

Committee	PLANNING COMMITTEE C	
Report Title	LAND TO THE REAR OF 41-43 NIGHTINGALE GROVE SE13 6SN, FRONTING SPRINGBANK ROAD	
Ward	Lewisham Central	
Contributors	S Isaacson	
Class	PART 1	8 NOVEMBER 2012

Reg. No. DC/11/78741

Application dated 8.11.2011 as revised 18.12.2011

Applicant The Black Ant Company Ltd

Proposal The construction of a part two/part four storey building on land to the rear of 41-43 Nightingale Grove SE13, fronting Springbank Road, comprising 2 office units (Use Class B1) on the ground floor, 3 one-bedroom and 3 two-bedroom self contained flats on the upper floors, incorporating balconies and a roof terrace.

Applicant's Plan Nos. 100-ST-01 rev D, 200-SK-01 rev D, 200-SK-02 rev E, 200-SK-03 rev E, 200-SK-R03 rev A, 300-EL-01 rev E, 300-EL-02 rev D, 300-EL-03 rev C, 300-EL-04 rev D, 400-SE-01 rev D, 400-SE-02 rev A, Design & Access Statement, BRE Sunlight Analysis & Code for Sustainable Homes Pre-Assessment Report.

Background Papers

- (1) Case File LE/792/E/TP
- (2) National Planning Policy Framework (NPPF)
- (3) The London Plan
- (4) Local Development Framework Documents
- (5) Adopted Unitary Development Plan (July 2004)

Designation Core Strategy / Adopted UDP - Existing Use

## **1.0 Property/Site Description**

1.1 The application site is located on the north side of Springbank Road to the rear of properties in Nightingale Grove, at the north end of Springbank Road. The site has been vacant for about 2 years, following its sale by Network Rail (apart from the unauthorised storage use that was taking place at the time of the appeal site visit). It forms part of a larger group of industrial sites on the north side of Springbank Road and east side of Nightingale Grove, comprising various commercial uses, and including a day nursery. Immediately to the east of the site is a footpath linking the north end of Springbank Road to Hither Green Station entrance. The railway line runs to the east of the site on a high embankment, with Hither Green station to the north-east. To the south, the west side of Springbank Road is residential in character, the closest residential dwellings being 102-116 and 51 Nightingale Grove and 18 - 24 Springbank Road.

- 1.2 The site is not within a conservation area, nor is it in the vicinity of any listed buildings. The site has a PTAL Rating of 3.
- 1.3 On the south-west side of the railway, bus route 225 runs along Springbank Road, and links Hither Green with New Cross, Surrey Quays and Canada Water. On the north-east side of the station, the 225 Route stops at Hither Green Station, running along Fernbrook Road and linking Lewisham down to Lee. Grove Park, Chislehurst and Petts Wood. Route 181 runs close by along Hither Green Lane, linking Lewisham through to Grove Park, via Catford and Lower Sydenham.
- 1.4 The Greenwich Meridian runs close to the east side of the site and crosses the main railway foot tunnel at Hither Green Station, where it is marked on the curving roof of the tunnel.

## **2.0 Planning History**

- 2.1 The previous use of the site was for storage, but there are no older records on the Statutory Register.
- 2.2 On 10 June 2011, planning permission was refused for the construction of a four-storey building on the land at the rear of 41-43 Nightingale Grove SE13, facing Springbank Road SE13, comprising 2 office units (Use Class B1) on the ground floor and 6 one bedroom and 2 two bedroom self-contained flats on the upper floors, incorporating balconies and a roof terrace (DC/11/75718). The reason for refusal was:-

*The proposed four-storey building would have an overbearing and dominating relationship to the open play area of the adjoining day nursery and thereby have an unacceptable adverse impact upon the amenity of children and teachers using the play area, contrary to policies URB 3 Urban Design and LCE 4 Places for Children to Play in the adopted Unitary Development Plan (July 2004).*

- 2.3 An appeal was submitted to the Planning Inspectorate against this decision, and the subsequent decision was issued on 11 October 2011. The appeal was dismissed. The Inspector stated that: - "The main issue in the appeal is the effect of the proposed building on the children's day nursery use adjacent to the north; in particular, whether it would have an unacceptably overbearing proximity to it, leading to an unduly increased sense of enclosure and a loss of natural light to the playground and the main nursery building."

- 2.4 The following paragraphs are relevant from the Inspector's Report:-

8. *There is no dispute that the proposed development would make full and effective use of a previously developed site, in line with other UDP policies, and that the 8 flats would make a significant contribution to meeting local housing needs. The ground floor B1 offices would also contribute to employment and regeneration needs and related planning objectives. Other than its effect on the nursery, the Council has no particular objection to the building design, which to my mind has a simple but attractive contemporary form and elevations externally, and is well laid out internally. Although it would be higher than the other buildings in the area, it would not harm the local townscape or the street scene.*

