

APPELLANT'S STATEMENT OF CASE

TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78

**APPEAL BY
SOUTH EAST LIVING GROUP**

**4 + 4A OAKLANDS ROAD
BROMLEY BR1 3SL**

PINS Reference: TBA

London Borough of Bromley
Reference: 14/04810

September 2015



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1.0 INTRODUCTION

- 1.1 This appeal arises out of the refusal by the London Borough of Bromley to permit the demolition of the existing building at 4/4A Oaklands Road, Bromley and the erection of a new three and a half storey building comprising of 7 one-bedroom apartments and 4 two-bedroom apartments with parking spaces.

Application

- 1.2 The application was submitted on 4 October 2014 and was for outline planning permission with all matters, apart from access and layout reserved for subsequent approval. It was accompanied by:-

Location Plan	-	Scale 1:1250
Drg 914:1022/PL201	-	Ground Floor
" 202/A	-	First and Third Floor Plans
" 203	-	Elevations
" 205	-	Roof Plan
" 206	-	West Elevation and Second Floor Plan
" 207	-	G F – wheelchair layout
" 208	-	Flat/as Wheelchair Unit
Front Elevation	-	coloured
Roof/Site Plan	-	coloured
Planning Design and Access Statement	-	Measures Scarfe Architects
Transport Assessment	-	Sarnlea Ltd
Tree Survey Report	-	Canopy Consultancy
Financial Viability Appraisal	-	Affordable 106
CIL Additional Information Requirement Form.		

- 1.3 An assessment of the Financial Viability Appraisal (FVA) was carried out by Lambert Smith Hampton (LSH) on behalf of LB Bromley and was dated 6 May 2015.
- 1.4 A response to the LSH assessment Affordable 106 was prepared and submitted, dated 10 July 2015.

Delegated Officer's Report

- 1.5 A delegated decision Officer's Report was prepared dated 1 September 2015 (copy produced APP 1). This, *inter alia*, concluded that:-
- the principle of the redevelopment of the site for a flatted development would appear to be acceptable;
 - the residential density of the development would equate to 173 habitable rooms per hectare and 73 units per hectare which is within the density guidelines set out in both the London Plan and the UDP;

- the layout proposed is, in principle, considered acceptable and a high quality scheme of landscaping could be provided. There is adequate separation to neighbouring properties;
- overall the development would not appear unduly dominant within the street scene;
- the proposed access is considered appropriate, given the scale of the development and its proximity to Bromley Town Centre and the A21;
- the proposal would provide adequate amenity space for occupiers of the proposed flats;
- overall the impact of the development proposal upon neighbouring amenities in terms of potential overshadowing, loss of light, overbearing impact, overlooking, loss of privacy and general noise and disturbance are all acceptable;
- the proposal would not impact on road safety or existing parking conditions in the local area to a significant degree;
- subject to the tree protection measures proposed in the submitted Tree Report the development is unlikely to have severely detrimental impact on protected trees;
- financial contributions towards health and education are sought:-

Health	-	£ 10,494.00
Education	-	£ 14,293.05.

1.6 The Report was therefore comprehensively positive in terms of the principle of the development and its impacts. However, it was concluded that:-

- the Applicant has not adequately demonstrated that the development is unable to support affordable housing provision, and
- insufficient information has been submitted to demonstrate that the development can achieve the required carbon dioxide reductions as set out in Chapter 5 of the London Plan.

The Report therefore concludes that for these two reasons, together with the lack of any planning obligation to secure financial contributions to Health and Education Infrastructure, planning consent should be refused.

Decision

1.7 Planning consent was refused by a notice dated 2 September 2015. There were two reasons given for refusal:-

- "1. The proposal would give rise to a requirement for affordable housing and a financial contribution towards health and education provision. Inadequate evidence has been submitted to demonstrate that the development cannot support affordable housing provision and a sufficient healthcare and education infrastructure contribution. As such the proposal fails to mitigate the impact of the development contrary to Policies H2 and IMP1 of the Unitary Development Plan and Policy 8.2 of the London Plan.
2. Insufficient information has been submitted in respect of energy and how the development will seek to minimise carbon emissions in accordance with the energy hierarchy in policy 5.2 of the London Plan and there is insufficient evidence to demonstrate that the development can feasibly achieve the required carbon dioxide reductions, contrary to Chapter 5 of the London Plan."

Issues

1.8 The issues in this appeal are therefore identified as being:-

- 1.- whether the financial viability of the proposed development can support the required provision of affordable housing;
- 2.- whether the proposed development can be energy-efficient;
- 3.- whether financial contributions towards the provision of local infrastructure in health and education are justified.

1.9 In terms of the second and third issues the Appellant was not notified during the course of the application process of the requirements for further information on energy efficiency or of the requirement for health and education contributions to be made. Neither of these are fundamentally resisted and the Appellant has commissioned an Energy Report and will provide a Unilateral Undertaking to secure the required contributions to Health and Education, if they are demonstrated to be compliant with the CIL Regulations. It is therefore anticipated that the Council will not wish to pursue these elements of their refusal, if the Energy Report and S106 Undertaking have been provided.

1.10 The single outstanding issue is therefore whether the proposed scheme should be required to provide Affordable Housing.

2.0 SITE DESCRIPTION

- 2.1 The site is described in the DAS and in the Statement of Common Ground (SoCG).

3.0 PLANNING HISTORY

3.1 There is no material planning history relating to the appeal site.

4.0 THE PROPOSAL

- 4.1 The proposal is extensively described in the DAS and the Planning Officer's delegated report.

