

Committee	PLANNING COMMITTEE A	
Report Title	16-18 SUNDERLAND ROAD, LONDON, SE23 2PR	
Ward	Perry Vale	
Contributors	Joshua Knowles	
Class	PART 1	09/01/2020

Reg. Nos. DC/19/113870

Application dated 12/09/2019

Applicant Mr B Hoffman

Proposal The construction of four rear elevation balconies at 16-18 Sunderland Road, SE23 together with the conversion of the roofs of two single outriggers from pitched to flat, and the replacement of four existing windows with glazed doors.

Background Papers (1) Core Strategy (adopted June 2011)  
(2) Development Management Local Plan (adopted November 2014)

Designation Local Open Space Deficiency  
PTAL 2/3

## 1 SUMMARY

1 This report sets out Officer's recommendations for the above proposal. The application has been brought before members for a decision as the recommendation is to approve and there are more than three valid planning objections.

## 2 SITE AND CONTEXT

2 The application relates to two adjoining three storey plus basement, mid-terrace buildings located on the western side of Sunderland Road and close to the junction with Waldram Park Road.

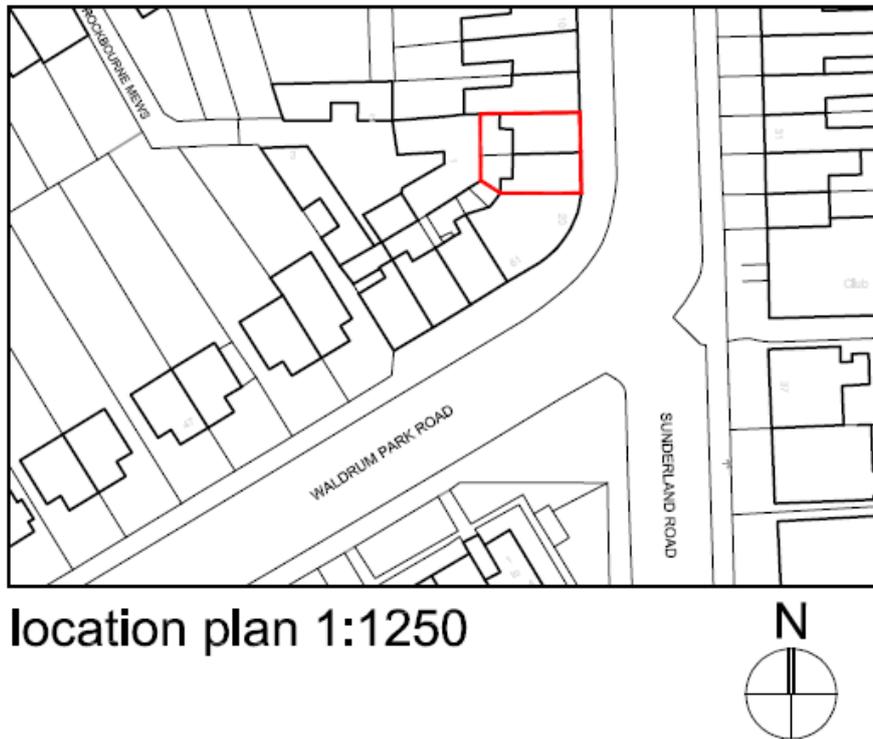


Figure 1: site location plan

- 3 The subject buildings are part of a curved and relatively uniform small parade of buildings comprising commercial/retail units on the ground floors and residential units on the upper floors.
- 4 The site is not in a conservation area, nor is it a listed building. There are no listed buildings in the vicinity of the site.

### 3 RELEVANT PLANNING HISTORY

- 5 **DC/16/098693** - The construction of a mansard roof extension at 16-18 Sunderland Road SE23 to provide additional living accommodation – Refused 13/12/2016
- 6 **DC/17/104455** - The construction of a mansard roof extension at 16-18 Sunderland Road, SE23, to provide additional living accommodation – Withdrawn 18/12/2018.
- 7 **DC/18/107706** - External and internal alterations to 16-18 Sunderland Road SE23 to support the sub-division of the existing restaurant (Use Class A3) into an A1 unit and an A3 unit with alterations to the existing shopfront and installation of new railings to the front elevation, the construction of a three storey staircase extension and the re-positioning of windows to the rear elevation – Granted 17/10/2018.
- 8 **DC/18/109664** - An application submitted under Section 73 of the Town and Country Planning Act 1990 for a Minor Material Amendment to vary condition 2 (approved plans) and install 4 new balconies to the rear elevation and the existing ground floor rear extension pitched roofs will be replaced by new flat roofs.
- 9 Refused by Lewisham for the following reason:

