

PLANNING COMMITTEE A		
Report Title	Our Lady and St. Philip Neri RC Primary School. 208 Sydenham Road, SE26 5SE	
Ward	Sydenham	
Contributors	Georgia McBirney and Katherine Biddlecombe	
Class	PART 1	03 October 2019

Reg. Nos. DC/19/111793
ENF/18/00139

Application dated 02/04/2019

Applicant Indigo Planning Ltd (Agent)

Proposal An application submitted under Section 73 of the Town and Country Planning Act 1990 to allow for the variation of Conditions 2 and 8 in connection with planning permission dated 7th October 2016 DC/16/096041 as amended for the demolition of the existing buildings at Our Lady and St Philip Neri Primary School, 208 Sydenham Road SE26 and the construction of a three storey school building including a nursery, a multi-function sports court and a running track, together with the creation of a formal pedestrian access from Home Park, the provision of cycle and scooter spaces, refuse storage and associated landscaping works to provide the amalgamation of the Infant and Junior Schools, in order to allow the following changes:-
Alterations to the materials, Alterations to the fenestration pattern, Increase in the height of the building, Alterations to the roof profile, Alterations to the siting of the building, Installation of UKPN cabinets and planting on the corner of Sydenham Road and Fairlawn Park, Reduction in the number of fins on the Hall building, Installation of an internal ball fence to the playground on the flat roof of the Hall building, Installation ventilation grilles, Alterations to external lighting, Alterations to extraction flue, Alteration to playground canopies, Alterations to nursery entrance, Installation of an air-conditioning unit near the nursery entrance, Alterations to the brick plinth and Alterations to external plant store

Background Papers

(1) Case File LE/180/J/TP

- (2) Local Development Framework Documents
- (3) The London Plan

Designation

PTAL 2/3
Area of Archaeological Priority

Screening

N/A

1 **SUMMARY**

1 This report sets out Officer's recommendations for both the development proposal (DC/19/111793) and enforcement investigation (ENF/18/00139) above. These matters have been brought before members for decision as the Council's Head of Planning is of the opinion they would be more appropriately dealt with by committee.

2 The planning application DC/19/111793 is recommended for refusal for the reasons given below. The undertaking of formal enforcement is also recommended to be delegated to officers.

3 This report sets out an assessment of applicant's proposed alterations at the site but also a consideration of existing elements built out-of-compliance with the planning system but proposed to be retained.

4 The report also includes a planning assessment of some existing elements that are not proposed to be retained as part of the current scheme to present the officer view to members as to the planning harm arising. This assessment informs a recommendation concerning the resolution of the enforcement investigation.

5 A draft Planning Enforcement Notice is attached at **Appendix 1**. The undertaking of formal enforcement is recommended to be delegated to officers. Members should note the EN is therefore indicative only. (Note the appendices referenced in the draft enforcement notice will be added before service and will contain plan extracts for clarity).

2 **SITE AND CONTEXT**

2.1 **SITE DESCRIPTION AND CURRENT USE**

6 The application and investigation relates to Our Lady and St Philip Neri RC Primary School, which is located on the eastern intersection of Sydenham Road and Fairlawn Park.

7 The site is approximately 2,991 sqm in area with an irregular shape as it bends behind the terrace building along Fairlawn Park. Prior to the approval and subsequent works pertaining to DC/16/096041 the site consisted of a number of single storey buildings, primarily nearest the corner of Fairlawn Park and Sydenham Road adjoining Home Park.

8 The boundary treatment along Sydenham Road was formed of small brick or wire fences with dense vegetation behind. The boundary treatment to the rear of adjoining properties and Home Park was formed of brick and wire fences. The site had no existing vehicle access or on-site parking. The main

pedestrian access point was from Sydenham Road, with a secondary access point from Fairlawn Park.

9 Currently the site consists of a three storey school building which has not been built in compliance with Conditions 2 (Approved Plans) and 8 (Materials) of DC/16/096041.

10 For the committee's reference, a side-by-side list of non-compliances with the 2016 planning permission is set out at **Appendix 2**.

2.2 CHARACTER OF AREA

11 The surrounding area is a mix of institutional land uses along Sydenham Road, including Our Lady and St Philip Neri Church and Presbytery directly adjoining and residential properties along Sydenham Road and to the rear, which front Fairlawn Park. Home Park, to the rear of the institutional buildings, adjoins the site to the east.

12 The typology of Sydenham Road is a mix of part two/part three storey institutional buildings adjacent to the site and two storey semi-detached Edwardian dwellings, as well as the 21st Century three storey apartment blocks opposite the site. To the rear along Fairlawn Park, the dwellings form tighter and consistent urban terraces.

2.3 HERITAGE/ARCHAEOLOGY

13 The application site is not located in a conservation area. It does not contain any listed building, nor are there any listed buildings in the vicinity. The application site is within an Area of Archaeological Priority.

2.4 TRANSPORT

14 The site has a PTAL value of 3, based on a scale of 0-6b with 6b being the highest. Sydenham Station is located approximately 1km to the east with a number of bus routes servicing Sydenham Town Centre and other locations such as Bell Green and Catford, from Sydenham Road.

3 RELEVANT PLANNING HISTORY

15 There is substantial planning history at the application site and only the relevant planning and enforcement history is detailed below.

Approved Full Applications, Amendments and Conditions

17 **DC/16/096041:** The demolition of the existing buildings at Our Lady and St Philip Neri Primary School, 208 Sydenham Road SE26 and the construction of a three storey school building including a nursery, a multi-function sports court and a running track, together with the creation of a formal pedestrian access from Home Park, the provision of cycle and scooter spaces, refuse storage and associated landscaping works to provide the amalgamation of the Infant and Junior Schools. **Granted 7/10/2016- determined by a Planning Committee**

