



## Planning Committee B

### Report title:

**28 BORDER ROAD, LONDON, SE26 6HB**

**Date:** 1 February 2022

**Key decision:** No.

See "[Legal Requirements](#)" in the guidance for more information.

**Class:** Part 1

See "[Legal Requirements](#)" in the guidance for more information.

**Ward(s) affected:** Sydenham

**Contributors:** Antigoni Gkiza

### Outline and recommendations

This report sets out the officer recommendation of approval for this planning application.

The case has been brought before members for a decision as three objections have been received from the neighbouring properties.

## Application details

**Application reference number(s):** DC/21/123393

**Application Date:** 09 September 2021

**Applicant:** Mr Bridges

**Proposal:** Demolition of existing shed and erection of a studio and an adjoining shed at the rear end of the garden at 28 BORDER ROAD, SE26.

**Background Papers:** Submission drawings  
Submission technical reports  
Statutory consultee responses

**Designation:** PTAL 4

**Screening:** N/A

## 1 SITE AND CONTEXT

### *Site description and current use*

- 1 This application site relates to a two-storey semi-detached dwelling, located in the northern side of Border Road, at No 28. The property benefits from a single storey rear extension and a moderate size garden.



Figure 1: Site Location Plan

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### ***Character of area***

- 2 The surrounding area is predominantly residential in character with terraced and semi-detached properties.



**Figure 2: Aerial View**

- 3 The property is not located within a conservation area, nor is it, or close to, a listed building or non-designated heritage asset.

### ***Surrounding area***

- 4 Crystal Palace Park is located to the south of the application site.

### ***Transport***

- 5 The site has a Public Transport Accessibility Level (PTAL) score of 4 on a scale of 1-6b, 1 being lowest and 6b the highest.

- 6 Sydenham Railway Station is located approximately 700m to the north-east of the application site.

## **2 RELEVANT PLANNING HISTORY**

- 7 **DC/96/039872** - Application for a Certificate of Lawful Development with respect to the erection of a single storey extension at the rear of 28 Border Road SE26 to provide larger kitchen/dining area. **Granted** 19 January 1996.

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### 3 CURRENT PLANNING APPLICATION

#### 3.1 THE PROPOSALS

8 Demolition of existing shed and erection of a studio and an adjoining shed at the rear end of the garden at 28 BORDER ROAD, SE26.

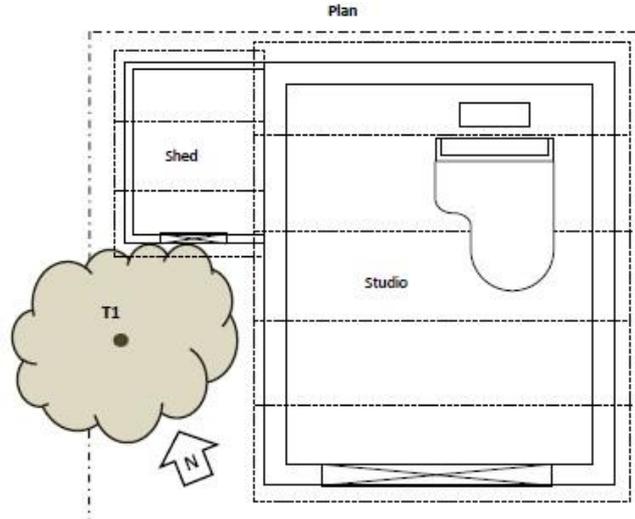


Figure 3: Proposed Plan

### 4 CONSULTATION

#### 4.1 PRE-APPLICATION ENGAGEMENT

9 No pre-application advice was sought from the council regarding the proposal.

#### 4.2 APPLICATION PUBLICITY

10 Letters were sent to residents and business in the surrounding area and the relevant ward Councillors on 15 September 2021.

11 Three responses were received, comprising three objections.

##### 4.2.1 Comments in objection

Comment	Para where addressed
Overshadowing and loss of daylight that would impinge the garden use.	45
Overbearing sense of enclosure	45
Loss of outlook from the inner side of the flat to the garden	45

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Creation of noise nuisance due to the use of the outbuilding as a music studio	45
Flood risk from overflowing drainpipe	36
Proximity to fence line	45

- 12 A number of other comments were also raised as follows:
- 13 The proposed development would negatively impact the value of the neighbouring property. (Officer comment: property values are not a material planning consideration.)
- 14 Safety/security concerns
- 15 Officer Comment: Planning Officers can only assess the proposed development, and the above comments are not material to the planning decision.

### **4.3 INTERNAL CONSULTATION**

- 16 No Internal Consultees were notified given the nature of the application.

