for VSC and finds that both rooflights serving the room would fall to approximately half the existing value but that the absolute value for both rooflights would exceed 27% in compliance with the BRE guidelines. As such, Officers are satisfied that the impact to natural light to Flat 2 would be within acceptable levels.
- 146 The objections to the development and comments at the Local Meeting questioned the methodology and conclusions of the report on the basis that the report was not compiled with the benefit of a site visit to the neighbouring properties. Officers have no concerns with the methodology employed for the report and are satisfied that the assessment and assumptions were undertaken in accordance with the industry guidelines and best practice. This includes modelling the impacts based on floor plans and other remote tools rather than on site.

#### **6.5.4 Noise and disturbance**

*Policy*

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- 147 The NPPF at para 170(e) states decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. At para 180(a) of the NPPF states that planning decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life
- 148 The National Planning Policy Guidance for Noise (July 2019) advises on how planning can manage potential noise impacts in new development. It states that local planning authorities' plan-making and decision taking should take account of the acoustic environment and in doing so consider whether or not:
- a significant adverse effect is occurring or likely to occur;
  - an adverse effect is occurring or likely to occur; and
  - a good standard of amenity can be achieved.
- 149 LPP D14 states that residential development should avoid significant adverse impacts to quality of life.
- 150 DMP 26 states that the Council will require a Noise and Vibration Assessment for noise and/or vibration generating development or equipment and new noise sensitive development, where appropriate, to identify issues and attenuation measures, prepared by a qualified acoustician

#### *Discussion*

- 151 No long-term impacts are likely to arise from the provision of a residential development within a predominately residential area. The objections to the development and questions within the local meeting raised disturbance from construction activity as a significant concern, particularly for residents who work from home. Officers concur that there is potential for disturbance during the construction phase so consider it necessary to impose conditions for a Construction Management Plan and to limit the time of works and deliveries to neighbourly hours. These conditions would not eliminate disturbance during weekdays but would ensure that disturbances are minimised as far as is practical and are therefore considered sufficient given the short-term nature of the noise impacts.
- 152 The Energy and Sustainability Statement (PES, January 2023) submitted with the application details that an Air Source Heat Pump (ASHP) would be installed to deliver the heating and hot water demands of the development. Limited information has been submitted regarding the location of the ASHP or any noise attenuation required to prevent noise from exceeding background noise levels at the nearest residential windows. A condition is recommended to secure this information prior to the equipment being installed.

### **6.5.5 Impact on neighbours conclusion**

- 153 The reduction to the massing of the proposed extension compared to the 2021 scheme is considered sufficient to overcome the harm to Flat 2 identified within the appeal decision. This amendment coupled with the conditions recommended above would therefore ensure that the impacts to the living conditions of the neighbouring properties would be within acceptable levels.

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## 6.6 SUSTAINABLE DEVELOPMENT

### *General Policy*

- 154 Para. 149 of the NPPF requires Local Planning Authorities to take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures. Policies and decisions should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts.
- 155 CS Objective 5 reflect the principles of the NPPF and sets out Lewisham's approach to climate change and adapting to its effects. CSP 7, CSP 8 and DMP 22 support this

### 6.6.1 Urban Greening

#### *Policy*

- 156 LPP G5 expects major development to incorporate measures such as high-quality landscaping (including trees), green roofs and green walls.
- 157 CSP 7 expects urban greening and living roofs as part of tackling and adapting to climate change. DMP 24 requires all new development to take full account of biodiversity and sets standards for living roofs.

#### *Discussion*

- 158 The site mainly comprises built form with areas of landscaping restricted to the front garden and a narrow area of planting along the Ashby Mews frontage. A modest area of the planting would be lost to accommodate a bin store. This would be adequately compensated by the installation of a living roof system to the remaining areas of flat roof at first floor level delivering a net increase in urban greening. A condition is therefore recommended securing the provision of the living roof prior to the occupation of the development. It is deemed necessary that this be a prior to commencement condition to ensure the structure's design accommodates the weight of a living roof.

### 6.6.2 Flood Risk & SuDS

#### *Policy*

- 159 NPPF para 159 expects inappropriate development in areas at risk of flooding to be avoided by directing development away from areas at highest risk. Para 163 states development should only be allowed in areas at risk of flooding where mitigation measure can be included.
- 160 LPP SI 12 expects development proposals to ensure that flood risk is minimised and mitigated.
- 161 CSP 10 requires developments to result in a positive reduction in flooding to the Borough.

#### *Discussion*

- 162 The application site is not located in a flood risk zone and the scale of development does not require a detailed SuDS scheme. However, the introduction of a green roof would

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likely reduce run-off rates and therefore has the potential to deliver some drainage benefits. This has not been substantiated by a detailed report and therefore does not carry weight as a planning merit.

### **6.6.3 Sustainable Infrastructure conclusion**

163 The proposal is considered acceptable sustainable infrastructure terms subject to the condition recommended securing the provision of the living roof.

## **6.7 NATURAL ENVIRONMENT**

### *General Policy*

164 Contributing to conserving and enhancing the natural environment and reducing pollution is a core principle for planning.

165 The NPPF and NPPG promote the conservation and enhancement of the natural environment (chapter 15) and set out several principles to support those objectives.

166 The NPPF at para 180 states decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the sensitivity of the site or wider area to impacts that could arise from the development

### **6.7.1 Biodiversity & Ecology**

#### *Policy*

167 Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard to the purpose of conserving biodiversity.

168 NPPF para 170 states decisions should minimise impacts on and provide net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. NPPF para 175 sets out principles which LPAs should apply when determining applications in respect of biodiversity.

169 LPP G6 expects Sites of Importance for Nature Conservation (SINCs) to be protected. Development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain.

170 CSP 12 seeks to preserve or enhance local biodiversity.

171 DMP 24 require all new development to take full account of biodiversity in development design, ensuring the delivery of benefits and minimising of potential impacts on biodiversity.

#### *Discussion*

172 The proposed development includes the provision of a green roof at first floor level to the remaining area of flat roof. The details submitted with the application indicate that this would be sedum system. Sedum roofs do not provide the species richness or quality of planting required to maximise the contribution to biodiversity. Therefore, a pre-

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commencement condition is recommended securing the provision of an extensive biodiverse living roof.

## 6.7.2 Trees

### *Policy*

- 173 S.197 of the Town and Country Planning Act gives LPAs specific duties in respect of trees.
- 174 NPPF para 131 seeks to retain trees wherever possible while para 170 expects development to contribute to and enhance the natural and local environment.
- 175 LPP G7 expects development proposals to ensure that, wherever possible, existing trees of value are retained. Where it is necessary to remove trees, adequate replacement is expected based on the existing value of the benefits of the trees removed, determined by, for example, i-tree or CAVAT or other appropriate valuation system.
- 176 CSP 12 seeks to protect trees and prevent the loss of trees of amenity value, with replacements where loss does occur.
- 177 DMP 25 sets out the required information for landscaping plans and their management, along with the information required to support development affecting trees. The policy states that development schemes should not result in an unacceptable loss of trees, especially those that make a significant contribution to the character or appearance of an area, unless they are considered dangerous to the public by an approved Arboricultural Survey. Where trees are removed as part of new development, replacement planting will normally be required. New or replacement species should be selected to avoid the risk of decline or death arising from increases in non-native pests and diseases.

### *Discussion*

- 178 The application site features mature trees in the front and side landscaped area. No harmful impacts to these trees are anticipated given that the development would not feature any significant building works at ground level and the trees do not project significantly above the existing level of the adjacent roof. A standard condition is recommended to ensure the trees are protected during works.

## 6.7.3 Air pollution

### *Policy*

- 179 LPP SI1 states that development proposals should seek opportunities to identify and deliver further improvements to air quality and should not reduce air quality benefits that result from the Mayor's or boroughs' activities to improve air quality.
- 180 The Air Quality Neutral LPG provides additional guidance and established the benchmark values for assessing whether a development would achieve air quality neutral.

### *Discussion*

- 181 No Air Quality Assessment has been submitted with the application. However, the information submitted is sufficient to undertake an assessment against the benchmark values for building and transport emissions set by the Air Quality Neutral LPG.

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Regarding building emission the LPG states that minor development will be considered Air Quality Neutral where:

- the new heating system is a heat pump or other zero-emission heat source;
- the new heating system includes one or more individual gas boilers with NOx emissions rated at less than 40 mg/kWh; or
- the development is connecting to an existing heat network

182 In this case the Energy and Sustainability Statement (PES, January 2023) states that the development would utilise an ASHP. Therefore, the development is considered air quality neutral in building emission terms in accordance with the LPG and the provision of the ASHP would be secured by condition.

183 Turning to transport emissions, the LPG states that minor development will be assumed to be Air Quality Neutral where it complies with the maximum parking standards set by LPP T6 and T6.1. No on-site parking is proposed as part of the development and therefore the scheme would comply with the guidance. As such, the development is considered Air Quality Neutral.

#### **6.7.4 Natural Environment conclusion**

184 Officers are satisfied that there would not be any adverse impacts to the natural environment.

## **7 LOCAL FINANCE CONSIDERATIONS**

185 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:

- 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
- sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

186 The weight to be attached to a local finance consideration remains a matter for the decision maker.

187 The CIL is therefore a material consideration.

188 £21,760.54 Lewisham CIL and £14,377.50 MCIL is estimated to be payable on this application, subject to any valid applications for relief or exemption, and the applicant has completed the relevant form. This would be confirmed at a later date in a Liability Notice.

## **8 EQUALITIES CONSIDERATIONS**

189 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.

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- 190 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - advance equality of opportunity between people who share a protected characteristic and those who do not;
  - foster good relations between people who share a protected characteristic and persons who do not share it.
- 191 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.
- 192 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>
- 193 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- The essential guide to the public sector equality duty
  - Meeting the equality duty in policy and decision-making
  - Engagement and the equality duty
  - Equality objectives and the equality duty
  - Equality information and the equality duty
- 194 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>
- 195 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.

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## 9 HUMAN RIGHTS IMPLICATIONS

196 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:

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

197 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.

198 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above 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.

199 This application has the legitimate aim of providing a extending a building with residential uses. The rights potentially engaged by this application, including Article 8 and Protocol 1, Article 1: Right to peaceful enjoyment of your property are not considered to be unlawfully interfered with by this proposal.

## 10 CONCLUSION

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

201 The proposed development is, with the exception of a reduction to the massing of the extension intended to overcome the harm identified by the Inspector, fundamentally the same scheme as the previous application (ref DC/21/124306) which was dismissed at appeal in 2022, on narrow grounds. The appeal was dismissed solely on the grounds that the extension would cause a harmful reduction to light and outlook to Flat 2 on the ground floor of the host property. The aforementioned change has addressed the limited scope of harm to Officer's satisfaction. On all other matters the Inspector found that the development would be acceptable, including its impact on the Brockley Conservation Area. The weight that should be given to the Appeal Decision is summarised at Para 53 above.

202 In housing terms, the site is considered a sustainable location for intensification at the density proposed and the unit mix and quality of the accommodation are supported. Accordingly, the contribution to overall housing supply and small sites housing targets forms a planning merit of the scheme that carries positive weights within the overall planning balance limited by the modest scale of development.

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203 Finally, Officers have identified no further concerns in terms of urban design nor additional impacts to the living conditions of the neighbouring properties. In addition, the impacts to transport, sustainable infrastructure and the natural environment are considered acceptable. As such, the proposed development is recommended for approval subject to conditions.