- 18 **DC/16/099556:** Details submitted in respect of **Condition (12a)** Boundary Treatment, of planning permission DC/16/96041 dated 7 October 2016, **Granted 08/08/2017- determined by a Planning Committee**
- 19 **DC/17/102655:** Section 73 Minor Material Amendment to allow for a variation of **Condition (13a)** of the planning permission dated 7th October 2016 (ref. DC/16/096041) to read: the development **shall not be occupied** until details of the following works to the highway (including drawings and specifications) have been submitted to and approved in writing by the local planning authority. **Granted 19/10/2017**
- 20 **DC/18/105485:** An application submitted under Section 73 of the Town and Country Planning Act 1990 for a Minor-material amendment in connection with the planning permission DC/16/096041 dated 7 October 2016 (as amended by DC/17/102655 dated 19 October 2017) to allow a variation to the wording of **Condition 6** to read:
- (a) The buildings hereby approved shall achieve a minimum BREEAM Rating of 'Very Good'
- (b) Prior to occupation, a Design Stage Certificate for each building (prepared by a building Research Establishment qualified Assessor) shall be submitted to and approved in writing by the local planning authority to demonstrate compliance with part (a). **Granted 20/03/2018**
- 21 Refused and Withdrawn Amendments and Condition Applications
- 22 **DC/17/100185:** Details submitted in respect of Condition (8a) Facing Materials, of planning permission DC/16/96041 dated 7 October 2016, **Refused 10/04/2017**
- 23 **DC/17/102271:** Details of the reserved matters for external materials and finishes submitted in compliance with Condition (8) of planning permission 16/096041 dated 7 October 2016 **Withdrawn 21/08/2017**
- 24 **DC/17/103461:** An application submitted under Section 73 of the Town and Country Planning Act 1990 to allow for the variation of Condition 2 and the removal of Condition 8 in connection with the planning permission DC/16/096041 dated 7th October 2017 in order to allow changes in the proposed external materials of the building. **Withdrawn 16/11/2017**
- 25 **DC/17/105610:** An application submitted under Section 73 of the Town and Country Planning Act 1990 to allow for the variation of Condition 2 and the removal of Condition 8 in connection with the planning permission DC/16/096041 dated 7th October 2016 (as amended by applications DC/17/102655 dated 19 October 2017 and DC/18/105485 dated 20/03/2018) in order to allow: Changes in the proposed external materials of the building. **Refused 27/03/2018**
- 26 Enforcement
- 27 **ENF/18/00139:** Implementation of planning permission DC/18/105610 not in accordance with approved plans, DC/16/096041 in regards to cladding, alleged height increase and installation of doors/windows.

4 **Planning and Enforcement Background**

28 In October 2016 planning permission (DC/16/096041) was granted for the construction of a three storey school building including a nursery. This was amended by applications DC/17/102655 (granted 19/10/2017) and DC/18/105485 (granted 20/03/2019).

29 Application DC/16/096041 approved the main building with composite cladding. In March 2018 permission (DC/18/105610) was refused to vary Condition 2 (Approved Plans) and remove Condition 8 (External Materials) of planning permission DC/16/096041 (as amended by applications DC/17/102655 and DC/18/105485).

30 This application proposed to replace the composite cladding with cementitious board cladding in a light mist colour and Esher facing brick. A site visit undertaken by officers confirmed the cladding, brickwork and windows has been installed prior to determination by officers.

31 Planning application DC/18/106894 was refused for the following reason:

“The proposed external materials would, by reason of their appearance, quality and fixing method, resulting in a poorly detailed and incongruent building harmful to local character and contrary to Policies 15 High Quality Design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014), DM Policy 30 Urban Design and Local Character.”

32 Following the Council’s refusal of application DC/18/106894, an enforcement investigation was opened in April 2018.

33 On the 28 August 2018, the Education Commission, the Archdiocese of Southwark, Darwin Group and IID collectively sought pre-application advice from the Local Planning Authority (PRE/18/107640). In the meeting, the developers raised issues with the ‘buildability’ of the approved design, including inadequate floor zone depths and an inappropriate ventilation strategy.

34 The developer also asserted an amended phasing had necessitated some of the deviations listed above. Officers advised that these issues were not adequate justification for the planning breaches that have taken place. They were informed once the issues with the approved plans were identified, revised plans should have been prepared and submitted to the LPA.

35 The developers were also advised that Condition 8 (External Materials) attached to the original consent was due to be discharged before above ground development could commence, but the school building was now almost complete. Following the pre-application meeting, a programme was received from the developer in a letter dated 3rd September 2018. Revised drawings were received on the 12th September 2018. The submission outlined that a sample panel would be made available on site for officers to review. Officers advised that these items could form the basis of further pre-application discussion, however, they would not be considered to meaningfully response to the matters for which the enforcement action is being considered.

36 The formal pre-application response(PRE/18/107640) was sent to the developers on the 21st September 2018. They were advised that:

“the approved 2016 scheme was considered to meet a high standard of design required of this prominent site. Since the application was approved by the Council, that the commitment to high quality design had been absent in the delivery of the scheme. The architectural quality of the building has been severely compromised, with the result that the finished teaching block is a different building to that approved. There is no reasonable justification for the failure to comply with the approved plans and to submit details for approval in line with the required timescales. Three submission have been made proposing amendment to the as-built scheme, none of which is considered to go far enough to resolve the breaches of planning control identified.”

37 A further pre-application (PRE/18/109133) was sought by the developer. This response was sent on the 1st November 2018. This response outlined that elements of the proposal could be acceptable pursuant to further information being submitted with a formal application. This response also outlined that full planning application should be submitted.

38 After the issue of the second pre-application advice note on 1st November 2018, no submission was forthcoming. The developers hired a Planning Consultant (Indigo Planning, the current agent) whom Officers met with on 5th March 2019 for another pre-application meeting (PRE/19/110969), as the Planning Consultant wanted to discuss consultation responses from a developer-led local meeting. During this pre-application, the Planning Consultant outlined that they were seeking a legal opinion on whether a Section 73 application could be submitted.

39 The Local Planning Authority also sought legal advice in April 2019 after a Section 73 application was submitted. (This is the current application before members). This legal advice indicated the submission of a s73 application was legally permissible given the circumstances, as is set out in the section below. However the Section 73 application submitted was invalid as a number of required documents were not provided. The application was made valid on the 17th May 2019 following additional information being provided.

40 During the course of the application, Officers wrote to the Planning Consultants on the 18th July 2019 and again 8th August 2019 requesting details and information in regards to the proposed materials. Information was provided by the Planning Consultants on the 18th August 2019.

5 CURRENT PLANNING APPLICATION

5.1 THE PROPOSALS

41 The current s73 planning application is to allow for the variation of Condition 2 and 8 of the 2016 permission (DC/16/096041) as amended.