5.0 PLANNING POLICY

5.1 The Statutory Development Plan comprises:-

1. The London Plan (March 2015)
2. London Borough of Bromley UDP (July 2006) (Saved Policies)

The Bromley UDP is out of date, having been adopted prior to the publication of the National Planning Policy Framework (the Framework) in March 2012. The weight to be given to the UDP is therefore as set out in the Framework at Paragraph 215, namely that due weight should be given to its policies according to their degree of consistency with the Framework.

5.2 A new Local Plan is currently under preparation, but it is not well advanced and is still at the consultation stage. A Local Plan Draft Policies and Designations document was published for consultation in February/March 2014. The draft policies set out therein must carry commensurately little weight because the Plan is still at an early stage.

The London Plan

5.3 A list of relevant policies from the London Plan is set out in the SoCG. It is agreed that the proposed development is in substantial accordance with these policies.

5.4 On the issue of the provision of affordable housing the relevant policies are:-

- | | | |
|-------------|---|---|
| Policy 3.10 | - | Definition of Affordable Housing |
| Policy 3.11 | - | Affordable Housing Targets |
| Policy 3.12 | - | Negotiating Affordable Housing on individual private residential and mixed use schemes. |

5.5 Policy 3.20 confirms that affordable housing is social rented, affordable rented and intermediate housing.

5.6 Policy 3.11 states that 60% of the affordable housing provision should be for social and affordable rent and 40% for intermediate rent or sale. It is left to individual Boroughs to set an overall target in their LDFs for the amount of affordable housing provision needed over the Plan period but the considerations include, inter alia:-

"f - the viability of future development taking into account future resources as far as possible."

5.7 Policy 3.12 states that the maximum reasonable amount of affordable housing should be sought, having regard to a list of 8 criteria set out in the Policy. One of these is affordable housing targets adopted in line with Policy 3.11. Others include:-

- the need to encourage rather than restrain residential development (Policy 3.3); and
- the specific circumstances of individual sites.

The supporting text to the policy states that:-

"Boroughs should take a reasonable and flexible approach to securing affordable housing on a site by site basis."

- 5.8 The context for the application of affordable housing policies is therefore very much one of considering each site individually, against the background of seeking the maximum reasonable amount of affordable housing. This is confirmed in Part B of Policy 3.12 which states:-

"Negotiations on sites should take account of their individual circumstances, including development viability, the availability of public subsidy, the implications of phased development, including provisions for re-appraising the viability of schemes prior to implementation (contingent obligations) and other scheme requirements."

London Borough of Bromley UDP

- 5.9 The relevant policies in the UDP are policies H2 and H3. The threshold for seeking affordable housing provision is schemes for 10 dwellings or more and the appeal proposal falls within this category. Policy H2 states that:-

"..... negotiations will take place to determine the number of affordable dwellings to be provided. In negotiating the amount of affordable housing on each site, the Council will seek 35% provision with 70% social-rented housing and 30% intermediate provision, unless it can be demonstrated that a lower level should be sought"

- 5.10 Policy H3 deals with off-site provision and is not directly relevant to the current issues.

- 5.11 An Affordable Housing SPD was adopted by LB Bromley on 3 March 2008. The guidance contained in the SPD is based on PPS3 and the London Plan 2008. It is therefore considerably out of date. The document does not include any specific guidance in relation to viability assessments, although it does say that there should be no assumption that grant will be available when valuing potential development sites (Paragraph 6.43).

National Guidance

- 5.12 National guidance upon the provision of affordable housing is contained within the Framework Paragraphs 47 – 50. Local Planning Authorities should identify affordable housing needs and then set policies for meeting the need onsite,

unless offsite provision can be robustly justified. Paragraph 173 of the Framework: Ensuring viability and deliverability is also relevant.

5.13 Other National guidance upon the delivery of affordable housing is contained in Planning Policy Guidance, notably in the section on Planning Obligations – Reference ID: 23b with revisions at various dates.

5.14 Paragraph 004 (26 March 2014) states that:-

"Planning obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, planning obligations should not prevent development from going forward."

5.15 Paragraph 006 (26 March 2014) states that:-

"Where local planning authorities are requiring affordable housing obligations or tariff style contributions to infrastructure, they should be flexible in their requirements. Their policy should be clear that such planning obligations will take into account specific site circumstances."

5.16 Paragraph 007 (26 March 2015) states that:-

"Policy for seeking planning obligations should be grounded in an understanding of development viability through the plan-making process.

On individual schemes, applicants should submit evidence on scheme viability where obligations are under consideration. Wherever possible, applicants should provide viability through an open book approach to improve the review of evidence submitted and for transparency."

5.17 The PPG also includes guidance on viability at Section ID10. Plans should be deliverable and sites should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened (Paragraph 001 – 6 March 2014). The paragraph goes on to say that, where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.

5.18 Paragraph 004 of Section ID10 (6 March 2014) sets out the underlying principles for understanding viability in planning. These include evidence-based judgements which require a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market.

5.19 In summary, national guidance confirms the need to make policy for the provision of affordable housing in new development schemes, but any requirement for planning obligations must be applied flexibly, must take into account specific site circumstances and should not prevent development from going forward.

5.20 This is the case for all planning obligations, but the provision of affordable housing will often have the greatest impact upon the viability and deliverability of any development project. This is confirmed by the review

and appeal procedure of S106 affordable housing requirements introduced by the Growth and Infrastructure Act which inserts a new Section 106 BA, BB and BC into the 1990 Town and Country Planning Act. These sections introduce a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing. Such a review process is not available for any other type of planning obligation and this is a recognition by the Government that unduly onerous requirements for the provision of affordable housing can prevent the delivery of much needed housing and should not be allowed to do so. The DCLG Guidance to accompany the new legislation, published in April 2013, sets out the Government aim to ensure that economically, unviable affordable housing requirements are not an obstacle to house building. The Guidance also contains useful advice upon the form of viability evidence.

