

Committee	PLANNING COMMITTEE B	
Report Title	Land on the Corner of Duncombe Hill, Brockley Rise, London	
Ward	Crofton Park	
Contributors	Louisa Orchard	
Class	PART 1	23 January 2020

Reg. Nos.

(A) DC/19/111251

Application dated

25<sup>th</sup> February 2019

Applicant

IG Estates Ltd on behalf of Investor Alliance Ltd.

Proposal

Construction of a part three/part four storey building on land at the corner of Duncombe Hill and Brockley Rise SE23, to provide 6 two bedroom and 1 one bedroom self-contained flats, together with landscaping, cycle storage and bin stores.

Applicants Plan Nos.

3613 – LP, , 3613-06, 3613-07, 3613- 08, 3613-09, 3613-11, 3613-12 (October 2018, Chapman Design LLP), CIL Form, Tree Survey and Supporting Letter (20<sup>th</sup> June 2018, Wharton), Planning, Design and Access Statement (February 2019, IG Estates), received 04<sup>th</sup> March 2019.

3613-01 Rev A, 3613-01 Rev A, 3613 – 02 Rev A, 3613 – 02 Rev, 3613 – 04 Rev A, 3613 – 05 Rev A, 3613-10 Rev A, (October 2018, Chapman Design LLP), received 25<sup>th</sup> March 2019.

Landscape Design Statement (06<sup>th</sup> June 2019, CSA Environmental), Landscape Proposals CSA/4402/100 (June 2019, CSA Environmental), received 06<sup>th</sup> June 2019.

Air Quality Assessment (24<sup>th</sup> April 2019, Eden Green Environmental Limited), received 22<sup>nd</sup> May 2019.

Background Papers

- (1) Case File DC/19/111251
- (2) Local Development Framework Documents
- (3) The London Plan

Designation

PTAL 5

# 1 SUMMARY

1 This report sets out Officer's recommendations for the above proposal. The application is before members for a decision as the recommendation is to **refuse**, and:

- There are 3 or more valid planning objections; and
- There is 1 or more objection from a recognised residents' association or community/amenity group within their area.

# 2 SITE AND CONTEXT

## ***SITE DESCRIPTION AND CURRENT USE***

2 The application site is a 420 sqm triangular shaped parcel of land which is part of a larger area of open space facing Brockley Rise at the corner of Duncombe Hill. It is approximately 350 metres walking distance south east of Honor Oak high street.

3 The application site comprises a small area of open space which is bounded on two sides by a knee high decorative fence. A group of five trees subject to a TPO are located on the application site itself. A further tree with a TPO attached is located just beyond the site on the remaining open space, which is owned by the Council.

4 The remaining area of Council owned open space which, excluding the application site, is a strip of land linking Duncombe Hill and Brockley Rise. This area includes a concrete public path with steps and railings, in addition to a bench which looks over the path, and the application site. The Crofton Park Ward information board faces Brockley Rise at the edge of this area.

5 On 6<sup>th</sup> May 1968 a tenancy agreement was entered into between the Council and "William's Poster Advertising Company LTD", later JC Decaux. The agreement required the preservation of the company's land (the application site) as a "public garden", in exchange for the use of the rear boundary of the area within the council's ownership for the display of advertising. A copy of the tenancy agreement has been appended to this report.

6 That agreement was for an initial period of three years, then on a year to year basis thereafter. A provision was included within the agreement that either party (the council or the company) had the right to terminate the agreement with a 12 months notice period.

7 JC Decaux served notice on the Council and on the expiry of the 12 month notice period the advertising panels were removed from the Council's land and the application site was no longer required to be retained as a "public garden". JC Decaux then sold the land which now forms the application site.

### *London Squares*

8 At Table 2 Annex 1 of Lewisham's Development Management Local Plan it states:

*"Table 2 lists London Squares within the London Borough of Lewisham protected by the London Squares Preservation Act 1931. London Squares are small open spaces protected by the Act as follows: Clause 3 (1) Subject to the provisions of this Act a protected square shall not be used otherwise than for one of the following purposes (that is to say) the purpose of an ornamental garden, pleasure ground or ground for play rest or recreation (in this Act referred to as 'authorised purposes') and no building or other structure or erection shall be erected or placed on or over any protected square except*

*such as may be necessary or convenient for or in connection with the use and maintenance of such square for one or more of the authorised purposes. Most of these squares, due to their small size, have not been designated as open space on the Policies Map.”*

- 9 Table 2 identifies that the ID Ref 63 London Square is located at Duncombe Hill however it is not identified on the Policies Map. The London Square afforded protection under the London Squares Preservation Act is located behind the dwellings on the southern side of Duncombe Hill. See indicative Figure 1 below. The shaded triangular shape indicates the area that includes the application site, the white rectangular box is the designated London Square.



*Figure 1: Taken from Lewisham's Open Spaces Assessment (April 2019)*

#### *Summary*

- 10 Officers' are therefore not aware of any operative legal impediment that restricts the development of the application site .

#### **CHARACTER OF AREA**

- 11 The character of the local area surrounding this site is mixed, befitting its location on a main north/south arterial road, the B218.

- 12 A commercial centre and shopping parade are located along the eastern side of Stondon Road (B218) and Brockley Rise approximately 100 metres north of the site before the two roads merge to become Brockley Rise (B218). This commercial character continues for a small section on the western side of Brockley Rise (B218) between Gabriel Street and Ackroyd Road, which is opposite the northern part of the application site. Honor Lea, a three storey purpose built residential institution is directly opposite the southern part of the site.

- 13 To the east of the site the land steeply rises towards Blythe Hill fields, with a residential area of suburban perimeter blocks. To the west towards Honor Oak is a residential area of urban terrace perimeter blocks. Southwards along Brockley Rise the character is predominantly residential with a mix of two and three storey buildings.

#### **HERITAGE/ARCHAEOLOGY**

- 14 The site does not fall within a conservation area, nor does it fall within the setting of a listed building.

## **TRANSPORT**

- 15 The Site has a PTAL of 5 which is very good. It is approximately 500 metres walking distance from Honor Oak train station. A bus stop and shelter are located on the pedestrian pavement directly outside the application site for southbound services. The corresponding bus stop for northbound services is 20 metres to the south of the subject side on the adjacent side of the road outside Honor Lea residential home.

