

Committee	PLANNING COMMITTEE (B)	
Report Title	97 Honor Oak Park, SE23	
Ward	Forest Hill	
Contributors	Geoff Whittington	
Class	PART 1	14 September 2021

Reg. Nos. DC/19/111021

Application dated 8 February 2019

Applicant Mr Rzadkiewicz

Proposal An application submitted under Section 73a of the Town and Country Planning Act 1990 for a Minor Material Amendment to allow for an amendment of Condition (2) of the planning permission dated 19th July 2012 (DC/08/68743) for the construction of 2, two-storey, two bedroom houses at the rear of 97 Honor Oak Park, SE23, together with associated landscaping, provision for refuse and cycle storage and two car-parking spaces, **to allow for the following:**

- Siting of House B closer to the western boundary;
- Repositioning of two dormers to 'House A';
- The addition of front door canopies;
- Insertion of a ground floor flank window to 'House A';
- Formation of circular opening at first floor;
- Installation of automated sliding gate to the rear;
- Erection of fence between new dwellings and main building;
- Resiting of parking bays;
- Relocation of bin store and cycle store;
- Additional paving measures.

Background Papers 1) Submission drawings
2) Submission documents

Designation PTAL 4

Screening N/A

1 SUMMARY

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

2 The current s73a Minor Material Amendment seeks to amend a scheme granted planning permission at Appeal in 2012 (DC/08/68743) for the construction of two dwelling-houses.

3 Both houses have been built, and are currently unoccupied. This application is recommended for approval with appropriate conditions for the reasons set out below. This report will assess the following:

- Proposed alterations to the approved scheme; and
- Existing elements that have been built out of compliance, and are proposed to be retained with some measures of mitigation.

2 SITE AND CONTEXT

Site description and current use

4 The application site is a rectangular plot of land to the rear of 97 Honor Oak Park measuring 34m deep and 24m wide, and currently occupied by two detached dwellings that were constructed following planning approval by written reps appeal in 2012 (APP/C5690/A/12/2172563/NWF dated 19 July 2012.)

5 The main property fronting Honor Oak Park is a large two storey detached unoccupied dwelling, which has planning permission to be converted to self-contained flats.

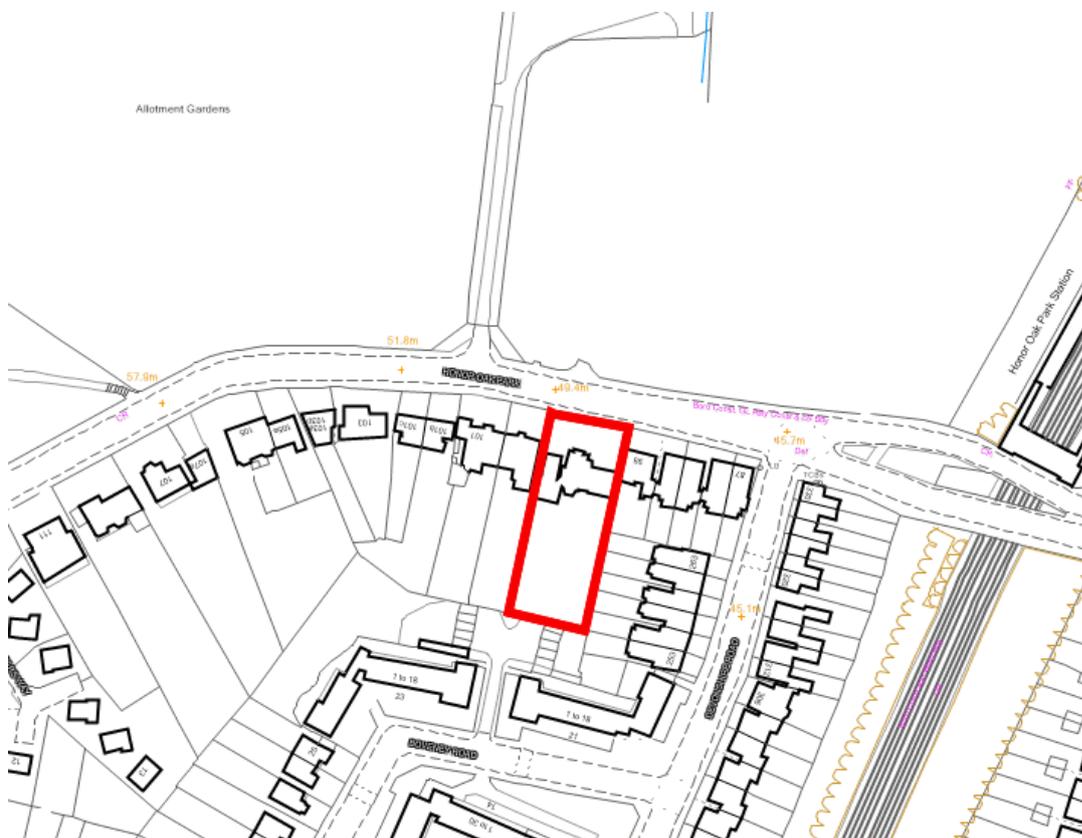


Figure 1: Site location plan

Heritage/archaeology

- 6 The site is not located within or adjacent to a conservation area. It does not contain a listed building, nor are there any in the vicinity.

Surrounding area

- 7 The immediate area is predominantly residential in character, with terraced dwellings fronting Devonshire Road to the east, and a 4-storey housing estate directly to the south fronting Boveney Road.