6.0 THE CASE FOR THE APPELLANT

- 6.1 It is for the Applicant/Appellant to submit evidence on scheme viability and such evidence should be on an open book approach and reflect a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market. The Appellant therefore commissioned a Financial Viability Appraisal (FVA) of their proposed development from Affordable 106 who are specialists and local experts in such matters. Their report is dated 1 December 2014 and is included within the appeal bundle.
- 6.2 The FVA uses the Argus Developer financial appraisal model with inputs from locally active Registered Providers, Local Estate Agents and recent tender figures for comparable schemes nearby. Following advice from local Estate Agents and applying a 20% vendor's incentive, the existing use site viability benchmark is set at £ 1.08 m.
- 6.3 With a policy compliant scheme the residual value produced is £ 536,000, leaving a £ 544,000 shortfall on the site viability benchmark.
- 6.4 A scheme for full market housing with no affordable housing would still be non-viable, producing a shortfall of £ 184,000 against the site viability benchmark. However, this lower shortfall is considered to represent a situation which the developer and its funder might be willing and able to pursue viably on the basis of a compromised profit margin in the hope of favourable market movements.
- 6.5 The FVA was appraised on behalf of the Council by Lambert Smith Hampton (LSH) in a letter dated 6 May 2015. This raised questions about the Affordable 106 Appraisal in respect of:-
- Building costs – RICS BCIS online build cost information indicates a lower build cost than that revealed by recent local tender evidence. LSH suggest £ 130 psf rather than £ 143 psf.
 - Evidence of market sales was of second-hand comparable flats, many being converted. The expectation would be that sales of new build flats within the local and wider area would establish a premium above second-hand comparables.
 - Unit sizes are larger than the minimum dwelling size standards as set out in the London Housing Guide.
 - The benchmark land value figure is questioned as being unrealistic.
 - The lack of detailed analysis of the comparables with additional commentary supporting the values adopted within the report is questioned.

The conclusion is that the Applicant's case had not been evidenced.

6.6 Affordable 106 were commissioned to produce a response to the LSH critique, which they did in the form of a comprehensive response report dated 10 July 2015 which was then submitted to the Council. In response to LSH points:-

- a firm of Quantity Surveyors were engaged to produce a detailed elemental cost plan for the scheme. This is a more robust approach than relying on general BCIS figures and produced an even higher cost than that originally used by Affordable 106. However, Affordable 106 continued to use the lower figure adjusted by the BCIS all-in tender price index.
- details of new build flat schemes were provided. Estate Agents were asked to re-visit their earlier advice in the light of these new comparables and a revised GDV of £ 3.54 m is used compared to £3.1 m in the original appraisal.
- a formal valuation of the existing value of 4/4A Oaklands Road was commissioned from D P Associates, Chartered Surveyors indicating a combined value of £ 1.05 m. This was verified in a separate valuation by Proctors.
- further comparable evidence was also provided by Proctors.

6.7 The Argus Developer model was re-worked on the basis of these amended inputs and still resulted in a significant shortfall upon the site's benchmark land value – although the shortfall was reduced from £ 184,000 to £ 74,000. Based upon these figures it is clearly demonstrated that a less valuable scheme, including affordable housing, would not be viable.

6.8 The Council did not comment upon the response document and planning consent was refused. It is understood that the Council's lack of response is because the Applicant/Appellant, having paid a significant fee for the initial LSH advice to the Council, was unwilling to pay the further substantial fee that was demanded to appraise the response document. The Appellant's position on this is that they have provided robust evidence in support of their case and, in addition to the planning fee, paid a substantial fee for the Council to take professional advice and this fee should have been sufficient to cover the relatively simple process of appraising the response. A requirement for further payment was therefore unreasonable.

6.9 This amounts to background information, but the main point in this appeal is that the Appellant has produce comprehensive and clear-cut evidence that this scheme will not be viable if affordable housing is provided, the evidence has been tested, revised in response to that testing, but still leads to the same conclusion. It is therefore up to the Council to demonstrate why they regard the evidence provided as being inadequate. The Appellant considers that they have conclusively demonstrated that a housing scheme including affordable housing, cannot be delivered in this case and that a requirement for affordable housing to be provided will prevent the delivery of much needed market housing – contrary to Government advice and objectives.

- 6.10 In terms of the considerations of Part B of London Plan Policy 3.12 there is no public subsidy available to support this scheme beyond the Registered Provider values that have been fed into the total GDV calculation. The development would not be phased and will be delivered promptly on the grant of consent. The disparity of value and the short time period involved mean that re-appraising viability prior to implementation is not appropriate, particularly as there is a viability shortfall even on the 100% market scheme and the Developer would be taking a view upon increased market figures without similar increase in build costs in order to achieve any return on the project at all.
- 6.11 The first reason for refusal also refers to financial contributions to health and education provision. The total contribution required for these contributions is set out in the Officer's Delegated Report as being £ 24,787.05. The Appellant has taken a view that this figure can be accommodated without materially changing their assessment of viability risk and will therefore provide a unilateral undertaking to make these payments.
- 6.12 Similarly, although it is considered that sufficient information on energy efficiency for an outline planning application has been provided, a specialist report will be submitted in response to the Council's case. Again, the Appellant does not understand what further information is reasonably required at this stage and why the issue justifies a reason for refusal rather than being adequately covered by condition and/or Building Regulation requirements. These are due to be issued in revised form in October/November this year. The Council will be called upon to explain their position on the second reason for refusal as well as the first.

