



Planning Committee: B

Report title:

NICHOLAS COURT, 166 BURNT ASH HILL, LONDON, SE12 0JD

Date: 24 August 2023

Key decision: No.

See "[Legal Requirements](#)" in the guidance for more information.

Class: Part 1

See "[Legal Requirements](#)" in the guidance for more information.

Ward(s) affected: Grove Park

Contributors: Max Curson

Outline and recommendations

This report sets out the Officer's Recommendation for approval of the above proposal. The report has been brought before Committee for a decision as the application has received 14 objections from local residents.

Application details

Application reference number(s): DC/23/130851

Application Date: 20 March 2023

Applicant: Castlemere Developments

Proposal: Application for Prior Approval under Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the construction of an additional storey to provide 5 self-contained flats at Nicholas Court, 166 Burnt Ash Hill, SE12.

Background Papers: (1) Submission drawings
(2) Submission technical reports and documents

Designation: PTAL 1b
Local Open Space Deficiency
Grove Park Neighbourhood Forum
Small Houses in Multiple Occupancy Article 4 Direction
Not in a Conservation Area
Not a Listed Building

Screening: N/A

1 SITE AND CONTEXT

Site description and current use

- 1 The application site at Nicholas Court, 166 Burnt Ash Hill is a three-storey block of flats which accommodates 12 self-contained residential units. It is located on the western side of Burnt Ash Hill, between the junctions with Winn Road and Farmcote Road. The site has a front and rear garden. The existing refuse storage is located to the rear of the property. A number of garages are located to the rear of the site and accessed via the same access road. However, the garages are in separate ownership and are not subject to this application.

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Figure 1: Site Location Plan

Character of area

- 2 The surrounding area is predominantly residential in nature. Two storey semi-detached 1930s dwellings are located to the south of the site, with blocks of flats of three to four storeys in height located to the north and opposite the site. The site serves as the most southerly block of flats before the character of the road shifts to two storey semi-detached dwellings.

Heritage/archaeology

- 3 The site is not located within a conservation area. It is not a statutory or locally listed building, nor is it located in the vicinity of one.

Surrounding area

- 4 A parade of shops is located 300m to the south of the site. Northbrook Park is located 275m to the east of the site. The Crown Public House is located 250m to the north of the site. Coopers Lane Primary School is located 450m south-west of the site.

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5 The site is located within an area of local open space deficiency. It is also subject to the Small Houses in Multiple Occupancy Article 4 Direction, which covers the whole of the Grove Park ward.

Transport

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

7 Lee Railway Station is located 1km north of the site.

2 RELEVANT PLANNING HISTORY

8 DC/22/129563: Application for Prior Approval under Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the construction of an additional storey to provide 4 self-contained flats at Nicholas Court 166 Burnt Ash Hill SE12. Refused 30 January 2023:

- *Prior approval is refused under Schedule 2, Part 20, Class A, paragraph 9A(b) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as the second bedrooms of Unit 14 and Unit 15 do not comply with the width requirements set out in paragraph 10(c) of the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.*
- *Prior approval is refused under Schedule 2, Part 20, Class A, paragraph A.1 (e)(ii) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as, through lack of section drawings, insufficient evidence has been provided to demonstrate that the floor to ceiling height of the additional storey, measured internally, would not exceed the floor to ceiling height of any storey of the principal part of the existing building.*
- *Prior approval is refused under Schedule 2, Part 20, Class A, paragraph A.2 (1)(a) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as it has not been demonstrated that the site would be capable of providing conveniently located and sufficient refuse storage facilities, contrary to Policy 13 Addressing Lewisham's waste management requirements of the Core Strategy (2011) and Standard 23 of the London Plan Housing SPG (2016).*
- *Prior approval is refused under Schedule 2, Part 20, Class A, paragraph A.2 (1)(a) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as it has not been demonstrated that the site would be capable of providing well integrated, easily accessible and sufficient cycle storage facilities, contrary to Policy T5 Cycling and Table 10.2 Minimum cycle parking standards of the London Plan (2021) and Policy 14 'Sustainable Movement and Transport' of the Lewisham Core Strategy (2011).*
- *Prior approval is refused under Schedule 2, Part 20, Class A, paragraph A.2 (1)(e) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as the proposed development, by reason of the design, form, materials and detailing of the proposed roof extension, would represent a poor quality, non-contextual and visually obtrusive form of development that*

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would cause visual harm to the character and appearance of the property and surrounding streetscene, contrary to paragraph 126 of the National Planning Policy Framework (2021), Policy 15 High quality design for Lewisham of the Core Strategy (2011), DMP 30 Urban design and local character and DMP 31 Alterations and extensions to existing buildings including residential extensions of the Development Management Local Plan (2014) and the provisions of the Small Sites Design Guide SPD (2021).