Condition 2 stated:

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

PL_003, PL_004, PL_005, PL_006, PL_007, PL_104, PL_105, PL_106, PL_204, PL_301, PL_302, PL_401, L-110 Rev A (Planting Plan), L-111 Rev C, C100 Rev P, C101 Rev P1, Detailed Data Network Maps, Desk Study Report, Landscape Design, Ecological Appraisal and Initial Bat Inspection, Energy Strategy Statement Phase 3, Arboricultural Impact Assessment, Design & Access Statement, Acoustic Implications On Design, BREEAM2014 Education Pre-assessment report Rev A, Overheating Assessment, Bat Survey Report, Daylight Assessment Stage 2, Public Transport & Local Services Analysis Stage 2 (received 30th March 2016); PL_501 Rev A, PL_502 Rev A, PL_503 (Received 20th May 2016) PL_505 Rev A, PL_506 Rev A (received 2nd September 2016); PL_507, PL_102 Rev A, PL_103 Rev A, PL_201 Rev B, PL_202 Rev B, PL_203 Rev B (received 9th September 2016); and Transport Assessment Addendum (EAS, September 2016), L-110

Rev E (Landscape External Works Plan); L-112 Rev C; PL_508 (received 12th September 2016).

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.*

Condition 8 stated:

8 (a) No development above ground level shall commence on site until a detailed schedule and specification, including samples of all external materials and finishes including bricks, cladding windows and external doors and roof coverings to be used on the building have been submitted to and approved in writing by the local planning authority.

(b) Sample panels of the materials, including mortar fixings, to be approved under part (a) shall be constructed on site, for review by the local planning authority.

(c) The scheme shall be carried out in full accordance with those details, as approved.

Reason: *To ensure that the design is delivered in accordance with the details submitted and assessed so that the development achieves the necessary high standard and detailing in accordance with Policies 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character.*

S73 Proposal and Effect of Alterations

The effect of s73 planning application is to create a new Planning Decision Notice, but with conditions amended. In this case, condition 2 is proposed to be amended with the relevant approved plans originally imposed removed and plans the subject of the current application inserted.

The plan substitution would therefore achieve the following changes:

- Alterations to the materials
- Alterations to the fenestration pattern
- An increase in the height of the building
- Alterations to the roof profile
- Alterations to the siting of the building
- The installation of the UKPN cabinets and planting on the corner of Sydenham Road and Fairlawn Park
- The reduction in the number of fins on the Hall building
- The installation of an internal ball fence to the playground on the flat roof of the Hall building
- The installation of ventilation grilles
- Alterations to external lighting
- Alterations to the extraction flue
- Alterations to the playground canopies
- Alterations to the nursery entrance
- The installation of an air-conditioning unit near the nursery entrance
- Alterations to the brick plinth
- Alterations to the external plant store

42 Members should note the application does not seek only to regularise what is on site currently, but proposes an alternative scheme that retains some in situ elements but also proposes some improvement to the current position, as is set out below.

6 CONSULTATION

6.1 PRE-APPLICATION ENGAGEMENT

43 The submitted Addendum Design and Access Statement details that a consultation event took place on the 31st January 2019 prior to the submission of the current application.

44 Four pre-application meetings were undertaken prior to the submission of the current application, as detailed above.

6.2 APPLICATION PUBLICITY

45 Site notices were displayed on 5th June 2019 and a press notice was published on 5th June 2019.

46 Letters were sent to residents and business in the surrounding area and the relevant ward Councillors on 28th May 2019.

47 40 responses were received, comprising 10 objections, 29 support and 1 comment.

48 Members should note that 57 letters of support were received from the parents of children, however, these letters did not provide a name and address as required to be registered as such they could not be formally registered on this application. Once this was brought to the applicant's attention, 25 of the letters were submitted providing names and addresses so that they could be formally registered. The comments are addressed in section 6.2.2. Officers also

received letters of support from the children enrolled at the school themselves. These have been considered and the issues raised concerning the support for the completion for the school have also been raised by other commenters. These letters have not been formally registered or placed online because they came from children, however the wider issue of the benefits of the school in the community and desire to complete the school building have been addressed in this report and copies of these letters (redacted as they are from children) can be made available to Members if required.

6.2.1 Objections

Neighbours

Material planning consideration	Para where addressed
The application should be a full planning application.	Addressed in section 8
The scale and height of the building is dominant and out of character	Addressed in paras 100-102
Loss of light from increase height of the building	Addressed in para 132
Overlooking from windows	Addressed in para 133
Poor quality materials	Addressed in para 103-119 and 128
Noise and overlooking from the reduction in the number of fins for the roof top playground	Addressed in Para 137
Air quality concerns	Addressed in para 139
Safety concerns and design concerns from the siting of the building	Addressed in para 101

Sydenham Society

Material planning consideration	Para where addressed
The application should be a full planning application	Addressed in section 8
Air quality concerns	Addressed in para 139

Councillor Best

Material planning consideration	Para where addressed
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The application should be a full planning application	Addressed in section 8
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49 A number of other considerations for this current application were also raised as follows and a brief comment provided as to why these are not being assessed in more detail and/or are being treated as non-material considerations for this application and/or any other comments considered appropriate (for example that conditions continue to apply):

50 The entrance in Home Park to the school is not being used as the main entrance. Officer Response: This application does not propose to amend the entrances approved on application DC/16/096041; application DC/16/096041 was approved with entrance gates on Fairlawn Park and in Home Park and an entrance on Sydenham Road. A condition (18/19) of DC/16/096041 requires works to be undertaken in Home Park, however it should be noted that this condition does not state that the entrance in Home Park is the main entrance to the school. Notwithstanding this, the use of the multiple entrances to the school is an operational issue of the school.

51 The works required in Home Park by condition 18/19 of DC/16/096041 have not been undertaken. Officer Response: This application does not propose to amend this condition as such this condition is still required to be complied with. The enforcement investigation is still on going. While the current draft enforcement notice primarily addresses materials and cladding, future formal enforcement action may address outstanding conditions.

52 Objections received state that only the originally approved scheme should be allowed. Officer Response: The applicant is legally entitled to seek amendments which will be assessed against policy. This assessment is set out below.

53 Concerns over whether the BREEAM Rating can be achieved. Officer Response: The BREEAM Rating is not proposed to be amended as part of this application. The proposed development is still required to achieve a 'Very Good' BREEAM Rating as per DC/18/105485.

6.2.2 Support

Material planning consideration	Para where addressed
The proposal would improve the visual appearance of the area	Addressed in para 103-119 and 128

54 A number of other considerations were also raised as follows:

55 The application site is still a building site and the project is incomplete. Officer Response: The committee can consider the planning merits of the variations to the 2016 scheme. The improvement in visual amenity of moving forward this development is noted and is addressed below. The progress of the build to date and the fact that it is currently incomplete is noted however progress of build-out is a matter for a developer.

