

MAYOR AND CABINET		
Report Title	Response to Sydenham Society on Our Lady and St Philip Neri School	
Key Decision	No	Item No.
Ward	Sydenham	
Contributors	Director of Planning	
Class	Open	Date: July 10 2019

1. Purpose of Report

- 1.1. The purpose of this report is to report back on a matter raised by the Sydenham Assembly, as detailed below.
- 1.2. At a meeting on 8th June, the Sydenham Assembly unanimously passed the motion below concerning the Our Lady and St Philip Neri (OLSP) School:

The Sydenham Assembly is dismayed at the long drawn out process of rectifying the planning breaches at Our Lady & St Philip Neri School. We were assured that Lewisham would insist on a new full planning application, yet a 'minor variations' application has been registered instead.

This leaves many breaches unaddressed, above all that the main entrance to the school will continue to be from Sydenham Road instead of Home Park.

The park entrance was a major condition of the consented application in October 2016, protecting the children from exposure to toxic air on Sydenham Road and the dangers from speeding traffic along this busy highway. It would also have reduced the impact of short-term car parking in surrounding streets, especially Fairlawn Park.

We insist that this condition must be met and should form part of a new full planning application.

2. Recommendation

- 2.1. It is recommended that the Mayor and Cabinet agree the contents of this report and that this be reported back to the Sydenham Assembly.

3. Background

- 3.1. In October 2016 OLSPN School was granted planning permission for a three storey school building including a nursery, a multi-function sports court and a running track. This permission was to allow the amalgamation of the Infant and Junior schools on the site.
- 3.2. Following the grant of planning permission, the applicant, the Archdiocese of Southwark, began the process of discharging relevant planning conditions. The applicant also applied to vary several very minor elements of the original permission under section 96A of the Town and Country Planning Act 1990. These amendments were granted planning approval by Lewisham as Local Planning Authority under delegated powers.
- 3.3. In January 2018, the applicant applied to vary the original planning permission to allow the use of different materials to those originally approved. The key changes were to replace an approved composite cladding to board cladding and alter the colour of approved facing brick.
- 3.4. A site visit undertaken by planning officers revealed that the proposed alternate cladding and brickwork had already been installed prior to determination of the application. The planning application to alter the materials was subsequently refused by Lewisham as the materials proposed were judged to be of poor quality and would have been out of keeping with the local area.
- 3.5. Following the Council's refusal in March 2018 an enforcement investigation was opened. This investigation subsequently revealed other departures from the original planning permission, including:
 - The roof profile had been altered and horizontal separation between each pitch had not been implemented
 - Guttering/ Drainpipes made prominent whereas they should have been hidden
 - The fenestration pattern had been amended
 - Dark colour panels were added to the window design
 - The physical entrance arrangement and access to the nursery had been amended
 - The Nursery building height had increased from the approved height of 3.5m to 4.2m
 - Two electrical intake cabinets constructed adjacent to the nursery were not on original plans

- 3.6. The Diocese engaged with officers to seek further planning pre-application advice, with an aim to agree a way forward to make alterations to the school that would bring the project into compliance with planning policy.
- 3.7. In August 2018 a pre-application meeting was held with the Diocese. A formal pre-application response was sent to the Diocese on 21 August 2018 and the applicant and their representatives returned for additional pre-application advice on two occasions in early 2019. The pre-application response has been generally supportive of a revised scheme.
- 3.8. A public meeting was held in January 2019 to allow the developer to set out the approach to amending the materials for the school. The developer advises that the public response to the proposed alterations was positive, although this meeting was not led by officers.

4. Planning Application Type

- 4.1. The Diocese submitted under section 73 of the Town and Country Planning Act 1990 a “Minor Material Amendment” (MMA) planning application (Council Ref DC/19/111793) on 5th April 2019 proposing to vary the approved design of the school and regularise some elements of the design not in compliance with the original permission.
- 4.2. It is important to note the MMA application does not seek to only regularise what is on the site currently, but seeks further amendments with a view to making the development acceptable in planning terms.
- 4.3. The application was validated and registered on 17th May 2019 following the submission of additional information. Statutory public consultation has now concluded.
- 4.4. The Council sought legal advice on its ability to accept a MMA planning application, as opposed to requiring a “fresh” planning application. The legal advice received indicates that accepting an MMA application is legally permissible and that it is a matter of planning judgement as to whether alterations to the approved scheme are ‘minor’ or not.
- 4.5. An MMA application is processed in the same way as a full planning application (e.g. requirements for neighbour notification, consultation, assessment against planning policies etc.) and the proposed materials and elements to be regularised would be assessed in the usual way irrespective of the application type that is in accordance with the development plan unless material considerations indicate otherwise.
- 4.5. The MMA application will be reported to planning committee and committee may grant or refuse planning permission for a variation to the original permission.