Transport

- 8 The site has a PTAL rating of 4, which on a scale of 1-6, represents good access to public transport.

3 RELEVANT PLANNING HISTORY

- 9 **DC/08/68743:** Permission was refused at Planning Committee (C) for 'the construction of 2, two-storey, two bedroom houses at the rear of 97 Honor Oak Park, SE23, together with associated landscaping, provision for refuse and cycle storage and two car-parking spaces', for the following reason:

(1) The proposal by reason of the design (including location of bin storage) and scale of the development would be out of character with the area and would lead to a loss of a wildlife habitat. The proposal is therefore contrary to policies 1, 5, 12 and 15 of the Lewisham Core Strategy (Adopted June 2011) and policies HSG 8 (b), (c) & (f) Backland and Infill Development and OS 13 Nature Conservation of the adopted Unitary Development Plan (2004).

- 10 Following the submission of an Appeal by the applicant (APP/C5690/A/12/2172563/NWF, the Planning Inspector granted permission on 19 July 2012, subject to conditions.

- 11 All pre-commencement planning conditions relating to the consented scheme were formally submitted to and discharged by the LPA in 2014.

- 12 Enforcement investigation (ENF/15/00254) opened in August 2016 regarding non-compliance with the appeal consent. Discussions were held between officers and the applicant, which resulted in the submission of the minor material amendment planning application.

4 CURRENT PLANNING APPLICATION

4.1 THE PROPOSAL

13 The current application has been submitted under s.73a of the TCPA (1990) (as amended) (set out further in Section 6 below). It seeks to amend Condition (2) that relates to the two dwelling-houses granted planning permission at Appeal under reference DC/08/68743, by addressing external works that have been undertaken which did not form part of the approved scheme, in addition to further proposed alterations to the approved scheme.

14 Whilst the houses are fully constructed, they have never been occupied.

15 Condition (2) stated:

The development hereby permitted shall be carried out in accordance with the following approved plans:

P1249.120E; P1249.121A; P1249.122C; P1249.123C; P1249.124D and P1249.125

16 The effect of a s73a planning application is to create a new planning decision notice with relevant conditions amended, or the inclusion of new conditions. In this case, Condition (2) is proposed to be amended with the approved plans replaced with updated versions.

17 Members are advised that the application seeks to regularise changes undertaken to the two dwelling-houses and the wider site, in addition to further proposals.

18 The changes already undertaken to the consented scheme includes:

- Siting of 'House B' closer to the western boundary;
- Repositioning of two dormers to 'House A';
- The addition of front door canopies;
- Insertion of a ground floor flank window to 'House A';
- Formation of circular openings at first floor;
- Retention of a fence between the new dwellings and main building;
- Resiting of parking bays;
- Additional paving measures.

19 Officers have visited the site to measure the size of the existing dwelling-houses, which is set out in the below Table 1:

Table 1

	Length	Width	SQM
2012 - Approved Scheme (Houses A & B)	9.3m	5.2m	48.3
2021 - House A	9.46m	5.41m	51.1
2021 - House B	9.57m	5.4m	51.6

20 Table 1 indicates minor increases to the approved footprints by up to 0.27m. This will be addressed later in the report.

21 Proposed changes include:

- Frosted film to 'House A' eastern flank openings;
- Soft landscaping measures;
- Boundary treatment on eastern side;
- Pergolas to part enclose parking bays;
- Installation of automated sliding gate to the rear;
- Relocation of bin store and cycle store.

22 During the application period, the proposal was amended in response to officer advice following discussions with neighbouring occupiers. This related to additional soft landscaping measures, boundary treatment and the formation of pergolas to part enclose parking bays adjacent to the western and eastern boundaries.

5 CONSULTATION

5.1 APPLICATION PUBLICITY

23 Site notices were displayed on 20 February 2019.

24 Consultation letters were initially sent to local residents on 20 February 2019 and a consultation email was sent to relevant ward councillors on the same date.

25 Further consultation was undertaken on 4 March 2021 due to the period of time that had passed since the original submission date of the application, and the revised plans that had been received during that period.

26 Seven responses from local residents and Friends of Honor Oak have been received, objecting to the proposal.

27 No letters of support were received.

5.1.1 Comments in objection

Comment	Para where addressed
Resiting of House B	72-75
House A appears to be one metre higher than permitted	109-112, 115
Both houses are up to 55% larger in footprint	113-114
Raised ground level by more than 30cm	109-110
Unauthorised ground floor window to House A should be removed	57-59

The property will completely block out all natural light to kitchen and bedroom	72-75
Boundary wall on eastern side, including structural requirements	92-98
Overlooking	78-87, 106-107
Moving of western fence will make the site 20% larger	88-91
Planting/ landscaping	123-128
Security concerns	63-64
Impact of re-sited parking bays	99-105
Relocation of bin and cycle stores, in relation to the resited parking bays	140-141

5.2 INTERNAL CONSULTATION

28 The following internal consultees were notified on 20 February 2019.

29 Highways officers: Verbally raised no objections.

5.3 EXTERNAL CONSULTATION

30 None undertaken.

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).

32 S.73 (applicable also to s.73a) of the Town and Country Planning Act (1990) (as amended) allows for applications for planning permission to be made for the development of land without complying with conditions subject to which a previous planning permission was granted. There is no definition within legislation that limits the scope of an application under s.73. Guidance for determining s.73 applications set out in the National Planning Practice Guidance (NPPG) states that an application under s.73 is an application for a “minor material amendment”, “whose scale and nature results in a development which is not *substantially different* from the one which has been approved”.