Other Comments

56 A number of comments relating to other considerations were also raised as follows:

57 Security concerns: the bin and bike stores adjoining the property line could allow users to access neighbouring properties by climbing on the stores and over wall. Officer Response: The bin and bike store were approved under application DC/16/096041 and are not proposed to be amended in this application.

6.3 Local Meeting

58 A Local Meeting was held on the 8th July 2019 as 10 or more objections had been received. The meeting was held at Our Lady and St Philip Neri Primary School and was chaired by Councillor Copley.

59 48 attendees signed attendance sheet.

60 The summary note of the local meeting has been attached as **Appendix 3**.

6.4 INTERNAL CONSULTATION

61 The internal consultee was identical to the original application (DC/16/096041) although and the proposed amendments are not relevant to all of the internal consultees. The following internal consultees were notified on the 28th May 2019.

62 Early Years Improvement Team: No comments received

63 Children and Young People: No comments received

64 Ecological Regeneration Manager: No comments received

65 Environmental Sustainability: Further information required. (See paragraph 141 below for further details).

66 Environmental Health: No objection subject to condition in regards to noise. See paras 135 and 136 for further information. For comments on Air quality see para 139.

67 Parks Manager: No comments received.

68 Planning Policy: No comments received.

69 Urban Design: Comments received and incorporated into the assessment in section 9 of the report.

70 Highways: No comments received.

7 POLICY CONTEXT

7.1 LEGISLATION

71 Planning applications are required to be determined in accordance with the statutory development plan unless material considerations indicate otherwise

(S38(6) Planning and Compulsory Purchase Act 2004 and S70 Town & Country Planning Act 1990). (The legal framework for the issuance and service of a Planning Enforcement Notice is set out in the 'Enforcement' section below.)

72 To issue and serve an Enforcement Notice, the Town and Country Planning 1990 (as amended) requires that there must have been a breach of planning control within the last four years in the case of operational development, and it is expedient to issue an enforcement notice having regard to the development plan and other material considerations.

73 **MATERIAL CONSIDERATIONS**

74 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.

75 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.

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

7.2 **NATIONAL POLICY & GUIDANCE**

- National Planning Policy Framework 2019 (NPPF)
- National Planning Policy Guidance

7.3 **DEVELOPMENT PLAN**

77 The Development Plan comprises:

- London Plan Consolidated With Alterations Since 2011 (March 2016) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013)

Members should note the Draft London Plan is emerging should be accorded some weight, but is not yet formally part of the Development Plan. The Mayor of London published the draft London Plan on 29 November 2017 and minor modifications were published on 13 August. The Examination in Public commenced on 15 January 2019 and concluded on 22 May 2019. The relevant Draft London Policies(DLPP) are discussed within the report

7.4 **SUPPLEMENTARY PLANNING GUIDANCE**

78 London Plan SPG/SPD:

- Planning for Equality and Diversity in London (October 2007)
- All London Green Grid (March 2012)
- Sustainable Design and Construction (April 2014)
- Character and Context (June 2014)
- The control of dust and emissions during construction and demolition (July 2014)
- Accessible London: Achieving an Inclusive Environment (October 2014)
- Social Infrastructure (May 2015)
- Energy Assessment Guidance (October 2018)

8 APPLICATION TYPE

- 79 The submission of a Section 73 planning application is legally permissible in this circumstance. Section 73 is an application under s.73 of the Town and Country Planning Act to develop land without compliance with conditions previously attached. The conditions proposed to be altered are conditions 2 and 8.
- 80 This section sets out an application of planning guidance to this issue for member's reference. Members should note that valid applications are to be determined against the provisions of the development plan and material considerations.
- 81 Guidance states, "a minor material amendment is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved." This is not a statutory definition. It is the judgment of the local planning authority, on an individual case basis as to whether the alterations to the original scheme are non-material or minor material or material but not so substantial/fundamental as to warrant a new planning application.
- 82 If granted the legal effect of an application made under Section 73 is to generate a new planning permission with the amended conditions then placed on the application.
- 83 The application seeks a number of changes to the external appearance of the building, the height of the building and the siting of the building. Therefore permission is being sought to amend condition (2) Approved Drawings and amend condition (8) External Materials. The effect of amending Condition 2 would be to insert a new plan set showing the as built form with the proposed improvements to the site.
- 84 The Council sought legal advice on the implications of accepting a S.73 planning application to vary the scheme, as opposed to requiring a 'fresh' full application. The legal advice received indicates that accepting a S.73 application is legally permissible and that it is a matter of planning judgement as to whether the scheme alternations are sufficiently 'minor' to fall within s.73 and the principal of altering a condition, or whether they are so substantial / fundamental that they would not do so.
- 85 In light of the above, the proposed amendments to conditions 2 and 8 are considered minor in the context of the above.

9 PLANNING CONSIDERATIONS

86 The main issues are:

- Urban Design
- Impact on Adjoining Properties

9.1 URBAN DESIGN

General Policy

87 Urban design is a key consideration in the planning process. The NPPF makes it clear that national government places great importance on the design of the built environment. Paragraph 124 states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

88 London Plan (policy 7.4 and 7.6) and Core Strategy (core strategy policy 15) design policies further reinforce the principles of the NPPF setting out a clear rationale for high quality urban design, whilst DM Policy 30 of the Development Management Local Plans seeks to apply these principles through detailed design issues for planning applications to address.

9.1.1 Appearance, Character, Form and Scale

89 Application DC/16/096041 was approved with a part one/ part two/ part three-storey building. The Hall building (eastern section) was approved flat roofed with a play space above whilst the main building (western section) was approved with three separate pitched roof elements with gable ends on the northern (Sydenham Road) elevation. Finally a single storey protrusion to the side of the main building was approved as housing part of the nursery.

90 The roof profile of the main building has been amended from the approved (DC/16/096041) by way of the introduction of a flat roof behind the mono-pitched roof elements.

91 On application DC/16/096041 the flat roofed Hall building was approved with a height of 8.2m. This application seeks permission to retain the as-built increased height of 11.07m.

92 On application DC/16/096041 the main building was approved with a maximum height of 11.5m and an eaves height of 9.7m. This application seeks permission to retain the as-built increased maximum height of 13.21m and as built increased eaves height of 10.88m.

93 The flat roofed building which connects the main and hall buildings was approved with height of 10.36m on application DC/16/096041. This application seeks permission to retain the as built increased height of 11.36m.

94 The single storey element along the Fairlawn Park boundary was approved with a height of 3m. This application seeks to permission to retain the as-built increase height of 4.30m of the single storey element. The single storey element protrude above the first floor level of the main building.