3 CURRENT PLANNING APPLICATION

3.1 THE PROPOSALS

9 The proposal would see the construction of an additional storey on top of Nicholas Court to provide five self-contained one bedroom one-person residential units. The additional storey would be clad in dark grey zinc. An increased area of refuse storage and cycle parking would be provided at the rear of the site.

3.2 COMPARISON WITH PREVIOUS SCHEME

10 The application follows a previous prior approval refusal at the site. The key changes are:

- The height of the extension has increased from 2.8m to 3.1m.
- The materiality of the additional storey has changed from render to zinc cladding, and the design incorporates a 200mm set back and a shadow gap.
- The current application has provided section drawings to demonstrate that the floor to ceiling height of the additional storey, measured internally (2.3m), would not exceed the floor to ceiling height of any storey of the principal part of the existing building.
- The window openings to the Burnt Ash Hill elevation have to be realigned to coordinate with the existing windows below.
- The internal layout has been reconfigured to provide bedrooms of sufficient width. Further details on the refuse and cycle storage have also been provided.

4 CONSULTATION

4.1 PRE-APPLICATION ENGAGEMENT

11 Pre-application discussions took place in August 2022 and February 2023 through reference PRE/22/127463 and PRE/23/130169 the latter following the refusal of the previous prior approval application. The response concluded that the principle of an additional storey at the site is supported, but it must be finished in a high-quality material.

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4.2 APPLICATION PUBLICITY

- 12 Site notices were displayed on 15 April 2023.
- 13 Letters were sent to residents and business in the surrounding area and the relevant ward Councillors on 12 April 2023.
- 14 14 objections were received regarding the proposal. The comments in objection are listed below.

4.2.1 Comments in objection

Comment	Para where addressed
Loss of garden space at the rear of the property due to the refuse storage and cycle parking.	38
Impact on parking stress.	32
External appearance of the additional storey.	45-52
Impact to the living conditions of the neighbours through loss of light and privacy and increased noise and disturbance.	56-62
Cycle parking should be provided for existing residents.	36

- 15 A number of non-material planning considerations were also raised, including structural concerns, impact on the service charge.
- 16 Furthermore, a number of concerns, such as the unit mix, and the impact on habitats and wildlife were raised. For the purposes of this type of prior-approval application, these are not material planning considerations.

4.2.2 Local Meeting

- 17 In accordance with the Council's Statement of Community Involvement (SCI), a virtual Local Meeting was held on Thursday 15th June 2023 at 7.30pm. Objectors were invited via email or letter to attend and submit questions before the meeting. The meeting was chaired by Grove Park Ward Councillor Mark Jackson. Ten local residents were in attendance. The Applicant team presented the development proposals, discussed key issues and answers questions from the local residents. Full details of the Local Meeting can be found at the meeting minutes. The summary note of the local meeting has been attached as Appendix 1.

4.3 INTERNAL CONSULTATION

- 18 Given the nature of the application, no internal consultation was undertaken.

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4.4 EXTERNAL CONSULTATION

19 Given the nature of the application, no external consultation was undertaken.

5 POLICY CONTEXT

5.1 LEGISLATION

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

20 On the 15th April 2015 The Town and Country Planning (General Permitted Development) (England) Order 2015 (“the Order”) (subsequently amended) was formally brought into force.

21 Schedule 2, Part 20, Class A of the Order provides permitted development rights for new dwellinghouses on detached blocks of flats. This was inserted on the 1st of August 2020 by The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020.

22 Where any development under Class A is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval of the authority to demonstrate that the proposal would be acceptable with regard to:

(a) transport and highways impacts of the development;

(b) air traffic and defence asset impacts of the development;

(c) contamination risks in relation to the building;

(d) flooding risks in relation to the building;

(e) the external appearance of the building;

(f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses;

(g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;

(h) whether because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State;

(i) where the existing building is 18 metres or more in height, the fire safety of the external wall construction of the existing building; and

(j) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building

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5.2 MATERIAL CONSIDERATIONS

23 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.

24 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.

25 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

26 The Development Plan comprises:

- London Plan (March 2021) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)

5.5 SUPPLEMENTARY PLANNING GUIDANCE

27 Lewisham SPG/SPD:

- Alterations and Extensions Supplementary Planning Document (April 2019)
- Planning Obligations Supplementary Planning Document (February 2015)

28 London Plan SPG/SPD:

- Character and Context (June 2014)

6 PLANNING CONSIDERATIONS

29 The development proposals can only be assessed against the provisions prescribed by Schedule 2, Part 20, Class A of the Order. Where necessary, the relevant policy tests lie within the NPPF. The procedure that has to be followed for applications for prior approval under Part 20 is set out in Paragraph B of Class A of the Order. The legislation

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is discussed in the table below. Where it states **Complies** in bold, Officers have assessed that the development proposals comply with the relevant section of subsection of Class A.