7.0 THE CASE FOR THE COUNCIL

- 7.1 From the Officer's Delegated Decision Report it is clear that there is general agreement that the design of the scheme and its site-specific impacts are acceptable. This is reflected in the draft Statement of Common Ground.
- 7.2 The Officer's Report makes no mention of the Applicant/Appellant's response to the points raised by the Council's advisers regarding build costs, land value and extent of supporting evidence. This was a thorough, competent and comprehensive response, but there is nothing to indicate that it has been taken into account by the Council in reaching their decision.
- 7.3 The Council's concerns about the alleged inadequacy of the information provided in the DAS in respect of sustainability and renewable energy were not communicated to the Applicant/Appellant prior to the issue of the refusal notice. If a separate, detailed energy report was required, then this should have been evident at the validation stage or during consultation with the relevant Officers of the Council. There is nothing particularly unusual about this development proposal that suggests the detailed construction will be unable to achieve industry standards. The reassurance given by the DAS that the building would achieve the necessary standards of energy efficiency and CO₂ reductions should have been enough at the outline stage without requiring a full strategy for building, the details of which are not being approved as part of this application. The second reason for refusal does not appear to be substantive and the situation can be satisfactorily addressed by the imposition of a condition requiring the submission and approval of a detailed energy strategy as part of the detailed submissions to follow the grant of outline consent.
- 7.4 Similarly, the Council did not communicate to the Applicant/Appellant the requirement for financial contributions to health and education. Again they only became aware of the requirement from the reason for refusal and had no opportunity to respond. This is certainly not consistent with the obligations placed upon local planning authorities by Paragraphs 186 and 187 of the Framework to adopt a helpful and positive approach.
- 7.5 The Appellant therefore considers that the Council's reasons for refusal were addressed by the response on affordable housing viability and by the DAS on energy efficiency. The requirement for a specific energy strategy statement could have been considered if it had been communicated sooner and similarly the health and education contributions could have been addressed if they had been communicated sooner. The Appellant therefore considers that the Council's case is not soundly based and that a refusal could have been avoided.

- 8.7 Additional reasons for refusal, not timeously identified by the Council, can be addressed by condition, the provision of an energy report and a unilateral undertaking if the requirements for health and education contributions pass the test of Section 122 of the CIL Regulations.
- 8.8 This is therefore a sustainable development proposal that accords with the Development Plan and should be approved without delay. The Inspector is therefore respectfully requested to allow the appeal.

LONDON BOROUGH OF BROMLEY
TOWN PLANNING
RENEWAL AND RECREATION DEPARTMENT

DELEGATED DECISION on 1st September 2015

14/04810/OUT **4 Oaklands Road**
Claire Harris **Bromley**
 BR1 3SL

Description of Development

Demolition of existing buildings and erection of a 4 storey detached building comprising 11 flats (7x one bed and 4 x two bed) with landscaping and parking **OUTLINE APPLICATION**

Proposal

Proposal

- Outline permission is sought for the demolition of existing building and associated outbuildings and erection of a 4 storey detached building comprising 11 flats
- Approval is sought for access and layout with appearance, landscaping and scale reserved
- 7 x one bedroom and 4 x two bedroom flats are proposed
- No affordable housing units are proposed
- The proposed building is three storey with fourth storey accommodation within the hipped roof
- The roof measures a maximum height of approximately 12.4 metres with the height lowering towards the western side and rear of the building to 11.7 metres
- The front elevation is stepped back towards the eastern side
- On the eastern side the building steps in from the side boundary to allow for the access road
- The building incorporates a combination of bays, balconies and traditional window designs
- Private gardens are provided for the 2 one bedroom ground floor apartments to the front of the building
- A small patio is provided for the two bedroom apartment at the rear of the ground floor
- Private balconies/terraces are provided for all apartments at first, second and third floors
- A communal amenity area is proposed at the rear
- 10 car parking spaces are proposed at the rear of the site as well as 1 disabled space at the front
- The rear parking area is accessed via a new access drive accessed from Oaklands Road
- The driveway ranges in width from 4.8m at its widest to 3.1m at its narrowest
- Cycle parking is proposed on the eastern side of the building
- Refuse and recycling storage is proposed within the front curtilage of the site adjacent to the highway boundary.

The applicant has submitted the following documents and to support the application:

- Tree Survey Report (12/11/2014) - it concludes that while a small number of trees will be removed to enable the proposed development, the larger trees will be retained and a number of new trees planted. Through the specified tree protection measures it will be possible to minimise the impact of the proposed development on the retained trees.
- Transport Assessment (01/2015) - it concludes that the proposal accords well with both local and national policy; the level of accessibility by non-car borne modes is adequate for the type of development proposed; the level of traffic generated will be immaterial and the internal highways layout is suitable in terms of highways safety and efficiency.

The application is also accompanied by a Design and Access Statement in which the applicant submits the following summary points in support of the application:

- The site is previously developed and has the potential for increased use making best use of the land;
- Materials and detailing are fully compatible with those generally used in the area;
- Environmental improvements are proposed;
- Safe and cycle storage is included;
- Dwellings comply with the London Plan Housing Design guide space standards and will be built to Lifetime Homes standards;
- Dwellings will achieve level 4 or better of the Code for Sustainable Homes;
- Renewable energy sources in the form of solar and photo-voltaic panels will be incorporated and A rated efficiency appliances and fittings will be used.