- 95 Application DC/16/096041 was approved with the main building fronting Sydenham Road and being constructed to the northern boundary, however, it should be noted that the approved site plan allowed for a widened footpath to Sydenham Road, near the junction with Fairlawn Park. The building frontage was approved as being stepped from the western boundary at Fairlawn Park by 3.3m; however, the single storey element was approved to the boundary.
- 96 The as-built Hall and Main building have been built without the building being setback from Sydenham Road near the junction with Fairlawn Park. The Main building has been built with a set back of 3.1m from Fairlawn Park.
- 97 In terms of scale, the application site is surrounded by a mixture of heights, including a three storey flat roofed building on Sydenham Road opposite the application site. Whilst it is acknowledged that the overall height of the buildings has increased, the principle of a three storey was approved by application DC/16/096041. Notwithstanding this, the increased height is not considered to be out of keeping within the existing patterns of development, particularly as it is focused on Sydenham Road.
- 98 Application DC/16/096041 established that the principle of the buildings along Sydenham Road being built to the highway as acceptable. This is still considered to be the case even though the whole building line along Sydenham Road would front the highway and result in a narrower pavement at the site. The narrower pavement is not considered to result in safety concerns as raised by consultation responses.
- 99 Overall, officers consider that whilst the proposed development would introduce a greater scale of development on the site compared to the approved application (DC/16/096041), by way of an increased height, siting of the development and altered roof profile, these are not considered to such a departure from the approved scheme that would adversely harm the character of the area. The amendments are therefore considered to be of an acceptable design in terms of its scale, mass and siting.

Materials, Fenestration and Detailing

Main Building

- 100 The approved drawings and Design and Access Statement of DC/16/096041 detailed that the main building would have a composite/ concrete cladding panel, aluminium windows with coloured reveals at ground floor level and a brick finish to the nursery. All material colours were to be confirmed as part of condition 8, which was not discharged.
- 101 Light grey cladding panels have been used on the Main building; the cladding panels do not have permission as they have not been approved via discharge of conditions application or an amendment application. The cladding which has been installed on the building is not considered to be of sufficient quality for this important educational building which is highly prominent within the street scenes of Sydenham Road and Fairlawn Park Road. Not only is the material of inferior appearance but the fixings, of which there are many, are visible and the method of fixing further degrades the quality of the finish. The gaps between the cladding boards are uneven with those of the horizontal axis

appearing larger than the vertical. This gives an untidy visual. In general the cladding is low quality and harms the visual amenity of the building.

- 102 It is proposed that the Main building would be rendered in a silicone Wetherby rendering. The silicone render is proposed to be applied directly to the in-situ cladding as described above. The silicone render would have a grain size of 2.0mm 'K' and would be light grey in colour (S-2502-B). Joints are proposed to be added to the silicone render and are proposed to align with the window reveals.
- 103 It is acknowledged that, the proposed silicone render would be similar in colour to that indicated in the Design and Access Statement of DC/16/0096041.
- 104 Application DC/16/096041 was approved with cladding panels extending to ground level, officers acknowledged that the panels could be susceptible to damage at ground level and that a robust material is appropriate and acceptable in this location. A brick plinth has been constructed on the lower third of the wall on the Sydenham Road, Fairlawn Park and Playground elevations. The brick plinth which has been constructed on the building is stepped and not level and so detracts from the character and appearance of the building. It is proposed that brick plinth which has been constructed in Esher brick would be straightened as part of the current application. The Nursery building has been constructed in the same Esher brick as the plinth. On balance the proposed brick is considered to be acceptable.

Main Buildings Windows

- 105 Application DC/16/096041 was approved with aluminium framed large picture windows without any glazing bars and with the majority of approved windows being non-openable. The approved Acoustic Implications design document submitted with application DC/16/096041 outlines that openable windows will not be permissible on the Sydenham Road elevation and side facades with a line of site to the road. The document goes on to state that if simple openable windows were to be adopted levels of noise internally would be as high as 63dB(A) which would be substantially in excess of guidance standards and would adversely affect speech communication and learning and that to achieve the equivalent ventilation rates to an open window, options could include acoustic passive vents, or a boosted mechanical ventilation/cooling system. Therefore openable windows are not supported.
- 106 White framed openable windows have been installed which substantially detract from the visual appearance of the building as they result in highly visible glazing bars and white frames which clutter the elevations and do not reflect the intent of the approved large picture window design.
- 107 It is proposed that the installed openable white windows are to be sprayed in a non-isocyanate acrylic topcoat. At first and second floor levels the windows are proposed to be Pearl Dark Grey (RAL 9023) in colour and at ground floor level the windows are proposed to be Gentian Blue (RAL 5010) in colour. Whilst the principle of spraying the white window frames to reduce their prominence is acceptable this would not overcome low quality visual appearance caused by the addition of glazing bars. Durability is one element of ensuring high quality design. The submitted AkzoNobel product sheet for the

non-isocyanate acrylic topcoat details that the proposed product has a life expectancy of up to 9 years. The durability and life expectancy of the proposed spray to the in-situ windows is not considered to result in a high quality finish and would not reflect the approved design intent. If a higher quality spray to the windows was proposed this would not address the harm caused by the highly visible glazing bars.

- 108 The fenestration pattern approved on application DC/16/096041 has not been implemented on the as-built Main building. The heights of the windows on the Sydenham Road, Fairlawn Park and Playground elevations have been reduced; additionally approved windows at ground floor level on the Playground elevation have been omitted. The alterations to the fenestration pattern in combination with the introduction of glazing bars is considered to diminish the visual appearance of the building as the fenestration pattern and windows are considered to be low quality for this prominent building. In addition blue spandrel panels have been inserted, the blue spandrel panels have been inserted in place of the approved the recessed glazed panel system which was approved between the 'terraced house' elements. The blue spandrel panels are not acceptable as they fail provide depth to the elevations which would have been provided by the approved recessed glazed panels. It is proposed that the installed blue spandrel panels are removed and replaced by a bespoke ribbed metal panel. The ribbed metal panels would be Black Grey (RAL 7021) in colour; this is the same colour as the proposed window reveals at first and second floor levels. This element is a distinct change from approved scheme, whilst officers acknowledge that the ribbed panels may work towards providing an element of depth to the elevations, the ribbed panels needs to be considered within the cumulative changes to the design of the building. The cumulative changes are assessed below in paragraph 125.
- 109 Reveals are proposed by the applicant to be created to the windows on the Main building by the application of silicone render and the addition of PPC aluminium reveals. The reveals would be a bespoke manufactured product. At ground floor level, the reveals would be Sapphire Blue (RAL 5003) in colour and at first and second floor levels, the reveals would be Black Grey (RAL 7021) in colour. In combination, the proposed silicone render and the proposed reveals are considered to be of low design quality which would result in a visually harmful building in the streetscene due to the prominence of three storey school within the streetscene.
- 110 Application DC/16/096041 was approved with timber louver panels on some of the non-openable windows on the Sydenham Road and Playground elevations. The louver panels were ventilation panels with acoustic dampers. Blue panels have been installed on the Main building; the blue panels are considered to be poor quality which diminish the design intent of the approved scheme. The proposed louvers would be a bespoke product comprising of polyester powder coated aluminium, Peal Dark Grey (RAL 9023) in colour, which would sit within a solid insulated panel. The proposed louvers would be for decorative purposes only, unlike on application DC/16/09604, where the louvers were proposed as ventilation panels. Whilst the officers support the revival of louvers, the louvers need to be considered within the cumulative changes to the design of the building. The cumulative changes are assessed below in paragraph 125.