7 SUBMITTED INFORMATION – PROCEDURE FOR APPLICATIONS FOR PRIOR APPROVAL UNDER PART 20

B	Procedure for applications for prior approval under Part 20	
(2)	The application must be accompanied by—	
(a)	a written description of the proposed development, which, in relation to development proposed under any of Classes A to AD, must include details of any dwellinghouse and other works proposed under paragraph A(a) to (d), AA(1)(a) to (d), AB(3)(a) to (d), AC(2)(a) to (c), or AD(2)(a) to (c) (as the case may be);	Complies
(b)	a plan which is drawn to an identified scale and shows the direction of North indicating the site and showing the proposed development;	Complies
(c)	floor plans which are drawn to an identified scale and show the direction of North indicating the total floor space in square metres of each dwellinghouse the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the existing and proposed elevations of the building;	Complies
(d)	a written statement specifying the number of new dwellinghouses proposed by the development (that is, additional to any dwellinghouses in the existing building);	Complies
(e)	a list of all addresses of any flats and any other premises in the existing building;	Complies
(f)	the developer's contact address;	Complies
(g)	the developer's email address if the developer is content to receive communications electronically;	Complies
(h)	where sub-paragraph (6) requires the Environment Agency to be consulted, a site-specific flood risk assessment, and	N/A
(i)	where the application for prior approval relates to the requirement mentioned in paragraph A.2(1)(i) or AA.2(1)(k), a report from a chartered engineer or other competent professional confirming that the external wall construction of the existing building complies with paragraph B4(1) of Schedule 1 to the Building Regulations 2010,	N/A
	together with any fee required to be paid.	Complies
Fee Regs	A fee of £334 for each dwelling house up to 50, more than 50 £16,525 + £100 for each dwellinghouse in excess of 50 to maximum fee of £300,000	

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(3)	The local planning authority may refuse an application where, in the opinion of the authority—	
(a)	the proposed development does not comply with, or	No – Complies
(b)	the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,	No – Complies
	any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.	No – Complies
(4)	Sub-paragraphs (5) to (10) and (12) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.	
(5)	Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult—	
(a)	where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road;	N/A
(b)	the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and	N/A
(c)	the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.	N/A
(6)	Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency¹⁹⁰ where the development is—	
(a)	in an area within Flood Zone 2 or Flood Zone 3; or	N/A
(b)	in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.	N/A
(6A)	Where the application relates to prior approval as to fire safety impacts, on receipt of the application, the local planning authority must consult the Health and Safety Executive – N/A.	
(7)	Where the application relates to prior approval as to the impact on air traffic or defence assets, the local planning authority must consult any relevant operators of aerodromes, technical sites or defence assets and where appropriate the Civil Aviation Authority and the Secretary of State for Defence – N/A.	
(8)	Where an aerodrome, technical site or defence asset is identified on a safeguarding map provided to the local planning authority, the local planning authority must not grant prior approval contrary to the advice of the operator of	

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	the aerodrome, technical site or defence asset, the Civil Aviation Authority or the Secretary of State for Defence – N/A.	
(9)	Where the application relates to prior approval as to natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses – Complies	
(9A)	Where the application relates to prior approval under paragraph A.2(1)(i) or AA.2(1)(k), the local planning authority must refuse prior approval if the application is not accompanied by the report mentioned in subparagraph (2)(i) above – N/A.	
(10)	Where the application relates to prior approval as to the impact on protected views, the local planning authority must consult Historic England, the Mayor of London and any local planning authorities identified in the Directions Relating to Protected Vistas dated 15th March 2012191 issued by the Secretary of State – N/A.	
(10A)	Where the application relates to a prior approval as to the impact of the development on heritage and archaeology, the local planning authority must so far as they consider reasonably practicable consult any bodies that they consider to have heritage and archaeological expertise relevant to their functions under Part 3 of the Act and this Order - N/A.	
(11)	The local planning authority must notify the consultees referred to in subparagraphs (5), (6), (6A) (7), (10) and (10A) specifying the date by which they must respond, being not less than 21 days from the date the notice is given.	
(12)	The local planning authority must give notice of the proposed development—	
(a)	by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which—	
(i)	describes the proposed development;	Yes - Complies
(ii)	provides the address of the proposed development;	Yes - Complies
(iii)	specifies the date by which representations are to be received by the local planning authority; or	Yes - Complies
(b)	(unless the proposed development falls within Class ZA), by serving a notice in that form on all owners and occupiers of any flats and any other premises within the existing building; and	Yes - Complies
(c)	by serving a notice in that form on any adjoining owner or occupier.	Yes - Complies
(13)	When computing the number of days in sub-paragraphs (11) and (12)(a), any day which is a public holiday must be disregarded.	
(14)	The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include—	
(a)	assessments of impacts or risks;	Yes, a full set of existing and proposed plans were submitted, along with a Planning