### **4.4 EXTERNAL CONSULTATION**

- 17 No External Consultees were notified given the nature of the application.

## **5 POLICY CONTEXT**

### **5.1 LEGISLATION**

- 18 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).

### **5.2 MATERIAL CONSIDERATIONS**

- 19 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.
- 20 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.
- 21 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 aforementioned directions and the test of reasonableness.

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## 5.3 NATIONAL POLICY & GUIDANCE

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

## 5.4 DEVELOPMENT PLAN

22 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)

## 5.5 SUPPLEMENTARY PLANNING GUIDANCE

23 Lewisham SPG/SPD:

- Alterations and Extensions Supplementary Planning Document (April 2019)

## 6 PLANNING CONSIDERATIONS

24 The main issues are:

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

### 6.1 PRINCIPLE OF DEVELOPMENT

#### *General policy*

25 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.

26 The London Plan (LP) sets out a sequential spatial approach to making the best use of land set out in LPP GG2 (Parts A to C) that should be followed.

#### 6.1.1 Principle of development conclusions

27 The Development Plan is generally supportive of people extending or altering their homes. The principle of development is supported, subject to details.

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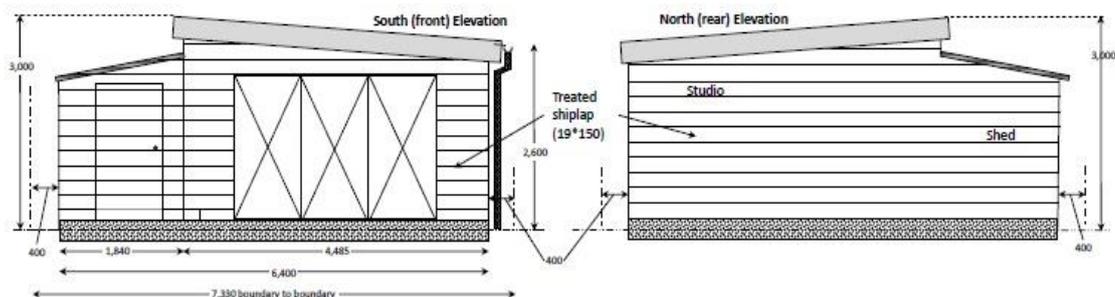
## 6.2 URBAN DESIGN

### *General Policy*

- 28 The NPPF at para 126 states the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
- 29 CSP 15 outlines how 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.
- 30 DMLP 30, Urban design and local character states that all new developments should provide a high standard of design and should respect the existing forms of development in the vicinity. The London Plan, Core Strategy and DMLP policies further reinforce the principles of the NPPF setting out a clear rationale for high quality urban design.
- 31 DMP 31 states that extensions will not be permitted where they would adversely affect the architectural integrity of a group of buildings as a whole or cause an incongruous element in terms of the important features of a character area.

### *Discussion*

- 32 According to Section 6.9.4 of the Alterations and Extensions SPD outbuildings should be subordinate to the host building and ancillary to the house. The materials to be used should be appropriate for a garden setting.
- 33 The existing shed would be demolished and the proposed outbuilding would be located at the end of the rear garden and would be rectangular in shape. The proposed outbuilding would set in by 0.4m from the rear boundary and 0.4m from both shared boundaries to the sides. It would have a total width of 6.4m, a depth of 5.56m and the roof would be sloping with maximum height of 3m sloping down to 2.6m. The outbuilding would feature a shed at its west elevation, which would be 3m deep, 2.15m high, rising at 2.55m, and 1.85m wide.



**Figure 4: North and South Elevations**

- 34 The submitted plans indicate that the outbuilding would be used as a music studio, which is considered ancillary to the residential function of the house.
- 35 The proposed outbuilding would be finished in wood shiplap, it would comprise kingspan quad core roof panels and a three sash bi-fold door that would face the rear elevation of the host building.

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36 The proposed development would reduce the rear garden area from approximately 105m<sup>2</sup> to 80m<sup>2</sup>, maintaining 76% of the existing garden, and as such it is considered that the proposed development would retain an appropriate sized garden. In addition, the proposed development would feature a drainpipe which is considered acceptable as in case of overflowing, the existing garden would be able to absorb the water without causing any flooding problems to the neighbouring properties.

### 6.2.1 Urban design conclusion

37 In summary, the extension, due to its design and use of high-quality materials, would preserve the character and appearance of the host dwelling.

38 Officers conclude that the proposal responds sensitively to its context and the character of the surrounding area and therefore is acceptable in terms of design.