Location

- The existing building is a substantial two/three storey Edwardian house with a single storey attached garage on the eastern side and detached garage adjacent to the eastern side
- The application building has been divided into 2 apartments (4/4a)
- there is a blanket Tree Preservation Order (TPO) which covers the entire site
- the site is not within a designate conservation area and there are no listed buildings adjoining the site however, it is noted that No.8 Oaklands Road is locally listed
- to the west of the site is a large four storey flatted building
- to the east is a series of three storey low-level townhouses known as Garden Court
- the surrounding area is residential in character consisting of a mix of older detached dwellings either in use as single family homes or divided into separate apartments and more contemporary terraced houses and blocks of flats, as well as a three/four storey residential care/nursing home granted planning permission in 2001
- The buildings in this part of Oaklands Road are generally fairly well-separated from the highway with parking or landscaping to the front, however, the residential care home at No.5 is significantly closer to the highway boundary
- The existing building resides on a generous plot with a large rear garden however the surrounding gardens vary significantly in length and width
- there are a number of mature trees on and around the perimeter of the site
- the site is located less than 1km from and to the north-west of Bromley town centre
- the A21 is immediately to the east of Oaklands Road connecting with Bromley town centre to the south and Lewisham High Street to the north

- it is within an area with a low Public Transport Accessibility Level (PTAL) of 1b.

Consultations

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

- o Existing house contributes to character of area and is of historic value
- o One of the apartments is still occupied
- o Rear building line does not extend significantly beyond rear of adjacent property
- o Would like a reduction to canopy of tree overhanging the roof of adjacent property
- o Laburnum Tree missing from tree survey
- o Concerned about overlooking from rear balconies and noise pollution
- o Loose gravel surface would create noise
- o On-street parking already congested - provision of another 11 properties will make worse
- o Traffic levels and unrestricted parking are already creating safety issues
- o Would prefer number of flats to be decreased
- o Security risk to adjacent property - would like a security gate to front of new roadway
- o Over-intensive use of a small site
- o Oaklands Road is an already overcrowded area, another 11 flats would make it worse
- o Disappointed trees will be cut down
- o Internal layout does not provide proper area for eating
- o Flats on right side of building will have daylight reduced by tree T1
- o Proposed building together with 6 Oaklands would present a monolithic and dominating mass in the street scene
- o Out of character with area
- o Side spacing inadequate
- o Concerned about damage to and loss of trees
- o Cycle parking appears to be insecure
- o Plans do not show a lift overrun which will increase height of building.

Comments from Consultees

Highways - no objections, recommend conditions.

Environmental Health (Housing) - concerns over communal living space combined with kitchen area. Also concerns over bathroom being located off a bedroom so occupants and visitors will have to travel through the bedroom to use WC

Environmental Health (pollution) - no objections but conditions recommended re: impact on Air Quality Management Area and electric car charging points should be provided per 20% of parking spaces

Drainage - no objections, recommend SUDS condition

Designing Out Crime Officer - if pedestrian and vehicular gates are installed in front of the main entrance doors to control access to the communal gardens, parking courtyard and building, the application should be able to achieve Secured by Design accreditation in respect of design and layout. Secured by Design condition recommended.

Planning Considerations

The application falls to be determined in accordance with the following policies of the Unitary Development Plan (UDP):

BE1 Design of New Development
BE7 Railings, Boundary Walls and Other Means of Enclosure
H1 Housing Supply
H2 and H3 Affordable Housing
H7 Housing Density and Design
H9 Side Space
IMP1 Planning Obligations
NE7 Development and Trees
T1 Transport Demand
T2 Assessment of Transport Effects
T3 Parking
T7 Cyclists
T8 Other Road Users
T9 and T10 Public Transport
T11 New Accesses
T12 Residential Roads
T15 Traffic Management
T16 Traffic Management and Sensitive Environments
T18 Road safety

Affordable Housing Supplementary Planning Document (SPD)

Planning Obligations Supplementary Planning Document (SPD)

Supplementary Planning Guidance 1: General Design Principles

Supplementary Planning Guidance 2: Residential Design Guidance

A consultation on draft Local Plan policies was undertaken early in 2014 and is a material consideration. The weight attached to the draft policies increases as the Local Plan process advances.

The most relevant draft Local Plan policies include:

5.1 Housing Supply
5.3 Housing Design
5.4 Provision of Affordable Housing
7.1 Parking
8.1 General Design of Development
8.7 Development and Trees
11.1 Delivery and implementation of the Local Plan

In strategic terms, the application falls to be determined in accordance with the following policies of the London Plan (March 2015):

3.3 Increasing housing supply
3.4 Optimising housing potential
3.5 Quality and design of housing developments
3.6 Children and young people's play and informal recreation
3.7 Large residential developments
3.8 Housing choice

- 3.9 Mixed and balanced communities
- 3.10 Definition of affordable housing
- 3.11 Affordable housing targets
- 3.12 Negotiating affordable housing on individual private residential and mixed use schemes
- 3.13 Affordable housing thresholds
- 5.2 Minimising carbon dioxide emissions
- 5.3 Sustainable design and construction
- 5.7 Renewable energy
- 5.9 Overheating and cooling
- 5.10 Urban greening
- 5.11 Green Roofs and Development Site Environs
- 5.12 Flood risk assessment
- 5.13 Sustainable Drainage
- 5.14 Water quality and wastewater infrastructure
- 5.15 Water use and supplies
- 6.3 Assessing effects of development on transport capacity
- 6.9 Cycling
- 6.10 Walking
- 6.13 Parking
- 7.1 Lifetime neighbourhoods
- 7.2 An inclusive environment
- 7.3 Designing out crime
- 7.4 Local character
- 7.5 Public Realm
- 7.6 Architecture
- 7.13 Safety, security and resilience to emergency
- 7.14 Improving Air Quality
- 7.21 Trees and woodlands
- 8.2 Planning obligations
- 8.3 Community infrastructure levy