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		Statement, Daylight & Sunlight Assessment, Parking Survey - Complies
(b)	statements setting out how impacts or risks are to be mitigated, having regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government in July 2021; or	Yes, a full set of existing and proposed plans were submitted, along with a Planning Statement, Daylight & Sunlight Assessment, Parking Survey - Complies
(c)	details of proposed building or other operations	Yes - Complies
(15)	The local planning authority must, when determining an application—	
(a)	take into account any representations made to them as a result of any consultation under sub-paragraph (5), (6), (7) or (10) and any notice given under sub-paragraph (12);	Yes - Complies
(b)	have regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government in July 2021, so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and	Yes - Complies
(c)	in relation to the contamination risks on the site—	
(i)	determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990, and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012, and	No - Complies
(ii)	if they determine that the site will be contaminated land, refuse to give prior approval.	No - Complies
(16)	The development must not begin before the receipt by the applicant from the local planning authority of a written notice giving their prior approval.	
(17)	The development must be carried out in accordance with the details approved by the local planning authority.	
(18)	The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.	

8 ASSESSMENT

Article 3	Permitted Development: Development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the
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	existing topmost residential storey on a building which is a purpose-built, detached block of flats, together with any or all—	
9A	Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse*—	
(a)	where the gross internal floor area is less than 37 square metres in size; or	Complies – all dwellings would meet or exceed 37sqm.
(b)	that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27 th March 2015.	Complies
9B	The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.	
*	For the purposes of Part 3, Schedule 2, dwellinghouse includes flats	
	Part 20, Class A – New dwellinghouses on detached block of flats Permitted Development:	
A	Development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, together with any or all—	
(a)	engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses;	
(b)	works for the replacement of existing plant or installation of additional plant on the roof of the extended building reasonably necessary to service the new dwellinghouses;	
(c)	works for the construction of appropriate and safe access to and egress from the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases;	
(d)	works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses.	
A.1	Development is not permitted by Class A if:	
(a)	the permission to use any building as a dwellinghouse has been granted only by virtue of Class M, MA, N, O, P, PA or Q of Part 3 of this Schedule;	No - Complies
(b)	above ground level, the building is less than 3 storeys in height;	No - Complies
(c)	the building was constructed before 1st July 1948, or after 5th March 2018;	No - Complies
(d)	the additional storeys are constructed other than on the principal part of the building;	No - Complies
(e)	the floor to ceiling height of any additional storey, measured internally, lower would exceed the of—	

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(i)	3 metres; or	Complies – The additional storey would be a maximum of 2.8m in height.
(ii)	the floor to ceiling height, measured internally, of any storey of the principal part of the existing building;	Complies
(f)	the new dwellinghouses are not flats;	Complies – the proposed residential units would be flats.
(g)	the height of the highest part of the roof of the extended building would exceed the height of the highest part of the roof of the existing building by more than 7 metres (not including plant, in each case);	Complies
(h)	the height of the highest part of the roof of the extended building (not including plant) would be greater than 30 metres;	Complies
(i)	development under Class A.(a) would include the provision of visible support structures on or attached to the exterior of the building upon completion of the development;	Complies
(j)	(development under Class A.(a) would consist of engineering operations other than works within the existing curtilage of the building to—	
(i)	strengthen existing walls;	No - Complies
(ii)	strengthen existing foundations; or	No - Complies
(iii)	install or replace water, drainage, electricity, gas or other services;	No - Complies
(k)	in the case of Class A.(b) development there is no existing plant on the building;	No - Complies
(l)	in the case of Class A.(b) development the height of any replaced or additional plant as measured from the lowest surface of the new roof on the principal part of the new extended building would exceed the height of any existing plant as measured from the lowest surface of the existing roof on the principal part of the existing building;	No - Complies
(m)	development under Class A.(c) would extend beyond the curtilage of the existing building;	No - Complies
(n)	development under Class A.(d) would—	
(i)	extend beyond the curtilage of the existing building;	No - Complies
(ii)	be situated on land forward of a wall forming the principal elevation of the existing building; or	No - Complies
(iii)	situated on land forward of a wall fronting a highway and forming a side elevation of the existing building;	No - Complies
(o)	the land or site on which the building is located, is or forms part of—	
(i)	article 2(3) land;	No - Complies

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(ii)	a site of special scientific interest;	No - Complies
(iii)	a listed building or land within its curtilage;	No - Complies
(iv)	a scheduled monument or land within its curtilage;	No - Complies
(v)	a safety hazard area;	No - Complies
(vi)	a military explosives storage area; or	No - Complies
(vii)	land within 3 kilometres of the perimeter of an aerodrome.	No - Complies

30 Where any development under Class A is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval of the authority as to the ten conditions as set out and assessed below.