9. *Thus I agree with the Council that the only problematical aspect of the proposal is its effect or impact on the nursery. I therefore spent some time during my site visit considering that, both from the playground and from inside the nursery buildings. I am in little doubt that the proposed building, 4 storeys in height and for some 6m. hard up against the nursery boundary, would have a very overbearing effect on the nursery playground, in particular, leading to a greatly increased sense of enclosure, and a significant loss of natural light at certain times of day, depending on the season. Indeed, that is borne out by the appellants' own sunlight analysis, and to some degree acknowledged by them. Rooms in the main nursery building would also suffer these effects, but to a more limited extent.*
10. *The appellants argue that the effects on a children's nursery are inherently less significant than if the neighbouring use affected were residential. In any event, they say, the merits of the proposals should outweigh any adverse effects on the nursery.*
11. *On balance, I am not persuaded by these arguments. It seems to me that UDP policies URB 3 and LCE4, while not directly relevant to the proposal in hand, provide policy backing for taking the adverse effects on the nursery into account. With that in mind, I regard the playground as an important and indeed indispensable amenity for the nursery, whose continued use and character should be protected as far as possible. To my mind, that includes protection from any potentially adverse effects or impacts of nearby development proposals.*
12. *I have also borne in mind that the playground is relatively small, but - as I saw for myself - is often intensively used; that its use is frequent, and occurs throughout the pre-school day, and (I have assumed) throughout most of the year; that it is already fairly tightly enclosed by buildings and by the nearby railway embankment; and that this sense of enclosure is further increased by the group of tall trees standing on the embankment. This existing level of enclosure tends somewhat to undermine its role, character and effectiveness as an outdoor playing area, but in my opinion the use and character of the playground would be significantly further harmed by the relatively tall, 4 storey building which is proposed to rise above its boundary fence. If this were built as proposed, the playground would have a far more tightly enclosed feel, would be more overshadowed and as a result would become less useful and pleasant as an essential amenity for the nursery.*
13. *While I have borne in mind the real merits of the appeal proposals, some of which I refer to above, they do not outweigh the harm to the amenity and functioning of the adjacent children's nursery. That is why the appeal must fail."*

### **3.0 Current Planning Application**

#### **The Proposal**

- 3.1 Following the refusal of planning permission and the dismissed appeal, the applicant has revised the proposal to take account of the Inspector's decision.

- 3.2 The revised application now submitted is again for the construction of a two/part four storey building on the site, but with the upper floors being of reduced depth. The new building will present a frontage both onto Springbank Road and to the railway footpath. It will comprise 2 office units (Use Class B1) on the ground floor, with the main commercial entrance and windows facing onto the footpath.
- 3.3 As original submitted, seven residential units were to be provided on the upper floors (reduced from 8 in the refused scheme) as 4 one-bedroom and 3 two-bedroom self-contained flats on the upper floors, incorporating balconies and a roof terrace (previously 6 one-bedroom and 2 two-bedroom self-contained flats in the refused scheme).
- 3.4 This residential provision has been revised, following discussion, to six units, viz. 1 two-bedroom flat and 1 one-bedroom flat on each floor. The rear of the upper floors is set a mean of 5.4m from the rear boundary with the day nursery playground (4.75m measured along the eastern site boundary and 5.9m along the west boundary.)
- 3.5 The site is roughly rectangular, measuring approximately 10m wide by a maximum of 22m deep along the western boundary, reducing slightly to 20m deep along the eastern boundary with the public footpath. The railway footpath to the east measures 7.5m wide at the front of the site, gradually tapering to just under 3m wide at the rear site boundary.
- 3.6 The revised plans show two Class B1 units at ground floor level. The forwardmost unit would measure 57.9m<sup>2</sup> and the rearmost unit 78.9m<sup>2</sup> and both would include a disabled WC. Both units are accessed from new pedestrian doors onto the public footpath running along the eastern side of the site, and each unit also has substantial glazing along this boundary to increase surveillance over the public footpath.
- 3.7 In terms of amenity space provision, all the residential units would have recessed balconies located on the east-facing elevation, whilst the roof would be utilised as a shared amenity area. The rear part of the flat roof over the ground floor commercial unit would be an intensive green roof, with no access for residents, other than for maintenance purposes.
- 3.8 In terms of bulk of building, the overall height has been reduced by 2m since the original submission, partly via a reduction in the floor to ceiling heights. That said, the proposed building is still four-storey, with commercial on the ground floor and three residential floors above, plus use of the roof space for amenity purposes. The applicant has also submitted a Sunlight Analysis to support the application.

#### Supporting Documents

- 3.9 The Design and Access Statement explains that the current proposal is a revised design, following the Inspector's appeal decision. The previous application was for the most part supported by planning officers, with the exception of the relationship of the proposed buildings to the neighbouring nursery playspace. The revised design has been developed to address this issue, with attention paid to planning policy, and the Statement explains that the following was prioritised:-

- Reducing impact on the nursery boundary to the north.

- The buildings relationship with the public footpath.
- Consideration of the internal environment of the flats and their relationship to the railway.
- The sloping topography of the site.
- The anticipated demographic of the area.
- Responding to both the current context and the anticipated redevelopment of the neighbouring properties.
- Proposing a subtle and appropriate material response to surrounding context.