*‘The proposed rear balconies, by virtue of their siting, scale, materials and external appearance would result in incongruous additions to the host*

*building causing significant harm to its character, contrary to Policy 15 High quality design for Lewisham of the Core Strategy (June 2011), DM Policy 30 Urban design and local character and DM Policy 31 Alterations/extensions to existing buildings of the Development Management Local Plan (November 2014) and Lewisham's Residential Standards SPD (updated May 2012)'.*

10 Planning Inspectorate overturned decision at appeal **APP/C5690/W/19/3222375**.

## **4 CURRENT PLANNING APPLICATION**

### **4.1 THE PROPOSAL**

11 The current application is for the construction of four balconies on the rear elevation of 16-18 Sunderland Road, to serve as outdoor amenity spaces for the existing residential units.

12 The balconies would be located at first floor and second floor of the rear elevation of the host building. The balconies would measure 1.5 metres in depth and approximately 5.2 metres in width (7.8m<sup>2</sup>). The balconies would be enclosed by 1.7 metre high obscure glazed privacy screens on either side. A black steel balustrade would enclose the front of the balconies. To enable access to the balconies, the application proposes the replacement of four windows on the rear elevation with fully glazed doors. Additionally, the proposal would involve the alteration of the roofs of the two single storey outriggers from pitched to flat.

13 The extraction vent, flue, and some redundant pipes would be omitted from the rear elevation of the building as part of the proposed works.

#### *'Fall Back' Planning Permission – the allowed appeal*

14 There is a legitimate fall back option, allowed on appeal, which could be implemented by the applicant if the current application is refused.

15 This fall back option is a minor material amendment to the original permission (DC/18/107706) to add four balconies across the first and second floors and extend the staircase. The balconies would be located either side of a three storey staircase extension, granted by the original permission. Each of the fall back balconies would measure 1.7m in depth and 3.8m wide (6.46m<sup>2</sup>).

16 The proposal before Members omits the staircase and extends the balconies to fill in the gap where the staircase was.

## **5 CONSULTATION**

### **5.1 APPLICATION PUBLICITY**

17 Letters were sent to residents and business in the surrounding area and the relevant ward councillors on 24/09/2019.

18 Four responses were received, comprising of four objections.

### 5.1.1 Comments in objection

Comment	Para where addressed
Design and Materials not in keeping with the character of the host building and wider terrace	34-39
Impacts upon living conditions of neighbours in terms of loss of privacy, increased noise levels and loss of security	0-63
Residential quality of subject apartments	0-47
Established precedent of balconies on the rear elevation of this terrace	29

### 5.1.2 Other comments

A number of comments relating to non-material planning considerations were also raised as follows:

Comment	Officer response
Works already being carried out on site	Four new openings have been made in the rear elevation and the pre-existing openings have been closed. The applicant stated that these works were carried out temporarily to ensure the brick façade is safe throughout construction, and that the façade will be reinstated in full accordance with approved details. If committee is minded to grant this permission this will be ensured by condition.
Potential use of balconies as storage.	Outside of scope of planning assessment
Increased pigeon roosting opportunities.	Outside of scope of planning assessment
Level of detail on submitted plans	The submitted drawings do not show the surrounding area, wider terrace, or context. Additionally, the existing drawings show the openings in the rear elevations prior to the works described above which have already been carried out. Officers do not require drawings of the wider context to make a recommendation. The proposed drawings show the applicant's intention.
Inaccurate information in the application forms	Previous applications labelled the units as 1-bedroom apartments whereas for the current application the plans and application form show each apartment as having two bedrooms. Additionally, the application form lists the existing use as C3, while the ground floor of the property is Use Class A1. These discrepancies are not a procedural problem for the application. The existing drawings show

	the flats as currently having two bedrooms and this is not proposed to change.
The Planning Inspectorate's assessment of DC/18/109664 differing from the current assessment as the architectural integrity of the host building had been compromised by the permitted staircase.	The Inspector's decision is a material consideration to which great weight should be given. The fact this proposal omits the staircase does not alter the fact that there is a legitimate fall back option. The significance of this is discussed in greater detail in the urban design section, below.

