



Planning Committee A

Report title:

**BLACKHEATH HOSPITAL, 40-42 LEE TERRACE, LONDON, SE3
9UD**

Date: 18 July 2023

Key decision: No.

Class: Part 1

Ward(s) affected: Blackheath

Contributors: Thomas Simnett

Outline and recommendations

This report sets out the Officer's recommendation of approval for the above proposal subject to the conditions and informatives.

This report has been brought before Committee for a decision due to the submission of five letters of objection from the neighbouring residents.

Application details

Application reference number(s): DC/22/128708

Application Date: 06 October 2022

Applicant: Walsingham Planning submitted on behalf of Circle Health Group

Proposal: Application submitted under Section 73A of the Town & Country Planning Act 1990 (as amended) for a 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 a 3m high visual screen 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.

Background Papers: (1) Submission Drawings
(2) Submission technical reports and supporting documents
(3) Internal consultee responses

Designation: PTAL 4
Local Open Space Deficiency
Air Quality
Blackheath Conservation Area
Locally List Building
B Road

Screening: Not applicable

1 SITE AND CONTEXT

Site description and current use

- 1 The application site is located on the southern side of Lee Terrace between the residential streets of Hatcliffe Close and Tristan Square. Adjoining the rear of the property are two-storey semi-detached and detached residential dwellings fronting Lock Chase.
- 2 The application property is the BMI Blackheath Hospital which is formed of Nos. 40 and 42 Lee Terrace, No. 40 Lee Terrace is to the west and No. 42 Lee Terrace is to the east. No 42 features a grey brick (now painted) façade with stucco dressings while No 40 has a wholly stuccoed finish with tower.
- 3 The two buildings merged around 1983 when a new link building was built between to allow the site to be used as a single hospital, No. 40 Lee Terrace was also extensively rebuilt and extended at this time.

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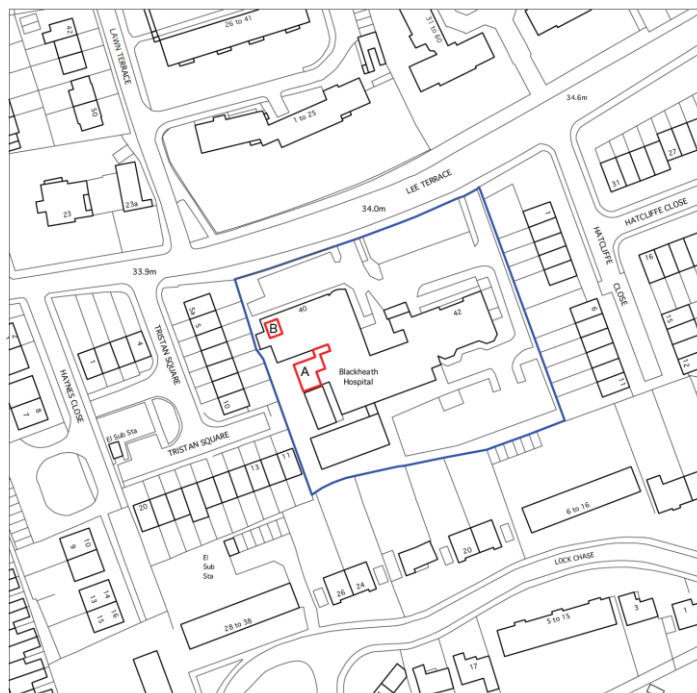


Figure 1 – Site location plan

Character of area

- 4 The hospital is bounded by residential development with Hatcliffe Close adjoining the site to the east, Tristan Square to the west and Lock Chase to the south.