8.1 TRANSPORT AND HIGHWAYS IMPACT

31 Paragraph A.2 1(a) requires the local planning authority to assess the transport and highways impact of the proposal.

32 A parking survey (Yes Engineering, ref. 22112 and dated September 2022) was submitted with the application. The proposed development would be car free. The local on-street parking stress levels are shown to be well below 85%, above which threshold a street is considered to be stressed. Parking stress levels were 40% on Tuesday the 13th of September and 48% on Thursday the 15th of September 2022. Burnt Ash Hill itself, where the site is located, had 54 spaces and 44 spaces on each survey day. As such, it has been demonstrated that the surrounding road network could comfortably accommodate any overspill parking as a result of the development.

33 No details on refuse storage or servicing were provided with the previous application. The existing refuse storage is located at the rear of the site, around 38m from the public highway. Paragraph 12.14.3 of the Small Sites SPD states that generally residents should have to carry their waste no more than 30m from their front door to a storage point, and this collection point should be positioned no more than 10m from the public highway. The existing location was considered too far from the public highway to be suitable, as would any location in the rear garden. Therefore, Officers could not be satisfied that the site could provide sufficient refuse storage.

34 The current proposal is to enlarge and improve the existing refuse storage area at the rear of the site to accommodate an additional 1100 ltr eurobin and additional recycling bins. This would remain 38m from the adopted highway, above the relevant 10m collection point policy guidance. A maintenance company would be instructed to move the refuse to and from the storage area on weekly collection days. This is considered to be an acceptable solution. A waste management plan condition requiring full details of the refuse and servicing arrangement is recommended.

35 Likewise, the previous application did not provide details of the cycle parking. It was not clear whether cycle parking could be included in the rear garden, or if the ownership of this land is associated with particular residential units.

36 Residential development is required to provide cycle parking in accordance with the requirements of Policy T5 and Table 10.2 of the London Plan. All developments should provide dedicated storage space for cycles at the following level: 1 per studio and one bed, 1.5 per 1 bedroom two person dwelling and 2 per all other dwellings. As such, five

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cycle parking spaces are required to meet policy requirements. The development only needs to provide cycle parking spaces for the additional residential units. There is no policy basis for requiring cycle parking spaces for the existing residential units.

37 The current proposal would provide a timber clad cycle parking enclosure in the rear garden and adjacent to the new refuse store. The enclosure would provide eight cycle parking spaces: five for occupiers of the new development; and three for existing residents. It would be secure, weatherproof and sited in an easy to access location. As such, the proposed cycle parking arrangement is considered acceptable.

38 A number of objections commented on the loss of rear garden space to accommodate the cycle parking and enhanced refuse store. The loss of garden space is minimal and could not warrant a refusal of the application.

8.2 AIR TRAFFIC AND DEFENCE ASSET IMPACT

39 Paragraph A.2 1(b) requires the local planning authority to assess the air traffic and defence asset impacts of the development. Given the location and scale of the development it would not impact air traffic or defence assets.

8.3 CONTAMINATION RISKS

40 Paragraph A.2 1(c) requires the local planning authority to assess the contamination risks of the proposal.

41 The previous Officer's Report for application DC/22/129563 did not raise any concerns with regard to contamination. The principle construction works are limited to the roof of the existing dwelling. A Construction Management Plan, as required by the regulations, should be imposed to ensure that construction impacts (including dust and noise) are controlled and appropriately mitigated.

8.4 FLOOD RISK

42 Paragraph A.2 1(d) requires the local planning authority to assess the potential flood risk impacts of the proposal.

43 The application site is located within Flood Risk Zone 1 which has a low probability of flooding. Given that the development relates to the upper floors of the site, and there are existing residential units at ground floor level, Officers have not identified any concerns relating to flood risk.

8.5 EXTERNAL APPEARANCE OF THE BUILDING

44 Paragraph A.2 1(e) requires the local planning authority to assess the external appearance of the building. Recent case law (Cab Housing Ltd v Secretary of State for Levelling Up, Housing and Communities)(2022) is relevant in respect of the matters that fall to be considered in terms of external appearance. That case held that the control of the external appearance of the dwelling house in that the case was not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality.

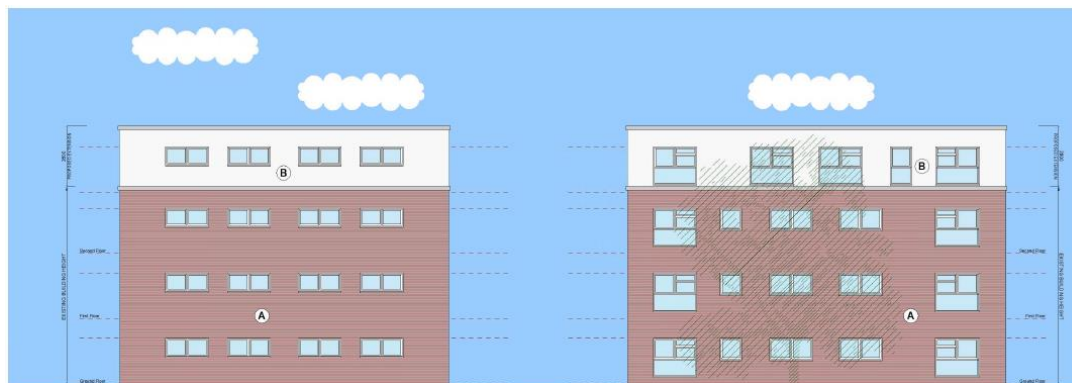
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45