## 11 RECOMMENDATION

204 That the Committee resolve to **GRANT** planning permission subject to the following conditions and informatives:

### 11.1 CONDITIONS

#### 1. Time Limit

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

**Reason:** As required by Section 91 of the Town and Country Planning Act 1990.

#### 2. Approved Plans

The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

EX.001 Rev A;  
EX.100 Rev B;  
EX.101 Rev A;  
EX.102 Rev A;  
EX.103 Rev A;  
EX.104 Rev A;  
EX.105 Rev A;  
EX.106;  
EX.107;  
EX.108;  
PA 001;  
PA.100 Rev B;  
PA.101 Rev E;  
PA.102 Rev E;  
PA.103 Rev C;  
PA.104 Rev B;  
PA.105 Rev B;  
PA.106 Rev E;  
PA.107 Rev C;  
PA.108 Rev B;  
PA.109 Rev A;  
PA.110 Rev A;  
PA.111;  
PA.112 Rev E;  
PA.113 Rev D;  
PA.114  
OS.01 Rev A.

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**Reason:** To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

### 3. **Construction Management Plan**

No development shall commence on site until such time as a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall cover:-

- (a) Dust mitigation measures.
- (b) The location and operation of plant and wheel washing facilities
- (c) Details of best practical measures to be employed to mitigate noise and vibration arising out of the construction process
- (d) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:-
  - (i) Rationalise travel and traffic routes to and from the site.
  - (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity, such vehicle trips to avoid the 30mins before and after Myatt Garden Primary School drop-off and pick-up times.
  - (iii) Measures to deal with safe pedestrian movement.
- (e) Security Management (to minimise risks to unauthorised personnel).
- (f) Measures to ensure no construction activity (including works and deliveries taken at or despatched to the site) shall take place other than between the hours of 8 am and 6pm on Mondays to Fridays and 8 am and 1 pm on Saturdays and not at all on Sundays or Public Holidays.
- (g) Details of the training of site operatives to follow the Construction Management Plan requirements

The measures specified in the approved details shall be implemented prior to commencement of development and shall be adhered to during the period of construction.

**Reason:** In order that the local planning authority may be satisfied that the demolition and construction process is carried out in a manner which will minimise possible noise, disturbance and pollution to neighbouring properties and to comply with Policy SI1 Improving air quality and Policy T7 Deliveries, servicing and construction of the London Plan (March 2021).

### 4. **Materials & Design Quality**

(a) No above ground works shall commence on site (excluding demolition) until a detailed schedule and specification including manufacturer's literature or detailed drawings including horizontal and vertical cross sections at suitable scales (e.g. 1:5, 1:10 or 1:20 where relevant), in respect of the following:

- (i) brickwork, mortar, bond and pointing (sample panel on site);
- (ii) exterior cladding materials, joins and junctions;

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- (iii) windows and reveals
- (iv) external doors;
- (v) rainwater goods;
- (vi) balconies and balustrades

has been submitted to and approved in writing by the Council.

(b) The works shall then be carried out in full accordance with the approved details prior to the first occupation of the development, and retained thereafter.

**Reason:** To ensure that the high design quality demonstrated in the plans and submission is delivered so that local planning authority may be satisfied as to the external appearance of the buildings and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character.

## 5. Refuse & Recycling Facilities

(a) Prior to the first occupation of the development further plans and elevations showing the design and dimensions of the bin store for the approved residential accommodation as shown on drawing PA.001, shall be submitted to and approved in writing by the local planning authority.

(b) The refuse and recycling facilities shall be installed in accordance with the details approved under Part (a) prior to occupation of the development and shall thereafter be permanently retained and maintained.

**Reason:** In order that the local planning authority may be satisfied with the provisions for recycling facilities and refuse storage in the interest of safeguarding the amenities of neighbouring occupiers and the area in general, in compliance with Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character and Core Strategy Policy 13 Addressing Lewisham waste management requirements (2011).

## 6. Cycle Parking Facilities

(a) Prior to first occupation, full details of the design and specification of the cycle parking store and facilities for 8 long-stay spaces, as shown on approved drawing PA.001, shall be submitted to and approved in writing by the local planning authority.

(b) All cycle parking spaces shall be provided in full accordance with the details approved under part (a) and made available for use prior to occupation of the development and maintained thereafter.

**Reason:** In order to ensure adequate provision for cycle parking and to comply with Policy T5 cycling and Table 10.2 of the London Plan (March 2021) and Policy 14: Sustainable movement and transport of the Core Strategy (2011).

## 7. Living Roof

(a) Notwithstanding the specification submitted with the application, prior to the commencement of the development details of an extensive biodiversity living roof system (substrate depth of 80–150mm) to include specification, drawings and maintenance details for the living roof and details of any structural works required, laid

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out in accordance with drawing PA.101 Rev D, shall be submitted to and approved in writing by the local planning authority.

(b) The living roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair or escape in case of emergency.

(c) Evidence that the roof has been installed in accordance with (a) shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved.

**Reason:** To comply with Policy G5 Urban greening in the London Plan (2021), Policy 10 managing and reducing flood risk and Policy 12 Open space and environmental assets of the Core Strategy (June 2011), and DM Policy 24 Biodiversity, living roofs and artificial playing pitches of the Development Management Local Plan (November 2014).

## 8. **Tree Protection Plan**

Any trees shown to be retained on the drawings hereby approved shall be protected in accordance with BS 5837:2012 (Trees in relation to design, demolition and construction - Recommendations) the entirety of the construction period including demolition and site preparation, such protection to include the use of protective barriers to form a construction exclusion zone, employ suitable ground protection measures, and any additional measures needed to protect vulnerable sections of trees and their root protection areas where construction activity cannot be fully or permanently excluded.

**Reason:** To safeguard the health and safety of trees during building operations and the visual amenities of the area generally and to comply with Policy 12 Open space and environmental assets of the Core Strategy (June 2011), and DM Policy 25 Landscaping and trees and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

## 9. **Screening**

(a) The residential units hereby approved shall not be occupied until full details of the siting and specification of the screening to all of the roof terraces and balconies, to comply with approved drawings PA.101 Rev E and PA.102 Rev E, have been submitted to and approved in writing by the local planning authority.

(b) The privacy screens shall be installed in full accordance with the details approved by part (a) prior to the occupation of any of the residential units and retained for the lifetime of the development.

**Reason:** To avoid the direct overlooking of adjoining properties and consequent loss of privacy thereto and to protect the privacy of the approved residential accommodation and to comply with DM Policy 32 Housing design, layout and space standards of the Development Management Local

## 10. **Air Source Heat Pumps (ASHP)**

(a) No ASHP shall be installed until details of the location, specification and appearance of the ASHP equipment, which shall include details of the equipment's

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noise rating and measures to alleviate visual impact, noise and vibration, have first been submitted to and approved in writing by the local planning authority.

(b) The facilities as approved under part (a) shall be provided in full prior to occupation of the residential accommodation and shall thereafter be permanently retained and maintained.

**Reason:** In order to safeguard local air quality and the amenities of the residential occupiers and to minimise the visual impact in compliance with Policies D14 Noise and SI1 Improving Air Quality of the London Plan (March 2021) and Policies 26 Noise and vibration, 30 Urban design and local character and 37 Non-designated heritage assets including locally listed buildings, areas of special local character and assets of archaeological interest of the Development Management Local Plan (November 2014).

## 11. Window Opening Restrictions

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the windows to be installed in the eastern elevation of the extensions (annotated as fixed on drawings PA.101 Rev E and PA.102 Rev E) hereby approved shall be fixed shut and retained as such in perpetuity.

**Reason:** To avoid the direct overlooking of adjoining properties and consequent loss of privacy thereto and to comply with DM Policy 31 Alterations and extensions to existing buildings including residential extensions, DM Policy 32 Housing design, layout and space standards, DM Policy 32 Housing design, layout and space standards, and Policy 33 Development on infill sites, backland sites, back gardens and amenity areas of the Development Management Local Plan (November 2014).

## 12. Water Efficiency

Mains water consumption shall be compliant with the Optional Requirement set out in Part G of the Building Regulations of 105 litres or less per head per day.

**Reason:** In order to minimise the use of mains water and to comply with Policy SI5 Water infrastructure of the London Plan (March 2021).

## 13. Unit Mix

The development hereby approved, shall provide six residential units comprised of 1 one-person studio, 1 one-bedroom two-person, 1 two-bedroom four-person and 1 three-bedroom five-person flats.

**Reason:** To comply with the unit mix assessed under this application.

## 11.2 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

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

2. As you are aware the approved development is liable to pay the Community Infrastructure Levy (CIL) which will be payable on commencement of the development. An '**assumption of liability form**' must be completed and before development commences you must submit a '**CIL Commencement Notice form**' to the council. You should note that any claims for relief, where they apply, must be submitted and determined prior to commencement of the development. Failure to follow the CIL payment process may result in penalties. More information on CIL is available at: - <http://www.lewisham.gov.uk/myservices/planning/apply-for-planning-permission/application-process/Pages/Community-Infrastructure-Levy.aspx>
3. The applicant be advised that the implementation of the proposal will require approval by the Council of a Street naming & Numbering application. Application forms are available on the Council's web site.

## 12 BACKGROUND PAPERS

- (1) Submission Drawings
- (2) Submission technical reports and supporting documents
- (3) Internal consultee responses
- (4) External consultee responses

## 13 REPORT AUTHOR AND CONTACT

Report Author: Alfie Williams (Senior Planning Officer)

Email: [alfie.williams@lewisham.gov.uk](mailto:alfie.williams@lewisham.gov.uk)

Telephone: 020 8314 9336

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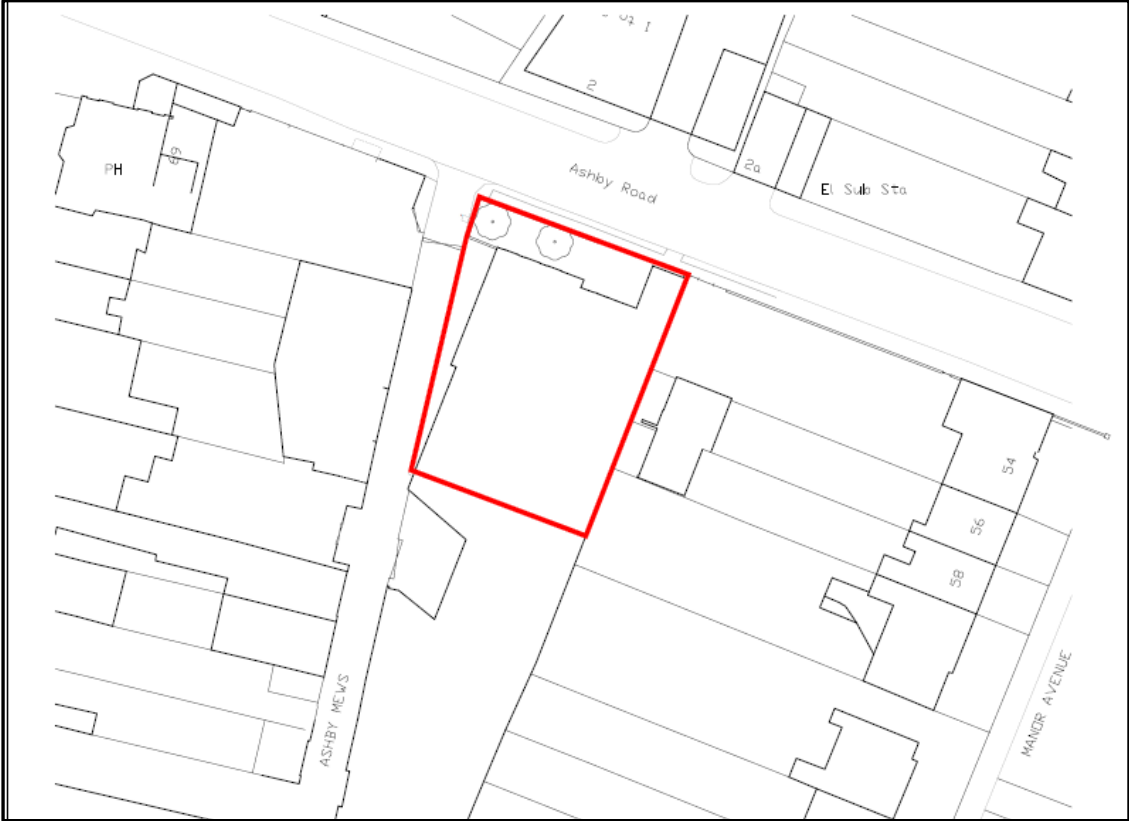
# 1-3 Ashby Road, London, SE4 1PR