## 6 POLICY CONTEXT

### 6.1 LEGISLATION

19 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).

### 6.2 MATERIAL CONSIDERATIONS

20 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 consider it.

21 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.

22 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.

### 6.3 NATIONAL POLICY & GUIDANCE

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

### 6.4 DEVELOPMENT PLAN

23 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)

## **6.5 SUPPLEMENTARY PLANNING GUIDANCE**

24 Lewisham SPD:

- Alterations and Extensions Supplementary Planning Document (April 2019)

## **6.6 OTHER MATERIAL DOCUMENTS**

25 The Mayor of London published a draft London Plan on 29 November 2017 and minor modifications before the EIP were published on 13 August. The Inspector's report was issued on 8th October 2019. As such, the draft plan now has some limited weight as a material consideration when determining planning applications. The relevant draft policies are listed below and discussed within the report. These are limited to policies that are materially different to existing London Plan policies. The emerging London Plan policies relevant to this application will be discussed in the assessment.

## **7 PLANNING CONSIDERATIONS**

26 The main issues are:

- Principle of Development
- Urban Design
- Standard of accommodation
- Impact on Adjoining Properties

### **7.1 PRINCIPLE OF DEVELOPMENT**

#### *General policy*

27 The National Planning Policy Framework (NPPF) at Paragraph 11, states that there is a presumption in favour of sustainable development and that proposals should be approved without delay so long as they accord with the development plan. The London Plan Housing SPG (paragraph 2.3.3.1 & 2.3.3.3) explains that private open space is highly valued and explains that dwellings on upper floors should all have level access to a terrace, roof garden, winter garden, courtyard garden or balcony.

#### **7.1.1 Principle of development**

##### *Discussion*

28 The Council supports increasing outdoor private amenity space where appropriate. Further, the appeal decision on the fall back option demonstrates that the installation of balconies to the rear elevation of this building is acceptable in principle.

29 Officers acknowledge that granting of permission for these balconies would potentially make harder to resist similar works to other properties. However, each case is considered on its individual merits. In this instance, the fall back option is highly material.

### **7.2 URBAN DESIGN**

#### *General Policy*

- 30 The NPPF at para 124 states the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.
- 31 CSP 15 seeks to ensure that a high standard of design is upheld; proposals must complement the existing development, townscape and character.
- 32 DMP 30 and 31 reflect this.
- 33 The Council's Alterations and Extensions SPD in section 4.7.1 addresses external balconies.

### **7.2.1 Appearance and Layout**

#### *Discussion*

- 34 The allowed appeal established that the principle of adding four balconies to the rear elevation of the building is acceptable, creating the fall back option. In reaching that decision, the Inspector considered the visual impact of the balconies, stating: "I find very little harm to the character and appearance of the wider area. Any harm would be very localised and offset by the general need for housing and by the improved living conditions the balconies would provide to the future occupiers of these quite small apartments." (Inspector's decision letter, 19 June 2019). There have been no relevant change to policy or other material considerations since that allowed appeal. Therefore, Officers give great weight to this material consideration.
- 35 The central question, therefore, is whether the proposal is materially more harmful than the fall back option. Officers consider the current proposal would have a better appearance than the fall back option would.
- 36 The pairs of balconies at each level would be continuous structures. Each of the balconies would be accessed via a new door, formed by existing window. By omitting the staircase, the rear of the building would be less cluttered than the fall back option. Officers consider the omission of the staircase is a merit of this proposal, helping to reduce the bulk of the additions to the rear. This merit offsets any additional visual impact of extending the balconies the full width of the building.
- 37 Similarly, the minor alterations to make flat the pitched roofs of two small single storey elements of the existing building are allowed by the fall back option. This part of the application does not raise any concerns.

### **7.2.2 Materials**

#### *Discussion*

- 38 The proposed balustrade would be black painted steel. The privacy screens enclosing the sides of each of the balconies would be obscured glass. The doors and windows in the rear elevation would be uPVC framed. The base would have a steel frame with timber infill, the soffit and fascia will be cladded in uPVC. The proposed flat roofs for the existing single storey outriggers would be finished in felt.
- 39 Officers consider these materials to complement the original building. These materials are the same as those permitted by the fall back option.