The previous proposal was not considered to be of sufficient design quality. Whilst the massing was considered acceptable in principle, the design and materiality did not adequately distinguish the proposed additional storey from the host building. The only effort made was the use render, a poor-quality material. Furthermore there were concerns with the blocky appearance of the additional storey, and the fenestration patterns proposed.



PROPOSED FLANK ELEVATION (SOUTH)

PROPOSED FRONT ELEVATION (EAST)
as viewed from Burnt Ash Hill



PROPOSED REAR ELEVATION (WEST)
as viewed from the Car Park

PROPOSED FLANK ELEVATION (NORTH)

Figure 2 – Proposed elevations of the previously refused scheme (DC/22/129563)

46

The proposal would see the construction of an additional storey at the site. The extension would be 3.1m in height and set back 0.2m from the existing edges of the roof. It would be clad in dark grey zinc and employ a 'shadow-gap' design feature, to visually separate the contemporary addition from the existing host building.

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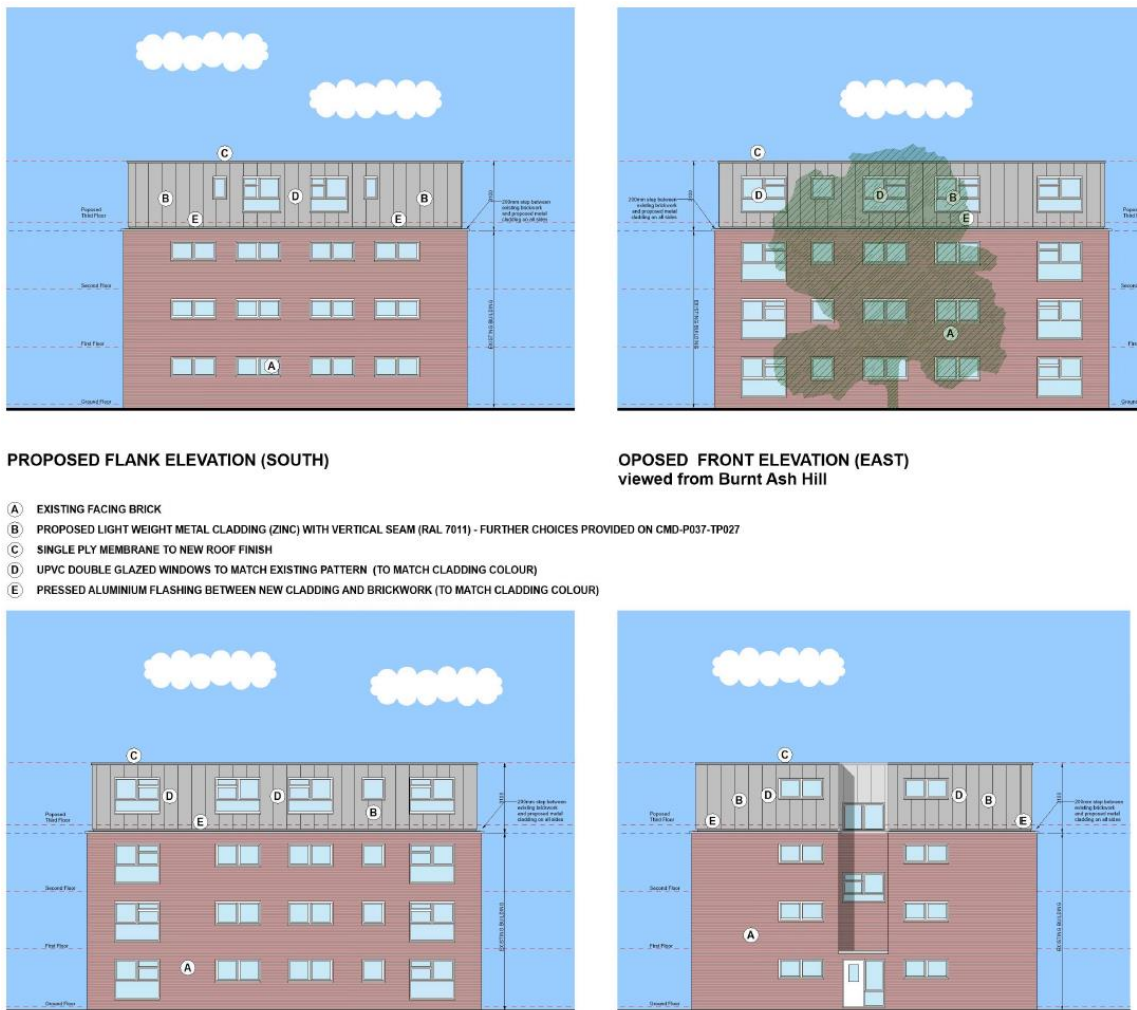