3.10 The Design and Access Statement continues: - *"The revised application addresses this issue by the complete removal of the four-storey element from the nursery boundary, and replacement of it with a more appropriate two-storey volume. This volume sits well below the ridge of the nursery building which borders the west side of the playground and incorporates careful detail to add interest and soften the visual experience. The proposed four-storey volume is now set back approximately six and a half metres from the nursery playground.*

3.11 *Layout has been designed so as not to overlook the adjacent nursery and to provide an ease of opportunity for the neighbouring site to develop. Overlooking issues from the 'winter balcony' have been avoided by a detailed wooden slatted design. This design will allow light through, adding interest to the north facade, while providing complete visual privacy to the nursery playground."*

#### **4.0 Consultation**

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

4.2 Site notices were displayed and letters were sent to residents and business in the surrounding area and the relevant ward Councillors.

#### **Written Responses received from Local Residents and Organisations**

4.3 13 letters of objection have been received. 3 individual letters have been received from the resident of 26 Longhurst Road, from mjb architecture on behalf of the owners of 41-43 Nightingale Grove and from Zoom Nurseries of Maythorne Cottages, off Nightingale Grove. The following objections were raised:-

- The proposed built form is out of character with form and scale of adjoining properties.
- Visual impact on adjoining properties, harmful to residential amenity.
- Overbearing impact of scale will create issues of overlooking and overshadowing.
- Intensive residential use with no parking will jar with the mixed use nearby and create issues with parking demand and create conflict with the adjoining commercial site.
- Impact on the adjoining day nursery, despite effort to reduce this. Positive benefit of scheme will not outweigh impact on nursery playground.

- Perhaps entirely residential scheme of a reduced scale would be a more practical way forward.

4.4 10 identical letters of objection have been received from parents with children attending the Zoom Day Nursery, (from addresses in Benin Street, Fenton Road, Fernbrook Road, Florence Road, Kellerton Road, Leahurst Road, Mount Pleasant Road, Murmio Road, Nightingale Grove, Pascoe Road, St. Joseph's Vale, Southbrook Road, Springbank Road & Taunton Road) raising the following issues:-

- Loss of light in the playground area. This tall four-storey building is going to block out sunlight.
- Security risks that the roof garden is going to present in relation to the playground and nursery being overlooked freely and debris that could fall from the roof.
- Parking and traffic - Cars already speed up and down Springbank Road and finding places to park is already difficult, not to mention the extra pressure placed on the transport system.

4.5 The Zoom Day Nursery, located at Maythorne Cottages, off Nightingale Grove, has submitted a 'strong objection' based on the following factors:-

- The proposed building would loom over our building and playground, which would result in loss of light and loss of amenity. The building will abut our rear boundary, so that we will lose natural light both in the building and in the play area. It is a huge building crammed into a tiny space, and in addition the health and safety of our children and teamwork will be compromised.
- Zoom Day Nursery provides a very valuable local childcare service.
- Although the applicant has submitted revised plans, they have not changed sufficiently to remove the concerns already raised.

(Letters are available to Members).

#### Written Responses received from Statutory Agencies

##### Thames Water

4.6 No objection in principle. Detailed comments regarding surface water drainage, sewerage and water infrastructure have been forwarded to the applicant.

##### Highways and Transportation

Unobjectionable in principle, subject to submission of details of residential and commercial waste and collection points, and cycle storage for both residential and commercial elements. Recommend Street Naming & Numbering informative.

## **5.0 Policy Context**

### Introduction

5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

5.2 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) makes it clear that the determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.

5.3 The development plan for Lewisham comprises the Core Strategy, Development Plan Document (DPD) (adopted in June 2011), those saved policies in the adopted Lewisham UDP (July 2004) that have not been replaced by the Core Strategy and policies in the London Plan (July 2011). The National Planning Policy Framework does not change the legal status of the development plan.

#### National Planning Policy Framework (NPPF)

5.4 The NPPF was published on 27 March 2012 and is a material consideration in the determination of planning applications. It contains at paragraph 14 a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on implementation of the NPPF. In summary this states that (paragraph 211), policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF. At paragraphs 214 and 215 guidance is given on the weight to be given to policies in the development plan. In summary, this states, that for a period of 12 months from publication of the NPPF decision takers can give full weight to policies adopted since 2004 even if there is limited conflict with the NPPF. Following this period weight should be given to existing policies according to their consistency with the NPPF.

5.5 Officers have reviewed the Core Strategy and saved UDP policies for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 211, 214 and 215 of the NPPF.

#### Ministerial Statement: Planning for Growth (23 March 2011)

5.6 The statement sets out that the planning system has a key role to play in rebuilding Britain's economy by ensuring that the sustainable development needed to support economic growth is able to proceed as easily as possible. The Government's expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.

5.7 The statement further sets out that local authorities should reconsider at the developer's request, existing Section 106 agreements that currently render schemes unviable, and where possible modify those obligations to allow development to proceed, provided this continues to ensure that the development remains acceptable in planning terms.