## **3 RELEVANT PLANNING HISTORY**

**ENF/19/00032: Enforcement notice issued 13<sup>th</sup> February 2019**, “Without planning permission, the erection of hoarding and associated gates on the land at junction of Duncombe Hill and Brockley Rise.” The 2.3 metre hoarding was constructed in anticipation of the current planning application to cease use of the site as publically accessible open space following the end of the tenancy agreement preserving the land as such and subsequent change of ownership.

The enforcement notice was appealed (Appeal Ref: APP/C5690/C/19/3224210) and the appeal was dismissed on all grounds on 27<sup>th</sup> September 2019. The enforcement notice was therefore upheld and as a result the hoarding was removed.

In their report, as part of their justification for dismissing the appeal the Inspector stated at Paragraph 3 “*The land is on a prominent corner at the western end of the residential street Duncombe Hill at its junction with Brockley Rise, a busy street with shops, bus stops, a public house and other businesses. Before the timber hoarding was erected photographs show that the land was a grassed area with a group of trees which made a very positive contribution to the attractiveness of the street scene. The triangular shaped open space, although small, provided visual relief within the urban surroundings and complemented the street trees and larger open spaces in the area. Representations on the appeal indicate that the small open space is much valued by the local community.*”

Furthermore, at paragraph 5 they state, “*Accordingly the enclosure of the open space has resulted in the loss of the ability of residents, other members of the local community and passers-by to fully appreciate the pleasant greenspace and trees and has severely eroded its amenity value. The development has a very harmful effect on the appearance of the site and its surroundings.*”

The hoarding has now been replaced by 6 approximately 1.5m high posts identifying that the site is private land.

## **4 CURRENT PLANNING APPLICATION**

### **4.1 THE PROPOSALS**

- 16 The application is for the removal of the existing 5 trees on site, and the construction of a part three, part four storey building consisting of 7 residential flats. Of the 7 flats, 6 are proposed to be two bedroom and one is proposed to be one bedroom.
- 17 Each unit is proposed to have an external fully glazed balcony on the western elevation facing Brockley Rise. The entrance to the building would be located on building’s southern elevation facing Duncombe Hill. The four storey element would be closest to Brockley Rise with the three storey element creating a step down to the rear eastern elevation. 23 cycle parking spaces are proposed to be located in a ‘lightweight polycarbonate cycle store’ in front of the building at the corner closest to the Duncombe Hill and Brockley Rise junction.

- 18 Revisions have been made to the proposal during the course of the application period which include:
- Submission of Landscaping Scheme.

## 5 CONSULTATION

### 5.1 PRE-APPLICATION ENGAGEMENT

- 19 No pre-application advice was sought prior to the submission of the current planning application.

### 5.2 APPLICATION PUBLICITY

- 20 A site notice was displayed on 28<sup>th</sup> March 2019.
- 21 Letters were sent to residents and businesses in the surrounding area and the relevant ward Councillors on 26<sup>th</sup> and 28<sup>th</sup> March 2019.
- 22 141 individual objections were received by the Council, in addition to 1 petition with 3,328 signatures requesting that the planning application is refused. 1 comment in support of the scheme was received.

#### 5.2.1 Objections

Material planning consideration	Paragraph or section where addressed
Loss of existing trees: <ul style="list-style-type: none"> <li>- As they provide important visual amenity.</li> <li>- Contribution to air quality in a congested area of pollution.</li> <li>- flood risk will increase as a result of the removal of trees.</li> <li>- New proposed trees are not sufficient replacement.</li> </ul>	7.6
Loss of open/green space: <ul style="list-style-type: none"> <li>- Important place for rest and more easily accessible than Blythe Hill which is up a large hill.</li> <li>- Dog walkers use the area.</li> <li>- Only green space along two mile stretch of Brockely Rise</li> <li>- Value to local community.</li> </ul>	7.1
Design: <ul style="list-style-type: none"> <li>- Overbearing in relation to local context.</li> <li>- Too tall and large for the site and should be considered over development.</li> <li>- Flawed design</li> </ul>	7.3

Highways: <ul style="list-style-type: none"> <li>- Reduced visibility at T-Junction at Duncombe Hill and Brockley Rise.</li> <li>- Lack of car parking proposed as part of the development.</li> </ul>	7.4
Lack of affordable housing <ul style="list-style-type: none"> <li>- affordable housing is not provided within the proposed development.</li> </ul>	7.2.2

23 A number of non-material planning considerations were also raised as follows:

- Construction of hoardings: Officer comment: dealt with under enforcement action and have since been removed as identified in section 3 of this report.
- Open space has been poorly maintained and run down: Officer comment: following termination of tenancy agreement identified in paragraph's 5-7 of this report there is no arrangement to preserve the land as a "public garden".
- Open space has been sold by the council for development: Officer comment: the land was not owned by the council but it was maintained as a "public garden" per the tenancy agreement of 1968 until that was terminated as identified in paragraph's 5-7 of this report.

24 A joint letter was sent by the Local Ward Councillors objecting to the scheme.

<b>Material planning consideration</b>	<b>Paragraph or section where addressed</b>
Historic role as open space since at least the 19 <sup>th</sup> Century.	49
The site has amenity value for the local community as seen in its designation in the draft neighbourhood plan.	6.7 and 47
The loss of five mature trees in addition to the fact the landscape visualisations are misleading and unlikely to accurately reflect its appearance.	7.6.1
Insufficient information has been submitted to assess the schemes environmental impact and sustainability credentials	7.6
The design is discordant with the surrounding environment and is too tall taking account of its prominent location, it is also flawed seen in the flats which would overlook the bus stop	101-102 and 77-79

25 A number of non-material planning considerations were also raised as follows:

- There was no meaningful pre-application engagement. Officer comment: While encouraged, pre-application engagement is not a statutory requirement.
- Construction of hoardings: Officer comment: dealt with under enforcement action and have since been removed as identified in section 3 of this report.

26 The Forest Hill Amenity Society, Friends of Honor Oak, Brockley Rise Residents Association, and the Ackroyd Society have objected to the application:

<b>Material planning consideration</b>	<b>Para where addressed</b>
The site has historic value as open space as far back as 1746.	49
Loss of Green Space: <ul style="list-style-type: none"> <li>- From public amenity.</li> <li>- which is designated in the draft Neighbourhood Plan.</li> <li>- building on the site would not conform with the Development Plan.</li> </ul>	7.1
Loss of trees which have TPOs and misleading nature of the CGIs.	7.6
Poor design and layout in relation to overlooking between flats and size of living accommodation.	74-83
Increased pressure on street parking owing to the fact no carparking is provided in the scheme.	117-119
Loss of trees in relation to mitigating air quality as the site is in an Air Quality Management Area.	7.6.1 and 7.6.2

30 A number of non-material planning considerations were also raised as follows

- Construction of hoardings: Officer comment: dealt with under enforcement action and have since been removed as identified in section 3 of this report.
- The site is a designated London Square: Officer comment: this site is not a designated London Square as identified in paragraphs 9-10 of this report.