33 It is further stated within the NPPG that the development which the application under s.73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. Consequently the extent of the material planning considerations are somewhat restricted and only the amendments being applied for should be considered. Having said that, when determining the application the Local Planning Authority (LPA) has to consider the application in the light of current development plan policy. The LPA therefore has to make a decision focusing on national or local policies which may have changed significantly since the original grant of planning permission as well as the merits of the changes sought.

34 In this case, in the time that has passed since permission was granted in 2012, the Core Strategy (2011) remains; the Development Management Local Plan was adopted in 2014; and the new London Plan adopted in March 2021.

35 The proposed changes will therefore be assessed in accordance with the relevant national, regional and local policy and guidance.

36 Returning to the scope of applications under s.73 of the TCPA (1990) (as amended), there exists a large amount of case law. The most recent relevant Judgement was handed down from the court of Appeal in November 2019; 'Finney v Welsh Ministers & Ors'². In this judgement, Lewison J refers to the correct interpretation of s.73 as that by Collins J, in the 2017 'Vue'³ judgement, who at paragraph 19 states "*It is, I suppose, possible that there might be a case where a change of condition, albeit it did not seek to vary the permission itself on its face, was so different as to be what could properly be described as a fundamental variation of the effect of the permission overall.*".

37 The 'fundamental variation', reiterated by Lewison J in the 'Finney' Judgement further clarifies that this test should be applied when assessing the scope of amendments proposed through the use of a s.73 application.

38 Members are advised that the current scheme relates to a s.73a application, which follows the same principles as a s.73, the difference being that it addresses changes to an approved scheme that have already been undertaken.

6.2 MATERIAL CONSIDERATIONS

39 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.

40 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.

41 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 2021 (NPPF)
- National Planning Policy Guidance 2014 onwards (NPPG)
- National Design Guidance 2019 (NDG)

6.4 DEVELOPMENT PLAN

42 The Development Plan comprises:

- London Plan (March 2021) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013) (SALP)
- Lewisham Town Centre Local Plan (February 2014) (LTCP)

6.5 SUPPLEMENTARY PLANNING GUIDANCE

43 Lewisham SPG/SPD:

- Alterations and Extensions SPD

7 PLANNING CONSIDERATIONS

44 The main issues are:

- Principle of Development
- Urban Design
- Impact on living conditions of neighbours
- Standard of residential accommodation
- Highways
- Landscaping

7.1 PRINCIPLE OF DEVELOPMENT

General policy and Statutory Context

45 The statutory and policy context of an application under s.73/a of the TCPA (1990) (as amended) is set out above in section 6.

Discussion

46 The principle of residential development has been established by the extant planning permission (ref: DC/08/68743) that this application seeks to vary.

47 The only assessment to be made is in relation to the amendments that are either being proposed, or already undertaken, and whether they;

- Comply with the Development Plan and any relevant material considerations.
- Do not represent a fundamental variation from the extant planning permission.

7.2 URBAN DESIGN

General Policy

- 48 Urban design is a key consideration in the planning process. Part 10 of the NPPF makes it clear that national government places great importance on the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
- 49 LPP D3 and Core Strategy Policy CS 15 reinforce the principles of the NPPF setting out a clear rationale for high quality urban design.
- 50 CSP 15 states that the Council will apply national and regional policy and guidance to ensure highest quality design and the protection or enhancement of the historic and natural environment, which is sustainable, accessible to all, optimises the potential of sites and is sensitive to the local context and responds to local character.
- 51 DMP 30 states that the Council will require all development proposals to attain a high standard of design, including alterations and extensions to existing buildings. An adequate response to how the scheme relates to the existing street including its building frontages will be required including: The quality and durability of building materials and their sensitive use in relation to the context of the development. Materials used should be high quality and either match or complement existing development, and the reasons for the choice should be clearly justified in relation to the existing built context. DMP 33 seeks to protect and enhance the Borough's character and street frontages through appropriate and high-quality design.

Discussion

Repositioning of two dormers to 'House A'

- 52 The approved dormers were originally sited to the rear roofslope of House A - elevation fronting the only access into the site. However during the time of construction, they were instead built to the front elevation facing into the shared garden. The applicant has not advised why this change was undertaken.
- 53 From a design perspective, no objections are raised toward their appearance, being traditional in approach, and set back sufficiently from the eaves and lower than the ridge, avoiding any sense of being bulky or harmful to the dwellings or character of the immediate area.
- 54 An assessment of their impact upon neighbour amenity will be addressed later in this report, however officers are satisfied neither dormer results in any significant visual harm.

The addition of front canopies

- 55 Pitched roof canopies have been installed over the front entrances of Houses A and B, replicating the gradient of the gabled ended frontages.
- 56 Officers consider these elements to be acceptable in siting and appearance, with no harmful impact upon neighbour amenity.

Insertion of a ground floor flank window to 'House A'

- 57 A secondary living room window has been installed to the eastern elevation of House A at ground floor level, which did not form part of the approved scheme.
- 58 No objections are raised toward the size or appearance of this opening, in keeping with other openings.
- 59 The harm upon neighbour amenity will be assessed later in this report.