Application Ref. DC/23/130234

**Construction of part single-storey and part two-storey roof extension to create 3 self-contained flats, together with the conversion of an existing studio flat to provided additional living accommodation at 1-3 Ashby Road SE4, with associated cycle storage, refuse storage and a new green roof.**

# Existing Site

# Site Location Plan



# Aerial View



# Site Photographs

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# Proposals

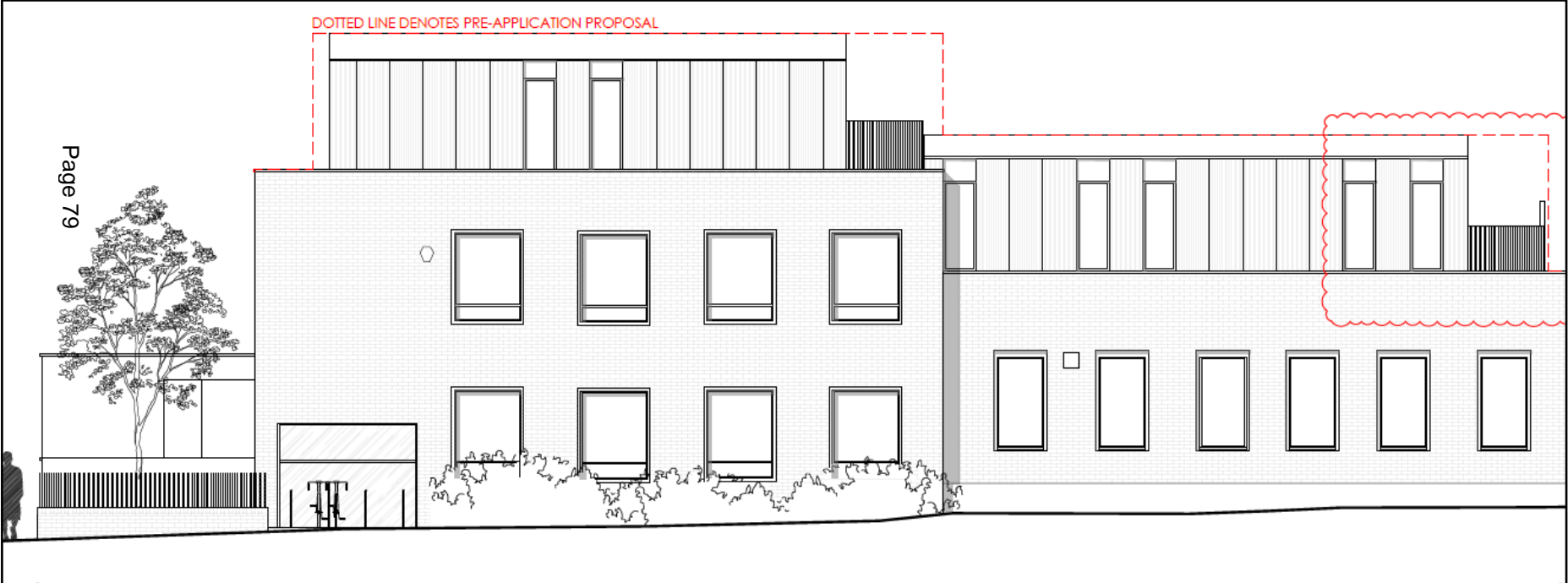
# Proposed Front Elevation

Page 78

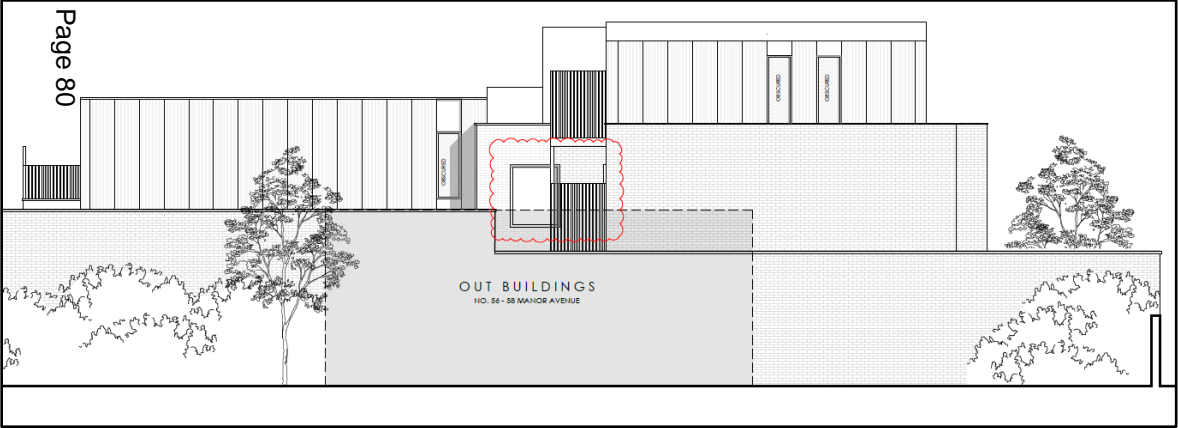




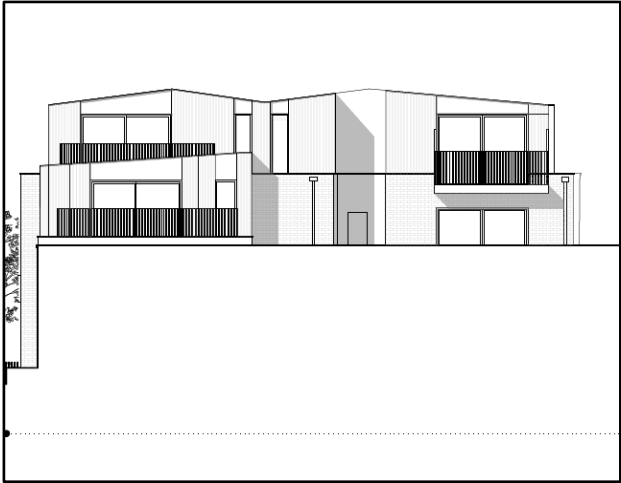
# Proposed Ashby Mews Elevation (West)