Figure 3 – Proposed elevations of the current scheme

- 47 The proposal would result in a four-storey building at the site. The site is adjoined by a two-storey semi-detached property to the south. The property has a steeply pitched roof which results in the ridge sitting slightly broadly in line with the flat roof of the building at the application site. The adjoining property to the north is a four-storey block of flats with a hipped roof. There are more four storey blocks of flats in the immediate context located further north on either side of Burnt Ash Hill. The proposal would result in an eaves height broadly similar to that of the northern neighbour, and approximately one storey above the southern neighbour. Given the current context, the proposed massing of the additional storey is considered acceptable.
- 48 The previous application proposed a rendered extension which did not have any set back. The current proposal uses dark grey zinc cladding. The use of zinc cladding is considered to be acceptable. Zinc cladding is a high-quality modern material which weathers well. The host building itself lacks architectural merit. The use of a modern extension in high quality metal cladding is considered to be an appropriate design response to the existing context. The set back and shadow gap ensure that the additional storey remains secondary to the host building.
- 49 Concerns were raised to the coordination of the windows in the previous application. To address this the windows at the front elevation, rear elevation and northern flank elevation line up with those below. The central windows of the front and rear elevation

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are of a greater height than their equivalents below. However, this is necessary in order to provide light levels to the internal individual habitable rooms in line with BRE guidance. As such, it is considered acceptable.

- 50 The fenestration patterns on the southern flank elevation deviate slightly from those on the lower floors. This is necessary because of the differing internal floor layouts. As the windows would be located on a lesser visible flank elevation, and the fenestration pattern on all other elevations are appropriate, Officers consider the slight deviation at the southern flank to be considered acceptable.
- 51 The windows would be a uPVC casement style. Whilst uPVC is not of the highest quality, it would match the materiality of the windows on the existing building. As such, it is considered acceptable.
- 52 Overall, the proposed external appearance and materiality of the proposed additional storey is considered acceptable. The scale of the proposal would be in keeping with the surrounding context. The use of a zinc clad extension would provide a clear distinction between the existing and contemporary and would sit comfortably within the existing streetscene.

8.6 PROVISION OF NATURAL LIGHT TO HABITABLE ROOMS

- 53 Paragraph A.2 1(f) requires the local planning authority to assess the levels of natural light to the habitable rooms of the new dwellinghouses.
- 54 Four of the five proposed residential units would be dual aspect (Units 13, 14, 16, 17). Unit 15 would be single aspect and have a rooflight. A Daylight, Sunlight & Overshadowing Assessment (EAL Consult, May 2023, Rev II) was submitted with the application. The assessment found that all habitable rooms would meet the minimum Target Daylight Factor for both half the grid and 95% of the grid. All habitable rooms have a 100% No-Skyline score. The kitchen living diner (K/L/D) of Unit 15, and the K/L/D and bedrooms of units 16 and 17, which all have windows facing due 90 degrees due south, exceed the target sunlight figures both annually and in the winter months. As such, it has been demonstrated that the proposed development would have sufficient levels of natural light.

8.7 IMPACT ON NEIGHBOURING AMENITY

- 55 Paragraph A.2 1(g) requires the local planning authority to assess the impact of the proposal on the amenity of the existing building and neighbouring premises including overlooking, privacy and loss of light.
- 56 The previous Officer's Report for application DC/22/129563 raised no concerns regarding the potential impact on the amenity of the neighbours.
- 57 The site is adjoined by a semi-detached property to the south, No.168 Burnt Ash Hill. No.168 benefits from a large rear garden with good overall levels of outlook. The construction of an additional storey might have the potential to result in a material loss of outlook. However, in the current context, the outlook towards that aspect of the rear garden has already been lost; an additional storey would not result in any additional loss of outlook.

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- 58 The site adjoins a four-storey block of flats to the north, No.164 Burnt Ash Hill. The site is located approximately 4m at the rear and 3m at the front from the southern side elevation of the adjoining block of flats. The windows in the southern elevation are narrow and secondary in nature. Given the separation between the site and the northern neighbour, Officers are satisfied that the additional storey would not result in a material loss of outlook for No.164.
- 59 A Daylight, Sunlight and Overshadowing Assessment (EAL Consult, May 2023, Rev II) was submitted with the application. The assessment concludes that the neighbouring properties will still receive adequate annual probable sunlight hours and adequate sunlight hours during the winter period. Officers have reviewed the assessment and are satisfied with the methodology and conclusions. The proposal is not considered to have a material impact on the neighbour's access to daylight or sunlight.
- 60 The windows of the additional storey would not provide any additional lines of sight beyond those already existing at second floor level. As such, the proposal would not have a material impact on the privacy of the neighbours.
- 61 The proposal would see the addition of residential accommodation within a residential area. Noise and disturbance levels are expected to be of a typical residential level.
- 62 In light of the above, Officers are satisfied that the proposal would not impact the amenity of the neighbours.