## Other National Guidance

5.8 The other relevant national guidance is:

By Design: Urban Design in the Planning System - Towards Better Practice (CABE/DETR 2000)

Planning and Access for Disabled People: A Good Practice Guide (ODPM, March 2003)

Safer Places: The Planning System and Crime Prevention (ODPM, April 2004)

Guidance on Tall Buildings (English Heritage/CABE, July 2007)

Code for Sustainable Homes Technical Guide (DCLG/BRE, November 2010)

## London Plan (July 2011)

5.9 The London Plan policies relevant to this application are:-

Policy 2.14 Areas for regeneration

Policy 3.3 Increasing housing supply

Policy 3.4 Optimising housing potential

Policy 3.5 Quality and design of housing developments

Policy 3.6 Children and young people's play and informal recreation facilities

Policy 3.8 Housing choice

Policy 3.9 Mixed and balanced communities

Policy 3.16 Protection and enhancement of social infrastructure

Policy 3.17 Health and social care facilities

Policy 3.18 Education facilities

Policy 4.12 Improving opportunities for all

Policy 5.1 Climate change mitigation

Policy 5.2 Minimising carbon dioxide emissions

Policy 5.3 Sustainable design and construction

Policy 5.7 Renewable energy

Policy 5.8 Innovative energy technologies

Policy 5.9 Overheating and cooling

Policy 5.10 Urban greening

Policy 5.11 Green roofs and development site environs

Policy 5.13 Sustainable drainage

Policy 5.21 Contaminated land

Policy 6.9 Cycling

Policy 6.10 Walking

Policy 6.13 Parking

Policy 7.3 Designing out crime

Policy 7.4 Local character

Policy 7.5 Public realm

Policy 7.6 Architecture

Policy 8.2 Planning obligations

Policy 8.3 Community infrastructure levy

Policy 8.4 Monitoring and review

## London Plan Supplementary Planning Guidance (SPG)

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

Accessible London: Achieving an Inclusive Environment (2004)



Housing (2005)  
Sustainable Design and Construction (2006)

London Plan Best Practice Guidance

5.11 The London Plan Best Practice Guidance's relevant to this application are:

Development Plan Policies for Biodiversity (2005)  
Wheelchair Accessible Housing (2007)  
London Housing Design Guide (Interim Edition, 2010)

Core Strategy

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

Spatial Policy 1 Lewisham spatial strategy  
Spatial Policy 2 Regeneration and growth areas  
Spatial Policy 3 District hubs  
Spatial Policy 4 Local hubs  
Spatial Policy 5 Areas of stability and managed change  
Core Strategy Policy 1 Housing Provision, mix and affordability  
Core Strategy Policy 4 Mixed use employment locations  
Core Strategy Policy 5 Other employment locations  
Core Strategy Policy 7 Climate change and adapting to the effects  
Core Strategy Policy 8 Sustainable design and construction and energy efficiency  
Core Strategy Policy 9 Improving local air quality  
Core Strategy Policy 14 Sustainable movement and transport  
Core Strategy Policy 15 High quality design for Lewisham  
Core Strategy Policy 19 Provision and maintenance of community and recreational facilities  
Core Strategy Policy 21 Planning obligations

Unitary Development Plan (2004)

5.13 The saved policies of the UDP relevant to this application are:

STR URB 1 The Built Environment  
STR URB 4 Regeneration Areas  
STR ENV PRO 3 Energy and Natural Resource Conservation  
URB 1 Development Sites and Key Development Sites  
URB 3 Urban Design  
URB 12 Landscape and Development  
ENV.PRO 10 Contaminated Land  
ENV.PRO 12 Light Generating Development  
HSG 4 Residential Amenity  
HSG 5 Layout and Design of New Residential Development  
HSG 7 Gardens  
HSG 8 Backland and In-fill Development  
LCE 2 Existing Leisure and Community Facilities

## Residential Standards Supplementary Planning Document (August 2006)

- 5.14 This document sets out guidance and standards relating to design, sustainable development, renewable energy, flood risk, sustainable drainage, dwelling mix, density, layout, neighbour amenity, the amenities of the future occupants of developments, safety and security, refuse, affordable housing, self containment, noise and room positioning, room and dwelling sizes, storage, recycling facilities and bin storage, noise insulation, parking, cycle parking and storage, gardens and amenity space, landscaping, play space, Lifetime Homes and accessibility, and materials.

## Planning Obligations Supplementary Planning Document (January 2011)

- 5.15 This document sets out guidance and standards relating to the provision of affordable housing within the Borough and provides detailed guidance on the likely type and quantum of financial obligations necessary to mitigate the impacts of different types of development.

## **6.0 Planning Considerations**

- 6.1 The planning issues relate to employment policy, the principle of residential development and whether the proposed four-storey building would have a significant impact on adjoining uses, particularly the day nursery located to the north at Maythorne Cottages, plus urban design, character, appearance and parking / traffic.

### Employment Policy Issues

- 6.2 Core Strategy Policy 5 seeks to protect the scattering of employment locations outside Strategic Industrial Locations, Local Employment Locations and Mixed Use Employment Locations . The application form lists the previous use of the site as private vehicle storage, currently vacant. Although the form also states that there is no known contamination on the site, it is certainly likely that oil spillage and dumped materials could have caused some land contamination in the past and therefore, if permission were to be granted, a full contamination survey and schedule of remediation work would be required.
- 6.3 The proposal includes the provision of 2 new Class B1 Business units on the ground floor, measuring a total of 126m<sup>2</sup> of new commercial floor space, with access from the existing pedestrian footpath. In employment policy terms, this is likely to generate an increase in employment over the previous vehicle parking / open storage use and the proposal therefore complies with the requirements of Policy 5.