# Proposed Elevations

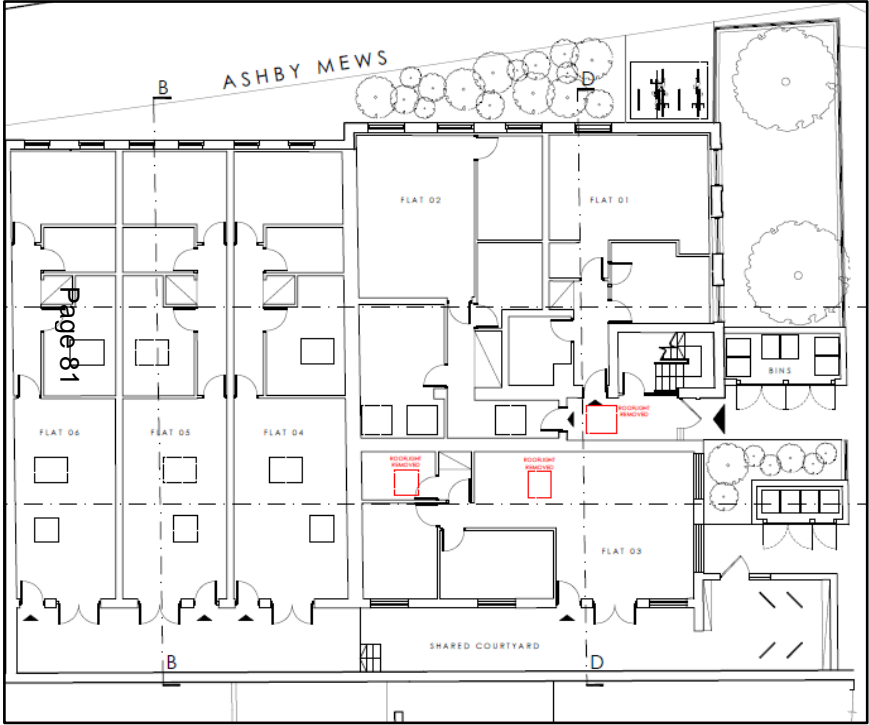


Eastern Side Elevation

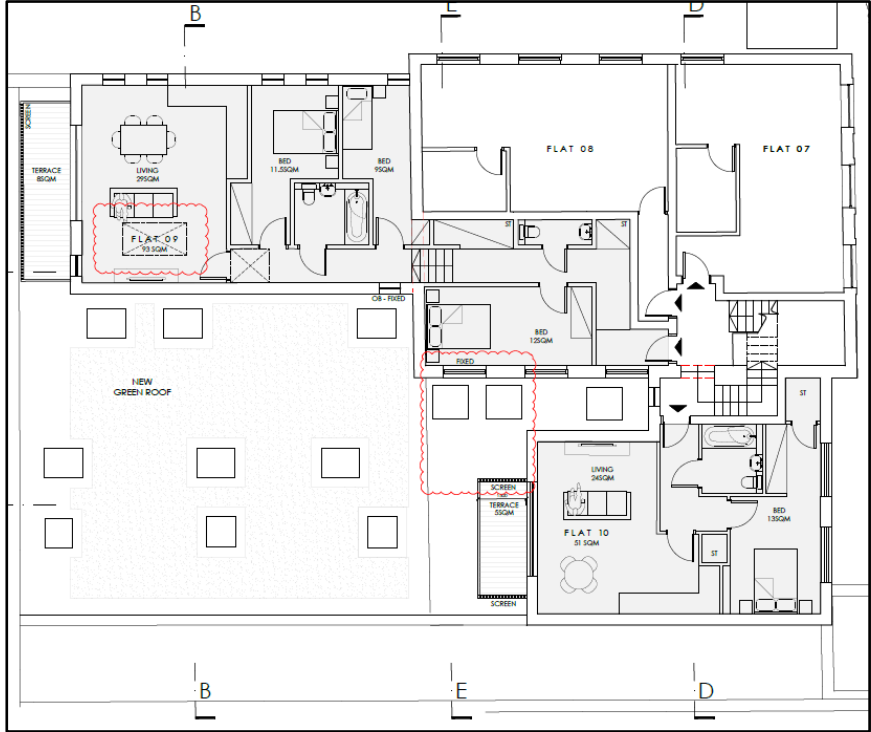


Rear Elevation

# Proposed Floor Plans

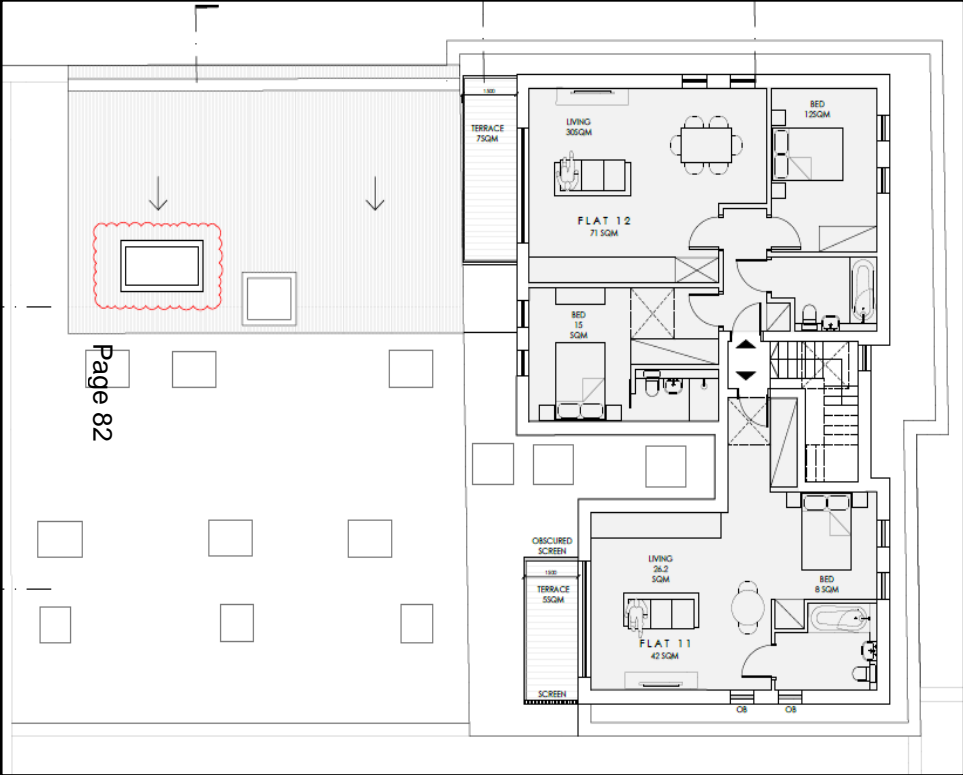


Proposed Ground Floor

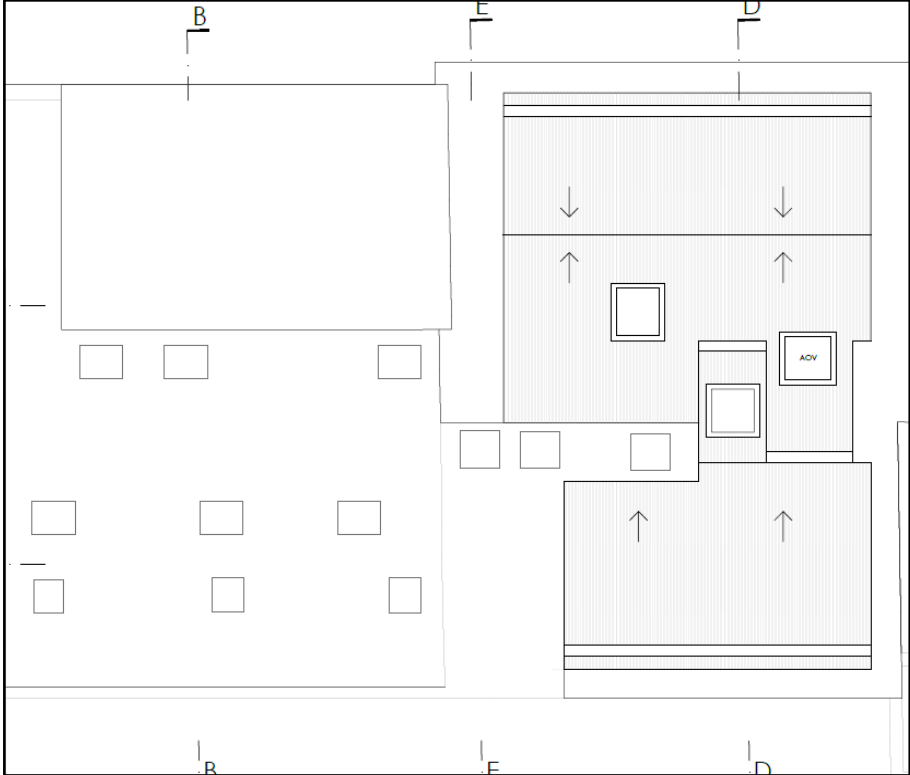


Proposed 1st Floor

# Proposed Floor Plans



Proposed 2<sup>nd</sup> Floor

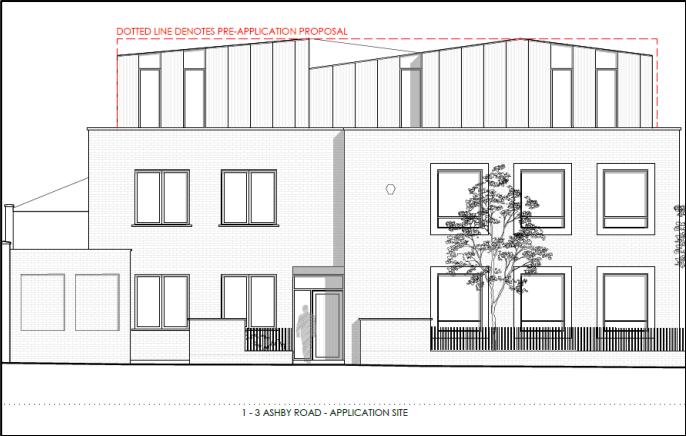


Proposed Roof Plan

# Planning History

# Previous Application DC/21/124306

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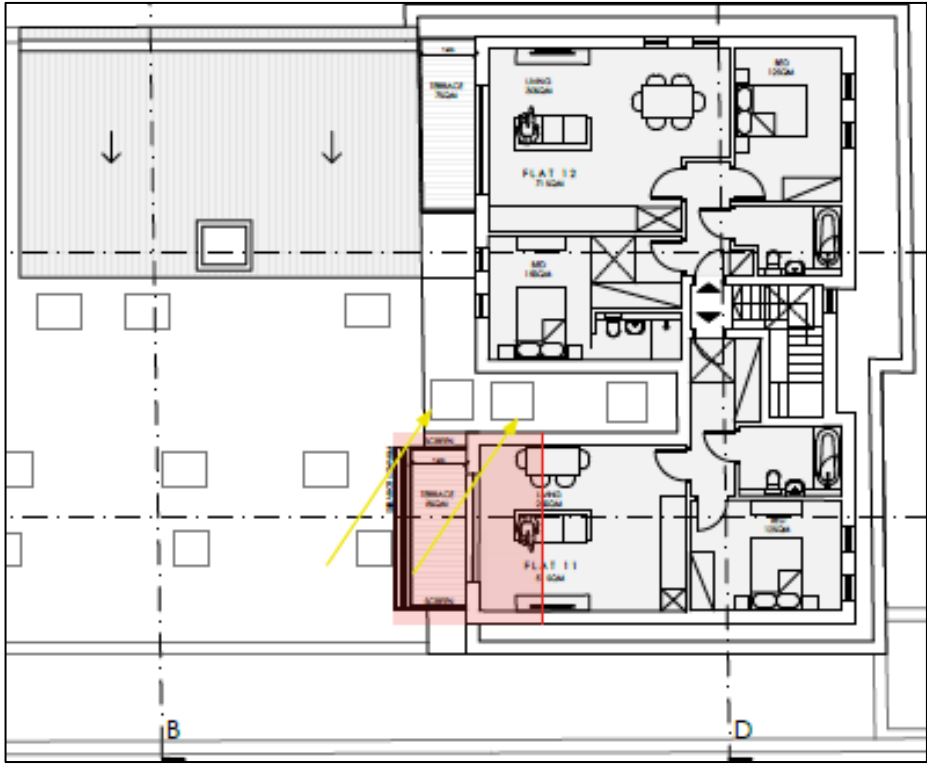
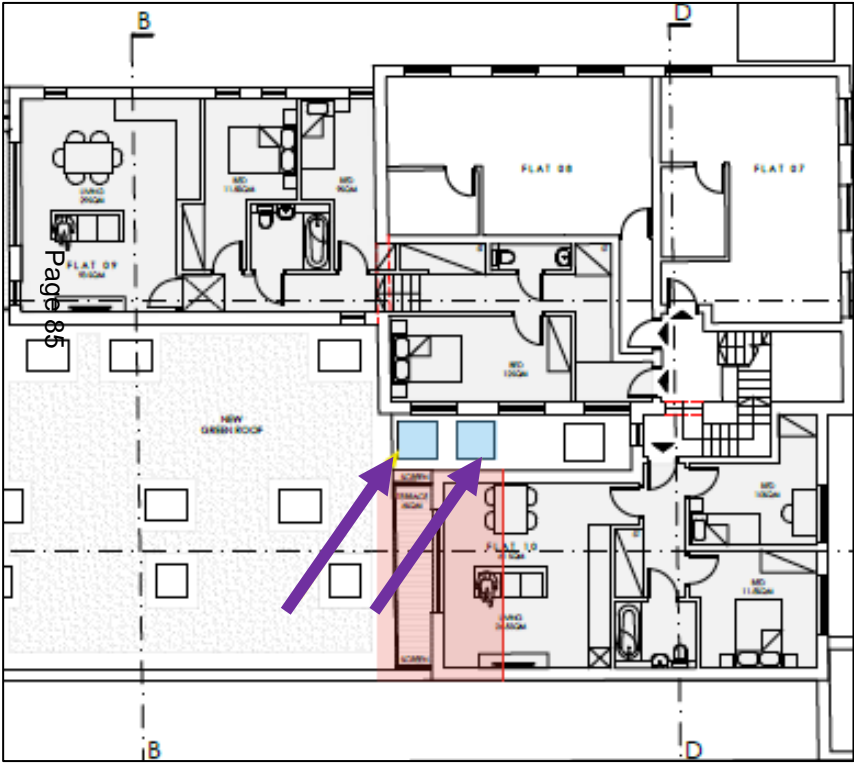


Front Elevation



Mews Elevation

# Revised Rear Massing



# Main Planning Considerations



# Main Planning Considerations

- Principle of Development
- Residential Quality
- Urban Design & Heritage Impact
- Transport Impact
- Living Conditions of Neighbors
- Natural Environment
- Sustainable Infrastructure

**END OF PRESENTATION**

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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## Planning Committee: A

### **ADVERTISING ON THE RIGHT SIDE OF 293 STANSTEAD ROAD, LONDON, SE23 1JB**

**Date:** 15 November 2023

**Key decision:** No

**Class:** Part 1

**Ward(s) affected:** Crofton Park

**Contributors:** Lucy Bennett

### **Outline and recommendations**

This report sets out the Officer's recommendation of approval for the above proposal. The report has been brought before Committee for a decision due to the submission of 9 individual objections and an objection from the Blythe Hill Community Action Group (10 objections in total)

## Application details

<b>Application reference number:</b>	DC/23/131562
<b>Application Date:</b>	17 May 2023
<b>Applicant:</b>	Wildstone Group Limited
<b>Proposal:</b>	The installation of an internally illuminated digital LED sheet sign at Right Side of 293 Stanstead Road, SE23.
<b>Background Papers:</b>	(1) Submission drawings (2) Appeal decision (reference: APP/C5690/Z/18/3198998) (3) Internal consultee responses (4) Statutory consultee responses
<b>Designation:</b>	Hopcroft Neighbourhood Forum Air Quality Management Area PTAL 3
<b>Screening:</b>	N/A

## 1 SITE AND CONTEXT

### *Site description and current use*

- 1 The application relates to a three-storey end-of-terrace single-family dwellinghouse located on the northern side of Stanstead Road, opposite the junction with Carholme Road. The property is constructed of London stock brick with a two-storey front bay window.
- 2 The application site comprises the flank wall on the right side of the property at No. 293 Standard Road.
- 3 An existing advertisement of around 6m wide and 3m high is situated on the flank wall of No. 293.
- 4 To the east, the application site adjoins the property at No. 295 Stanstead Road which is part of a block of terraced properties that have commercial uses on the ground floor and residential uses above. On the ground level of No. 295 is a post office with an array of fascia and hanging signs on its front façade.
- 5 To the west, the application site adjoins the property at No. 291 Stanstead Road which has a ground level and upper level flat. This property is setback approximately 5m from the front boundary and has a moderate-sized paved front forecourt for vehicle parking.