### 5.2.2 Support

<b>Material planning consideration</b>	<b>Para where addressed</b>
The site is currently not well used and its redevelopment would improve its appearance based on the CGI's provided.	7.3

## 5.3 INTERNAL CONSULTATION

27 The following internal consultees were notified on 25<sup>th</sup> July 2019, 19<sup>th</sup> August 2019 and 6<sup>th</sup> January 2020.

28 Arbouricultural Officer: objection raised. See section 7.6 for further details.

29 Urban Design: objection raised. See section 7.3 for further details.

30 Highways: no objection subject to the provision of information. See section 7.4 for further details.

## **6 POLICY CONTEXT**

### **6.1 LEGISLATION**

31 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 DEVELOPMENT PLAN**

32 The Development Plan comprises:

- London Plan Consolidated With Alterations Since 2011 (March 2016)
- Core Strategy (June 2011)
- Development Management Local Plan (November 2014)
- Site Allocations Local Plan (June 2013)
- Lewisham Town Centre Local Plan (February 2014)

### **6.3 MATERIAL CONSIDERATIONS**

33 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.

34 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.

35 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.

### **6.4 NATIONAL POLICY & GUIDANCE**

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

### **6.5 DRAFT LONDON PLAN**

36 The Mayor of London published a draft London Plan on 29 November 2017 and minor modifications were published on 13 August 2018. The Examination in Public commenced on 15 January 2019 and concluded on 22 May 2019. The Inspector's report was published 08 October 2019. The Mayors response to the Inspectors Report in the form of the 'Intend to Publish London Plan' was issued publically on 9<sup>th</sup> December 2019 and provided to the Secretary of State who has six weeks to provide comment on the Plan. This document now has some increasing weight as a material consideration when determining planning applications. The relevant draft policies are discussed within the report.

## **6.6 SUPPLEMENTARY PLANNING GUIDANCE**

37 Lewisham SPG/SPD: no relevant SPG or SPD.

38 London Plan SPG/SPD:

- Sustainable Design and Construction (April 2014)
- Character and Context (June 2014)
- Accessible London: Achieving an Inclusive Environment (October 2014)
- Housing (March 2016)
- Energy Assessment Guidance (October 2018)

## **6.7 HOPCROFT NEIGHBOURHOOD PLAN**

39 The site is within the boundary of the Hopcroft Neighbourhood Plan area. A draft of the Plan was submitted to the Council in September 2018 however it has not yet reached referendum stage, or been examined. It is therefore a material consideration in the determination of this application but carries very limited weight in the determination of planning applications.

## **6.8 OTHER MATERIAL CONSIDERATIONS**

40 The Open Space Assessment (Jon Sheaff Associates) (April 2019) produced in support of the emerging Local Plan.

## **7 PLANNING CONSIDERATIONS**

41 The main issues are:

- Principle of Development
- Housing
- Urban Design
- Impact on Adjoining Properties
- Transport
- Natural Environment

### **7.1 PRINCIPLE OF DEVELOPMENT**

#### *General policy*

42 Lewisham is defined as an Inner London borough in the London Plan. London Plan Policy 2.9 sets out the Mayor of London's vision for Inner London. This includes among other things sustaining and enhancing its recent economic and demographic growth; supporting and sustaining existing and new communities; addressing its unique concentrations of deprivation; ensuring the availability of appropriate workspaces for the area's changing economy; and improving quality of life and health.

43 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.

## *Decision Taking Framework*

### *Loss of Open Space*

44 Core Strategy Policy 12 states that in recognising the strategic importance of the natural environment and to help mitigate against climate change the Council will:

- a. conserve nature
- b. green the public realm
- c. provide opportunities for sport, recreation, leisure and well-being

This will be achieved by 2 b. protecting Metropolitan Open Land, open space, urban green space and green corridors from inappropriate built development to ensure there is no adverse effect on their use management, amenity or enjoyment in accordance with the principles of PPG2 and the London Plan.

45 Core Strategy Policy 15 states that any adverse impact on neighbouring amenity, conservation areas and designated and non designated heritage assets, biodiversity or open space as a result of small scale development will need to be addressed.

46 Paragraph 97 of the NPPF stipulates that existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space to be surplus to requirements. Open Space is defined in the NPPF as “All open space of public value.... and can act as a visual amenity”.

47 The site is located within the designated boundary of the the Hopcroft Neighbourhood Plan. The Neighbourhood Plan, currently in draft form designates the application site as ‘Site D’ within the policy GS1 Protecting Green Space and Local Green Space which seeks to protect the site from development, other than structures ancillary to its use, as “local green space” However, very limited weight can be applied to the emerging policy within draft Neighbourhood Plan the as it has not been adopted.

48 The Open Space Assessment (Jon Sheaff Associates) (April 2019) produced as part of the evidence base for London Borough of Lewisham’s Local Plan Review identifies that the current open space levels will need to increase by approximately 50 ha to keep up with the Borough’s anticipated population growth. The Assessment draws attention to the deficiency of park types which includes the area surrounding the subject site. It also states at Section 5.3.2 that *“There is a shortage of open space sites of all typologies in the relatively dense area of housing between Forest Hill station and Blythe Hill Fields. Housing typologies in this area are such that the potential to develop enhanced connectivity between greenspace sites is limited.”* The area is surveyed as part of the Assessment (covering both the land within the applicant and the Council’s ownership) as an pocket park/amenity area and is assessed as being “poor quality”.

### *Discussion*

49 The application site consists of a large part of an existing open space. Historic records indicate that the application site has never been built on, and that it has always served as an area of local amenity since the urbanisation of the area in the mid to late 19<sup>th</sup> Century. It is therefore considered to be a greenfield site. No information to the contrary has been submitted in support of the application to indicate otherwise.

50 The open space is in a prominent location at the junction of Stonnard Road and Brockley Rise which is an area of dense low rise buildings. The park is higher than street level and slopes upwards toward Blythe Hill park to the east. The site acts as an area of visual amenity to residents and has historically been wholly publically accessible. Its function is also demonstrated by the ward information board situated at the edge of the park The construction of the proposed development would necessitate 5 existing trees at the site to

be removed (addressed further in section 7.6). The proposed development would leave only the Council owned small strip to the rear, with the application site's sense of openness and character lost.