Mayor's SPG: "Housing" (2012)

Mayor's SPG: "Accessible London: Achieving an Inclusive Environment" (2014)

Mayor's SPG: "Providing for Children and Young People's Play and Informal Recreation" (2012)

On 11 May 2015 the Mayor of London published for six weeks public consultation two sets of Minor Alterations to the London Plan - on Housing Standards and on Parking Standards. Where London Plan policies are quoted the changes in the MALP are shown in *italics*. The most relevant changes to policies include:

- 3.5 Quality and Design of Housing Development
- 3.8 Housing Choice
- 5.3 Sustainable Design and Construction
- 6.13 Parking

Relevant policies and guidance in the form of the National Planning Policy Framework (NPPF) (2012) and National Planning Practice Guidance (NPPG) must also be taken into account. The most relevant paragraphs of the NPPF include:

- 14: achieving sustainable development
- 17: principles of planning
- 47-50: housing supply

56 to 66: design of development

National Planning Policy Guidance (NPPG)

Planning History

There is an application relating to the removal and reduction of various trees at the site, however there is no other recent relevant planning history relating to the site

Conclusions

The main issues to be considered in respect of the current outline proposal are

- o Acceptability in principle of the re-development of the site for flats
- o Density
- o Acceptability in terms of layout and indicative scale
- o Acceptability of the proposed access
- o Housing Issues
- o Impact on neighbouring amenity in terms of outlook, daylight, sunlight and privacy
- o Highways impacts
- o Impact on trees
- o Sustainability and site wide Energy Requirements
- o Planning Obligations

Principal of Development

The National Planning Policy Framework (NPPF) states that housing applications should be considered in the context of the presumption in favour of sustainable development. New development should reflect the identity of local surroundings and add to the overall quality of an area, whilst not discouraging appropriate innovation. The NPPF also encourages the effective use of land and states developments should optimise the potential of the site to accommodate development.

In accordance with London Plan policy 3.5, the design of all new housing developments should enhance the quality of local places, taking into account, amongst other things local character and land use mix. Oaklands Road and the surrounding area is characterised by a combination of single dwellings, residential conversions and purpose-built flats. As such, the principle of the re-development of the site for a flatted development would appear to be acceptable.

Density

Development should comply with the density ranges set out in table 4.2 of the UDP and table 3.2 of the London Plan and in the interests of creating mixed and balanced communities development should provide a mix of housing types and sizes.

Policy 3.4 in the London Plan seeks to ensure that development proposals achieve the optimum housing density compatible with local context, the design principles in Chapter 7 and with public transport capacity. Table 3.2 (Sustainable residential quality) identifies appropriate residential density ranges related to a site's setting (assessed in terms of its location, existing building form and massing) and public transport accessibility (PTAL). This site is considered to be in an 'urban' setting and has a low

PTAL rating of 1b giving an indicative density range of 50-95 units / 150-250 habitable rooms per hectare (dependent on the unit size mix). The London Plan states that residential density figures should be based on net residential area, which includes internal roads and ancillary open spaces.

UDP Policy H7 also includes a density/location matrix which supports a density of 50-80 units / 200-250 habitable rooms per hectare for locations such as this provided the site is well designed, providing a high quality living environment for future occupier's whilst respecting the spatial characteristics of the surrounding area.

The residential density of the development would equate to 173 habitable rooms per hectare and 73 units per hectare which is within the density guidelines set out in both the London Plan and the UDP.

Layout and Indicative Scale

Policies H7 and BE1 of the UDP require new developments to complement the scale, form, layout and materials of adjacent dwellings. Development should not detract from the existing street scene and the space about buildings should provide opportunities to create attractive settings. While the current proposal is in outline form with scale and design reserved, it is necessary to assess the proposed layout of the development as well as the height parameters as indicated in the application.

The proposed flatted development would retain a similar building line to that of the existing building however would be stepped back on the eastern side allowing for more landscaping to the front of the site. Generous separation would be retained between the eastern side of the proposed building and the flank boundary of the site and a minimum side space of approximately 1.7m would be retained to the western flank boundary. While the development would project substantially further back than the existing building, the layout proposed would provide adequate separation to neighbouring properties and there would be enough space retained about the building to ensure that the development would not appear cramped. Furthermore, a high quality scheme of landscaping could be provided.

The rear parking area would be accessed via a new driveway from positioned along the eastern side of the site which is laid out in an informal configuration which takes into account the positions of existing mature trees, the impact on which will be addressed later on. While the impact on neighbouring amenities is a material consideration that needs to be carefully considered, there are examples of other rear parking areas at nearby properties, including at Charmaine Court to the north of the application site, and, as such, the layout proposed is, in principle, considered acceptable.

It will be necessary for all units to be provided with cycle, refuse and recycling storage facilities that are secure, covered and well located in relation to the dwelling. There is adequate space within the site for such facilities to be provided and appropriate conditions are recommended should permission be granted.

The drawings submitted indicate the proposed building to be three storeys in height with accommodation within the roof. It is considered that this would accord with the scale and height of surrounding development including the adjacent No.6 (Oaklands Court) and the residential care home at No.5. Furthermore, the proposed hipped roof design and staggered ridge height would reflect the character of nearby Edwardian properties and, overall, the development would not appear unduly dominant within the street scene.