### *Character of area*

- 6 Development along this section of Stanstead Road has a mixed-use character predominately comprising detached, semi-detached, and terraced two-storey properties.

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- 7 The properties on the northern side of Stanstead Road to the east of No. 293 contain ground-floor commercial and business units with residential dwellings above.
- 8 An advertisement of a similar size to the current one on the application site on the flank wall of the end-of-terrace property at No. 309 Stanstead Road at the intersection with Ravensbourne Road.

### ***Heritage/archaeology***

- 9 The property is not located within a conservation area, nor is it a statutory listed building or non-designated heritage asset.
- 10 Blythe Hill Tavern and the attached gate piers and walls at 319 Stanstead Road are Grade II listed (entry no. 1475999). This property is 131m east of the application property, at the intersection with Blythe Hill Lane.
- 11 Stanstead Lodge (entry no. 1079934), located 130m west of the application property at the intersection with Northwood Road, is a Grade II listed building.

### ***Local environment***

- 12 The site is located within an Air Quality Management Area.

### ***Transport***

- 13 The site has a moderate Public Transport Accessibility Level (PTAL) score of 3 on a scale of 1-6b, 1 being the lowest and 6b the highest. Catford Station is the closest train station to the application site, being 0.5 miles away at an approximate 10-minute walk. Stanstead Road is serviced by a number of buses, including the 185, 171 and N171 services.
- 14 Stanstead Road (A205) is a red route that forms part of Transport for London's (TfL) Road Network. TfL has noted that the current 30 MPH speed limit is due to be reduced to 20 MPH in the near future.
- 15 A cycle lane and on-street parking bay are located on the road outside the application property. The vehicle crossover for No. 291 is located 5m west of the application site. A speed camera facing west is located on the opposite side of the road.

## **2 RELEVANT PLANNING HISTORY**

- 16 On 9 July 2018, advertisement consent was refused for the installation of 1 x internally illuminated digital LED 48-sheet sign at this location (DC/17/104674). The application was refused for the following reason:
- 'The proposed advertisement, by reason of its location, size and the use of an illuminated digital display would constitute an incongruous addition to the street scene, harmful to local character and to the visual amenity of nearby occupiers, especially No.291A Stanstead Road contrary to DM Policy 19 Shopfronts, signs and hoardings, DM Policy 27 Lighting and DM Policy Urban design and local character of the Development Management Local Plan (November 2014).'
- 17 The Council's decision was appealed by Mr Paul O'Sullivan of Insite Poster Properties Ltd (ref: APP/C5690/Z/18/3198998). The main issues of the appeal case were:

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- The effect of the proposal on the character and appearance of the area; and
- The effect of the proposal on the amenity of existing occupiers at 291A Stanstead Road and surrounding properties.

18 On 10 July 2018, the Planning Inspector allowed the appeal and granted express advertisement consent for the display of a 48-sheet digital LED advertising display. The Planning Inspector stated that the consent must be for five years from the date of the decision (10 July 2018) and be subject to the five standard conditions set out in the Regulations and the following additional conditions:

- The advertisement hereby approved shall operate at an illumination level no greater than 300cd/m above ambient light levels at any time and in the hours of darkness not exceed 300cd/m.
- The advertisement hereby approved shall not be illuminated during the hours of 0000-0600.
- The interval between successive displays shall be instantaneous (0.1 seconds or less), the complete screen will change, there shall be no special effects (including fading, swiping, or other animated transition methods) between successive displays.
- There shall be no special effects (including noise, smell, smoke, animation, flashing, scrolling, three dimensional, intermittent or video elements) of any kind during the time that any message is displayed.
- The display panel shall have a default mechanism to switch it off in the event of a malfunction or during periods of maintenance.

19 On 10 May 2023, advertisement consent was refused for the installation of 1 x internally illuminated digital LED 48-sheet sign at the Right Side of 293, Stanstead Road, SE23 (DC/23/130576). The application was refused for the following reasons:

- *Reason for refusal 1: The proposed advertisement, by reason of its position, size and illumination on the host building would increase visual clutter on Stanstead Road and materially harm the visual amenity of nearby residential properties and the streetscape, contrary to paragraph 136 of the National Planning Policy Framework (2019), Policy D8 Public Realm of the London Plan (2021), DM Policy 19 Shopfronts, signs and hoardings, DM Policy 30 Urban Design and Local Character and DM Policy 35 Public Realm of the Development Management Local Plan (2014).*
- *Reason for refusal 2: The proposed advertisement, by reason of its position, size and illumination would impact public safety and increase the risk of collisions between motor vehicles and/or involving cyclists and pedestrians, particularly at night, contrary to paragraph 136 of the National Planning Policy Framework (2019), Policy D8 Public Realm and Policy 72 Healthy Streets of the London Plan (2021), Policy 14 Sustainable Movement and Transport of the Core Strategy (June 2011) DM Policy 19 Shopfronts, signs and hoardings and Policy 27 Lighting of the Development Management Local Plan (2014).*

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## **3 CURRENT PLANNING APPLICATION**

### **3.1 THE PROPOSALS**

#### **3.1.1 Background**

20 Wildstone Group Limited submitted an application to Council on 28 February 2023 to renew the advertisement consent granted by the Planning Inspector under the APP/C5690/Z/18/3198998 which was set to lapse on 10 July 2023. The application was submitted with drawings only and failed to provide any background on the submitted application or make any reference to the previous advertisement consent granted by the Planning Inspector in 2018. The Council did not have a record of the appeal decision on file at the time and a copy was not available on the Planning Inspectorate website.

21 On 10 May 2023, Council refused advertisement consent for the installation of 1 x internally illuminated digital LED 48 sheet sign at the Right Side of 293, Stanstead Road, SE23 (DC/23/130576). At the time of the assessment, Officers failed to acknowledge the Planning Inspector's decision for APP/C5690/Z/18/3198998. If they were aware of this decision then advertisement consent would have likely been granted, subject to the conditions set out in the appeal decision.

#### **3.1.2 Scope of proposal**

22 Advertisement consent is sought for the installation of 1 x internally illuminated digital LED 48 sheet sign at the Right Side of 293, Stanstead Road, SE23.

23 The existing advertising on the western elevation of the application property is proposed to be replaced with an LED digital display on a like-for-like size and siting basis.

24 The proposed sign will have a width of 6m wide, a height of 3m and a depth of 0.06m. It is proposed to have a maximum projection from the face of the building of 0.1m. The base of the advertising sign will be 5.7m above ground level. It is proposed to have a display with a maximum illumination level of 300 cd/m<sup>2</sup>.

### **3.2 COMPARISON WITH PREVIOUS SCHEME**

25 The proposal is the resubmission of the previously refused advertisement consent application under DC/23/130576.

26 The proposed advertisement is more streamlined than the previous advertising allowed by the Planning Inspector under APP/C5690/Z/18/3198998. The proposed advertising is the same height and width; however, the depth has been significantly reduced from 0.45m to 0.06m. The maximum projection of the advertising from the face of the building has also been reduced from 0.65m to 0.1m. The illumination level has been reduced from 600 cd/m<sup>2</sup> to 300 cd/m<sup>2</sup> to align with the Planning Inspector's conditions.

## **4 CONSULTATION**

### **4.1 APPLICATION PUBLICITY**

27 There is no statutory requirement to publicise applications for advertisement consent.

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- 28 In this instance, Officers noted the application may affect the amenity of neighbours and therefore their views have been sought. Letters were sent to residents and businesses in the surrounding area, the relevant ward Councillors, Hopcroft Neighbourhood Forum and Blythe Hill Community Action Group on 31 May 2023. A site notice was also displayed on site on 1 June 2023.
- 29 A total of 10 representations were received in response, comprising 9 objections from local residents and a further objection from the Blythe Hill Community Action Group.

#### 4.1.1 Comments in objection

Comment	Para where addressed
The proposal increases the visual clutter along Stanstead Road and would deteriorate the public realm, in terms of visual impact	Para 54 to 57
The proposal is out of character with the residential setting of the area and would create a commercialised feeling.	Para 54 to 57
Light pollution from the LED advertisement will impact the amenity of nearby residents	Para 58 to 60
The large, illuminated sign will distract drivers, cyclists and pedestrians and increase the risk of road accidents	Para 66 to 72

30 A number of other comments were also raised as follows:

- The illuminated advertisement is electricity intensive and contradicts the Council's sustainability objectives.
- Artificial lighting is detrimental to wildlife.

31 Officer response: The above concerns are outside the local planning authority's powers of planning control over advertisement applications, in accordance with Part 1, Section 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

32 Blythe Hill Community Action Group also raised objections, see below:

- The proposal would increase visual clutter along the streetscape and impact the visual amenity of the local area and neighbouring amenity.
- The increased light pollution will impact wildlife.

33 Officer response: The above concerns are outside the local planning authority's powers of planning control over advertisement applications, in accordance with Part 1, Section 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

## 4.2 INTERNAL CONSULTATION

34 The following internal consultees were notified on 31 May 2023.

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35 Highways: no objection, see para 70 for details.

### 4.3 EXTERNAL CONSULTATION

36 The following External Consultees were notified on 31 May 2023.

37 TfL: raised objections, see para 56, 67, 69 and 73 for details.

38 Hopcroft Neighbourhood Forum: no response received.

## 5 POLICY CONTEXT

### 5.1 LEGISLATION

39 The display of advertisements is subject to a separate consent process within the planning system. This is principally set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (Regulations).

40 The power to control advertisements can only be exercised in the interests of amenity or public safety, taking into account the provisions of the development plan, so far as they are material, and any other relevant factors.

41 The provisions of Section 38(6) of the Town Planning and Compulsory Act 2004 Act do not apply to advertisements; however, the policies can be considered where the material is in accordance with the Regulations.

42 'Advertisement' is defined in Section 336(1) of the Town and Country Planning Act 1990 (as amended) as follows:

*“any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure used or adapted for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly.”*

### 5.2 MATERIAL CONSIDERATIONS

43 A material consideration is anything that, if taken into account, creates the real possibility that a decision-maker would reach a different conclusion to that which they would reach if they did not take it into account.

44 Whether or not a consideration is a relevant material consideration is a question of law for the courts. Decision-makers are under a duty to have regard to all applicable policy as a material consideration.