51 Core strategy Policy 12 at 2 b. affords protection to open spaces such as the application site by seeking to protect their character and amenity from inappropriate built development. As this is a strategic policy it is necessary to assess the application site specifically. Taking into account the existing and historic context identified above, it is considered most forms of development would be inappropriate at the application site as they would unacceptably erode its character and amenity, this includes the development proposed as part of this application.

52 The open space including the application site is not designated as such within Development Plan policy, therefore the same level of protection against re-development is not afforded to it as designated open space. However the fact that it is not designated does not mean that it is an area of open space suitable for development. In the context of the application site it is considered that great weight should be applied to the retention of area relative to its undesignated status.

53 Paragraph 97 of the NPPF sets out that open space should not be built on unless an assessment has been undertaken which has clearly shown the open space to be surplus to requirements. The Council's own strategic assessment does not indicate that the site is clearly surplus to requirements and no assessment has been submitted in support of the application indicating that the site is surplus to requirements.

54 *Residential Use*

*Policy*

55 The London Plan outlines through Policy 3.3, 3.5 and 3.8 that there is a pressing need for more homes in London and that a genuine choice of new homes should be supported which are of the highest quality and of varying sizes and tenures in accordance with Local Development Frameworks.

56 The Intend to Publish London Plan Policy H2<sup>1</sup> sets out that boroughs should pro-actively support well designed new homes on small sites through planning decisions and plan-making, particularly in areas with a high PTAL.

*Discussion*

57 The need for housing in London is clearly and robustly evidenced within Local Plan Policy. The site has a very good PTAL, the design of the scheme is assessed in section 7.3 of this report.

---

<sup>1</sup> The 'Intend to Publish' version of the London Plan was issued to the Secretary of State on 9<sup>th</sup> December 2019. This, the latest version of the plan, takes account of the recommendations made within the Planning Inspectors Report. One of the key recommendations was the deletion of the H2A Small Sites. Rather than delete the draft policy H2A the Mayor has considerably reduced its scope by removing the presumption in favour of small sites, and has reduced the target number of dwellings that are expected to be delivered through small sites.

### 7.1.1 Principle of development conclusions

58 It is clear from the assessment above that there is policy support for both residential development, and the protection of open space. It is therefore necessary to balance the need for residential development against the loss of open space in relation to the current application.

59 Fundamentally officers consider that taking into account the site specific assessment above, the proposed development would amount to inappropriate development. The provision of seven market residential units would not provide sufficient benefits to outweigh the impact on the character and amenity of the open space, contrary to Core Strategy Policy 12.

60 Additionally, the loss of the existing open space has not been justified, as it has not been demonstrated that the open space has clearly been shown to be surplus to requirements contrary to NPPF paragraph 97. On the basis that the Council's own strategic assessment has not identified that the site is clearly surplus to requirements it is considered unlikely that this could be demonstrated through an additional assessment.

## 7.2 HOUSING

61 This section covers: (i) the contribution to housing supply, including density; (ii) the dwelling size mix; (iii) the standard of accommodation.

### 7.2.1 Contribution to housing supply

#### *Policy*

62 National and regional policy promotes the most efficient use of land.

#### *Discussion*

63 Table 1 below sets out the measures of density criteria required in the supporting text of Draft London Plan Policy D3 for all sites with new residential units. The plans provided do not identify the number of bedspaces, however, all of the drawings show double beds within the bedrooms and therefore are considered to be 1 bedroom 2 person and 2 bedroom 4 person.

**Table 1 : Measures of Density**

Criteria	Value	Value/area
Site Area (ha)	0.04	BLANK
Units	7	175
Habitable rooms	20	500
Bedrooms	13	325
Bedspaces	26	650

#### *Summary*

64 The density arising out of the proposed development only taking into account the hectare to unit (or other) ratio could be acceptable, subject to compliance with the relevant design policies.

## 7.2.2 Affordable housing

- 65 No affordable housing is required to be provided as the development is below the 10 unit threshold set out in Core Strategy Policy 1.
- 66 No affordable housing contribution has been offered by the applicant as part of the proposed development nor does policy require the applicant to make such an offer.

## 7.2.3 Residential Quality

### *General Policy*

- 67 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 relevant policies of the London Plan (Policy 3.5), the Core Strategy (CSP 15), the Local Plan (DMP 32) and associated guidance (Housing SPG 2017, GLA)
- 68 The main components of residential quality are: (i) space standards; (ii) outlook and privacy; (iii) overheating; (iv) daylight and sunlight; (v) noise and disturbance; (vi) accessibility and inclusivity.

### ***Internal space standards***

#### *Policy*

- 69 London Plan (2016) Policy 3.5 at Table 3.3 identifies the minimum space standards for new residential developments including conversions to residential use. This table is provided in support of DM Policy 32 of the Development Management Local Plan. which also sets out the acceptable design parameters for proposed development to be considered acceptable.
- 70 Draft London Plan Policy D6 reiterates the standards set out in Table 3.3 of the adopted London Plan and the table in support of DM Policy 32 of the Development Management Local Plan.

#### *Discussion*

- 71 The unit sizes of the proposed development are set out below in Table 2.

**Table 2: Standard of Accommodation**

	Unit type	Unit size (GIA) (sqm)	Minimum Standard (GIA) (sqm)	External Amenity (Balcony)	Minimum Standard (sqm)
1	1 bedroom 2 person*	62	50	6.2	5
2	2 bedroom 4 person	68	70	6.5	7

3	2 bedroom 4 person	62	70	6.5	7
4	2 bedroom 4 person	68	70	6.5	7
5	2 bedroom 4 person	62	70	6.5	7
6	2 bedroom 4 person	68	70	6.5	7
7	2 bedroom 4 person	62	70	6.5	7

\* Identified on the proposed ground floor plan (Drawing No 3613 -03 Rev A) as “wheelchair suitable unit” however whether the unit has been designed in accordance with M4(3) has not been identified.

72 The required amount of built in storage is provided within all of the units except Flat 1 which does not provide built in storage.

73 It is clear from Table 2 that all of the units apart from Flat 1 are below the space standards required. The proposed development does not therefore have an acceptable standard of accommodation for future occupiers.