Formation of circular openings

- 60 Circular features were shown on the original elevation plans approved in 2012, however these were not shown as windows on the floor plans.
- 61 No objections are raised toward the appearance of these openings.
- 62 There have been neighbour objections in regard to overlooking from the opening to the eastern elevation of House A, which provides a secondary opening to a bedroom. This will be addressed later in this report.

Installation of automated sliding gate to the rear

- 63 A sliding metal electronically operated gate would be sited across the entry point into the site - no elevation details have been submitted. The 2012 approved plans referred to 'existing gates to be refurbished'.
- 64 No objections are raised in principle to the formation of a new gate, and details regarding their appearance and operation will be requested by condition.

Pergolas

- 65 The erection of pergolas are proposed to part enclose the parking bays adjacent to the eastern and western boundaries.
- 66 In principle these are considered acceptable, subject to the submission of elevation details and facing materials by planning condition.

Summary

- 67 In regard to design, the changes that comprise this minor material submission are considered acceptable, and officers maintain that the appearance, siting and scale of the two dwellings are appropriate for this residential setting. The design of both buildings is simple and traditional, and do not appear overdominant, relating well with surrounding period properties.

7.3 LIVING CONDITIONS OF NEIGHBOURS

Policy

- 68 NPPF para 130 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, the Core Strategy (CP15), the Local Plan (DMP32) and associated guidance (Housing SPD 2016, GLA; Alterations and Extensions SPD 2019, LBL).
- 69 DMP32(1)(b) expects new developments to provide a 'satisfactory level' of privacy, outlook and natural lighting for its neighbours.
- 70 The main impacts on amenity arise from: (i) overbearing enclosure/loss of outlook; (ii) loss of privacy; (iii) loss of daylight within properties and loss of sunlight to amenity areas; and (iv) noise and disturbance.
- 71 Overbearing impact arising from the scale and position of block is subject to local context. Outlook is quoted as a distance between habitable rooms and boundaries. The relevant guidance is the Mayor's Housing SPG.

Discussion

Siting of 'House B' closer to the western boundary

- 72 The approved application showed 'House B' to be sited 4.6m away from the western boundary, however the dwelling has been constructed 3.4m away.
- 73 Officers consider this remains a sufficient distance away from the property at no.99 and the shared boundary to avoid any significant visual harm upon the occupiers, with existing boundary trees providing a good level of screening. The distance between House B and the rear elevation of no.99 is approximately 16.5m.
- 74 Outlook from the first floor bedrooms of House B are inward facing toward the shared garden only, so there is no overlooking between habitable room windows or toward the garden area of no.99.
- 75 In regard to overshadowing, a daylight/ sunlight report has not been submitted as part of this application. For the reasons stated earlier, officers are satisfied there is no significant harm arising from the repositioning of House B. Officers therefore raise no objections.

Repositioning of two dormers to 'House A'

- 76 The two dormers look toward the communal garden, and due to their discreet size and positioning, officers do not consider these result in any adverse impact upon neighbouring amenity.
- 77 It is noted that neighbours have not objected to this element of the proposal.

Insertion of a ground floor flank window to 'House A' and formation of circular opening at first floor

- 78 DM Policy 32 advises there should be a minimum separation of 21 metres between directly facing habitable room windows on main rear elevations, but is a general rule that may be applied flexibly. In this case, the windows serve the flank wall, not the rear, however the 21m distance is applicable.
- 79 According to the current submission plans, the two secondary openings lie approximately 4 metres from the eastern boundary, and 22m from the rear elevations of the nearest Devonshire Road dwellings.
- 80 Officers have conducted their own measurements using Google Earth, and the distance between 'House A' and the nearest Devonshire property is approx. 18.2m, being 4m from the boundary. Whilst this falls within the prescribed 21m, as advised, this should be applied flexibly.
- 81 The applicant has advised that both openings will be fitted with frosted film to avoid any direct overlooking of neighbouring gardens, which was presented to officers on site.
- 82 Some neighbouring occupiers would prefer frosted glass to be installed as they are concerned the film could be easily removed by future occupiers. This has been discussed with the applicant, however they maintain that frosted film would be sufficient.
- 83 Officers agree that the film would suffice in this case, and a planning condition will ensure that both windows are fitted prior to first occupation and retained thereafter. The openings are secondary in their respective rooms, with garden facing openings providing their main source of outlook.
- 84 In regard to the actual opening of the windows, Devonshire Road occupiers are concerned that this will result in overlooking, negating the purpose of providing the film. In this case, the ground floor window is/ will be screened to some extent by an existing tree directly to the side of the property and the eventual erection of side boundary fencing.
- 85 In regard to the porthole, this is positioned at a height to minimise outlook, (as demonstrated by an internal photograph provided by the applicant), with its main purpose being to provide additional daylight.
- 86 Nevertheless, a planning condition will ensure that both windows are restricted in the extent of their opening to less than 45 degrees, and that they remain frosted in perpetuity.
- 87 In regard to the other porthole openings to the opposite side of House A, and those at House B, officers are satisfied these do not result in any significant visual harm upon neighbour amenity.
- 88 In summary, considering the two windows are secondary and will be frosted and restricted, officers are satisfied there would be no adverse harm upon neighbouring amenity.

Siting of fence between new dwellings and main building (no.97)

- 89 Officers acknowledge the fence may currently appear unsightly to some Devonshire Road occupiers due to it being of a greater height than the existing eastern boundary wall. This matter will be suitably resolved however once the eastern boundary fence/ wall is erected, following the submission of details to comply with the relevant planning condition. A CGI that has been submitted shows a consistent fence height to the boundaries.