45 The weight given to a relevant material consideration is a matter of planning judgement. Matters of planning judgement are within the exclusive province of the LPA. This report sets out the weight Officers have given relevant material considerations in making their recommendation to Members. Members, as the decision-makers, are free to use their planning judgement to attribute their own weight, subject to the aforementioned directions and the test of reasonableness.

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## 5.3 NATIONAL POLICY & GUIDANCE

- National Planning Policy Framework 2023 (NPPF)
- National Planning Policy Guidance 2014 onwards (NPPG)
- National Design Guidance 2019 (NDG)

## 5.4 DEVELOPMENT PLAN

46 The Development Plan comprises:

- London Plan (March 2021) (LP)
- Core Strategy (June 2011) (CS)
- Development Management Local Plan (November 2014) (DMLP)

## 5.5 OTHER MATERIAL DOCUMENTS

- Institution of Lighting Professionals Guide PLG05: The Brightness of illuminated advertisements (2014) (ILP)
- Outdoor Advertisements and Signs: A Guide For Advertisers (2007) (MHCLG)
- TfL's Vision Zero Action Plan (2018) (VZAP)

## 6 PLANNING CONSIDERATIONS

47 In deciding whether to approve an advertisement application the LPA can only consider the interests of:

- amenity and;
- public safety

taking into account the development plan (so far as material) and any other relevant factors.

### 6.1 AMENITY

#### *Policy*

48 The NPPF at para 136 states the quality and character of places can suffer when advertisements are poorly sited and designed. Control in the interests of amenity should take account of cumulative impacts.

49 The LP Policy D8(B) and T2(B), CS Policy 15, and DMLP Policy 19, 27, 30 and 35 are all relevant.

50 DMLP Policy 19(1)(g) states planning permissions for advertisements will be refused where they adversely affect the amenity and character of an area.

51 DMLP Policy 27 aims to ensure high-quality lighting to prevent the adverse impact of light pollution on biodiversity and wildlife, local character and residential amenity.

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- 52 DMLP Policy 35 requires public spaces to be designed to be safe, inclusive, accessible, and attractive. Council will require street signage to harmonise with the street scene and minimise visual clutter.

#### *Discussion*

- 53 The main impacts on amenity usually include visual amenity and factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest.

#### **Character and appearance**

- 54 The proposed advertisement would replace the existing advertisement display on the flank wall of No. 293 with a 48-sheet digital LED sign in the same position. It would have a width of 6m wide, a height of 3m and a depth of 0.06m and be positioned 5.7m from ground level. The proposed width and height of the advertisement would match the existing advertisement; however, it would have a significantly slimmer profile (60mm compared to 250mm). The proposed advertisement would have a different appearance to the existing one by virtue of having an illuminated digital display. It would also differ from the existing advertisement as it would introduce the sequential display of images. The changes between the images would be instantaneous and in full and would not have any effects that would cause delay or disruption to the change.
- 55 In the Appeal Decision (APP/C5690/Z/18/3198998), the Planning Inspector did not *“consider the digital nature of the display would have a materially harmful effect on the character and appearance of the area, compared to the existing advertisement.”* Since the Planning Inspectorate’s decision in 2018, the London Plan 2021 has commenced. LP Policy D8(B) states development proposals should *“ensure the public realm is well-designed, safe, accessible, inclusive and attractive.”* It further requires lighting, including for advertisements, to be *“carefully considered and well-designed in order to minimise intrusive lighting and infrastructure and reduce light pollution.”* LP Policy T2 is also relevant to the proposal which aims to deliver and maintain high-quality streets that support increased levels of walking, cycling, and public transport use.
- 56 TfL were consulted as the application site is on Stanstead Road (A205) which forms part of TfL’s Road Network. TfL considered the proposal to have an unacceptable impact on visual amenity. TfL raised objections to the proposed illuminated advertisement on the basis that it would not comply with LP Policy T2 as it would not contribute to a high-quality pedestrian environment as a result of increasing visual clutter impacting the streetscape and amenity of street users.
- 57 Officers note that existing non-illuminated advertising has been located on site since at least 2008 therefore, advertisement in this location is an established part of the streetscape. Since 2020, there has been an increase in the number of illuminated advertisements in the vicinity of the site, particularly at the ground-floor shop fronts on Stanstead Road to the east of the site and at the intersection of Ravensbourne Road and Stanstead Road. Since the Planning Inspector’s decision in 2018, the streetscape environment has changed significantly. As such, Officers consider the proposal to be in keeping with the existing townscape and find no reason to disagree with the Inspector’s conclusion, subject to securing all of the Planning Inspector’s conditions in the advertisement consent of the current application.

#### **Amenity**

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- 58 The proposed advertisement would be located adjacent to the property at No. 291. The adjoining two-storey property at No. 291 is set back further in its plot than the subject site (by approximately 5m) and has a hipped roof that sits substantially lower than the roof of the three-storey application property. The underside of the proposed advertisement would sit in line or just above the eaves of No. 291 and would face the pitch of the roof. The proposal would sit perpendicular and above the windows in the front elevation of the upper flat in No. 291. The bay window of No. 291 is set further out than the main front elevation; however, an occupant would have to step into the bay window in order to view the screen above.
- 59 The proposed advertisement would operate at 300cd/m<sup>2</sup> in compliance with Table 1 of the ILP which identifies the luminance level limits for lighting in England. The proposed illumination level would be less than the previous advertisement allowed by the Planning Inspector (APP/C5690/Z/18/3198998), which had a daytime illumination level of 600cd/m<sup>2</sup>. In the Appeal Decision, the Planning Inspector granted consent subject to conditions which included restricting the illumination level to a maximum of 300cd/m<sup>2</sup> at night and the hours of illumination during the hours of 0000-0600.
- 60 In the Appeal Decision (APP/C5690/Z/18/3198998), the Planning Inspector stated they “*did not consider the proposal would have a harmful effect on the amenity of occupiers of No. 291A.*” This statement was supported with consideration of the position of the proposal above the windows of No. 291 and the level of illumination and the display being controlled by condition. The Inspector furthered this by stating conditions “*would also protect the amenity of the occupiers of surrounding residential properties which are situated at a great distance to the application site.*” Officers find that nothing has changed since the Inspector considered this matter and therefore, do not disagree with the Inspector’s conclusion that the siting and nature of the current proposal would not give rise to any significant material impacts upon the living conditions of the adjoining property at No. 291 in terms light spillage, glare, and outlook. Similar to the Planning Inspector’s decision, in order to protect the amenity of neighbouring residents, the application would be subject to the imposition of conditions restricting the luminance of the displays, restricting moving images, and controlling the method of change between adverts.

### **6.1.1 Amenity conclusions**

- 61 Applying the principle of consistency, Officers found no material changes have arisen that would reasonably lead to a different conclusion to that of the Planning Inspector on the appeal APP/C5690/Z/18/3198998. Therefore, Officers are satisfied the proposal would have no materially harmful effect on the character and appearance of the area or the amenity of surrounding occupiers, subject to the imposition of conditions.

## **6.2 PUBLIC SAFETY**

### *Policy*

- 62 The NPPF at para 136 states that control in the public’s safety interests should consider cumulative impacts.
- 63 The LP Policy D8(B), T2(B), CP Policy 14, and DMLP Policy 19 and 27 are all relevant.
- 64 DMLP Policy 19(1)(g) states planning permissions for advertisements will be refused where they adversely impact on public safety.

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## Discussion

- 65 In accordance with Part 3(2)(b) of the Advertisements Regulations, the main factors relevant to public safety include:
- (i) *the safety of persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);*
  - (ii) *whether the display of the advertisement in question is likely to obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air;*
  - (iii) *whether the display of the advertisement in question is likely to hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.*

### **Street user safety and navigation**

- 66 The siting of the adjoining property at No. 291 makes the existing advertisement on the application site highly visible when drivers are moving along Stanstead Road from west to east.
- 67 In their response, TfL made no reference to the previous advertisement consent allowed by the Planning Inspector in 2018. TfL considered the overall impact on public safety and pedestrian/cyclist users' comfort to be unacceptable. TfL's highway safety concerns regarding illuminated adverts relate to the field of the view of the observer, which in this case are drivers and other road users, and the impact brightness may have upon driver distraction. TfL has commented that the proposed digital LED sign would *"increase the risk of collision between motor vehicles and/or cyclists and pedestrians, particularly at night,"* given how bustling the section of Stanstead Road is at the frontage of the application property with a cycle route, bus routes, an on-street parking bay, a vehicle crossover for No. 291 at the junction where vehicles would be turning right. TfL did not provide any evidence to support their concerns (e.g. collision data). TfL's Vision Zero commitment requires them to take a risk-based approach to road danger, making TfL cautious about bright roadside adverts.
- 68 The proposed advertisement luminance level complies with Table 1 of the ILP. Section 5 of the ILP notes that *"media screens that may be effective during the day are likely to exceed the night time luminance limits"*. This section also acknowledges this can be controlled by a system that limits luminance times.
- 69 TfL expects conditions to be secured if the Council is minded to approve the application to reduce the impact of the proposed illuminated advert on public safety. They requested that the sign is not illuminated between 11 pm and 7 am the next morning and that the degree of illumination during the day not exceed 300cd/m<sup>2</sup>. Officers note that TfL's requested restriction on the illumination times is more than the Planning Inspector's condition under the appeal decision APP/C5690/Z/18/3198998 to ensure the illumination times for the advertisement shall not be during the hours of 0000-0600. They also requested limits on the advertisement's display time and effects.
- 70 The Council's Highways Officer also reviewed the application and stated the *"application poses no threat of disruption to the local highway network."*
- 71 The road environment at the front of the application property has not changed since at least 2008. The cycle route, bus routes, speed camera, on-street parking bays, vehicle

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crossover for No. 291, and junction with Carholme Road all existed prior to the Planning Inspectorate's decision in 2018. A number of illuminated advertisements are located in the vicinity of the site that have been in place since 2020. Illuminated signage is part of the established street scene and is not an incongruous addition to the road environment.

72 The previous scheme (DC/17/104674) was not refused on public safety grounds on the basis that TfL's requirements could be conditioned to reduce the potential distraction caused by the illuminated digital advert. The Planning Inspector did not turn their mind explicitly to public safety, nevertheless, many of the conditions imposed by the Inspector are relevant to public safety in line with the above recommendations of TfL. Officers consider the imposition of conditions would minimise the potential for driver and pedestrian distraction on Stanstead Road and uphold public safety. These conditions would be the same as requested by the Planning Inspector and include restrictions on the luminance of the displays, restrictions on moving images, and controls on the method of change between adverts.

#### ***Impact on existing speed camera***

73 TfL also raised concerns that a brightly illuminated advertisement on the application site would *"impact the effective operation of the speed camera on the opposite side of the road."* No evidence was provided by the applicant to demonstrate the proposal would not impact the operation of the speed camera.

74 Officers are aware this speed camera has been in place since 2008. The Planning Inspector did not address the potential impact of the illuminated advertisement on the functioning of the speed camera. Nevertheless, the conditions imposed by the Inspector are relevant as they assist in managing any potential impacts on the operation of the speed camera.

#### **6.2.1 Public safety conclusions**

75 Officers consider the proposal would not worsen the existing Stanstead Road environment where illuminated advertisement displays are part of the established street scene and are not an unexpected addition to the road environment. Similar to the conclusion of the Planning Inspector in the appeal APP/C5690/Z/18/3198998, Officers consider the imposition of conditions would minimise the potential for driver and pedestrian distraction on Stanstead Road. Officers are satisfied the proposal would not result in an unacceptable harmful effect on the safety and useability of the highway and public safety, subject to the imposition of conditions.