### ***Privacy, Outlook, Daylight and Sunlight***

#### *Policy*

74 DM Policy 32 requires that all new residential development ‘provide a satisfactory level of privacy, outlook and natural light both for its future residents and its neighbours’, and Paragraph 123 of the NPPF advocates a pragmatic approach to daylight and sunlight when looking to optimise potential development sites.

75 DM Policy 33 (9) f) states that proposals for new residential development on amenity areas provide adequate privacy for the new development.

76 Draft London Plan Policy D3 sets out at 7) deliver appropriate outlook, privacy and amenity.

#### *Discussion*

##### *Privacy*

77 The proposed development is located at a prominent location on the intersection of Brockley Rise and Duncombe Hill. A bus stop is located directly outside the site’s boundary on Brockley Rise.

78 The proposed units are organised so that bedrooms and living rooms with the proposed units would be located on the north western elevation of the proposed development facing Brockley Rise.. This north western elevation also has a significant amount of glazing (incorrectly labelled southern elevation on drawing number 3613-08), including balconies

which are proposed to be fully glazed. Windows are located on the south facing façade Flats' 6 and 4 which would enable future occupiers to limited overlooking into the living areas of Flats' 3 and 5. At its closest point, glazed elements of the development are located approximately 3 metres from the existing bustop, where the bedroom for flat 2 is located.

- 79 This arrangement even with the foundations which lift the scheme off the ground by approximately 1 metre as a result of the level change across the site would allow people waiting at the bus stop to look directly into the bedroom windows of Flat 2, in addition to the living spaces of Flat 2 and Flat 1. This would have an unacceptable impact on the privacy of future occupiers of Flats 1 and 2.

#### *Outlook*

- 80 The closest relationship to adjacent existing properties where proposed habitable rooms would be located facing each other is approximately 24 metres south of the development at 2, 4, 6, 6a, and 8 Duncombe Hill. The proposed development is therefore considered to provide an appropriate level of outlook for future occupiers.
- 81 No.5 Duncombe Hill is located directly east of the site and is approximately 16 metres from the proposed development's eastern elevation which would contain obscure glazed windows. This property would not therefore cause an unsatisfactory outlook for the proposed development.
- 82 The corner of No. 2 Ackroyd Road is located closest to the north western elevation, and is approximately 25 metres away on the opposing side of Brockley Rise. Ackroyd Road is angled so the flank elevation would be closest to the north western elevation. This orientation and distance would mean that this property would not therefore cause an unsatisfactory outlook for the proposed development.
- 83 The Honor Lea residential institution is located approximately 40 metres to the south east of the development and as a result would not cause an unsatisfactory outlook for the proposed development.

#### *Daylight and Sunlight*

- 84 The proposed development would receive an appropriate level of daylight and sunlight owing to the aforementioned distance to the surrounding buildings and the height of these buildings (between 2 and 3 storeys).

### ***Accessibility and inclusivity***

#### *Policy*

- 85 LPP 3.8 requires that 10% of residential units to be designed to Building Regulation standard M4(3) 'wheelchair user dwellings', i.e. designed to be wheelchair accessible, or easily adaptable for residents who are wheelchair users, with the remaining 90% to M4(2) 'accessible and adaptable dwellings'.

#### *Discussion*

- 86 As the proposed development would provide less than 10 residential units, policy does not require that an accessible unit is provided within the proposed development. Notwithstanding this, an accessible unit would be provided at Flat 1. A wheelchair unit statement has been provided, it does not clarify that the unit would comply with M4(3). If compliant this would act as a benefit of the proposed development, but not sufficient benefit so as to make the scheme acceptable.

## **7.2.4 Housing conclusion**

87 Taking into account the assessment above, the proposed development would provide poor quality standard of accommodation for future occupiers. Six of the seven proposed units would be undersized and the relationship of Units 1 and 2 with the site's north western boundary would have an unacceptable impact on privacy, contrary to Policy DM Policy 32 and DM Policy 33 of the Lewisham's Development Management Local Plan.

## **7.3 URBAN DESIGN**

### *General Policy*

88 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.

89 London Plan Policy 3.4 identifies that development should optimise housing output, relative to the location type according to the density matrix at Table 3.2. This optimisation is subject to local context and character, the design principles in Chapter 7 of the London Plan and public transport capacity.

90 London Plan Policy 7.4 sets out the criteria that planning decisions should be made against in relation to the Urban Character of an area, and Policy 7.6 sets this out in relation to Architecture.

91 DM Policy 30 sets out general and more detailed principles to take into account when considering the design of a proposed development.

92 In addition requiring adherence to internal space standards, as set out above, DM Policy 32 also seeks to ensure that the siting and layout of new build development should respond positively to site specific constraints and opportunities.

93 DM Policy 33 sets out further design considerations for suitable development on "infill sites, backland sites and back gardens and amenity areas". At 33 9. It provides additional requirements for development on amenity areas such as the application site specifically and that this type of development will only be permitted if it. a) repairs or re-provides street frontages, b) increases natural surveillance

94 Draft London Plan Policy D3 'Optimising site capacity through the design led approach' is an evolution of London Plan Policy 3.4. Draft Policy and includes at 5) that development should achieve safe, secure and inclusive environments.

### *Discussion*

## **7.3.1 Appearance and character**

95 No contextual analysis has been submitted to demonstrate how the positive elements of the surrounding area and context have informed the final design. An analysis of the application site's context is a requirement set out in DM policies 30. Without this information it is not possible to robustly assess the character of the proposed development.

96 DM policy 30 (5) requires that the application materials demonstrate that the proposed development is a site specific response. It is the Urban Design Officer's view that the proposed development does not address the requirements of 30 (5) as the design and access statement submitted does not include any information on the surrounding area in relation to the elements that have been incorporated into the design.

97 Using the limited information that has been provided Officers' consider that the proposed elevational treatment and overall design is poor quality and would not be a positive contribution to the area and the character of the streetscape. Additionally, the introduction of balconies on the ground floor units is not clearly justified as part of a wider response to the constraints of the site.

### ***Layout***

98 The proposed layout would infill the existing open space that has not previously been built on. Even though it is recognised that some landscaping is proposed that could enhance the appearance of the proposed development. Officers have major concerns in regards to the proximity to the application site's boundaries; the location of the bin and cycle stores and the location of the ground floor balconies.

99 To the east of the proposed development where the remaining part of the open space would be located including the public path, the siting and layout of the proposed development would create an unwelcoming area which would not be sufficiently overlooked on the basis that only blank three storey wall with obscure glazed bathroom windows would be located on the eastern elevation of the scheme.