- 90 The fence was originally proposed to be sited close to the flank wall of 'House B', ending in line with side boundary fence between nos 261 and 263 Devonshire Road.
- 91 On the revised 'ground floor plan', the fence has been moved northwards by approximately 1 metre toward the main building, and is consequently more visible from no.263. Having visited the site however, officers observed that the fence appears to lie further to the north than shown on plan.
- 92 In light of this, it is appropriate to request further details that accurately show the siting of the fence, and its relationship to the proposed eastern boundary fence/ wall, although in principle, officers raise no objections to the current siting, and are satisfied sufficient garden space would be retained for the main building.

Boundary Treatment

- 93 In regard to the boundary treatment on the eastern boundary, the 100 year old brick wall has in sections been demolished, or collapsed through instability.
- 94 The Planning Inspector did not include a condition requiring the submission of details, stating only in para.25 that 'it would be for the developer to ensure that any works to boundary walls are undertaken in a satisfactory manner.'
- 95 The Landscaping plan approved in 2014 (discharge of condition - DC/14/087688) referred to 'existing brick wall to be repaired/ rebuilt using existing bricks'. The existing submission (CGI only) now suggests that a timber fence of up to 2m height will be erected along the boundary, with the removal of any remaining sections of wall.
- 96 Whilst there was an intention for the boundary wall to be retained as part of the original scheme, its retention was not a fundamental reason for officers recommending approval to Members in 2011, or for the Planning Inspector in their decision to grant permission in 2012.
- 97 The wall is now in a poor condition, and it is clear some form of treatment must be reinstated as a matter of urgency, whether in the form of a rebuilt brick wall or a timber fence.
- 98 The brick wall is in the ownership of the applicant - an historic map shows the boundary wall around the curtilage of no.97 prior to the construction of the Devonshire Road dwellings. The applicant is entitled to remove the wall as it is not a protected structure, and can replace with a fence/ wall of up to 2 metres in height under permitted development.
- 99 Considering the sensitivity surrounding this site, it is appropriate to include a planning condition that requires the submission of scaled plans detailing the boundary treatment in terms of height and materials, and to ensure it is erected in full accordance within a reasonable timescale prior to first occupation of the dwelling-houses. It is noted that some neighbours are concerned that a fence would be unsuitable due to 'soil pressure'. This is a matter that the applicant will need to consider in their future submission.

Resiting of parking bays

- 100 The approved plan showed two parking spaces adjacent to the western boundary, however hardstands for the bays have been provided to separate areas - the 'House B' bay lies approx. 2 metres away from the west boundary, whilst the 'House A' bay has been relocated adjacent to the eastern boundary.

- 101 Officers raise no concerns toward the 'B' bay as it is located to a similar area as the approval.
- 102 In regard to 'A', neighbours have raised concerns toward the close proximity of the bay to the boundary, and the resulting noise and pollution arising from the vehicle. It has also resulted in the removal of a tree, and does not adhere to the approved landscaping scheme granted in 2014 - DC/14/087689 - this will be addressed in the Landscaping section of this report.
- 103 The applicant is aware of the objections to the bay, however they maintain their preference to retain its current position, rather than move it closer to the site access. They have proposed the erection of a pergola with a solid back adjacent to the boundary that would serve to contain a degree of noise and fumes arising from the vehicle. In addition, the erection of fencing and provision of planting measures to the eastern boundary would provide additional measures to reduce the level of impact.
- 104 Neighbours do not consider the pergola to be sufficient to address their concerns.
- 105 Having considered the neighbour objections, inspected the site and assessed the measures proposed by the applicant, officers are satisfied that the approach for additional planting and the provision of the car shelter would be sufficient to mitigate the concerns raised, subject to the submission of appropriate details by condition.
- 106 It must be acknowledged that this relates to a single parking bay, therefore assuming future occupiers own a car, it is unlikely there would be regular vehicular movement to the extent whereby it would be so harmful upon neighbour amenity.

Overlooking from Side Patio of House A

- 107 To the eastern side of 'House A' there is a raised patio area where currently there is some overlooking down to the gardens of Devonshire Road. This is attributed in part to the lack of boundary treatment that currently exists, and the change of ground levels. The restoration of appropriate boundary treatment would serve to mitigate this to some extent.
- 108 The applicant has agreed to additional planting measures to that area to restrict occupier use and privacy issues, which officers support in principle.

Other matters

- 109 Neighbours have also raised concern that:
- the ground level of the application site has been raised during construction works by up to 30cm, resulting in increased overlooking;
 - the height of 'House A' has increased by 1 metre, appearing 'as a whole more overbearing and visually dominating';
 - the increased footprints of the dwellings contribute to a larger and more visually imposing appearance.
- 110 Having visited the site and neighbouring gardens, 'House A' did at first view appear as a notable addition, but not from the perspective that it was necessarily constructed on a larger scale than the planning approval. The pitch of the roof as seen on-site appears to be in accordance with the approved plan, whilst the height of the dwelling as built appears to be comparable with the approved plans.