### Principle of Residential Development

- 6.4 The principle of providing an element of residential development in this area close to the main Hither Green Station is considered acceptable providing an adequate level of amenity can be provided for future residents. The residential element will also increase the site value and hence the likelihood of the development coming forward for implementation in the shorter term.

## Impact on Amenity of Adjoining Premises

- 6.5 The application site forms the south-east corner of a block of essentially commercial uses bounded by Springbank Road to the south, Nightingale Grove to the west and Maythorne Cottages to the north. The eastern boundary is formed by the railway footpath leading between the north end of Springbank Road up to the main Hither Green Station entrance in Maythorne Cottages. The nearest residential dwellings are the bungalows on the south side of Springbank Road immediately opposite the site.
- 6.6 The Zoom Day Nursery occupies the site immediately to the north, fronting onto Maythorne Cottages, and shown as 'Depot' on the applicant's submitted location plan. There is an electricity substation in the northeast corner of the day nursery site, but otherwise the open land to the east of the nursery building is used as their open play area. This land is provided with various play equipment and is clearly in regular use by the children.
- 6.7 Following the appeal decision and to back up the revised design submission, the applicant has submitted a revised BRE Sunlight Analysis which considers the revised relationship of the proposed building to the day nursery.
- 6.8 Daylight and sunlight analyses are normally couched in terms of impact on adjoining residential properties, rather than day nurseries, but the importance of sunlight to the functioning of the nursery and the ability to use their external space to maximum benefit for the children is clearly an important issue, and this was confirmed by the Planning Inspector as being the significant issue in this case.
- 6.9 The relevant part of the Inspector's report states:-
9. *"Thus I agree with the Council that the only problematical aspect of the proposal is its effect or impact on the nursery. I therefore spent some time during my site visit considering that, both from the playground and from inside the nursery buildings. I am in little doubt that the proposed building, four stories in height and for some 6 m, hard up against the ministry boundary, would have a very overbearing effect on the nursery playground, in particular, leading to a greatly increased sense of enclosure, and a significant loss of natural light at certain times of day, depending on the season. Indeed, that is borne out by the appellant's own sunlight analysis, and to some degree acknowledged by them. Rooms in the main nursery building with all staff also suffer these effects, but to a more limited extent.*
  10. *The appellants argue that the effects on a children's nursery are inherently less significant than if the neighbouring use affected were residential. In any event, they say, the merits of the proposals should outweigh any adverse effects on the nursery.*
  11. *On balance, I am not persuaded by these arguments. It seems to me that UDP policies URB 3 and LCE 4, while not directly relevant to the proposal in hand, provide policy backing for taking the adverse effects on the nursery into account. With that in mind, I regard the playground as an important and indeed indispensable amenity for the nursery, whose continued use and character should be protected as far as possible. To my mind, that includes*

*protection from any potentially adverse effects or impacts of nearby development proposals.*

12. *I have also borne in mind that the playground is relatively small, but - as I saw for myself - is often intensively used; that its use is frequent, and occurs throughout the pre-school day, and (I have assumed) throughout most of the year; that it is already fairly tightly enclosed by buildings and by the nearby railway embankment; and that this sense of enclosure is further increased by the group of tall trees standing on the embankment. This existing level of enclosure tends somewhat to undermine its role, character and effectiveness as an outdoor playing area, but in my opinion the use and character of the playground would be significantly further harmed by the relatively tall, four-storey building which is proposed to rise above its boundary fence. If this were built as proposed, the playground would have a far more tightly enclosed feel, would be more overshadowed and as a result would become less useful and pleasant as an essential amenity for the nursery.*
13. *While I have borne in mind the real merits of the appeal proposals, some of which I referred to above, they do not outweigh the harm to the amenity and functioning of the adjacent children's nursery. That is why the appeal must fail."*

- 6.10 The applicant has made significant changes to the design of the building when compared to the scheme refused last year, by setting back of the taller four-storey element of the building, by 5.34 metres from the boundary with the day nursery. The single-storey business units would still extend to the full depth of the site up to the nursery boundary, but as these are only approximately 3.4m high, they are not considered to constitute a particularly obtrusive element and would therefore not affect the nursery playground to any great extent.
- 6.11 The residential unit on each of the first to third floors at the north end of the building would each have a balcony on the east side, with full height opening and double doors facing out onto the balcony. Two additional windows would be provided on the northern elevation, providing additional light to each of the large living/kitchen/dining areas. However, these north-facing windows would be fixed shut and fitted with obscured glass at the lower level, with the obscure glazing extending above eye height, so that there would be no direct overlooking of the day nursery or its playground. Similarly, the east-facing balconies would be provided with screen walls on the northern side, in order to prevent any direct overlooking in the direction of the day nursery whilst at the same time allowing improved surveillance over the footpath from Springbank Road to Hither Green Station.
- 6.12 Clearly this is a matter of fact and degree that is difficult to adjudge and, given the advice of the Planning Inspector in the recent appeal decision, officers have endeavoured in negotiation to reduce the impact of the new building by moving it a significant distance from the nursery boundary as well as ensuring that design measures preclude any direct overlooking problems in relation to the nursery.
- 6.13 The applicant was requested to consider a reduction in the overall bulk of the building to perhaps three stories, but has stated that this would render the scheme uneconomic. In policy and land use terms, it is considered important to retain the

employment floorspace at ground level, and both commercial and residential use would have significant benefits of overlooking the public footpath.