8.8 PROTECTED VISTAS

- 63 Paragraph A.2 1(h) requires the local planning authority to assess the impact of the proposal on any protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State.
- 64 The proposal is not of sufficient height to impact the views of any Protected Vistas.

8.9 FIRE SAFETY

- 65 Paragraphs A.2 1(i) and (j) require the local planning authority to assess the fire safety of any external wall construction should the existing building be over 18m in height. The building is under 18 metres in height. Therefore conditions A.2(1)(i) and (j) are not triggered.

9 EQUALITIES CONSIDERATIONS

- 66 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.
- 67 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;

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- 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.

68 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.

69 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>

70 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

71 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>

72 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

73 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

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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

74 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.

75 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.

76 This application has the legitimate aim of providing five additional residential units. 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

77 This application has been considered in the light of Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)).

78 Development is permitted by virtue of Class A. Officers have had regard to the relevant material considerations prescribed by the Order and consider these matters to be acceptable:

(a) transport and highways impacts of the development;

(b) air traffic and defence asset impacts of the development;

(c) contamination risks in relation to the building;

(d) flooding risks in relation to the building;

(e) the external appearance of the building;

(f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses;

(g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;

(h) whether because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State; and

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(i) where the existing building is 18 metres or more in height, the fire safety of the external wall construction of the existing building; and

(j) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

12 RECOMMENDATION

79 That the Committee resolve to **GRANT** prior approval subject to the following conditions and informatives:

12.1 CONDITIONS

1) **Prior Approval Time Limit**

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

Reason: As required by Condition A.2.(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2) **Development In Accordance with The Approved Plans**

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

CMD-P037-TP001 Rev 002; CMD-P037-TP002 Rev 001; CMD-P037-TP010 Rev 001; CMD-P037-TP016 Rev 001; CMD-P037-TP019 Rev 004; CMD-P037-TP025 Rev 006; CMD-P037-TP026 Rev 004; CMD-P037-TP027 Rev 003; CMD-P037-TP040 Rev 004; CMD-P037-TP041 Rev 004; and CMD-P037-TP020 Rev 009.

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.

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- (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.
 - (iii) Measures to deal with safe pedestrian movement.
- (e) Security Management (to minimise risks to unauthorised personnel).
- (f) Details of the training of site operatives to follow the Construction Management Plan requirements and any Environmental Management Plan requirements (delete reference to Environmental Management Plan requirements if not relevant).
- (g) Details of the construction hours and activity

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) and As required by Condition A.2.(3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

4) **Materials**

No development above ground shall commence on site until a detailed schedule and specification/samples of all external materials and finishes, including a sample panel of zinc cladding and to be provided on site, to be used on the building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to first occupation and maintained for the lifetime of the development.

Reason: To ensure that the local planning authority may be satisfied as to the external appearance of the building 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) **Cycle Parking**

The cycle parking facilities hereby approved shall be provided in full accordance with Dwg Nos. CMD-P037-TP019 Rev 004 and CMD-P037-TP041 Rev 004 prior to the first occupation of the development hereby approved and be permanently 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).

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6) **Waste Management Plan**

- (a) No development shall commence until details of proposals for the storage of refuse and recycling facilities for each residential unit hereby approved, have been submitted to and approved in writing by the local planning authority. The details must include the provision of a maintenance company to transfer the refuse to and from the collection point on collection day.
- (b) The facilities as approved under part (a) shall be provided in full prior to the first occupation of the development and shall thereafter be permanently retained and maintained thereafter.

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).

7) **Residential Use**

The development hereby approved shall remain as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

Reason: As required by Condition A.2.(6) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

8) **Boiler Emissions**

In the event that gas boilers are proposed the boilers shall have dry NO_x emissions not exceeding 40 mg/kWh.

Reason: To comply with Policy SI1 Improving air quality and Policy T7 Deliveries, servicing and construction of the London Plan (March 2021).

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.
- 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

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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.
- 4) It is the responsibility of the owner to establish whether asbestos is present within their premises and they have a 'duty of care' to manage such asbestos. The applicant is advised to refer to the Health and Safety website for relevant information and advice.
- 5) The developer must notify the local planning authority of the completion of the development as soon as reasonably practicable after completion.

The notification must be in writing and must include—

- (a) the name of the developer;
- (b) the address or location of the development; and
- (c) the date of completion.

13 BACKGROUND PAPERS

- 80
- 1) Submission drawings
 - 2) Submission technical reports and documents

14 REPORT AUTHOR AND CONTACT

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