- 111 On the Fairlawn Park elevation the double entrance gate approved on DC/16/096041 is proposed to be replaced by a single entrance gate. This is considered to be acceptable. It should be noted that the boundary treatments were approved at planning committee on application DC/16/099556.
- 112 Application DC/16/096041 was approved with six canopies serving windows and doors on the ground floor. Three canopies have been constructed on site, which are continuous across the windows and doors which they serve; it is proposed to retain the canopies that have been constructed on site. The heights of the canopies have increased to a height of 3m. The canopy nearest the boundary with Fairlawn Park has a width of 6.37 and the other two canopies have a width of 5.60m. The frames of the constructed canopies are powder coated aluminium, Anthracite Grey (RAL 7016) in colour, the polycarbonate roofing sheets of the canopies are Opal White and the rainwater goods are black. The proposed changes in height, width and layout of the canopies on balance are considered acceptable in terms of their resulting appearance.
- 113 A number of ventilation grilles have been installed at ground, first and second floor level; they were not approved on application DC/16/096041. At ground floor level the installed ventilation grilles detract from the character and appearance of the building. At ground floor level on the Sydenham Road elevation, it is proposed that existing ventilation grilles are removed and fewer ventilation grilles are proposed which would sit above and align with the ground floor windows, the material of the ventilation grilles has not be confirmed. In addition, external lighting has been installed at ground floor level. The external lighting is round bulkhead lighting which has an anthracite polycarbonate body. Application DC/16/096041 was not approved with ventilation grilles and external lighting, whilst officers acknowledge that the ventilation grilles would be re-aligned, the proposed ventilation grilles and lighting are considered to be of poor quality and result in visual clutter on the elevations.
- 114 A low level Panasonic air-conditioning unit has been installed at ground floor level on the Fairlawn Park elevation. Whilst not approved on application DC/16/096041, the proposed air-conditioning unit would be screened behind the boundary treatment (approved by application DC/16/099556) so is not considered to have an unacceptable impact on the character and appearance of the streetscene and is not considered to be enough of a departure to justify a refusal on this ground.
- 115 Tapco Slate roof tile have been installed on the roof. Whilst no information has been provided in regards to the specification of the tiles, the in-situ tiles are not considered to result in a material planning harm to the character and appearance of the main building.

Hall Building

- 116 The approved drawings and Design and Access Statement of DC/16/096041 details that the Hall building was approved with brickwork and timber fins. The proposed bricks would be Esher bricks which would be the same as the brick plinth on the main building and the nursery building. The timber fins are proposed to be replaced by painted metal fins in three different colours, Clay

Brown (RAL 8003), Fawn Brown (RAL 8007) and Purple Red (RAL 3004). The fins would have varying depths.

- 117 The proposed metal fins are considered to take into account the natural tones of the approved timber fins and the varying depths would provide a depth to the façade of the hall building. The proposed metal fins are considered to be of higher quality than the approved timber fins due to durability, as such the proposed material of the fins is considered to be much improved over and above the approved timber fins.
- 118 The number of fins proposed across the windows on the Hall building are proposed to be reduced; this is proposed practical reasons for example to allow the windows to be cleaned. It is also proposed that the top line of the proposed fins would be amended to incorporate varying sizes. The reduction in the number of fins across the windows on the Hall building and the fins of varying sizes in the top line of fins are not considered to have unacceptable impact on the overall arrangement, balance and composition created by the fins.
- 119 A ball fence is proposed behind the fins. The ball fence would have a total height of 1.8m and would extend 1.58m above the parapet of the Hall building. The ball fence would be polypropylene carbonite (PPC) and would be Beige Brown (RAL 8024) in colour. Due to the colour and the height of the proposed ball fence it is not considered to have an unacceptable impact on the design of the Hall Building.
- 120 It is proposed that the kitchen flue extract would extend 1.59m above the proposed fins; application DC/16/096041 was approved with the kitchen flue extending 0.31m above the fins. This element is considered to compromise the quality of the scheme, however, this element is not considered to be enough of a departure to justify a refusal on this ground.
- 121 The play area on the flat roof of the hall building was approved on DC/16/096041 at the front of the flat roof towards Sydenham Road. It is proposed that the play area would be relocated to the rear of the flat roof of the hall building towards the playground elevation. The siting of the play area on the flat roof of the Hall building is considered to be acceptable in design terms.

UKPN Cabinets and External Store

- 122 On application DC/16/096041, single storey plant room was proposed in the playground to the side of the Hall building; the plant room had a floor area of 24.47m². The approved plant room is proposed to be converted into a store room and the floor area is proposed to be reduced to 19m². This is considered to be acceptable from a design perspective given that the only external changes are the reduction in the size of the door opening on the front elevation and the change from timber fins to metal fins.
- 123 Two UKPN cabinets are proposed at the junction of Sydenham Road and Fairlawn Park. Planting and signage are proposed to obscure the UKPN cabinets. It should be noted that the proposed UKPN cabinets have a Permitted Development fall-back position under Class B of Part 15 Power Related Development of the GPDO. Given the fall-back position, on balance

the siting and design of the of the UKPN cabinets is considered to be acceptable. The proposed planting is not considered to complement the urban greening of the area with the park setting of Home Park to the rear, and is not considered to reflect the character of planting along the street. In addition, the proposed planting should provide year round interest as to reduce the visual impact of the UKPN boxes. Further to this, the proposed one year maintenance plan provide is not acceptable, the maintenance should for a minimum of five years.