- 6.14 Taking the above circumstances into account, officers consider that the amendments to the proposal are satisfactory and, on balance, the impact of the proposed four-storey building on the adjoining day nursery play area is now not considered to be sufficient to warrant a refusal of planning permission on this ground.

#### Overlooking and Security Issues

- 6.15 The day nursery has raised concerns over direct overlooking and impact of the development on safety of the children attending the nursery. The applicant has confirmed that all windows in the rear elevation would be fitted with obscure glass to above eye height. The imposition of a condition to all north-facing windows of the building to require that they are non-opening and provided with obscure glazing is recommended.
- 6.16 With regards to overlooking from the proposed roof garden areas, the applicant's drawing (200-SK-03 Revision A) indicates that whilst the edge of the roof of the building would be set 5.4m away from the day nursery boundary, the northern part of the roof would be a semi-intensive green roof, and not available as an amenity area for residents. Access to this area would be for maintenance only.

The proposed roof terrace would be set back approximately 5.5m from the northern edge of the roof, which would mean that it was approximately 12m away from the boundary with the playground. The effect of this 12m setback and the relative angles of view is that the roof terrace would not in fact be visible from the nursery playground and vice versa.

- 6.17 It is considered that this matter could be dealt with by way of a suitably-worded condition to ensure that residents using the top floor of the building do not directly overlook the nursery, and that overlooking / security reasons would not in themselves justify a refusal of permission.

#### Urban Design, Character and Appearance

- 6.18 The proposed building is four stories in height, whereas the existing nearby buildings fronting Nightingale Grove are generally three stories in height, whilst the nearest dwellings on the south side of Springbank Road are single-storey bungalows. These bungalows are unusual in this urban context and the surrounding area generally contains buildings which are at least two stories in height, with a majority in the main part of Springbank Road around the shops being three stories.
- 6.19 The applicant has argued that the greater height of the building is partly justified by its relationship to the height of the railway embankment and abutments immediately to the east. Although the proposed building is substantially taller than the bungalows opposite, it would be read in a different context and there is certainly a reasonable argument that a taller building could be justified on this site by virtue of its close proximity to the main railway station entrance.
- 6.20 In his report, the Planning Inspector concluded as follows: - *“Other than its effect on the nursery, the Council has no particular objection to the building design,*

*which to my mind has a simple but attractive contemporary form and elevations externally, and is well laid out internally. Although it would be higher than the other buildings in the area, it would not harm the local townscape or the street scene."*

#### Standard of Accommodation

- 6.21 All the units comply with the London Plan standards and would provide a satisfactory level of accommodation. Despite the constrained site, all units are provided with some private amenity space, in the form of east-facing balconies, plus residents will have use of a separate roof garden. A car-free scheme is considered acceptable, given the close proximity to Hither Green Station and local bus routes.

#### Sustainability

- 6.22 The building would be provided with a biodiverse living roof on the top floor and the roof of the rear part of the ground floor, providing a total of 71 sq. m. of green roof. This matter can be the subject of a condition regarding the exact specification of the roof.

#### Community Infrastructure Levy (CIL)

- 6.23 The Mayor of London's CIL is a material consideration and, if permission is granted, CIL is payable on this application.

### **7.0 Conclusion**

- 7.1 The proposed redevelopment of the site and loss of the existing storage use employment site are considered to be acceptable. The scale of residential development has been reduced from the scheme previously refused and, on balance, it is considered that the impact on the adjoining day nursery is now not so serious as to justify a refusal of permission. This application has been considered in the light of policies set out in the development plan and other material considerations.

### **8.0 Summary of Reasons for Grant of Planning Permission**

- 8.1 It is considered that the proposal satisfies the Council's land use and environmental criteria and is acceptable in principle, being in accordance with Objective 11: Community Well Being, Policy 8 Sustainable Design and Construction, Policy 15 High quality design for Lewisham and Policy 19 Provision and Maintenance of Community and recreational facilities in the adopted Core Strategy (June 2011), and saved Policy URB 3 Urban Design, ENV.PRO 10 Contaminated Land, HSG 1 Prevention of Loss of Housing, HSG 4 Residential Amenity, HSG 5 Layout and Design of New Residential Development and LCE 2 Existing Leisure and Community Facilities in the adopted Unitary Development Plan (July 2004).
- 8.2 It is considered that the proposal is appropriate in terms of its form and design and would not result in material harm to the appearance or character of the surrounding area, or the amenities of neighbouring occupiers. The proposal is thereby in accordance with Objective 11: Community Well Being, Policy 8 Sustainable Design and Construction and Policy 15 High quality design for

Lewisham and in the adopted Core Strategy (June 2011), and saved policies URB 3 Urban Design, ENV.PRO 11 Noise Generating Development, HSG 4 Residential Amenity, HSG 5 Layout and Design of New Residential Development and LCE 2 Existing Leisure and Community Facilities in the adopted Unitary Development Plan (July 2004).