- 111 It is difficult to establish any differences between the existing and former ground levels, however neighbours consider an increase has been undertaken.
- 112 In paras 8 and 9 of the decision report, the Planning Inspector referred to the houses as 'modestly sized dwellings with the upper floors contained within steeply pitched roofs'; 'subservient in scale to all the adjoining buildings'; and 'would also sit comfortably within the site boundaries.'
- 113 Officers have visited the site on three separate occasions to assess the dwellings in context with neighbouring properties, and whilst there may be some inconsistencies between the various plan submissions and what has been built, the dwellings remain of good design that are appropriately sited to avoid any significant visual harm upon neighbour amenity.
- 114 Objection letters consider the footprint of the existing buildings is up to 55% larger than the approved scheme. A neighbour submission that refers to 'bigger houses' provides an overlay of the permitted and built footprints, which shows a considerable difference.
- 115 Officers have reviewed the current and consented floor plans, and undertaken a site inspection to measure the two buildings. As set out in Table 1, the footprints of both dwellings are larger than approved, however not to a significant extent. House A measures a length greater than the approval by 0.16m, and House B measures 0.27m more in length. The houses measure a width of 0.2 – 0.21m greater than approved scheme.
- 116 In regard to height of the buildings, officers were unable to undertake a measurement. A comparison between the submitted plans has not resulted in any significant differences being observed.
- 117 The works undertaken are not so considerable to the extent that it represents a significant departure from the approved plans - consequently, officers are satisfied that the two dwellings generally accords with the approved plans and Inspector's considerations. Whilst conditions will be used to mitigate any harm arising from potential overlooking etc, the dwellings do not appear overly imposing or dominant.

Summary

- 118 Given the above considerations, the proposal is not considered to have any significant adverse impact upon the amenities of its neighbours in terms of privacy, sense of enclosure or overshadowing, and this will be ensured by appropriate planning conditions.

7.4 LANDSCAPING

Policy

- 119 S.197 of the Town and Country Planning Act gives LPAs specific duties in respect of trees.
- 120 LPP G7 protects trees of value and replacements. New development should include additional trees wherever appropriate, particularly large-canopied species.
- 121 Paragraph 174 of the NPPF (2021) requires that decisions should contribute to and enhance the natural and local environment. DM Policy 25 seeks to ensure that applicants consider landscaping and trees as an integral part of the application and development process.

Discussion

- 122 Landscaping within the rear garden of the approved scheme included:
- Two established Pear trees would be retained;
 - Seek to minimise loss of existing trees, with the felling of an Oak tree and two smaller trees;
 - The formation of a new hedge across the site, comprised of holly, beech, hornbeam, dog wood, copper beech, rugeroua and whitebeam;
 - Retain the existing Sycamore, Fir and Cherry trees, and infill with new Victorian Plum and Holly trees;
 - To the southern boundary where existing sheds will be removed, infill with new Holly, Horse Chestnut and Ash trees;
 - Rebuild existing brick wall to eastern boundary, and plant and train a Wisteria against it;
 - Permeable treatment to accessway and car-parking bays.
- 123 It was considered at the time that substantial tree screening should be retained/ provided close to the boundaries of the site to protect neighbour amenity and setting of the area, as approved in the landscaping planning condition - DC/14/087689.
- 124 The original 2019 plans shows the retention of some of the more substantial trees, however having visited the site, officers determined there was a clear reduction in planting measures generally across the site, particularly to the south-eastern corner where the parking bay has been relocated to - the planting of 4no. trees was approved there, including holly, horse chestnut and ash.
- 125 During the course of this application, the applicant has provided an amended block plan that shows additional landscaping measures to the eastern boundary, including Beech, Laurels and Photinia Red Robin, which in principle are acceptable, however in accordance with the intent of the approved 2014 plan, it is considered appropriate to require the submission of further details by condition for more planting across the site, particularly to the area adjacent to the existing fence that spans the width of the garden, that is currently in stark contrast to the approved plan for substantial planting there.
- 126 The Planning Inspector commented in para.22 that the two dwellings would reduce the openness of the site, however 'the proposal would retain a substantial amount of planted green space, particularly around the edges of the site', therefore officers consider this must be ensured by condition.
- 127 There are additional hard landscaping measures around the site, particularly with the formation of pathways around both houses, instead of lawned areas as originally approved, and the additional paving adjacent to the southern boundary.
- 128 The extent of additional hard landscaping within the site is not considered to be detrimental upon the immediate character of the setting.

Summary

- 129 The reduction of soft landscaping from the approved scheme is regrettable. As addressed earlier, additional planting will be secured by condition to the north and eastern sides, whilst details of the existing paving and their permeability will be required.

7.5 TRANSPORT

General policy

- 130 The NPPF recognises that transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Plans and decisions should take account of whether the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, safe and suitable access to the site can be achieved for all people. The NPPF clearly states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 131 Policy T1 of the London Plan (2021) sets out the Mayor's strategic approach to transport which aims to encourage the closer integration of transport and development. This is to be achieved by encouraging patterns and nodes of development that reduce the need to travel, especially by car; seeking to improve the capacity and accessibility of public transport, walking and cycling; supporting measures that encourage shifts to more sustainable modes and appropriate demand management; and promoting walking by ensuring an improved urban realm.
- 132 Core Strategy Policy 14 'Sustainable movement and transport' promotes more sustainable transport choices through walking, cycling and public transport. It adopts a restricted approach on parking to aid the promotion of sustainable transport and ensuring all new and existing developments of a certain size have travel plans.