5. Other Planning Issues

- 5.1. There are other planning issues at the site that are not related to the current MMA application. Officers wrote to the applicant regarding the discharge of outstanding planning conditions on 29th June 2019. Three key conditions that remain unresolved pertain to land remediation, improvements to Home Park and travel planning. Further information is set out below.
- 5.2. Officers will be monitoring the discharge of planning conditions alongside the current planning application, and the planning enforcement investigation remains live.

6. Site Access

- 6.1. The 2016 planning committee report setting out a recommendation to approve the original school noted that pedestrian access for the public would be provided from Sydenham Road, leading to the general office. However, access for pupils was proposed to be split between access points on Fairlawn Park and from Home Park. Officers understand the school may have amended the current pupil access arrangement via the Travel Plan, which is awaited.
- 6.2. It should be noted that access arrangement for schools are largely an operational matter. There is no planning condition on the 2016 planning decision notice that restricts which access point pupils may enter the school from.
- 6.3. Provided the school undertakes a suitable travel planning exercise to reduce car travel and promote public transportation, and school-related drop off and pick up activities do not give rise to amenity or highways concerns, the age of particular pupils using certain accesses to the school building is not a planning matter and would not be enforceable by the planning system.
- 6.4. The submission of a travel plan is still outstanding and officers wrote to the applicant on 29th June 2019 seeking an update as to the status of this condition. The applicant discharged a planning condition relating to highways works to facilitate access (Council Ref: DC/17/103472) on 27 October 2017.
- 6.5. Upgrades to Home Park (including lighting and footway improvements) were conditioned in 2016 in part to facilitate access to the school. These improvements have not yet been implemented. Officers have written to the applicant seeking an update on this item.

7. Current situation

- 7.1. The MMA planning application is targeted to be heard at Planning Committee in late July or August 2019. A summary of the planning

Local Meeting programmed for 8th July will be provided to committee members as an appendix to the eventual committee report.

8. Financial Implications

- 8.1. There are no direct financial implications arising from the recommendations of this report.

9. Legal and Equalities Implications

- 9.1. The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a public sector equality duty which 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.
- 9.2. The Council must in the exercise of its functions, have regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 9.3. The Council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 9.4. The principle of education use at the school is not at issue in the current application and only the operational works to amend the materials and regularise parts of the scheme fall to be considered by the MMA application. There are no direct equalities implications arising from the recommendation in this report.
- 9.5. The Rules and Procedure of council's Constitution at Part IV provides at paragraph 15(e) that Mayor and Cabinet will consider reports from local assemblies as part of its business. Paragraph 20(f) allows local assemblies to place an item on the agenda as has happened here.
- 9.6. The council Constitution at Article 12 explicitly recognises the local assemblies are an important consultative mechanism and provide "a conduit to the Council and other public service providers through which the local community can prioritise local issues..."
- 9.7. In regard to the MMA planning application under section 73 of the Town and Country Planning Act 1990, that section provides planning applicants with an express power to apply for planning permission for

the development of land without complying with conditions attached to an earlier permission. The MMA application currently being considered seeks to amend the certain approved drawings found in condition 2 to allow for new drawings to be approved , and to amend certain approved external materials and finishes.

- 9.8. Council officers in using their professional planning judgement, which they are entitled to do, have accepted this application under section 73 as opposed to seeking a full planning application. Committee may grant or refuse the MMA planning application in the usual way. If granted the MMA planning application will result in a “new permission” though the remainder of conditions not subject to the MMA planning application will be conditions attached to the new permission.

10. Conclusion

- 10.1. It is recommended that the Mayor and Cabinet agree the contents of this report and that this be reported back to the Sydenham Assembly.