Heritage/archaeology

- 5 The application site is located within the Blackheath Conservation Area and contains two locally listed buildings, which form the principal elevation of the Hospital to Lee Terrace.
- 6 The Local List Descriptions are as follows:

No 40 Lee Terrace

Villa. Detached. 1868. Stucco, stone and slate. Central/principal section built to three storeys with basement and tower. Four bays. Corniced string at second floor level. Slightly projecting quoined entrance bay to left. Flat-arched entrance flanked by Tuscan columns and surmounted by round-arch window with splayed moulded reveal and keystone. This surmounted by cambered-arch window with keystone and decorative stone balustrade; this supported by large enriched brackets. Above parapet, terminates in tower with pyramidal roof, finial and deep projecting eaves with paired brackets. One round-arch window flanked by two blind round-arch windows. To right, low pitched roof surmounted by decorative iron balustrade. To left, bowed section of three bays with half-blind six-pane sashes surmounted by stone balustrade parapet. Corniced string at first floor level. To right, two storey, two bay extension under plain parapet with further, recessed extension of one bay. With no. 42, now part of Blackheath Hospital.

No 42 Lee Terrace

Villa. Detached. 1870. Latterly painted brick and slate with stone and stucco Blackheath Conservation Area dressings. Two storeys with attics. Symmetrical façade. Three bays flanked by two projecting bays. Pitched roof to central section, pyramidal roof with highly

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decorative oculus dormers to projecting bays. Deep bracketed eaves. Central bays have replaced casements with at first floor, fine iron balconets over corniced string. Ground floor windows are flat arched with central flower motif and spaced by archlevel nail-head strings. To projecting bays, three-light sash windows to ground floor separated by plain columns and flanked by plain pilasters. Columns and pilasters surmounted by variation on composite capitals. To first floor, three light sashes similarly divided but surmounted by plain frieze with central cherub motif enriched by foliage. This in turn surmounted by flat cornice with central camber. Original bricks dark grey. Although now painted, original effect of contrasting brick and stucco still clear. With no. 40, now part of Blackheath Hospital.

Local environment

7 The site falls within Air Quality Management Area.

Transport

8 The site has a Public Transport Accessibility Level (PTAL) score of 4 on a scale of 1-6b, 1 being lowest and 6b the highest.

9 Blackheath Railway Station is located approximately 0.2 miles to the north-east of the application site.

2 RELEVANT PLANNING HISTORY

10 There have been fifteen applications on this site historically, the most relevant application is:

11 **DC/21/123944:** The installation of a rooftop plant and all associated works at Blackheath Hospital 40-42 Lee Terrace SE3. **Granted**

- There has also been a number of approval of details applications relating to discharge of planning conditions to the above application (DC/21/123944). Those are not relevant planning history and so not listed here.

12 **DC/21/124085:** Certificate of Lawfulness (proposed) pursuant to The Town and Country Planning (General Permitted Development) Order 2015 (as amended), Schedule 2, Part 7, Class M for the construction of a single-storey entrance lobby extension at the front of Blackheath Hospital, 40-42 Lee Terrace SE3. **Granted**

13 **DC/21/122611:** Construction of a single storey glazed entrance lobby extension at the front of Blackheath Hospital 40-42 Lee Terrace SE3, together with roof top plant equipment and 2 Air Conditioning condenser units on the side elevations. **Refused – reasons for refusal:**

- 1) The proposed single storey extension to the front, by reason of its scale, design and materials would be an incongruous and architecturally inappropriate addition that would result in substantial harm to the character and appearance of the host locally listed buildings and surrounding Blackheath Conservation Area contrary to NPPF (2021) Paragraph 202, Policy HC1 Heritage conservation and growth of the London Plan (March 2021); Policy 15 High quality design for Lewisham and Policy 16 Conservation areas, heritage assets and the historic environment of the Core

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Strategy (June 2011), DM Policies 30 Urban design and local character, 31 Alterations and extensions to existing buildings including residential extensions; 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; DM Policy 37 Non designated heritage assets including locally listed buildings, areas of special local character and areas of archaeological interest and the Blackheath Conservation Area Appraisal and SPD

- 2) By virtue of insufficient details and mitigation measures on proposed equipment (external plant, air handling equipment and air condition condenser units) the proposal fails to demonstrate that there would be no adverse impact on surrounding properties in terms of increased noise contrary to Paragraph 130 of NPPF (2021), Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and Policy 26 Noise and Vibration and 31 Alterations and extensions to existing buildings including residential extensions of the Development Management Local Plan (November 2014).