Discussion

- 133 The site has a PTAL rating of 4, indicating that access to public transport in the area is good. The approved scheme proposed two off-street parking bays adjacent to the access into the site, with a cluster of trees to the opposite side.
- 134 The current proposal shows that a tree has been removed, and replaced with a parking bay adjacent to 'House A', whilst the other bay remains in the same area as approved, but reconfigured.
- 135 The surrounding area experiences a high level of on-street parking, however there are some unrestricted opportunities. The London Plan (2021) advises that new dwellings should be car free in PTAL 4 Inner London areas.
- 136 Considering the current provision accords with the approved scheme for two off-street parking bays, officers cannot require a subsequent reduction in this case to accord with the London Plan.

Summary

- 137 Officers are satisfied the provision of off-street parking is in accordance with the approved scheme, despite the reconfiguration that has been undertaken.

7.5.1 Servicing and refuse storage

Policy

- 138 LPP D6(E) states housing should be designed with adequate and easily accessible storage space that supports the separate collection of dry recyclables and food waste as well as residual waste.
- 139 Core Strategy Policy 13 Addressing Lewisham's waste management requirements states that the Council will support the objectives of sustainable waste management and promote the waste hierarchy of prevention, reuse, compost, recycle, energy recovery and disposal through a partnership approach.
- 140 Storage facilities for waste and recycling containers should meet at least BS5906:2005 Code of Practice for waste management in Buildings in accordance with London Plan Housing Supplementary Planning Guidance (2016) standard 23.

Discussion

- 141 The refuse store would be located where the parking bays were originally shown adjacent to the access point into the site - this is considered acceptable, however elevation details are required, which will be subject to a planning condition.
- 142 In regard to the cycle store, two areas are shown to either side of the access, however these do not appear to be policy compliant dry and secure. Whilst their siting is acceptable, further details will be required by condition.

Summary

- 143 Officers are satisfied the proposal would adequately provide for refuse and cycle storage, subject to further details to be secured by condition.

8 LOCAL FINANCE CONSIDERATIONS

- 144 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).
- 145 The weight to be attached to a local finance consideration remains a matter for the decision maker.
- 146 The CIL is therefore a material consideration.

147 In this case, the dwellings were granted permission in July 2012, and works commenced within 3 years. The Lewisham CIL was adopted on 1 April 2015, therefore this is not applicable.

9 EQUALITIES CONSIDERATIONS

148 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.

149 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.

150 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.

151 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>

152 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

153 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:

154 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.

10 HUMAN RIGHTS IMPLICATIONS

155 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

156 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.

157 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.

158 This application has the legitimate aim of providing new residential units. The rights potentially engaged by this application, are not considered to be unlawfully interfered with by this proposal.

11 CONCLUSION

159 This application has been considered in the light of policies set out in the development plan and other material considerations, including relevant policies of the New London Plan.

160 The Council generally supports the works that have been undertaken to date, including the appearance and resiting of the two dormers, however there is a need for further details relating to:

- the eastern boundary treatment;
- siting of the existing fence within the garden;
- hard and soft landscaping measures;
- pergola details;
- sliding gate;

- refuse and bicycle store elevations.

- 161 Planning conditions will ensure that the House A flank wall windows on the eastern side facing the Devonshire Road dwellings will be opaque in perpetuity to avoid overlooking, in addition to a restriction in the extent of opening.
- 162 This report has advised of the difficulty in establishing ground level changes between the approved plans and what has been built to date. Officers are satisfied however that following site inspections, the relationship between the new buildings and existing dwellings is acceptable, and does not result in any significant visual harm.
- 163 It is therefore recommended that s.73a minor material amendment is granted, subject to the above details being addressed by conditions.

12 RECOMMENDATION

- 164 That the Committee resolve to **GRANT** Minor Material permission subject to the following conditions and informatives:

12.1 CONDITIONS

1) Retain in Accordance With Approved Plans

Notwithstanding the further details requested by planning conditions, the development shall be retained strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

Location Plan; OS Map; Historic Site Plan; p1505.br.2019 b; p1505.br.2019 c (received 18 February 2020)

Ground Floor Plan; Elevations House A; Opaque film photo; Eastern Boundary trees photos; CGIs of eastern boundary (received 28 January 2020)

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

2) **Refuse Store**

- (a) Prior to first occupation, elevation details of the storage for refuse and recycling facilities shall be submitted to and approved in writing by the local planning authority.
- (b) The facilities as approved under part (a) shall be provided in full prior to occupation of the development and shall thereafter be permanently retained and maintained.

Reason: In order that the local planning authority may be satisfied with the provisions for recycling facilities and refuse storage in the interest of safeguarding the amenities of neighbouring occupiers and the area in general, in compliance with Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character and Core Strategy Policy 13 Addressing Lewisham waste management requirements (2011).

3) **Cycle Store**

- (a) A minimum of 4no. dry and secure cycle spaces shall be provided.
- (b) Prior to first occupation, full details of the dry and secure cycle parking facilities shall be submitted to and approved in writing by the local planning authority.
- (c) All cycle parking spaces shall be provided and made available for use prior to occupation of the development and maintained thereafter.

Reason: In order to ensure adequate provision for cycle parking and to comply with Policy 14: Sustainable movement and transport of the Core Strategy (2011).