Access

The proposed vehicular access would be in a similar position to the existing access to the detached garage but would be increased in width to allow two vehicles to pass each other within the site as well as being wide enough for vehicles, pedestrians and cyclists to pass safely. The proposed access is considered acceptable from a highways safety perspective.

Pedestrian access is proposed via a separate access at the front of the site leading to the side entrance to the building located on the eastern elevation. The applicant states that this enables convenient access from the rear amenity area, car park and the road frontage and is considered acceptable.

Housing Issues

Unit Size Mix

London Plan policy requires new housing development to offer a range of housing choices in terms of the mix of housing sizes and types taking into account the housing requirements of different groups. Policies within the Bromley UDP do not set a prescriptive breakdown in terms of unit sizes. Each application should be assessed on its merits in this respect. The development proposes a scheme that is all market housing comprising 7 x one bedroom and 4 x two bedroom flats. The mix of the units is considered appropriate given the scale of the development and its proximity to Bromley town centre and the A21.

A two bedroom/three person wheelchair unit is proposed at ground floor meeting the requirements of London Plan Policy 3.8 which requires 10% of housing units to be designed to be wheelchair accessible and all housing units to be built to Lifetime Homes standards. Furthermore, the applicant states in the submitted Design and Access Statement that all units reflect Lifetime Homes standards.

Tenure

The development is considered liable for the provision of affordable housing on site as set out in the Policy H2 of the UDP. Policy H2 requires 35% affordable housing (on a habitable room basis) to be provided. A lower provision of affordable housing can only be accepted where it is demonstrated that the viability of the scheme cannot support policy compliant provision. In this case the development comprises 11 units and triggers the need for at least 9 of the habitable rooms to be provided as affordable housing.

The applicant has submitted a Financial Viability Appraisal and affordable housing report that advises that the development cannot viably provide any affordable housing on site. The assessment has been independently reviewed by an expert consultant appointed by the Council.

The advice received by the Council from the independent consultant indicates a significant difference of opinion regarding the viability information submitted by the applicant. In particular there is disagreement regarding the build costs and land value and insufficient evidence to justify the scheme's value. On this basis it is considered that the applicant has not adequately demonstrated that the development is unable to support affordable housing provision.

Standard of Residential Accommodation

The Mayor's Housing SPG sets out guidance in respect of the standard required for all new residential accommodation to supplement London Plan policies. Table 3.3 of the London Plan and Standard 4.1.1 of the SPG sets out minimum space standards for new development. The unit sizes proposed are larger than the minimum dwelling space standards as set out in the London Plan.

All units must benefit from private amenity space which must comply with the minimum space requirements taking into account the number of occupants set out in the Mayor's Housing SPG. Dwellings on upper floors should all have access to a terrace, roof garden, winter garden, courtyard garden or balcony. The proposed units all have access to private balconies/terraces or gardens which meet the minimum space standards and a communal amenity area is also proposed to the rear.

Based on the expected child occupancy of the development, the London Plan requires a minimum 4.8 square metres of communal play space for the development which the rear amenity area far exceeds. The proposal would therefore provide adequate amenity space for occupiers of the proposed flats.

Impact on Neighbouring Amenities

Policy BE1 of the UDP seeks to protect existing residential occupiers from inappropriate development. Issues to consider are the impact of a development proposal upon neighbouring properties by way of overshadowing, loss of light, overbearing impact, overlooking, loss of privacy and general noise and disturbance.

While the proposed development would project further back than the existing building, it would be well-separated from the boundary with the adjacent two storey properties to the east, Garden Court, by around 8.5m at the narrowest point widening to around 14m towards the rear of the site. Concerns have been raised by adjacent occupiers regarding overlooking from the proposed balconies at the rear, however, given the substantial separation along with the existing mature tree screening along the eastern boundary there is unlikely to be any significant opportunities for overlooking into Garden Court, nor would the development have a significant visual impact from or result in significant overshadowing to Garden Court.

With regard to the impact on adjacent occupiers at No.6 Oaklands Road, to the west, balconies/terraces are proposed in close proximity to the boundary with this site, as such, a form of screen on the western side of the balconies sited at the front of the building is considered necessary in order to minimise overlooking to neighbouring windows. Should permission be granted, a condition is recommended accordingly. Furthermore, the windows situated in the eastern flank wall at No.6 Oaklands Road (facing the application site) appear to be obscure glass so, overall, no undue loss of privacy would occur for occupiers of this adjacent building. The proposed development would share a similar rear building line to that of No.6 and given its size and orientation is unlikely to result in any significant overshadowing to No.6.

While the proposed car parking area and side access would increase the level of noise and activity toward the rear of the site and adjacent to neighbouring rear gardens (in particular, that of Garden court), it is noted that similar arrangements exist in adjoining sites, including Charmaine Court to the north, and, given the relatively small nature of

the development with only 10 car parking spaces proposed at the rear, it is unlikely to result in significant levels of noise and disturbance to adjacent occupiers.

Overall, the impact of the development on the amenities of occupiers of nearby buildings is therefore considered acceptable.

Highways Impacts

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. All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. 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. It should be demonstrated that improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. The NPPF clearly states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

London Plan and UDP Policies encourage sustainable transport modes whilst recognising the need for appropriate parking provision. Parking should be in accordance with London Plan policy 6.13 and the maximum standards set out in Table 6.2. Eleven car parking spaces are to be provided, including 1 disable space which accords with London Plan standards. Local residents have raised concerns over additional on-street parking in Oaklands Road as a result of the development, however, the level of parking proposed is, in this instance, considered acceptable in that it would not lead to a significant increase in on-street parking.