9.1.2 Urban design conclusion

124 Application DC/16/096041 was approved on the basis of high quality design and high quality materials. The as-built scheme is considered to be poor with low quality materials having been used. The proposed amendments to the as-built scheme, individually and cumulatively, are considered to result in a school building of low visual quality. Section 10 details the conclusion and balances this conclusion with other planning matters.

9.2 LIVING CONDITIONS OF NEIGHBOURS

General Policy

125 Paragraph 127 of the NPPF sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users. At paragraph 180 it states decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions.

126 London Plan Policy 7.6 states that building should not cause unacceptable harm to the amenity of surrounding land and building, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate.

127 Core Strategy Policy 15 requires that any adverse impact on neighbouring amenity will need to be addressed by development proposals.

128 Application DC/16/096041 established that the development would not have any adverse impacts in terms of daylight/sunlight, loss of outlook and that the overbearing impacts would not be severe. The proposed increase in height, alterations to the roof profile and the siting of the building, are not considered to have an adverse impacts in terms of daylight/sunlight, loss of outlook or are the overbearing impacts considered to be severe given separation distance to residential properties on Sydenham Road and Fairlawn Park and the orientation of the school buildings.

129 The proposed fenestration alteration includes the provision of openable windows, the reduction in height of window openings and the replacement of recessed windows in the Sydenham Road and Playground elevations with ribbed panels. Application DC/16/0096041 established that the loss of privacy to neighbouring properties was not considered significant. Given that the number of windows would be reduced and that the height of the windows are proposed to be reduced, it is still considered that the proposed window openings would not have a significant impact in terms of loss of privacy to neighbouring properties.

- 130 The proposed materials, alterations to the brick plinth, alterations to the nursery entrance, alterations to external lighting, alterations to the extraction flue, alterations to the playground canopies, installation of ventilation grilles, alterations to the external plant store and the installation of an internal ball fence to the playground on the flat roof of the hall building are considered to have a negligible impact on neighbouring amenity.
- 131 The proposed installation of UKPN cabinets and planting on the corner of Sydenham Road and Fairlawn Park would be situated approximately 13m from the nearest property on Fairlawn Park. Given the separation distance of a minimum of 13m to the nearest neighbouring properties, the impact in terms of increase on noise is considered to be minor. It should be acknowledged that the condition in relation to noise levels attached to DC/16/096041 is still required to be complied with in regards to the noise level of fixed plant.
- 132 Similarly, the proposed air-conditioning unit given the separation distance of approximately 13m to neighbouring properties is considered to be minor. It should be acknowledged that the condition in relation to noise levels attached to DC/16/096041 is still required to be complied with in regards to the noise level of fixed plant.
- 133 The reduction in the number of fins and re-siting of the roof top playground from the front to the rear of the Hall roof is not considered to result in a significant increase in noise or overlooking to Nos.158-188 Fairlawn Park compared to the approved application (DC/16/096041), given the separation distance to these properties and as the applicants have agreed that no balls would be used on the roof top playground (if the proposal was otherwise acceptable this would have been secured by condition).

9.2.1 Impact on neighbours conclusion

- 134 In summary, the proposed development is not considered to cause significant detrimental harm to the residential amenity of neighbouring properties and therefore is considered to be acceptable.

NATURAL ENVIRONMENT

9.2.2 Air pollution

- 135 Application DC/16/096041 was approved with the majority of windows being non-openable and it is proposed for the windows to be openable. Environmental Health comment that the GLA London Local Air Emission Inventory 2016 data its modelled levels of NO₂ annual mean at the school as 35 µg/m³. The health limit level is 40 µg/m³. Environmental Health confirmed that the limit level is not exceeded.

9.2.3 Flood Risk

- 136 The Council's Flood Risk Manager was consulted and stated that due to the material changes to the approved scheme, the applicants are required to demonstrate that over the lifetime of the development, access will still be physically possible for drainage maintenance to be carried out, safe for its user and that the proposed development will not increase flood risk. If the proposal was otherwise acceptable, this information would have been requested.

10 CONCLUSION

138 The S73 planning application has been considered in the light of policies set out in the development plan and other material considerations. The proposed amendments the subject of the s73 application are not considered to cause significant detrimental harm to the residential amenity of neighbouring properties.

139 However, the proposed amendments to the school building are individually as detailed above and cumulatively considered to result in a development of low quality visual appearance. While some retained elements (including building heights and siting) are acceptable the overall reduction in design quality of the building is contrary to adopted policy and warrants the refusal of planning permission.

140 The provision of openable windows in the Sydenham Road elevation has the potential to give rise to an unacceptable level of internal noise within the building and to a poor quality educational environment for users. The application is recommended for refusal for the reasons set out in the recommendation section below.

Enforcement Action

141 Officers consider that in the event committee are minded to accept the recommendation to refuse the s73 planning application, it is expedient to take formal planning enforcement action to remedy the harmful visual appearance and openable window design of the current building.

142 National guidance allows for Local Planning Authority to stipulate “lesser requirements” in enforcement notices (or ‘under enforce’). The decision to recommend formal action is in light of guidance to work with applicants and owners informally to achieve a resolution to breaches of control. Officers consider that discussion with the applicant since 2018 has failed to yield an acceptable planning outcome to date, and enforcement is therefore considered to be a last resort.

143 Officers are also mindful that though the decision to take enforcement action is discretionary, the Local Government and Social Care Ombudsman can make a finding of “maladministration” if a Council fails to take enforcement action when it is plainly necessary to do so. The decision not to take enforcement action is also open to judicial review in accordance with the public law principles of “reasonableness”.

144 Officers have included an indicative planning enforcement notice attached to this report that would set the broad scope for enforcement action for member’s information. As per the recommendation below, officers are minded to issue a Planning Enforcement Notice on a delegated basis to the approximate timelines identified.