- 14 **DC/16/099401** – Application submitted under Section 73 of the Town and Country Planning Act 1990 for to allow the variation of Condition (1) of the planning permission DC/03/54427 dated 23 September 2003 for the construction of a single storey modular building linked to the rear of Blackheath Hospital, 40-42 Lee Terrace SE3 to provide additional clinical facilities for a temporary period, as amended by the minor material amendment under Section 73 (DC/15/92524) granted on 27th October 2015, **in order to allow the retention of the temporary building for a further year. Granted.**
- 15 **DC/15/094861** – Demolition of two existing buildings, serving as the Endoscopy Department and ancillary office space, located in the south-western corner of Blackheath Hospital, 40-42 Lee Terrace SE3, together with the construction of a part single part two-storey extension to the south-western corner of the main building for use as an Endoscopy Department and an Intensive Treatment Unit (ITU) in connection with the existing hospital use (Class C2) with ancillary plant room, new roof plant and landscaping works, including replacement trees and the provision of covered bicycle store at the far south-eastern side of the site. **Granted.**
- 16 **DC/09/070870/X** – The re-siting of the existing CT Scanner condensing unit at 40-42 Lee Terrace SE3, together with the formation of a box enclosure to the MRI chiller unit. **Granted**
- 17 **DC/05/061356/FT** – The retention of the existing air conditioning plant and the cladding of the existing enclosure at The Blackheath Hospital, 40-42 Lee Terrace SE3, together with the removal of the existing quench pipe and installation of a new quench pipe to the roof of the bay at the side of building. **Granted**

3 CURRENT PLANNING APPLICATION

3.1 THE PROPOSALS

- 18 This application is submitted under Section 73A of the Town & Country Planning Act 1990 (as amended) for a variation of condition amendment 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,

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install 3m high visual screening and provide a steel walkway on the rear flat roof to provide maintenance access to the equipment. Since the works have now been completed it is necessary to amend the wording of or delete entirely other conditions to ensure they continue to meet the Six Tests as set out in the NPPF. See sub-section 7.3 for more detail. .

3.2 COMPARISON WITH PREVIOUS SCHEME

19 The plans submitted with the previously approved scheme showed significantly smaller rooftop equipment (see Figure 2) compared with that the applicant is seeking permission for as part of this application (see Figure 3).