The Transport Assessment accompanying the application estimates that the development will generate a net total of 10 vehicular movements occurring at the site access during the network peak hours. This is considered immaterial when assessed in isolation or against the existing background traffic flows on Oaklands Road and the A21 and, overall, the development would not impact on road safety or existing parking conditions in the local area to a significant degree.

Trees

The application site is subject to a blanket TPO, and any works carried out should therefore ensure their appropriate management and maintenance in a healthy condition. A tree protection plan and arboricultural report has been received which is shown to retain the majority of trees on and adjoining the site. Nine individual trees will be removed but this is considered unlikely to impact upon the wider streetscape. Subject to the tree protection measures proposed in the report, the development is unlikely to have severely detrimental impact on protected trees. Appropriate conditions are recommended to ensure the future health and protection of retained trees.

Sustainability and Site Wide Energy Requirements

All new development should address climate change and reduce carbon emissions. London Plan Policies 5.1 - 5.7 refer to energy requirements to achieve climate change mitigation including reduction in carbon emissions and renewable energy. Major developments are expected to prepare an energy strategy which shows how the need for energy is to be minimised, and how it will be supplied to the particular development

proposed. In accordance with the energy hierarchy in policy 5.2 of the London Plan, developments should provide a reduction in expected carbon dioxide (CO₂) emissions through the use of on-site renewable energy generation, where feasible. The strategy shall include measures to allow the development to achieve a reduction in CO₂ emissions of 35% above that required by the 2013 Building Regulations. The development should also aim to achieve a reduction in CO₂ emissions of at least 20% from on-site renewable energy generation, where feasible.

Very limited information has been received in respect of sustainability and renewable energy in relation to the development proposal and no energy assessment has been submitted setting out the applicant's commitments in relation to reduction in carbon emissions. While the applicant states that various energy efficient measures will be incorporated into the design and construction, such as high standards of insulation and low energy glazing to windows, and that the contribution to renewable energy will be achieved through solar sources, the information submitted is considered insufficient to demonstrate that the development can achieve the required CO₂ reductions as set out in Chapter 5 of the London Plan.

Policy 5.13 of the London Plan requires development to utilise Sustainable Urban Drainage System (SUDS), unless there are practical reasons for not doing so though supporting text to the policy also recognises the contribution 'green' roofs can make to SUDS. The hierarchy within that policy is for a preference for developments to store water for later use.

This site appears to be suitable for an assessment to be made of its potential for a SUDS to be developed for the disposal of surface water and a condition is recommended accordingly.

The London Plan at Policy 5.11 also requires major development proposals to be designed to include roof, wall and site planting, especially green roofs and walls where feasible, which, among other things, supports sustainable urban drainage. No information has been submitted in respect of provision of green roofs or walls however the design of the building includes flat roofed areas which have the potential to support a green roof. A condition is therefore recommended should permission be granted for details of a suitable green roof to be submitted.

Planning Obligations

The National Planning Policy Framework (NPPF) states that in dealing with planning applications, local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. It further states that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled. The NPPF also sets out that planning obligations should only be secured when they meet the following three tests:

- (a) Necessary to make the development acceptable
- (b) Directly related to the development; and
- (c) Fairly and reasonably related in scale and kind to the development.

Paragraph 122 of the Community Infrastructure Levy Regulations (April 2010) puts the above three tests on a statutory basis, making it illegal to secure a planning obligation unless it meets the three tests.

From April 2015 it is necessary for pooled contributions to take account of pooling regulations. In this instance the Council seek to secure the provision of affordable housing in compliance with Policy H2, health and education contributions.

Based on the proposed tenure of 11 market flats (7 x 1 bed, 4 x 2 bed), the calculations for health and education contributions are as follows:

Health: £10,494

Education: £14,293.05.

The Financial Viability Appraisal which the applicant submitted as part of the application concludes that the development cannot viably provide any affordable housing on site and no allowance is made for health and education contributions. The proposal is therefore not in compliance with the Council's policies regarding affordable housing and planning obligations.

Summary

The assessment above considers the acceptability of the proposal in respect of layout and access with all other matters reserved. It is also necessary to consider the quality and type of housing proposed as well as the wider impacts of the development on local residents, highways, trees and the contribution the development makes towards the mitigation of climate change.

Overall, the layout proposed provides adequate separation between the proposed building and existing neighbouring development, allowing good opportunities for soft and hard landscaping and retaining the majority of existing mature trees on and around the site.

It is clear that there will be an impact on adjacent properties as a result of this proposal and due consideration has been given to the comments made by residents during the consultation process. However, based on the above it is considered that the development in the manner proposed is acceptable in that it would not have an unduly harmful impact on the outlook or amenities of local residents, nor would the parking proposals lead to significant road safety issues or undue noise and disturbance to occupiers of nearby dwellings.

However, in this instance the applicant has failed to adequately demonstrate that the development is unable to support affordable housing provision and, as such, would not meet the housing needs of the Borough. Furthermore, the proposal would be unable to deliver any contributions towards health and education which are considered necessary to mitigate the impacts of the development on existing infrastructure.

In addition, very limited information has been received in respect of sustainability and the applicant does not sufficiently demonstrate that the development can achieve the required CO₂ reductions to contribute towards the mitigation of climate change as set out in Chapter 5 of the London Plan.

The application site was visited by the case officer and the aims and objectives of the above policies, national and regional planning guidance, all other material planning considerations including any objections, other representations and relevant planning history on the site were taken into account in the assessment of the proposal.

Having had regard to the above it was considered that the application should be refused for the reasons set out above.

Decision

Application Refused

For conditions or grounds of refusal please refer to the Decision Notice

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