## 6.3 LIVING CONDITIONS OF NEIGHBOURS

### *General Policy*

39 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. At para 185 it states decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions

40 This is reflected in relevant policies of the London Plan (D3), the Core Strategy (CP15), the Local Plan (DMP 31) and associated guidance (Alterations and Extensions SPD 2019).

41 The Council has published the Alterations and Extensions SPD (2019) which establishes generally acceptable standards relating to these matters (see below), although site context will mean these standards could be tightened or relaxed accordingly.

42 Daylight and sunlight are generally measured against the Building Research Establishment (BRE) standards however this is not formal planning guidance and should be applied flexibly according to context

### *Discussion*

43 The proposed outbuilding would extend for 5.56m along the boundary with No 26 and 3m along the boundary with No 28A with a sloping roof of maximum height of 3m sloping down to 2.6m. The outbuilding would have a minimal setback of 0.4m from the boundary with Nos 26 and 28A Border Road.

44 Officers note that objections to the proposal raise concerns over overshadowing and loss of daylight that would impinge the garden use, overbearing sense of enclosure, loss of outlook from the inner side of the flat to the garden, creation of noise nuisance due to the use of the outbuilding as a music studio and proximity to the fence line.

45 Although there is a minimal setback from the boundary with the adjacent properties, the size of the adjacent gardens is large enough that any potential enclosing or overbearing effect would be minimal. Therefore the proposed outbuilding is not considered to result in any unreasonable harm to the residential amenity of these neighbouring properties, in terms of loss of daylight, outlook, creation of sense of enclosure and nuisance that would

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warrant a refusal of the application. The use of the site as a music studio is judged ancillary to the host dwelling and the noise would not be inconsistent with conventional outbuilding use in a rear garden.

### **6.3.1 Impact on neighbours conclusion**

46 The proposed development would not introduce any unacceptably harmful impacts to the living conditions of any of the neighbouring properties and therefore would be compliant with LPP D3, CSP 15 and DMP 31 and the provisions of the 2019 SPD.

## **7 LOCAL FINANCE CONSIDERATIONS**

47 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).

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

49 The CIL is therefore a material consideration.

50 This application is householder development, does not attract a CIL charge.

## **8 EQUALITIES CONSIDERATIONS**

51 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.

52 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.

53 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.

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- 54 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>
- 55 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
- 56 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>
- 9 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

- 57 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
- 58 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.

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- 59 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.
- 60 This application has the legitimate aim of providing a new outbuilding to an existing residential property. The rights potentially engaged by this application, including Article 8 and Protocol 1 are not considered to be unlawfully interfered with by this proposal.

## 11 CONCLUSION

- 61 This application has been considered in the light of policies set out in the development plan and other material considerations.
- 62 In conclusion, the proposal is overall considered acceptable in its design, scale, materials and impact on neighbouring amenity.
- 63 In reaching this recommendation, Officers have given weight to the comments and objections that were received regarding this application and consider the proposed development would preserve the host building in terms of design. No unacceptable harm would arise to the living conditions of neighbours, therefore Officers recommend that planning permission should be granted subject to the imposition of suitable planning conditions.

## 12 RECOMMENDATION

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

### 12.1 CONDITIONS

- 1) **FULL PLANNING PERMISSION TIME LIMIT**  
The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.  
Reason: As required by Section 91 of the Town and Country Planning Act 1990.
  
- 2) **DEVELOP IN ACCORDANCE WITH THE APPROVED PLANS**  
The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:  
  
Drawing #1; Drawing #2 (Received 10/09/2021); Drawing #3 (**Received 14/09/2021**).

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

3) **USE OF ANCILLARY BUILDINGS/ANNEXES**

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the residential accommodation hereby approved shall only be used for purposes ancillary to the residential use of the dwellinghouse known as **28 BORDER ROAD, SE26** and shall not be occupied as any form of self-contained residential accommodation without prior the benefit of planning permission.

**Reason:** The application has been assessed only in terms of this restricted use and any other use may have an adverse effect on the character and amenity of the area and amenity for future occupiers contrary to relevant policies in the London Plan (March 2021), Core Strategy (2011) and Development Management Local Plan (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, no pre-application advice was sought. However, as the proposal was clearly in accordance with the Development Plan, permission could be granted without any further discussion.

**2) Unique Informative:** You are advised that self-contained residential use of the building hereby approved is expressly precluded by a condition attached to this permission. You are reminded the Local Planning Authority has powers of enforcement.

## 13 BACKGROUND PAPERS

- 65 Submission drawings
- 66 Submission technical reports and documents
- 67 Statutory consultee responses

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## 14 REPORT AUTHOR AND CONTACT

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