145 *Option A and Option B*

146 The broad steps for compliance set out in the indicative notice offer two options.

- 147 If selected Option A would compel the school to implement the 2016 permission granted. Officers consider that at this juncture, in particular altering the building heights may be above what is necessary to remedy the harm to that individual aspect, when Officers consider the height increase itself is acceptable, as set out above. This is why Option B has also been put forward. However against this consideration of individual matters, the collective position must be considered. It is important to recognise that if Option B raises logistical challenges, the Applicant has an Option A to achieve compliance which is straightforward to achieve and which will then be the minimum necessary to remedy the breach of planning control and the injury to amenity. Officers are also aware that in some situations rebuilding in accordance with an approved design can be a more appropriate option for a variety of reasons whether because it can be more effective, faster, or cheaper or where parties may have claims against insurers.
- 148 Option B seeks to compel the school in essence to clad and fenestrate the building to a suitable standard that respects the 2016 permission for this landmark site, while still ensuring work done to date on the majority of the built form is not lost or demolished (as well as related work to ventilation, lighting, etc). Option B represents the minimum necessary to ameliorate the planning harm and the damage to amenity caused. The notice does not seek to remove elements built out-of-compliance with planning control that do not give rise to significant planning harm (as per the assessment above).
- 149 Officers accept that Option B may raise logistical challenges in this instance, however officers consider the school and their representatives are capable of meeting these challenges to deliver on their obligations to bring forward policy compliant development. If these logistical challenges are not surmountable then Officers would seek Option A.
- 150 Members should note the allegation(s), specific steps for compliance and timelines may change prior to issue of the EN based on legal advice and should the school make any further representations.
- 151 *Time for Compliance*
- 152 **Option A**
- 153 If Option A is chosen, the indicative notice sets a period for compliance of 21 calendar months once the notice takes effect. Officers have taken into account that they would expect the notice to be issued and served on interested parties on 23rd October 2019. The proposed period of 21 months would yield a likely compliance date (i.e. when the steps in the notice are required to be complete) in mid-September 2021. This would allow two full “summers breaks” where the children are not at the school to ensure that works can be undertaken.
- 154 **Option B**
- 155 If Option B is chosen, the indicative notice sets a period for compliance of 9 calendar months once the notice takes effect. Careful consideration has been given to the appropriate period taking into account the nature of the works required which are straightforward to carry out (for example removal of cladding and installation of appropriate cladding, removal of lighting, etc) and

to seek to enable most of the works to take place during the summer vacation. Officers have taken into account that they would expect the notice to be issued and served on interested parties on 23rd October 2019. The proposed period of 9 months would yield a likely compliance date (i.e. when the steps in the notice are required to be complete) in mid-September 2020. This would allow some months for planning and delivery works and then for a full summer holiday period where the children are not at the school to ensure that works can be undertaken with no or only a low level of disruption.

156 If there should be some slippage in the date of service of the Enforcement Notice, Officers would propose to amend this period of time to ensure that the school would have the necessary period of time enabling the school to take advantage of the lengthier summer vacation. Officers consider both time periods are sufficient to allow for the necessary materials to be sourced to result in a high quality design in keeping with the terms of the Enforcement Notice to be implemented. Officers are committed to ensuring the lines of communication with the school stay open during this compliance period. The school may also lodge an appeal against the enforcement notice. This compliance period takes into account the desire of the Council to minimise educational disruption to pupils by enabling the necessary works to take place in the summer holidays.

11 LEGAL IMPLICATIONS OF ENFORCEMENT

157 Based on the information in this report it has been concluded that no action short of the proposed enforcement action set out below can overcome the harm caused by this breach of planning control.

158 Government policy advice to local planning authorities on the use of their enforcement powers is set out in the "Enforcement and post-permission matters" PPG (July 2019). The local planning authorities have responsibility for taking whatever enforcement action may be necessary in the public interest.

12 EQUALITIES CONSIDERATIONS

159 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.

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

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

161 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.

162 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "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/services-public-functions-and-associations-statutory-code-practice>

<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

163 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

164 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>

165 Officers have carefully considered the public sector equality duty in relation to the s73 application and whether it is expedient to take enforcement action. Officers are aware that the case affects the operation of a local religious school, and has carefully taken into account the implications of this in their determination and the decision whether or not to take enforcement action and the scope of that enforcement action, including the time periods for compliance. Officers have had due regard to the religious school and the school children, however on balance, taking into account the impact of the proposed S.73-the design of the proposal and internal noise implications-officers have considered that a refusal of the S.73 is appropriate.

13 HUMAN RIGHTS IMPLICATIONS

166 In determining this application and determining whether to take enforcement action the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. "Convention" here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including:

- Article 8 - Respect for your private and family life, home and correspondence;
- Protocol 1, Article 1 – Right to peaceful enjoyment of possessions and protection of property;
- Protocol 1, Article 2 – Right to Education.
- Article 9- Freedom of Religion

167 This report has outlined the consultation that has been undertaken on the application and the opportunities for people to make representations to the Council as Local Planning Authority.

168 Members need to satisfy themselves that the potential impacts are acceptable and that any potential interference with Protocol 1, Article 1 (Peaceful enjoyment of one's property), Protocol 1 of Article 2 (Right to Education), Article 8, Article 9 and 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.

169 The rights of all affected parties under the Human Rights Act 1998 were taken into account when determining the application and determining whether or not it is expedient to take the enforcement action described in this report. This case involves a school and the proposed action may impact particularly on students as well as others. These rights include Article 1 Protocol 1 (Peaceful enjoyment of one's property), Article 2 Protocol 1 (Right to Education), Article 8 (Right to respect for Private and Family Life, Home and Correspondence) and Article 9 (Freedom of Religion).

170 Officers are aware that enforcement action in this case affects the operation of a local school, and has carefully taken into account the implications of this in deciding whether or not to take enforcement action and the scope of that enforcement action, including the time periods for compliance. Officers have considered the rights of all affected parties under the Human Rights Act 1998 in making this decision, in particular Article 1 Protocol 1 rights, Article 2 Protocol 1 rights, Article 8 rights and Article 9 rights. Officers have determined that it is expedient and proportionate to take enforcement action.

14 **RECOMMENDATION**

171 That the Committee resolve to:

1) Refuse planning permission for application DC/19/111793 for the following reasons:

1. *The proposed development would give rise to materials and a fenestration pattern, by reason of their appearance and quality, which would result in low quality, poorly detailed and incongruent building harmful to the local character. The development is contrary to Policies 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character*
2. *The proposed development would retain openable windows on the Sydenham Road elevation resulting in a building with the potential to give rise to unacceptable internal noise levels in excess of guidance standards and adversely impacting the learning environment. The development is contrary to Development Management Local Plan (November 2014) Policy DM 26 Noise*

2) Note the indicative enforcement notice attached at Appendix 1.

3) Delegate the resolution of the planning enforcement investigation ENF/18/00139 to officers to authorise the issue and service of a planning enforcement notice, in broad accordance with the indicative notice attached at Appendix 1. (Members should note the notice terms indicative only, with precise terms to be delegated to officers to amend, vary, or delete).