100 The proposed development has not addressed the topography of that site and the end result is that balconies are located at ground floor level which would have been unnecessary had topography of the site been given greater consideration.

### ***Form and Scale***

101 In terms of massing and scale, the proposed building would not follow any established building lines and would not relate to the urban typology of the area. No contextual analysis has been submitted and therefore a full assessment cannot be undertaken.

102 Notwithstanding the absence of contextual information Officers' consider the proposed development would be a prominent element on the streetscape which would fail to integrate with its surroundings through the use of part three and part four storey generic form on a uniquely constrained site. As previously highlighted the wider area is characterised by urban and suburban perimeter blocks..

### ***Detailing and Materials***

103 The building materials are inconsistently referred to within the planning application and supporting materials that have been submitted. The application form states it will be covered in "*Terrazo cladding, blue engineering brick below dpc and areas of living green walls*" and the design and access statement states that it will be covered in "*artstone cladding*" in addition to the living walls. From the CGI's submitted in support of the application it appears to be strips of grey slate/brick cladding.

104 A significant amount of glazing is also proposed on the western elevation facing Brockley Rise, as discussed in section 7.2.3 above, In addition to the areas around the entrance on Duncombe Hill. A grey aluminium roof, windows details and grey aluminium bands are also included to demarcate each floor.

105 Insufficient and inconsistent information has been provided to understand whether the materials and detailing are of sufficient quality. This information would have been requested and assessed accordingly if the proposed development had otherwise been found acceptable.

### **7.3.2 Public Realm**

- 106 In the design and access statement it is stated that there will be no fences or other boundary treatment around the development to retain a sense of openness; as identified in section 7.2 of this report, this arrangement raises privacy and safety concerns for the ground floor flats, especially given the close proximity to a bus stop
- 107 This intention conflicts with landscape scheme that was submitted following the submission of the application which bounds the site with hedgerows in all but a small section (addressed in more detail in section 7.6 of this report). the design and access statement acknowledges the sensitivity of the site and states that the scheme has been designed to reflect the current openness of the site and to integrate well with the public path and benches. However Officer's considered this intention to be poorly executed, for example the aforementioned blank elevation along the eastern boundary beside the public path.
- 108 Furthermore, the cycle store that would serve the proposed development would be located at a highly visible corner of the development where Brockley Rise meets Duncombe Hill. No details have been submitted with regards to the bin and cycle store other than an annotation on the site plan that the former will be "*lightweight poly carbonate*" and the latter will be a "*rendered wall*". It is therefore unclear how these elements would look and what their resulting impact will be on the streetscene would be, they are not included within the CGI's of the scheme. Whilst this detail is not provided it is considered that the location of the cycle store and bin store would have a negative impact on the streetscene and views northwards along Brockley Rise.

### **7.3.3 Urban design conclusion**

- 109 Overall the design of the proposed development is unacceptable as the applicant failed to demonstrate how the proposed design is a site specific response that enhances and supports the character of the area and that relates to the streetscape. This has led to a what officers consider to be a poor quality scheme which would significantly detract from the character of the local area contrary to DM Policy 30 and DM Policy 33.

## **7.4 TRANSPORT IMPACT**

### *General policy*

- 110 Core Strategy Policy 14 provides the Council's approach to prioritizing sustainable transport.
- 111 In Section 9 of the NPPF 'Promoting sustainable transport' it sets out how transport should be dealt with in decision taking. Paragraphs 108 and 110 set out criteria against which development proposals can be assessed.
- 112 At Paragraph 108 which also applies to the interpretation of this criteria, it states "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

### **7.4.1 Transport Modes**

#### *Public Transport*

- 113 The site has a PTAL rating of 5 indicating that access to public transport is very good. It is located approximately 500 metres from Honor Oak Park overground / mainline train station with regular services to London Bridge.

### *Cycling*

- 114 The Adopted London Plan sets out the cycle parking requirements at Policy 6.13 at for residential development in Table 6.3. The Intend to Publish London Plan stipulates the minimum cycle parking standards at Policy T5, Table 10.2.
- 115 13 spaces are required to be provided under the adopted London Plan. 13.5 cycle parking spaces are required to be provided by the development with a further 2 visitor cycle parking spaces. Space for 23 bicycles are proposed to be provided according to the site plan (as discussed in section 7.3 above).
- 116 The proposed provision of cycle parking in combination with its prominent location within the site makes it likely that this element would be an overly prominent feature of the scheme. This concern is exacerbated by the failure of the applicant to provide details on the appearance of the cycle store. Overall it is considered that the applicant has failed to demonstrate that this element will be successfully visually integrated into the scheme thereby failing to meet the requirements of Policy 15 of the Core Strategy and Policies DM30 and DM32 of the Development Management Local Plan

### *Private Cars*

- 117 Adopted London Plan policy states that “all developments in areas of good public transport accessibility in all parts of London should aim for significantly less than 1 space per unit”. Draft London Plan policy T6 states that car free development should be the starting point for all development proposals.
- 118 The site is not located within a Controlled Parking Zone (CPZ).
- 119 Taking into account the application site’s high PTAL and scale the car free nature of the proposed development is considered acceptable.

## **7.4.2 Servicing and refuse**

- 120 As discussed in section 7.3, a bin store is located within the application site on the southern elevation just above the pedestrian pavement on Duncombe Hill. Details would need to be provided to ensure It would be of sufficient capacity to contain the refuse bins required by the development. However, details have not been provided of the bin store other than that it would be ‘enclosed in a rendered wall’, these details could have been requested by condition had the proposed development otherwise been found acceptable. As with the arrangements for cycle storage, the applicant has failed to demonstrate that this element will be successfully visually integrated into the scheme thereby failing to meet the requirements of Policy 15 of the Core Strategy and Policies DM30 and DM32 of the Development Management Local Plan.

## **7.4.3 Transport impact conclusion**

- 121 Given the modest scale of the development it is not considered that it would result in a severe impact on the highways network. Whilst the current arrangement of cycle parking and refuse is not currently acceptable a solution would have been sought with the applicant if the proposed development had otherwise been found acceptable.

## **7.5 LIVING CONDITIONS OF NEIGHBOURS**

### *General Policy*

- 122 As stated in section 7.3 above, DM Policy 32 requires that all new residential development ‘provide a satisfactory level of privacy, outlook and natural light both for its future residents

and its neighbours', and Paragraph 123 of the NPPF advocates a pragmatic approach to daylight and sunlight when looking to optimise potential development sites.