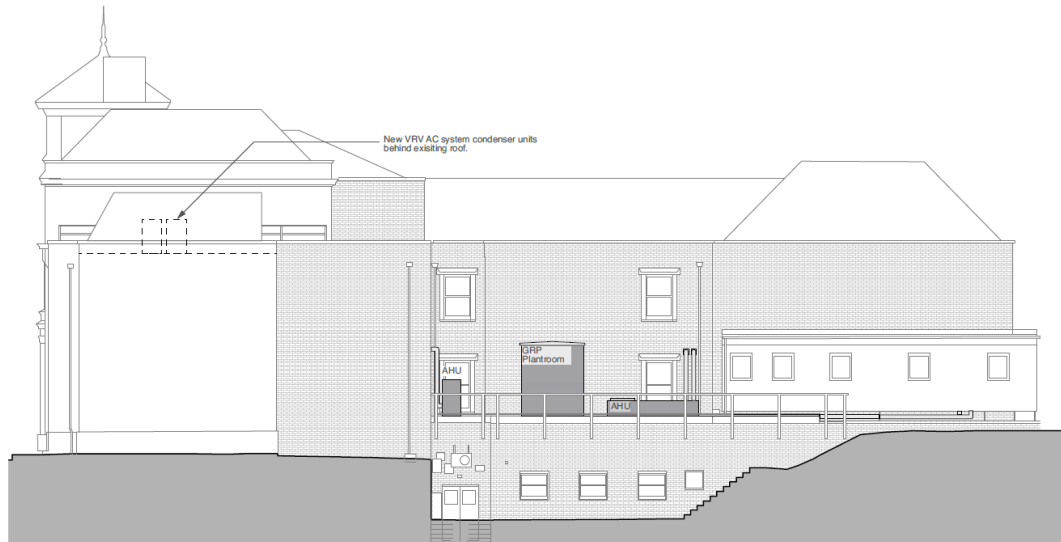
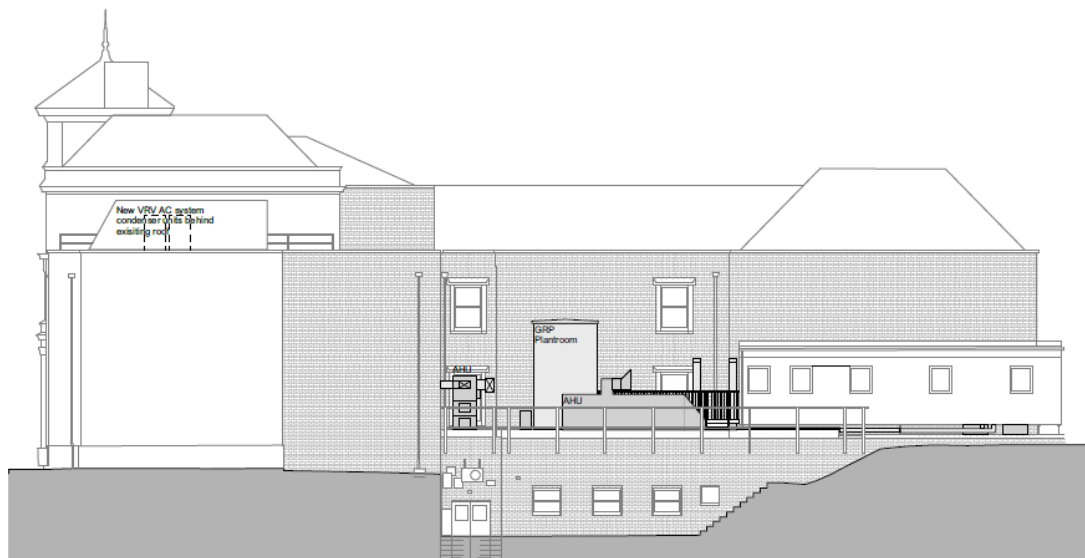


Figure 2 – previously approved rooftop equipment (DC/21/123944)



Proposed West Elevation

Figure 3 – proposed west elevation without screening

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Proposed West Elevation With Plant Screening

Figure 4 – proposed west elevation without screening

20 Officers have been advised by the applicant that incorrect plans were submitted with the previous application. While the equipment proposed had been tested in the Noise Impact Assessment, the size of that equipment was not correctly reflected in the plans. As such the applicant is seeking to amend the wording of Condition 2 (Approved Plans) to replace the incorrect plans with the correct version that accurately shows the size of the equipment. Subsequently, visual screening has been installed which also requires planning permission and this is included in the application. The noise qualities of the equipment was fully assessed in the previous application, and remain unchanged.

4 CONSULTATION

4.1 PRE-APPLICATION ENGAGEMENT

21 There was no pre-application engagement conducted by the applicant.

4.2 APPLICATION PUBLICITY

22 Site notices were displayed on 03 May 2023 and a press notice was published on 03 May 2023.

23 Letters were sent to residents and business in the surrounding area and the relevant ward Councillors on 25 April 2023.

24 Five representations were received, comprising of five objections.

4.2.1 *Summary of themes of individual objections*

Comment	Para where addressed
Concern regarding visual impact	Paras 52 to 55

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Concerns regarding noise impact	Paras 64 to 68
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4.3 INTERNAL CONSULTATION

- 25 The following internal consultees were notified on 04 November 2022.
- 26 Environmental Health: satisfied the submitted noise impact assessment addresses the previous planning condition
- 27 Conservation: did not provide comments as this case falls below the current threshold for conservation input due to its scale of development and potential impact on the conservation area. The heritage matters were considered by the case officer with reference to Policy and Guidance.

5 POLICY CONTEXT

5.1 LEGISLATION

- 28 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).
- 29 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990: imposes a duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Likewise, section 72 of the same imposes a duty to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area.