## **9.0 RECOMMENDATION**

**GRANT PERMISSION** subject to the following conditions:-

- (1) No development shall commence on site until sample details of all facing materials (including their colour and texture) to be used on the buildings 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.
- (2) All window and door openings shall be constructed with minimum 90mm deep external reveals.
- (3) Details of lighting to external areas within the site and to illuminate the adjoining public footpath shall be submitted to and approved in writing by the local planning authority prior to first occupation of the residential units. Any such lighting shall be installed in accordance with the approved drawings. The applicant should demonstrate that the proposed lighting is the minimum needed and that the proposals minimise pollution from glare and spillage.
- (4)
  - (i) The buildings shall be constructed so as to provide sound insulation against external noise to achieve levels not exceeding 30dB LAeq and 45dB LAm<sub>ax</sub> (night) for bedrooms, 35dB LAeq (day) for other habitable rooms, with windows shut and other means of ventilation provided.
  - (ii) Development shall not commence until details of a sound insulation scheme complying with paragraph (i) of this condition have been submitted to and approved in writing by the local planning authority.
  - (iii) None of the flats hereby approved shall be first occupied until the sound insulation scheme approved pursuant to paragraph (ii) of this condition has been implemented in its entirety. Thereafter, the sound insulation scheme shall be maintained in perpetuity.
- (5) Prior to first occupation of any of the flats hereby granted permission, the windows to be installed in the north-facing rear walls of the building shall be fitted with obscured glazing, which is non-openable unless at or above a height of 1.7 metres above internal floor level, and such obscured glazing shall be maintained permanently thereafter.
- (6) Details of the living roofs, which shall cover an area no less than 70 sq. m. shall be submitted to and approved in writing by the local planning authority prior to any superstructure works commencing on site. The living roof shall be:-

- a) Biodiversity based with extensive substrate base (depth shall vary between 80-150mm with peaks and troughs but shall average at least 133mm);
  - b) Laid out in accordance with plans 200-SK-02 Revision E and 200-SK-R03 Revision A hereby approved; and will include details of how the roof has been designed to accommodate any plant, management arrangements, and any proposed photovoltaic panels and fixings.
  - c) Plug planted & seeded with an agreed mix of species within the first planting season following the practical completion of the building works.
  - d) The living roofs shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair, or escape in case of emergency.
  - e) The development shall be carried out strictly in accordance with the details so approved, shall be maintained as such thereafter and no change there from shall take place without the prior written consent of the Local Planning Authority.
  - f) Evidence that the roof has been installed in accordance with sub-points a) to c) above shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved.
- (7) (i) The dwellings hereby approved shall achieve a Code for Sustainable Homes rating of minimum 'Level 4'.
- (iii) Prior to commencement of development, a Design Stage Assessment undertaken by a suitably qualified Assessor shall be submitted to and approved in writing by the local planning authority to demonstrate compliance with (i).
- (iv) Within 3 months of first occupation of the dwellings, evidence shall be submitted to demonstrate full compliance with the requirements of this condition, which shall include a Post Construction Certificate issued by a suitably qualified Assessor.
- (8) The dwellings hereby permitted shall be constructed in accordance with Lifetime Homes Standards.
- (9) C10 Site Contamination

Reasons

- (1) BO1R
- (2) BO1R
- (3) The order that the local planning authority may be satisfied that the lighting is installed and maintained in a manner which will improve lighting and pedestrian safety along the adjoining footpath leading to Hither Green



Station, and minimise possible light pollution to neighbouring properties and to comply with Policies ENV.PRO 12 Light Generating Development and HSG 4 Residential Amenity in the adopted Unitary Development Plan (July 2004).

- (4) To ensure the development is carried out to the satisfaction of the local planning authority and to comply with policy Objective 10 Protect and Enhance Lewisham's Character and Policy 15 High Quality Design for Lewisham in the Local Development Framework - Core Strategy (June 2011) and saved policies URB 3 Urban Design, HSG 4 Residential Amenity and HSG 5 Layout and Design of New Residential Development in the adopted Unitary Development Plan (July 2004).
- (5) BO5R
- (6) To ensure the development provides the maximum possible provision towards creation of habitats and valuable areas for biodiversity in accordance with policies OS 13 of the Lewisham UDP July 2004; Policies 5.11 (Green roofs and development sites environs) and 7.19 (Biodiversity and access to nature) in the London Plan (July 2011); Planning Policy Statement 9 Biodiversity and Geological Conservation & Local Development Framework; Policy 7 Climate change and adapting to the effects; Policy 10 Managing and reducing the risk of flooding; and Policy 12 Open space and environmental assets.
- (7) To ensure the development achieves the maximum possible in respect of energy and carbon emissions and to comply with Policy 8 Sustainable Design and Construction and Energy Efficiency of the adopted Core Strategy (June 2011).
- (8) To ensure that the development meets the Lifetime Home Standards and to ensure compliance with London Plan Policy 3.8 Housing Choice.
- (9) C10R

## Appendix

### MINUTES of LOCAL MEETING MINUTES

Site rear of 41-43 Nightingale Grove, fronting Springbank Road SE13

Application No DC/11/78741

**Notes of the Local Meeting held at Zoom Nursery, off Nightingale Grove on Tuesday 31 January 2012 from 6.45 - 8.15pm.**

The meeting was attended by:-

Steve Isaacson (SI) LB Lewisham Planning Case Officer

Anthony Thomas (AT) - Site owner / developer

Amber Bowie (AB) - Architect for the scheme

Bella Landen            Zoom Day Nursery

Sophie Hubble         Zoom Day Nursery

Plus some 12 parents with children attending the Zoom Day Nursery or staff working at the premises.