### **7.2.3 Public Realm**

#### *Discussion*

- 40 In the assessment of the fall back option, the Inspector was clear the rear elevation of the subject property would not be visible from the “main public vantage points, including from the front of the property”. Further, the inspectorate stated, “the curvature of the terrace in this location, and the position of the neighbouring outrigger back additions and of the Rockbourne Mews development to the rear, as well as trees and vegetation, restricts views virtually entirely from the public realm”.
- 41 Therefore, Officers consider the proposed balconies would not pose harm to the public realm, or the character of the area.

#### **7.2.4 Urban design conclusion**

- 42 The proposal is considered to be an improvement on the fall back option, in terms of its visual impact. The proposal is therefore acceptable in regards to design. Officers recommend a condition to control the standard of the materials and finish of the balconies, should Members be minded to grant planning permission.

### **7.3 STANDARD OF ACCOMMODATION**

#### *Policy*

- 43 NPPF para 127 sets an expectation that new development will be designed to create places that amongst other things have a ‘high standard’ of amenity for existing and future users. This is reflected in LPP 3.5, CSP 15, DMP 32 and associated guidance (Housing SPD 2017, GLA; Alterations and Extensions SPD 2019, LBL). The Housing SPG (paragraph 2.3.3.1 & 2.3.3.3) explains that private open space is highly valued and explains that dwellings on upper floors should all have level access to a terrace, roof garden, winter garden, courtyard garden or balcony.

#### *Discussion*

- 44 In assessing the fall back option the Inspector acknowledged the “improved living conditions the balconies would provide the future occupants of these quite small apartments”. The fall back option would increase the internal floor areas of the apartments by moving the existing internal staircases to the extension. Therefore, the fall back option increased both the internal and external spaces of the apartments.
- 45 Alternatively, this proposal would reduce the existing useable kitchen space by providing the access to the doors serving the balconies (see figures 2 and 3 below). This application creates a trade-off between a minor harmful change to the internal living space, in what is already a small apartment, and the benefit of adding outdoor amenity space.



## 7.4 LIVING CONDITIONS OF NEIGHBOURS

### *General Policy*

- 48 NPPF para 127 sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users.
- 49 This is reflected in relevant policies of the London Plan (LP7.6), the Core Strategy (CP15), the Local Plan (DMP31) and associated guidance (Alterations and Extensions SPD 2019, LBL).
- 50 DMP 31 requires that residential balcony extensions should result in no significant loss of privacy and amenity (including sunlight and daylight) to adjoining houses and their back gardens.
- 51 The Alterations and Extensions SPD, in section 4.7.1, outlines that the Council generally will not permit external balconies when they are likely to give rise to overlooking and a loss of privacy

### 7.4.1 Privacy

#### *Discussion*

- 52 In assessment of the fall back option, the inspector considered the potential for loss of privacy to neighbouring residents, stating: "I have given consideration to the concerns raised by neighbouring occupiers at the application stage, insofar as these refer to the potential for a loss of privacy due to overlooking from the balconies. However, I consider the opaque glass sides proposed would preserve reasonable levels of privacy to the adjacent flats at Nos 14 and 20 Sunderland Road. The disposition of the buildings at Rockbourne Mews and distances from the balconies would avoid any harmful loss of privacy to the courtyards and interior rooms of any these neighbouring homes." (Inspector's decision letter, 19 June 2019).
- 53 There have been no relevant changes to policy or other material considerations since that allowed appeal. Therefore, Officers give great weight to this material consideration.
- 54 The central question, therefore, is whether the proposal is materially more harmful than the fall back option. Officers do not consider the small extension of the balconies, to fill the space where the staircase was located, constitutes a change that would materially alter the privacy enjoyed by neighbours. Therefore, there have been no relevant changes to policy or material considerations to justify Officers reaching a different conclusion to the Inspector on this matter.
- 55 As identified by the Inspector, the properties to consider are the upper floor flats at No.14 and No.20 Sunderland Road, and the properties in Rockbourne Mews.
- 56 Privacy screening is proposed to address concerns regarding loss of privacy to neighbouring properties on either side of the application site, and between the pairs of adjacent balconies. As such, Officers consider that the proposed balconies would not result in loss of privacy to the upper floor flats at No.14 and No.20 Sunderland Road, accounting for the curvature of No. 20. This was supported by the Planning Inspector's assessment where it stated "I consider the opaque glass sides proposed would preserve reasonable levels of privacy to the adjacent flats at Nos 14 and 20 Sunderland Road".
- 57 The balconies would be located at least 13 metres from the courtyard at Rockbourne Mews, and would be at least 21 metres from the windows of No.3 Rockbourne Mews, which almost directly faces the rear elevation of the application building. The courtyard at

Rockbourne Mews is separated from the application site by No.1 Rockbourne Mews, a two-storey building. The distances to and relationships with neighbouring residential buildings are unchanged from the fall back position.