5.2 MATERIAL CONSIDERATIONS

- 30 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.
- 31 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.
- 32 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)

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

5.4 DEVELOPMENT PLAN

33 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

34 London Plan SPG/SPD:

- The control of dust and emissions during construction and demolition (July 2014)

5.6 OTHER MATERIAL DOCUMENTS

- Blackheath Conservation Area Character Appraisal

6 APPLICATION TYPE AND SCOPE OF APPLICATION

35 The application has been made under Section 73A(2)(c) of the Town and Country Planning Act 1990 to retrospectively develop land without compliance with conditions previously attached. The conditions proposed to be altered are 2 (Approved Plans) and deletion of Condition 6 (Considerate Constructors Scheme).

36 Section 73A of the Town and Country Planning Act 1990 provides for retrospective applications for planning permission that has already been carried out. They may be for development without planning permission, or, as here, for development which did not comply with a condition.

37 Case law establishes that there is scope for wider or narrower examination of the planning merits depending on the nature and stage of the development and the circumstances of the application. Here, for the reasons given below, the application essentially seeks only to change the size of the rooftop equipment (Condition 2), with the noise elements having been previously assessed in the previous application. As such, the Committee's inquiry is focused principally on the size of the rooftop equipment, as the principle of the development has in other respects been approved in the original permission (and officers are satisfied there has been no material change in the underlying planning framework since then).

38 If granted the legal effect of an application made under Section 73A is to generate a new planning permission with the amended conditions then placed on the application. Since the works are complete, it is necessary for the Council to make appropriate amendments to other conditions. See sub—section 7.3 for more detail.

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7 PLANNING CONSIDERATIONS

39 The main issues are:

- Urban Design and Impact on Heritage Assets
- Impact on Living Conditions of Neighbours
- Other Matters

7.1 URBAN DESIGN AND IMPACT ON HERITAGE ASSET

General Policy

40 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.

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

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

43 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). This includes giving great weight to the asset's conservation, when considering the impact of a proposed development on the significance of a designated heritage asset. Further, 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

Policy

44 London Plan Policy D3 states that development proposals should respond to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality and respect, enhance and utilise the heritage assets and architectural features that contribute towards the local character. It should also be of high quality, with architecture that pays attention to detail and gives thorough consideration to the practicality of use, flexibility, safety and building lifespan through appropriate construction methods and the use of attractive, robust materials which weather and mature well.

45 Core Strategy Policy 15 High quality design for Lewisham repeats the necessity to achieve high quality design but also confirms a requirement for new developments to minimise crime and the fear of crime.

46 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.

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- 47 DMLP 30 states that all new developments should provide a high standard of design and should respect the existing forms of development in the vicinity. The London Plan, Lewisham Core Strategy and Lewisham DMLP policies further reinforce the principles of the NPPF setting out a clear rationale for high quality urban design. DM Policy 33 seek to protect and enhance the Borough's character and street frontages through appropriate and high-quality design.
- 48 DMP 31 states that extensions will not be permitted where they would adversely affect the architectural integrity of a group of buildings as a whole or cause an incongruous element in terms of the important features of a character area.
- 49 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.
- 50 DMP 37 sets out a framework for the protection of the borough's non-designated heritage assets.

Discussion

- 51 There are no amendments proposed to the already approved plant equipment at roof level of Area B, as such this assessment will only consider the amended plant equipment on Area A and visual screening that has been installed since the installation of the equipment. The assessment of the amended design relates only to whether the increased size of the plant equipment and screening would as a result be more visible and therefore have an impact on the character and appearance of the building and the conservation area.
- 52 Some neighbours had raised concerns with the increased visual impact of the amended plant equipment from those properties along Tristan Square; consequently, a site visit was undertaken to understand the relationship of the plant equipment and those properties. The increased visual impact has no discernible impact to the street scene or to the wider conservation area. After discussing the neighbour concerns with the applicant, they had proposed to include screening. The screening is shown on figure 4, above, and on drawing 201048-3013 Rev C1 (and in plan on drawing 201048-1210 Rev C1). It is located on the elevated access to the Area A plant, is 3m high and described as "woodside artificial maple leaf garden fence screening".
- 53 Officers consider the screening, while not necessary in planning terms, further helps to reduce the visual impact of the amended plant equipment. It is also noted that there are trees and shrubs on the boundary of the hospital with the properties that back onto it on Tristan Square would provide natural screening of the plant equipment. In this context the screening has a neutral impact on the building and wider conservation area, preserving the character and appearance.
- 54 The applicant has submitted revised visibility plans for Area A; given its location, the revised plant equipment would remain shielded from the front elevation and would not be visible from the public realm. As such is not considered to adversely affect character and appearance of the building and conservation area. It is recognised that the equipment is larger than approved, and the screening is new, however there is no resultant harm.
- 55 Some further neighbour correspondences were concerned that the installed screening does not fully block the plant equipment from view; Officers do not consider the