## **7 LOCAL FINANCE CONSIDERATIONS**

76 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:

- 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
- sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

77 The weight to be attached to a local finance consideration remains a matter for the decision maker.

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78 Advertisements are not subject to CIL and therefore, this is not a material consideration.

## 8 EQUALITIES CONSIDERATIONS

79 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.

80 In summary, the Council must, in the exercise of its function, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and persons who do not share it.

81 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.

82 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>

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

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

84 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

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at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

85 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 HUMAN RIGHTS IMPLICATIONS

86 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:

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

87 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.

88 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above 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.

89 This application has the legitimate aim of installing a new advertisement. The rights potentially engaged by this application, including Article 8 and Protocol 1, Article 1: Right to peaceful enjoyment of your property are not considered to be unlawfully interfered with by this proposal.

## 10 CONCLUSION

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

91 The proposed advertising is very similar to the advertising that was allowed by the Planning Inspector on 10 July 2018 (APP/C5690/Z/18/3198998). The proposal remains an existing advertising display of the same width and height as the existing advertisement on the application site however, it would have a different appearance based on its slimmer profile, illuminated digital display, and the sequential display of images. Officers support the Planning Inspector's decision that the proposal would not result in unacceptable impacts on the character and appearance of the area or the amenity of surrounding occupiers, or an unacceptable risk to public safety, subject to the imposition of conditions.

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# 11 RECOMMENDATION

92 That the Committee resolve to **GRANT** advertisement consent subject to the following conditions.

## 11.1 CONDITIONS

### 1. Approved plans

The advertisement hereby granted consent shall not be displayed otherwise than in complete accordance with the approved plans below, unless previously agreed in writing by the local planning authority.

289-PA-01; 289-PA-02; 289-PA-03; 289-PA-04 (received 24 October 2023).

**Reason:** To protect the visual amenities of the area and to comply with the terms of the application and DM Policy 19 Shopfronts signs and hoardings of the Development Management Local Plan (November 2014).

### 2. Advertisement conditions

- (a) This consent is granted for a fixed period expiring 5 years from the date of consent.
- (b) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
- (c) No advertisement shall be sited or displayed so as to:
  - (i) Endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
  - (ii) Obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or.
  - (iii) Hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- (d) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
- (e) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
- (f) Where an advertisement is required to be removed under the Town and Country Planning (Control of Advertisement) (England) Regulations 2007, the site shall be left in a condition that does not endanger the public or impair visual amenity.

**Reason:** In accordance with the Town and Country Planning (Control of Advertisement) (England) Regulations 2007.

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### 3. **Illumination levels**

The maximum luminance shall not exceed 300 cd/m<sup>2</sup> and shall fully comply with the recommendations contained in the Institution of Lighting Professionals Technical Report No.5.

**Reason:** In order that the local planning authority may be satisfied that the lighting is installed and maintained in a manner which will not be detrimental to visual amenity and highway safety, to comply with Policy D8, T2 and T4 of the London Plan (March 2021), Policy 15 of the Core Strategy (2011), Policy 19, 27, 30 and 35 of the Development Management Local Plan (November 2014).

### 4. **Hours of illumination**

The advertisement hereby approved shall not be illuminated during the hours of 0000-0600.

**Reason:** To ensure that the advertisement does not prejudice the amenities of the neighbouring occupiers, to comply with Policy D8, T2 and T4 of the London Plan (2021), Policy 15 of the Core Strategy (2011), Policy 19, 27, 30 and 35 of the Development Management Local Plan (November 2014).

### 5. **Advertisement display (time between advertisements)**

The minimum display time for each advertisement shall be 10 seconds. The use of message sequencing for the same product is prohibited and the advertisements shall not include features/equipment that would allow interactive messages/advertisements to be displayed.

**Reason:** To ensure that the advertisement does not prejudice the amenities of the neighbouring occupiers, to comply with Policy D8, T2 and T4 of the London Plan (2021), Policy 15 of the Core Strategy (2011), Policy 19, 27, 30 and 35 of the Development Management Local Plan (November 2014).

### 6. **Advertisement display (interval between display)**

The interval between successive displays shall be instantaneous (0.1 seconds or less), the complete screen will change, there shall be no special effects (including fading, swiping, or other animated transition methods) between successive displays.

**Reason:** To ensure that the advertisement does not prejudice the amenities of the neighbouring occupiers, to comply with Policy D8, T2 and T4 of the London Plan (2021), Policy 15 of the Core Strategy (2011), Policy 19, 27, 30 and 35 of the Development Management Local Plan (November 2014).

### 7. **Advertisement display (special effects)**

There shall be no special effects (including noise, smell, smoke, animation, flashing, scrolling, three-dimensional, intermittent or video elements) of any kind during the time that any message is displayed.

**Reason:** To ensure that the advertisement does not prejudice the amenities of the neighbouring occupiers, to comply with Policy D8, T2 and T4 of the London Plan (2021), Policy 15 of the Core Strategy (2011), Policy 19, 27, 30 and 35 of the Development Management Local Plan (November 2014).

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## 8. Advertisement control

The display panel shall have a default mechanism to switch it off in the event of a malfunction or during periods of maintenance.

**Reason:** To ensure that the advertisement does not prejudice the amenities of the neighbouring occupiers, to comply with Policy D8, T2 and T4 of the London Plan (2021), Policy 15 of the Core Strategy (2011), Policy 19, 27, 30 and 35 of the Development Management Local Plan (November 2014).

## 11.2 INFORMATIVES

### A 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.

### B Installation of advertisement

The footway and carriageway of the A205 Stanstead Road must not be blocked during the installation of the advertisement. Temporary obstructions must be kept to a minimum and should not encroach on the clear space needed to provide safe passage for pedestrians or obstruct the flow of traffic. All vehicles must only park/stop at permitted locations and within the time periods permitted by existing on-street restrictions. No skips or construction materials shall be kept on the footway or carriageway on the TLRN at any time.

## 12 BACKGROUND PAPERS

- (1) Submission drawings
- (2) Appeal decision (reference: APP/C5690/Z/18/3198998)
- (3) Internal consultee responses
- (4) Statutory consultee responses

## 13 REPORT AUTHOR AND CONTACT

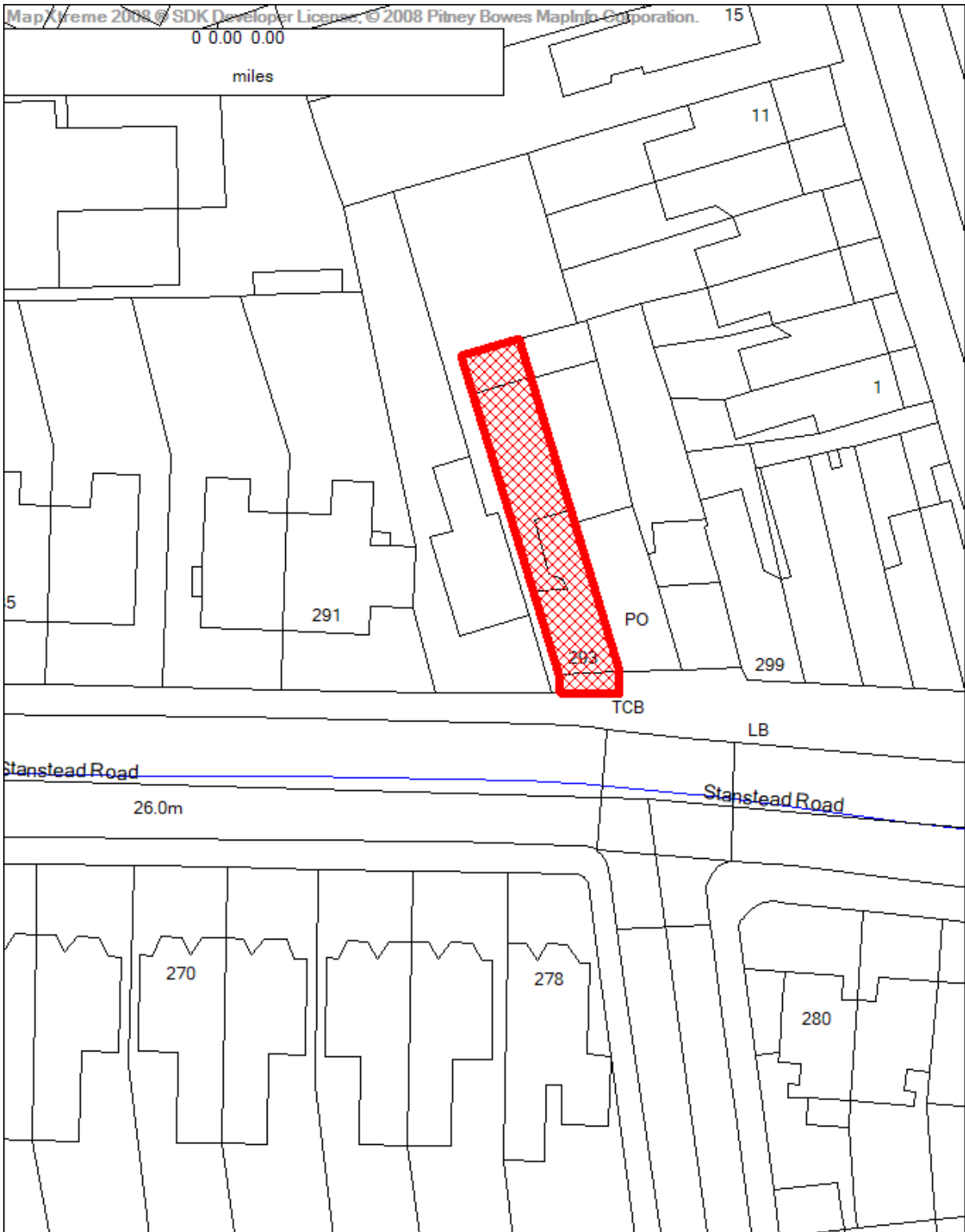
93	Report Author:	Lucy Bennett (Senior Planning Officer)
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Lewisham