- 123 DM Policy 33 9. e) states that new development should provide no significant loss of privacy and amenity, and no loss of security for adjoining residential development and private back gardens.

### **7.5.1 Daylight and Sunlight**

- 124 The proposed development is part three and part four storeys. It's closest neighbour is No. 5 Duncombe Hill to the east of the scheme beyond the Council owned area. This property is approximate 16 metres from the boundary of the application site. The proposed building would be three storeys in this location and would not be substantially taller than the property at number 5.

- 125 Sections have not been submitted to clarify the relationship between No. 5 Duncombe Hill and the proposed development. However, there are two windows located on the ground floor of the western elevation of No. 5 Duncombe Hill which provide the only light to the dining room of the property. The application materials are not considered to have demonstrated that the proposed development would not result in a significant loss of light to this unit .

- 126 As identified in section 7.2 the closest relationship to adjacent existing properties where proposed habitable rooms would be located is approximately 24 metres south of the development at 2, 4, 6, 6a, and 8 Duncombe Hill. The corner of No. 2 Ackroyd Road is located closest to the north western elevation, and is approximately 25 metres away on the opposing side of Brockley Rise. The Honor Lea residential care home is located approximately 40 metres to the south east of the development. Taking into account the distances it is not considered likely the proposed development would result in a significant loss of private amenity to these properties.

### **7.5.2 Enclosure, Outlook and Privacy**

- 127 As identified above the closest neighbour to the proposed development a No. 5 Duncombe hill. The distance is sufficient to ensure a satisfactory level of outlook would be retained.

- 128 In terms of privacy, the only fenestration located on the eastern elevation of the proposed building is three obscure glazed windows. The proposed development would not therefore result in an unsatisfactory level of privacy.

### **7.5.3 Impact on neighbours conclusion**

- 129 The proposed development is not considered to have any significant impact on the living conditions of neighbours with respect to the sense of enclosure, outlook or privacy. However it has not been demonstrated that the living room of No.5 Duncombe Hill will not unduly impacted in terms of daylight and sunlight. In this respect the proposed development would be contrary to DM Policy 32 and DM Policy 33 9) e.

## **7.6 NATURAL ENVIRONMENT**

### *General Policy*

- 130 As previously identified, Core Strategy Policy 12 states that in recognising the strategic importance of the natural environment and to help mitigate against climate change the Council will:

a. conserve nature

- b. green the public realm
- c. provide opportunities for sport, recreation, leisure and well-being.

This will be achieved by points including protecting the character, historic interest and amenity of, and within, open spaces, as well as the effects of development outside their boundaries.

- 131 Core Strategy Policy 15 states that any adverse impact on neighbouring amenity, conservation areas and designated and non designated heritage assets, biodiversity or open space as a result of small scale development will need to be addressed.
- 132 Chapter 15 of the NPPF sets out how the framework for conserving and enhancing the natural environment.

### **7.6.1 Green spaces and trees**

#### *Policy*

- 133 DM Policy 25 implements Core Strategy Policy 12. It requires that a Landscape Plan, Landscape Management Plan and Arboricultural Survey in line with BS5837 are submitted in support of applications, where appropriate. 2b) of the policy goes on to state that development will be required to retain trees for the most part and that replacement trees will normally be required.
- 134 London Plan Policy 7.21 states that existing trees of value should be retained and any loss as the result of development should be replaced. This is echoed within draft London Plan Policy G7.

#### *Discussion*

- 135 The application site has five trees located on it with an additional tree just outside the application site boundary to the east of the site within the Council's land ownership. Both the group of five trees currently existing on the application site, and the single tree to the east have Tree Preservation Orders attached (TPOs). These are known as G1 (group of five trees) (information available under reference DC/18/109671) and T1 (single sycamore on adjacent council land) (DC/19/111316). TPO G1 would be removed as a result of the proposed development.
- 136 TPO G1 was given its protected status as the five trees are visually prominent being located on the triangular open space at the road junction of Duncombe Hill with the busy Brockley Rise. The trees form a visually interesting and attractive group with differing crown shapes and foliage colours, and contribute significantly to the public realm visual amenity. The trees provide a focal point for views along Brockley Rise and Ackroyd Road and enhance the streetscape visual amenity.
- 137 TPO T1 was confirmed for similar reasons and would have been included in G1 had it been within the same ownership. The sycamore is considered to be of great significance to the Duncombe Hill street scene visual amenity contributes to the Brockley Rise local area, additionally it complements the foliage interest of the TPO G1.
- 138 An objection to the TPOs was made by the applicant as per their statutory right prior to the TPOs' 'confirmation'. The letter of objection included an Arboricultural Survey. The survey and letter were provided on 20<sup>th</sup> June 2018, prior to the submission of the current planning application. Both the objection letter and survey were re-provided in support of the current application.

- 139 The submitted Tree Constraints Plan within the Arboricultural Survey shows the positions of the trees incorrectly. The Tree Constraints Plan depicts all six trees within the application site boundary. The correct situation is that five trees (TPO G1) are within the development site and the sycamore (TPO T1) is within the council's ownership.
- 140 The Landscape Design Statement provided following the submission of the application is minimal regarding the sensitivity of the site stating only that 'The proposed planting is intended to reflect the character of the surrounding area'. There is no further justification for the design proposals. The Landscape Proposals (drawing number CSA/4403/100) shows boundary hedging enclosing the whole site apart from one small section on the east boundary which conflicts with the statement at 4.15 of the design and access Statement which states "it is proposed to keep the site completely open with no boundary fences as an essential design aspect of the scheme" in addition to the site plan which identifies "open boundaries to the site". The proposed hedges will restrict views across the site and reduce the sense of openness.
- 141 The Landscape Proposals show a bin store which will be within the Root Protection Area of the off- site sycamore (TPO T1). There is no indication of construction details, any level changes or permeability of materials for the hard surfacing within the RPA as required by BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations, clause 7.4 – Permanent hard surfacing within the Root Protection Area.
- 142 There is no Tree Protection Plan for the Root Protection Area of the sycamore (TPO T1) so it is not possible to assess if the foundations to the residential block will be damaging to the sycamore (TPO T1), which is within the Council's ownership. There is no indication if there is a need for crown reduction of sycamore (TPO T1) in order to have clearance for construction scaffolding. There is no CEZ to ensure construction works, storage of materials etc will be managed to prevent root or canopy damage during construction of sycamore (TPO T1).
- 143 The CGIs submitted with the application are misleading as they appear to show fully mature trees and do not accurately depict the scheme based on the plans and landscaping proposals submitted.
- 144 The landscape management regime is generic with insufficient detail especially for the management of the new trees regarding watering frequency, volumes of water per visit and the management of the vertical green walls to ensure the landscape planting will reach maturity.