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screening is a planning requirement in order for this application to be acceptable and it is not designed to fully shield the plant equipment from view. Given the nature of the use of the site as a hospital, it is not uncommon for plant equipment such as this to be visible from neighbouring properties: that is not itself harmful, and it is considered appropriate in this context.

56 Officers consider that the current proposal would lead to no harm to the Blackheath Conservation Area and the locally Listed Building.

7.1.1 Urban design and impact on heritage assets conclusion

57 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 Blackheath Conservation Area.

58 Officers consider the amended design to be acceptable subject to conditions.

7.2 LIVING CONDITIONS OF NEIGHBOURS

General Policy

59 NPPF para 127 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. At para 180 it 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 and living conditions.

60 This is reflected in relevant policies of the London Plan (LPP D3), the Core Strategy (CP15), the Local Plan (DMP32).

7.2.1 Noise and disturbance

Policy

61 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

62 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.

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63 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

64 There are no proposed changes to the noise levels assessed and considered acceptable in the original permission. The previously approved Noise Impact Assessment (“NIA”) (prepared by 24 Acoustics Ltd dated on 27 September 2021) had assessed the larger plant equipment which the applicant is now seeking retrospective permission for.

65 The applicant has explained the reason for this discrepancy between the plant equipment shown on the approved drawings and that installed was due to a miscommunication with the applicants’ architects. As such the only difference between the approved scheme and this retrospective scheme is their size, which is accordingly considered as part of the Urban Design and Impact on Heritage Assets.

66 In support of this application the applicant submitted a letter from their noise consultants (sent by 24 Acoustics Ltd dated on 25 October 2022 ref no. R9080-3 Rev 0) which confirmed that the plant equipment proposed had not changed since the preparation of the previously approved NIA. As such, Officers are satisfied that the approved NIA had correctly assessed the impact of the installed plant equipment and the recommended mitigation measures in the aforementioned report are, therefore, still applicable.

67 While the impact of the plant on the living conditions of neighbours in terms of noise and disturbance is a material planning consideration, the impact is the same as that found to be acceptable in the original permission. Consequently, that original permission is a material consideration which carries considerable weight in the assessment of this application. Moreover, by virtue of the already approved permission, the applicant would have a fall-back position to install equipment which is in accordance with the noise levels in that approved document. Officers have carefully considered the proposal and supporting information and conclude there is no reason to depart from the previous in respect of impact on living conditions of neighbours in respect of noise and disturbance.

68 Objections were received regarding how the plant noise commissioning survey did not take measurements from the façade of their homes. Notwithstanding the above point, that there is no reason to now reach a different conclusion on noise impact than that previously reached with the original planning permission, Officers are satisfied that the impact of noise on neighbours has been adequately addressed. Given the location of the noise measurements were closer to the noise emitting plant equipment than the facades of the properties, it is reasonable to conclude that if the noise is acceptable at a point closer to the noise source, then it would remain acceptable at a point farther from the noise source.

7.2.2 Outlook and sense of enclosure

Policy

69 DMP 32(1)(b) expects new developments to provide a ‘satisfactory level’ of privacy, outlook and natural lighting for its neighbours.

Discussion

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70 The larger plant and screening fence, due to their scale and location, would have no unacceptable impact on the living conditions of neighbours in terms of loss of outlook or overbearing sense of enclosure.