4) **Soft Landscaping**

- (a) A scheme of soft landscaping (including details of trees to be proposed, plant numbers, species, location and size of trees and tree pits) and details of the management and maintenance of the landscaping for a period of five years shall be submitted to and approved in writing by the local planning authority prior to first occupation.
- (b) All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the development, in accordance with the approved scheme under part (a). Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: In order that the local planning authority may be satisfied as to the details of the proposal and to comply with Core Strategy Policy 12 Open space and environmental assets, Policy 15 High quality design for Lewisham of the Core

Strategy (June 2011), and DM Policy 25 Landscaping and trees and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

5) **Boundary Treatment**

- (a) Elevation and section details of the proposed eastern boundary treatment and pergola (drawn to scale) shall be submitted to and approved in writing by the local planning authority within 3 months of the date of this decision.
- (b) The approved boundary treatment shall be implemented prior to first occupation of the dwelling-houses and retained in perpetuity.

Reason: To ensure that the boundary treatment is of adequate design in the interests of visual and residential amenity and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

6) **External Lighting**

Any external lighting that is to be installed at the site shall be no greater than 2 lux to the nearest neighbouring window, in accordance with CIBSE.

Reason: In order that the local planning authority may be satisfied that the lighting is installed and maintained in a manner which will minimise possible light pollution to the night sky and neighbouring properties and to comply with DM Policy 27 Lighting of the Development Management Local Plan (November 2014).

7) **PD Rights – No Extensions**

No extensions or alterations to the dwellinghouses hereby approved, whether or not permitted under Article 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) of that Order, shall be carried out without the prior written permission of the local planning authority.

Reason: In order that, in view of the nature of the development hereby permitted, the local planning authority may have the opportunity of assessing the impact of any further development and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011).

8) **PD Rights – No Windows**

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), no windows (or other openings) shall be constructed in any elevation of the dwellinghouses other than those expressly authorised by this permission.

Reason: To enable the local planning authority to regulate and control any such further development in the interests of amenity and privacy of adjoining properties in accordance with DM Policy 31 Alterations and extensions to existing buildings including residential extensions, DM Policy 32 Housing design, layout and space standards, and DM Policy 33 Development on infill sites, backland sites, back gardens and amenity areas of the Development Management Local Plan (November 2014).

9) **Obscured Glazing**

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the windows installed in the eastern flank wall of House A at ground and first floor levels hereby approved shall be fitted with frosted film prior to first occupation 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, DM Policy 32 Housing design, layout and space standards, and Policy 33 Development on infill sites, backland sites, back gardens and amenity areas of the Development Management Local Plan (November 2014).

10) **Parking**

The whole of the car parking accommodation shown on drawing 'ground floor plan' hereby approved shall be provided prior to the occupation of any dwelling and retained permanently thereafter

Reason: To ensure the permanent retention of the spaces for parking purposes, to ensure that the use of the buildings does not increase on-street parking in the vicinity and to comply with Policies 1 Housing provision, mix and affordability and 14 Sustainable movement and transport of the Core Strategy (June 2011), DM Policy 29 Car Parking of the Development Management Local Plan, (November 2014), and Policy T6.1 Car parking and Table 10.3 of the London Plan (March 2021)

11) **Hard Landscaping**

- (a) Prior to first occupation, details showing hard landscaping of any part of the site not occupied by buildings (including details of the permeability of hard surfaces) shall be submitted to and approved in writing by the local planning authority.
- (b) Any additional hard landscaping works shall be completed within 3 months of first occupation.

Reason: In order that the local planning authority may be satisfied as to the details of the proposal and to comply with Policies SI 12 Flood risk management in the London Plan (March 2021), Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) Policy 25 Landscaping and trees, and DM Policy 30 Urban design and local character.

12) **House 'A' Windows**

- (a) The eastern flank wall windows at ground and first floor of 'House A' shall have restricted openings of no greater than 45 degrees.
- (b) The restriction measures required in (a) shall be implemented in full prior to first occupation, and retained thereafter.

Reason: To enable the local planning authority to regulate and control any such further development in the interests of amenity and privacy of adjoining properties in accordance with DM Policy 32 Housing design, layout and space standards, and DM Policy 33 Development on infill sites, backland sites, back gardens and amenity areas of the Development Management Local Plan (November 2014).

13) **Boundary Fence**

An accurate plan of the siting of the 'new close boarded fence' spanning the full width of the existing garden as shown on 'ground floor plan' and its relationship with no.97 Honor Oak Park and neighbouring boundaries shall be submitted to and approved in writing within 3 months of the date of this decision. The approved fence shall be provided in full compliance prior to first occupation, and retained thereafter.

Reason: To ensure that the boundary treatment is of appropriate siting in the interests of visual and residential amenity and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

14) **Sliding Gate Details**

- (a) Details of the proposed access gate to the southern boundary, including elevation, materials and operational details, shall be submitted to and approved in writing by the LPA prior to first occupation.
- (b) The gate shall be installed in full accordance with the approved plans prior to first occupation, and shall thereafter be maintained in perpetuity.

Reason: To ensure that the boundary treatment is of adequate design in the interests of visual and residential amenity, and to safeguard the amenities of neighbouring occupiers, and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

12.2 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.
- 2) The applicant is advised to refer to plan P1303.BR.12 approved under DC/14/087689 with regard to soft landscaping measures, in particular to the northern and eastern boundaries, to inform the future soft landscaping submission relating to Condition (4).
- 3) The Applicant is advised that the following Conditions relating to DC/08/68743 have been formally discharged:
 - (13) Lifetime Homes; (12) Submission of a Stag Beetle Report (DC/14/089673);
 - (4) Facing Materials (DC/15/091345).