## **7.6.2 Air Quality**

### *Policy*

- 145 NPPF para 170 states decisions should among other things prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of air pollution. Development should, wherever possible, help to improve local environmental conditions such as air quality.
- 146 LPP 7.14 states new development amongst other requirements must endeavour to maintain the best ambient air quality (air quality neutral) and not cause new exceedances of legal air quality standards. The draft London Plan Policy SI1 echoes this.
- 147 Core Strategy Policy 7 reflects the London Plan. CSP 9 seeks to improve local air quality. DM Policy 23 sets out the required information to support application that might be affected by, or affect, air quality.

### *Discussion*

148 The site is located within the Crofton Park and Honor Oak Air Quality Management Area and as a result an Air Quality Assessment was submitted in support of the application. The AQA has assessed the impact of the construction and operational phases of the development only.

149 The assessment states that there is a low to medium risk of nuisance and/or loss of amenity impacts due to dust nuisance. Mitigation measures are proposed to minimise this impact and if the proposed development had otherwise been found acceptable a condition would have been sought to secure the mitigation measures proposed.

### **7.6.3 Flood Risk and Drainage**

150 The NPPF at paragraph 165 expects major development to incorporate sustainable urban drainage systems (SUDS) unless there is clear evidence it is inappropriate. The application is not for a major development (for residential development this is 10+ dwellings) and therefore no drainage information is required to be submitted in support of the application.

### **7.6.4 Natural Environment conclusion**

151 The loss of the 5 on-site trees, the lack of regard for the long term health and likely future loss of the remaining off-site sycamore (T1 in TPO) is unacceptable. Insufficient and conflicting information has been submitted in relation to the landscaping scheme and its management and officers are not convinced the level of tree and other planting is deliverable or sustainable and therefore cannot be used to offset the loss of trees contrary to DM Policy 25 and London Plan Policy 7.21

152 Furthermore the height and scale of the development and enclosing boundary landscape planting will reduce and restrict the green open space nature of the site and will be hugely detrimental to public realm visual amenity.

## **7.7 LOCAL FINANCE CONSIDERATIONS**

153 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:

- a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown; or
- sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

154 The weight to be attached to a local finance consideration remains a matter for the decision maker.

155 The CIL is therefore a material consideration.

156 £35,000 Lewisham CIL and £30,000 MCIL is estimated to be payable on this application, subject to any valid applications for relief or exemption, and the applicant has completed the relevant form. This would be confirmed at a later date in a Liability Notice.

## **8 EQUALITIES CONSIDERATIONS**

157 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.

158 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.

159 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.

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

161 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

162 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>

163 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**

164 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

165 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.

166 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.

167 This application has the legitimate aim of providing a new building with new residential development. The rights potentially engaged by this application, including Article 8: Respect for your private and family life, home and correspondence and Protocol 1, Article 1: Right to peaceful enjoyment of your property are not considered to be unlawfully interfered with by this proposal.

## **10 CONCLUSION**

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

169 The proposed development is for the removal of a group of 5 trees protected by a TPO (G1) in order to redevelop the site to provide 7 dwellings in part three part four storey building on a small triangular piece of open space at the corner of Brockley Rise and Duncombe Hill.

170 There is an acute need for new housing in London. There is also a need to retain open green space. Both sentiments are reflected in the Development Plan policies set out in this report. It is therefore necessary to balance the needs of one against another.

171 Officers are of the view that the great weight should be applied to the importance of the application site as open space owing to its contribution the character of the area and the visual amenity it provides despite its non-designated status. Therefore as a matter of planning judgment officers' consider that in these specific circumstances the harm caused by the loss of the open space as a result of the proposed development is not outweighed by the provision seven residential units.

172 Officers' consider that the scheme's design would be poor quality, would provide substandard accommodation for future occupiers and it has not been demonstrated that the proposed development would result in the retention of a satisfactory level of daylight and sunlight at No.5 Duncombe Hill.

173 Furthermore, the removal of the trees afforded TPOs (G1) and impact to the long term health of a further TPO protected tree (T1), has not been justified or satisfactorily mitigated.

## 11 RECOMMENDATION

That the Committee resolve to **REFUSE** planning permission for the following reasons.

### REASONS

#### Principle of Development

1. The introduction of the proposed development on to the existing open space would have an unacceptable impact on its character and amenity in an area where no clear surplus of open space has been identified. Contrary to Core Strategy (2011) CS Policy 12, and NPPF paragraph 97.

#### Urban Design

2. The proposed development is not a site specific response to the application site and would result in a poor quality design which is incompatible with the character of the area and would harm the local townscape, particularly seen in its siting in relation to the public path to the east of the site which would create an unwelcoming area, and its lack of regard for the topography of the site which has lead to two ground floor balconies. Contrary to Core Strategy (2011) Policy CS Policy 15, London Plan (2016) Plan Policy 3.4, London Plan (2016) Policy 7.4. London Plan (2016) Policy 7.6, and Development Management Local Plan (2014) DM Policy 30, DM Policy 32 and DM Policy 33.

#### Standard of Accommodation

3. The standard of accommodation provided by the development would result in a unacceptable living environment for future residents as six of the seven residential units are undersized, and the layout of Units 1 and 2 providing an unsatisfactory level of privacy through the inclusion of a large amount of glazing on the north western elevation and its proximity to the bus stop on Brockley Rise, contrary to London Plan (2016) Policy 3.5, Policy 7.6 and Development Management Local Plan (2014) DM Policy 32 and DM Policy 33.

#### Trees

4. The proposed development would require the removal of a group of five trees subject to TPOs (G1) and compromise the long term health of a further tree with a TPO (T1) that significantly contribute to the visual amenity of the local area with no satisfactory replacement or mitigation strategy proposed, contrary to Core Strategy (2011) CS Policy 12, London Plan (2016) Policy 7.21, and Development Management Local Plan (2014) DM Policy 25.

#### Daylight and Sunlight

5. The application materials have failed to demonstrate that the daylight and sunlight levels received by the dining room on the ground floor of No. 5 Duncombe Hill would remain satisfactory following the construction of the proposed development. Contrary to Development Management Local Plan (2014) DM Policy 32 and DM Policy 33.