# **ADVERTISING RIGHT SIDE OF 293 STANSTEAD ROAD, SE23 1JB**

Application Ref. DC/23/131562

**The installation of an internally illuminated digital LED sheet sign at the Right Side of 293 Stanstead Road, SE23.**

# Existing Site

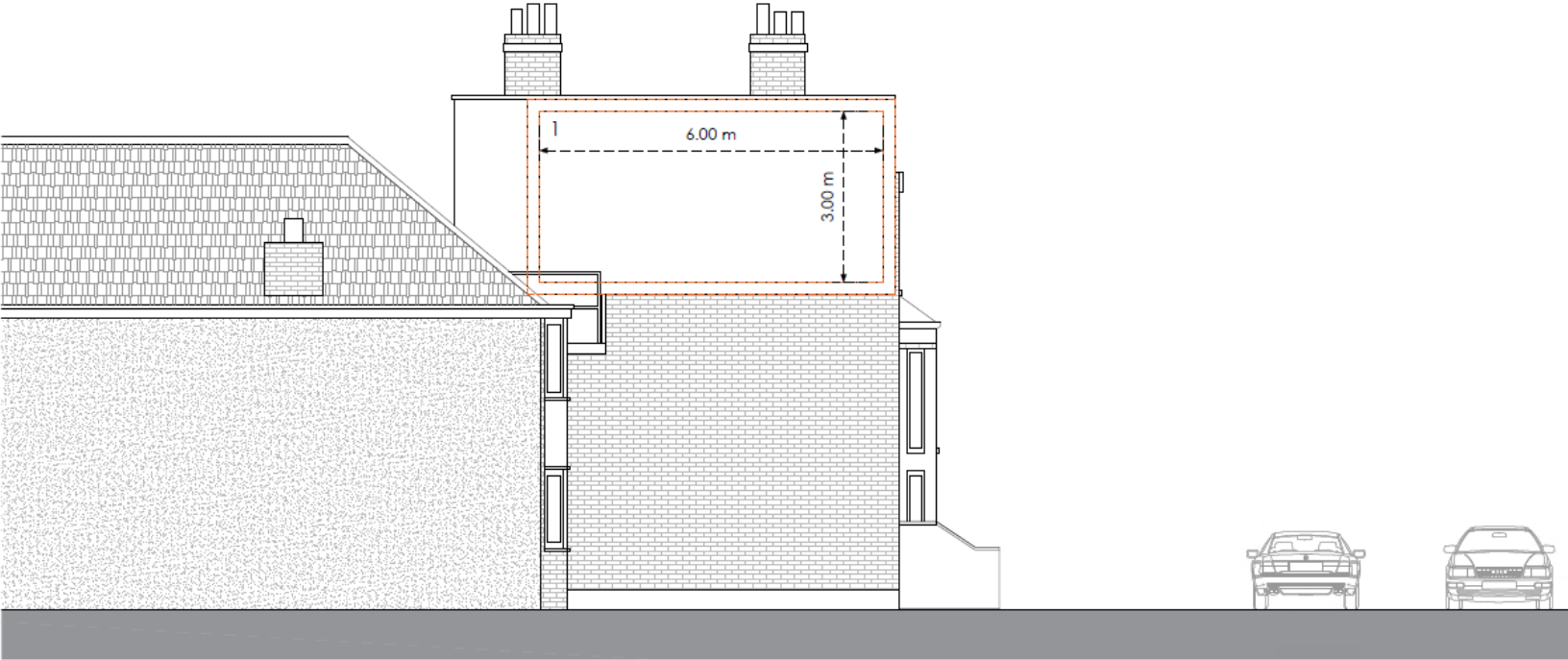
# Site Location Plan

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# Existing advertising

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# Street view

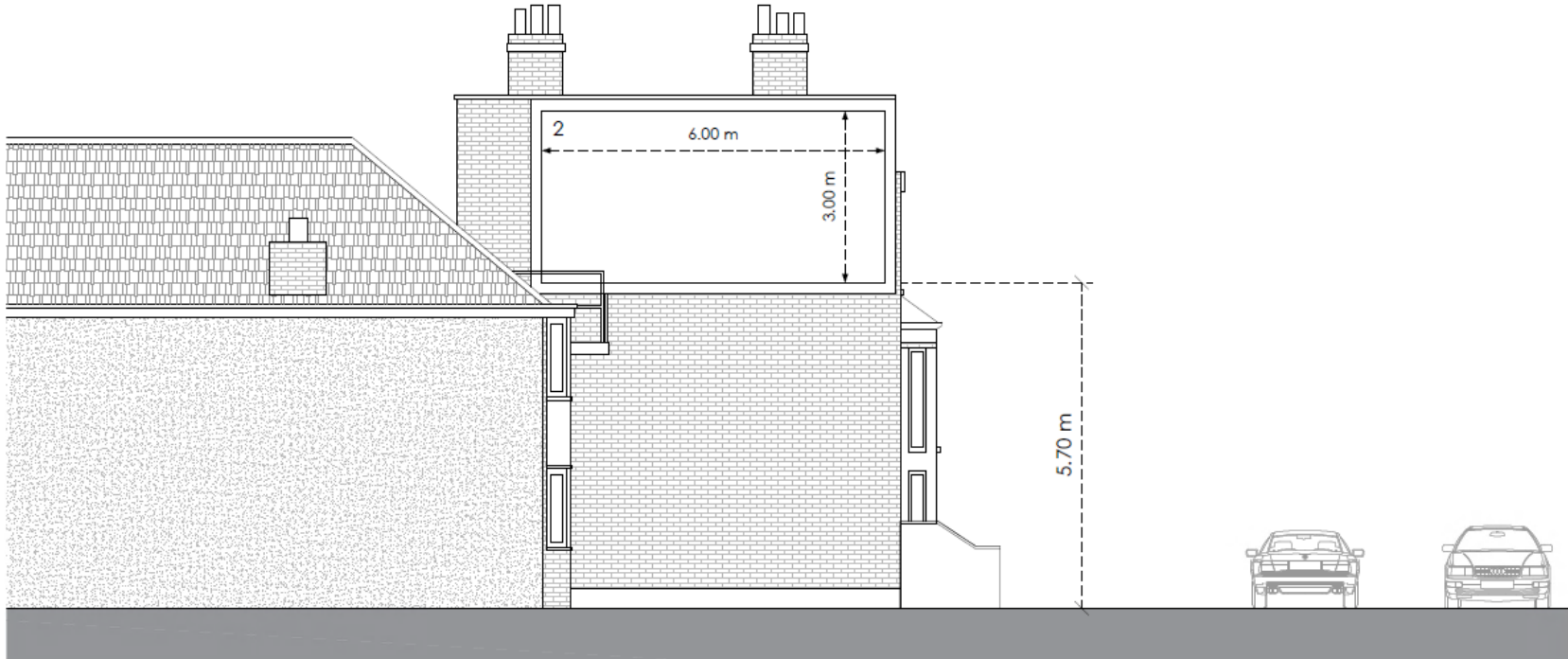
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# Proposal

# Proposed advertising

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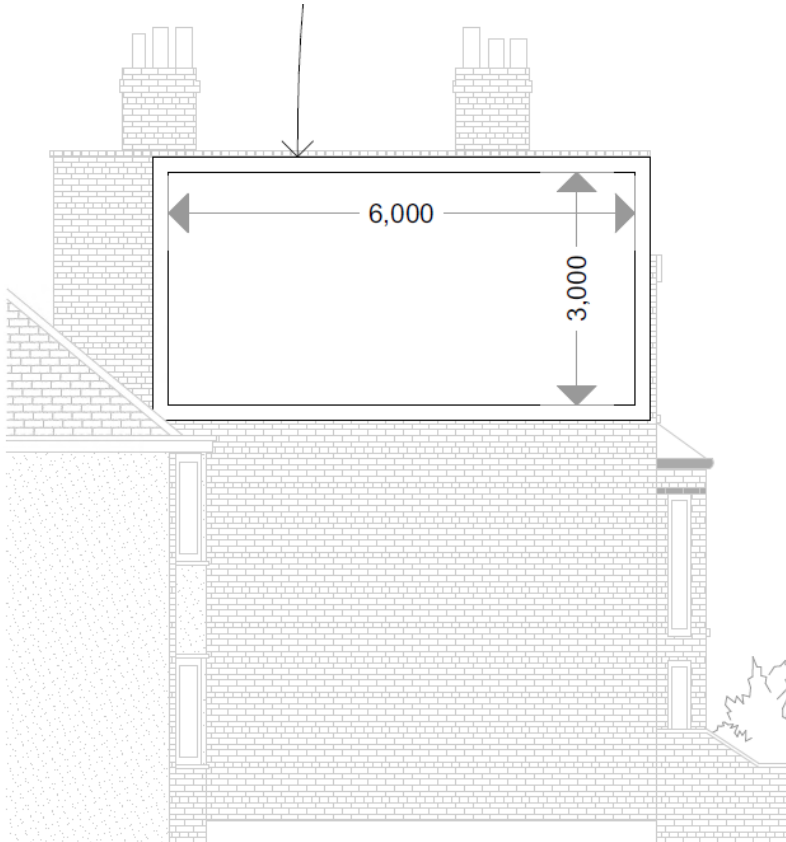




# Planning History

# Previously refused application (2018) DC/17/104674

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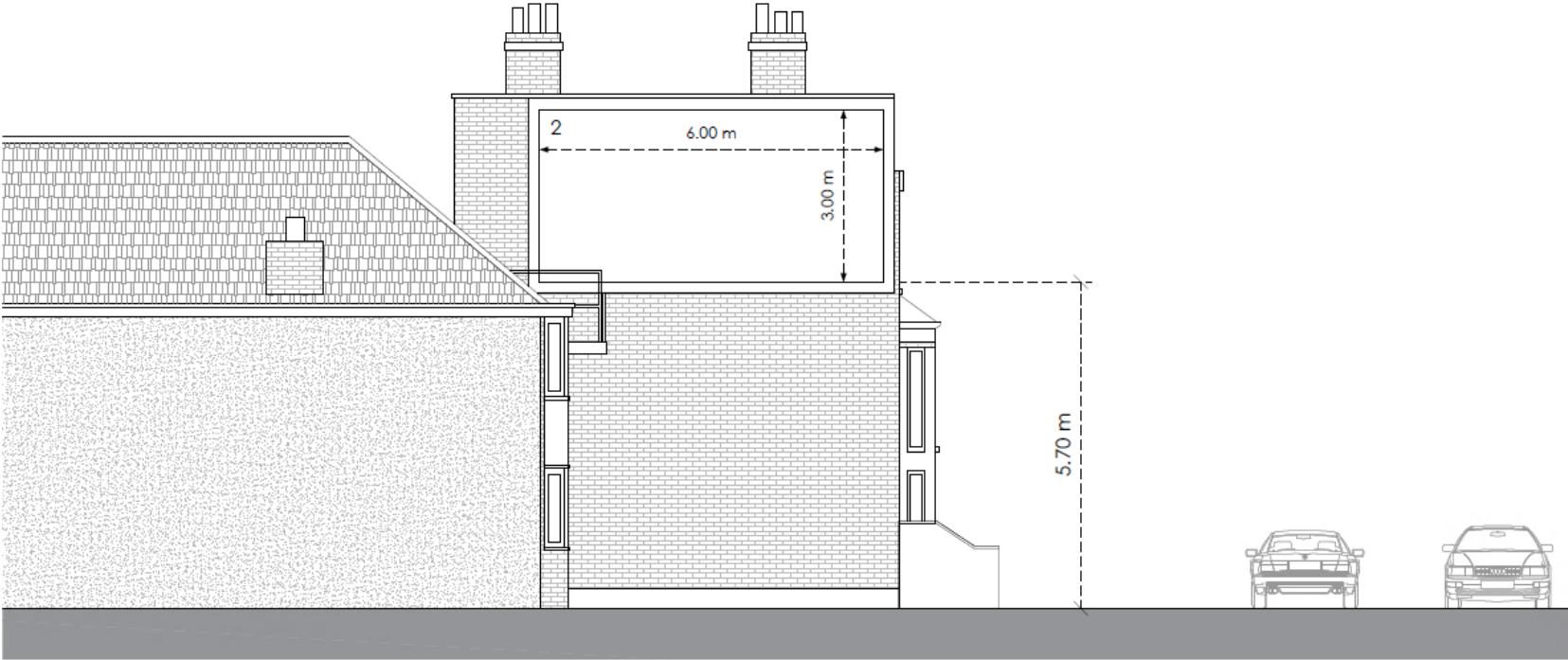


Council's refusal was appealed  
(APP/C5690/Z/18/3198998)

Planning Inspectorate allowed  
the appeal on 10 July 2018,  
subject to conditions

# Previously refused application (2023) DC/23/130576

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# Main Planning Considerations

# Main Planning Considerations

- Amenity
- Public safety

**End**

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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