SI welcomed everybody to the meeting, gave an overview of the planning history and explained the way he would conduct the meeting with an initial presentation from the developer, followed by questions from the audience.

He explained the process of the current planning application and likely route to Planning Committee, following the Local Meeting. He confirmed that residents could submit further comments on the application if they wished.

AT explained the design rationale for the proposal, as well as the financial background and that the site was within the Hither Green regeneration area. He stressed that his position was also a local businessman and investor, and he explained his commitment to providing a high-quality development that would last. He had purchased the site from Network Rail sometime ago, and his intention was to provide a good-looking scheme, with a strong visual point of interest on the corner of Springbank Road and good appearance of the building. He referred to the previous refusal of planning permission by the Council and subsequent appeal to the Planning Inspectorate. He had also taken into account the advice contained in the appeal Inspector's letter, particularly that the Inspector was happy with a four-storey building on the Springbank Road frontage. Later revisions to the scheme also included a reduction in the height of the rear part of the building to single-storey.

Mr Thomas further explained that, as currently proposed, the building would be 6.2 metres high fronting onto Springbank Road, and the four-storey element would be set back from the nursery boundary by 5.7 metres. This rear section of single-storey flat roof would be provided as a green roof and not available as a sitting out or balcony area.

All windows to the rear would be provided with obscured glass up to a certain height so that there was no direct overlooking of the nursery play area. A condition could be imposed to ensure the provision of such glazing and its permanent retention.

The scheme would provide to Class B1 commercial units at ground floor level, fronting onto the pathway running alongside the runaway embankment. SI explained the B1 use class as containing light industrial buildings or office uses that did not cause any detriment to the area by way of noise, vibration, ash, dust, grit, etc.

A roof terrace would be provided on the top of the building on the flat roof and this would be approximately 10-12m from the nursery boundary.

### Sunlight and daylight

There was some discussion over the submitted data and sunlight study and the conclusions reached. AT stressed that the study followed standard methodology in comparing shadow diagrams from four different times during the year, and that the scheme complies with Building Research Establishment (BRE) standards. Parents felt these limits were applicable to adults, but no account seemed to be taken of how children would perceive the development.

### Other points raised

- Could object to be thrown from the top roof terrace over into the nursery?
- With teenagers sunbathe on the unprotected part of the roof?
- How would the green roof be maintained?
- If you stood on a chair you could look over the top of the frosted part of the rear windows.
- The proposal would be overbearing from a child's perspective.
- The scheme was still too ambitious and too big.
- It was disingenuous to compare the height of a four-storey flat roof with nearby ridge heights, when the perceived height from ground level was in fact the eaves line.
- Has consideration being given to fewer floors?
- Trees along the railway embankment are felled on a regular basis.
- Length of building works (AT estimated 9/10 months).
- Could the Council require that construction works only take place at the weekend? (AT opined that this would not be practical from a developer's point of view).
- The Council should take into account the cumulative impact of two adjoining developments taking place at the same time, if planning permission is granted for the adjoining scheme at 41-43 Nightingale Grove.
- Has a scale model been constructed? (AT - "No")
- Could the ground floor be sunk?
- Fence to roof terrace was too low.

### Issues of security

AT emphasise that local issues of security would actually be improved by redeveloping the site with residential occupiers and commercial units that would be occupied during the day, with windows facing out onto the railway footpath.

### Noise & Dust Pollution Issues

Parents were concerned over possible dust and noise pollution. SI explained the Council's Code of Practice for Demolition and Construction Sites which the developer would need to comply with if planning permission was granted. The owners of the Zoom Day Nursery were concerned that children would be petrified by drilling noise.

AT explained party wall legislation and that there would need to be agreements with all the adjoining owners in this regard, and confirmed that he would happy to discuss the detailed construction programme with the Day Nursery to minimise disruption.

### Form of Construction

What form of construction would be used? AT said that this had not been determined at this stage, but he could possibly consider using timber frame construction, where the main construction elements would be formed off-site, allowing a faster construction time and thereby minimising noise disturbance.

### Car Free Development

AT explained that this would be a car-free scheme, given the proximity of Hither Green station.

### Specific Issues Relating to the Zoom Day Nursery

As well as noise concerns, the Nursery owners and staff are concerned that if permission was granted, this could have a significant commercial impact on the Nursery, with parents withdrawing their children. The Nursery provides an important service to the local community.

AT explained party wall legislation and that there would need to be agreements with all the adjoining owners in this regard, and confirmed that he would happy to discuss the detailed construction programme with the Day Nursery to minimise disruption. Overshadowing remains the most significant concern. The top corners of the top floor would cast the biggest shadows - could this floor be chamfered? Research indicates that 25% of UK children suffer from vitamin D deficiency, and the proposal would result in further loss of sunlight. AT considered that a mansard design with chamfered corners would be difficult to achieve, and that he did not wish to create a 'pastiche' development.

Regarding the question as to whether the freehold would be sold, AT confirmed that this had not been decided as yet.

The meeting ended at 8.15 PM.