58 Officers consider that it would be difficult to directly overlook the courtyard at Rockbourne Mews even from the balconies on the second floor, given the separation distance and two storey building in-between. Given the significant distance between the balconies and the windows of No.3 Rockbourne Mews, Officers do not consider that the proposal would result in a material loss of privacy to neighbouring residents.

#### **7.4.2 Noise and disturbance**

##### *Discussion*

59 The enlarged balconies would not result in any materially different noise impact than the fall back option. Given the distances to and relationships with neighbouring properties, and the existing soundscape in this urban environment, Officers do not consider neighbours would experience harmful noise effects.

#### **7.4.3 Security**

##### *Discussion*

60 Given the inaccessibility and height of the balconies, Officers consider they would not pose harm the security of neighbouring residential properties.

#### **7.4.4 Daylight and Sunlight**

##### *Discussion*

61 The fall back option establishes extensions with a greater height, depth, and physical bulk than the proposal. Given the arrangement and minimal depth of the proposed balconies on existing rear elevation of the building, Officers consider the proposed balconies would not affect the daylight or sunlight reaching adjoining properties, or their gardens.

#### **7.4.5 Enclosure and Outlook**

##### *Discussion*

62 The fall back options establishes extensions with a greater height, depth, and physical bulk than the proposal. Officers consider the proposed balconies would not alter the impact on outlook of any adjoining properties or create a sense of enclosure on any nearby properties.

#### **7.4.6 Impact on neighbours conclusion**

63 Officers do not consider the balconies would have any material effect on the living conditions of neighbouring residents. This conclusion is consistent with the Inspectors conclusion in allowing the fall back option. Therefore, the proposal is acceptable in regards to impacts upon neighbouring amenity. Officers recommend a condition to ensure the privacy screens are installed and maintained, should Members be minded to grant planning

## 8 EQUALITIES CONSIDERATIONS

64 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.

65 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.

66 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.

67 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

68 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

69 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>

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

## 9 HUMAN RIGHTS IMPLICATIONS

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

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

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

73 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above Convention Rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

## 10 CONCLUSION

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

75 There is a legitimate fall back option, to which Officers attach great weight. Officers consider this to be, on balance, a better scheme than the fall back option. The current proposal would have the same effect on neighbours' living conditions as the fall back option would, while the appearance would be an improvement. The impact on the standard accommodation would, on balance, be positive.

76 The proposal is recommended for approval, subject to the following conditions.

## 11 RECOMMENDATION

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

### 11.1 CONDITIONS

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

**Reason:** As required by Section 91 of the Town and Country Planning Act 1990.

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

Planning and Design Statement, 18-1318-30B, DAT/9.1, Location Plan

**Reason:** To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

- 3) No development shall commence on site until a detailed schedule and specification/samples of all external materials and finishes to be used on the development hereby approved 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.

**Reason:** To ensure that the local planning authority may be satisfied as to the external appearance of the building(s) and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character.

- 4) The privacy screening as approved shall be installed prior to the occupation of the apartments, and retained in perpetuity.

**Reason:** To avoid the direct overlooking of adjoining properties and consequent loss of privacy thereto and to comply with DM Policy 31 Alterations and extensions to existing buildings including residential extensions, of the Development Management Local Plan (November 2014).

- 5) The openings in the rear elevation of the building as approved shall be installed prior to the occupation of the first and second floor residential units, and retained in perpetuity.

**Reason:** To avoid the direct overlooking of adjoining properties and consequent loss of privacy thereto and to comply with DM Policy 31 Alterations and extensions to existing buildings including residential extensions of the Development Management Local Plan (November 2014), and Core Strategy Policy 15 High Quality Design for Lewisham of the Core Strategy (2011).

## 11.2 INFORMATIVES

- 1) **Positive and Proactive Statement:** The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application, positive discussions took place which resulted in further information being submitted.