7.2.3 Living conditions of neighbours conclusion

71 Officers consider that the amended scheme is in accordance with the previously approved Noise Impact Assessment therefore noise and disturbance is not relevant to the scope of the current application under s. 73A of the 1990 Act.

7.3 OTHER MATTERS

72 This application is retrospective and the works are complete. Therefore it is necessary to vary other conditions as per the table below. This is to ensure the conditions continue to meet the Six Tests as set out in the NPPF. Paragraph 55 of the Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

Table 1: Comparison of existing and proposed conditions

Original number	Original condition	New number	New conditions
1	Time limit to commence works	-	Deleted: not necessary, works are commenced and completed
2	Approved plans	1	Approved plans: amended to reflect relevant drawings
3	Noise assessment	2	Noise assessment: retained for continued control, amended for clarity
4	Materials	3	Materials: retained for continued control, amended for clarity
5	Ventilation	4	Ventilation: retained for post-installation certification and continued control, amended for clarity
6	Considerate Constructors Scheme	-	Deleted: not necessary, works are commenced and completed

8 LOCAL FINANCE CONSIDERATIONS

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

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- 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).

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

75 The CIL is not liable and is therefore not a material consideration.

9 EQUALITIES CONSIDERATIONS

76 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.

77 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.

78 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.

79 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>

80 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

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

81 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>

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

10 HUMAN RIGHTS IMPLICATIONS

83 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

84 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.

85 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.

86 This application has the legitimate aim of providing additional capacity with health uses. The rights potentially engaged by this application, including Article 8 and Protocol 1 Article 1 are not considered to be unlawfully interfered with by this proposal.

11 CONCLUSION

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

88 Officers consider that the proposals, while larger than already permitted, would not negatively affect the character and appearance of the host property and Blackheath

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conservation area. Through the imposition of planning conditions, impacts on urban design and the living conditions of neighbours will continue to be appropriately mitigated.

12 RECOMMENDATION

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

12.1 CONDITIONS

1) **APPROVED PLANS**

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

201048-1002 REV P05 - Site Plan – Proposed;
201048-1008 REV P03 – Proposed Upper Flat Roof;
201048-1011 REV P05 - West Elevation Existing and Proposed;
201048-1013 REV P03 -Proposed West Elevation (Extend of Visibility) ;
201048-1210 REV C1 - West Flat Roof – Proposed New Plant Screening;
201048-3013 REV C1 - Proposed West Elevation Plant Screening;

As previously approved under DC/21/123944 dated on 27 April 2022:

201048-1000 REV P03 - Site Location;
201048-1001 REV P03 - Site Plan - Existing;
201048-1005 REV P01 - West Flat Roof - Existing;
201048-1007 REV P01 - Upper Flat Roof - Existing;
201048-1010 REV P02 - North Elevation Existing and Proposed;

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.

2) **NOISE ASSESSMENT**

In accordance with the Noise Assessment (Technical Report: R9080-1 Rev 1 dated 27 September 2021 as submitted under DC/21/123944 dated on 27 April 2022) the rating level of the noise emitted from fixed plant on the site shall be maintained at 5dB below the existing background level at any time for the lifetime of the development. The noise levels shall be determined at the façade of any noise sensitive property. The measurements and assessments shall be made according to BS4142:2014.

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

3) **MATERIALS**

The hereby approved GRP enclosure as shown on plan 201048-1011 REV P05 and painted to match the colour of the front elevation shall be maintained as such for the lifetime of the development.

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Reason: To ensure that the design is delivered in accordance with the details submitted and assessed so that the development achieves the necessary high standard and detailing in accordance with Policies 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.

4) **VENTILATION**

Within three months of the date of this decision a post installation certificate demonstrating compliance with the ventilation strategy approved under DC/22/126918 dated on 22 August 2022 shall be submitted to and approved in writing by the Council. The development shall be retained in accordance with the approved details for the lifetime of the development.

Reason: To manage and prevent further deterioration of existing low quality air across London in accordance with London Plan policy 5.3 and 7.14, and NPPF 181.

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

13 **BACKGROUND PAPERS**

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

14 **REPORT AUTHOR AND CONTACT**

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