

Item No: 6	Classification Open	Committee: Camberwell Community Council	Date: 21 July 2011
From: Head of Development Management		Title of Report: Addendum Late observations, consultation responses, information and revisions.	

PURPOSE

- 1 To advise Members of observations, consultation responses and information/revisions received in respect of the following planning applications on the main agenda. These were received after the preparation of the report and the matters raised may not therefore have been taken in to account in reaching the recommendation stated.

R E C O M M E N D A T I O N

- 2 That Members note and consider the late observations, consultation responses and information/revisions received in respect this item in reaching their decision.

FACTORS FOR CONSIDERATION

- 3 Late observations, consultation responses, information and revisions have been received in respect of the following planning application on the main agenda:

Comments by the Head of Development Management

ITEM 6.1 - LAND TO THE REAR OF 37 AND 38 GROVE PARK, LONDON SE5 8LG

5 Grove Park (new objection)

- 4 I write to object to this application. For the reasons set out below, it is in my submission improperly made and must be rejected.
- 5 The applicant seeks permission under section 73 of the Town and County Planning Act 1990 to develop the land without complying with condition 2 of the conditions imposed following application 10-AP-1717. Condition 2 specifies the drawings which must be followed in carrying out the development. In other words it identifies the development for which permission has been given. The applicant wishes to delete the specified drawings from the condition and substitute a new set of drawings for them. Thus, the effect of the application is to seek permission to develop the site according to a different set of drawings from that for which permission was originally given.
- 6 Looking in more detail at the new drawings, it can be seen that the new drawings include a basement floor in each of the proposed houses increasing their floor area by approximately 30%. It is, accordingly, clear that the application is for a new permission for a different development from that for which permission was previously given.
- 7 Subsections (1) and (2) of section 73 are in the following form:

- (1) *This section applies, subject to subsection (4) to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted,*
- (2) *On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and -*
- a) *if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
- b) *if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse permission.*
- 8 It can be seen that the scope of this statutory provision is limited to considering whether specific conditions to which planning permission was subject should be removed or revised. It is not directed to applications for a permission to build a different building from that for which permission has previously been granted. It follows that the making of the present application is misconceived and that it should be refused.
- 9 It makes no difference that the application conforms in procedural terms with the provisions of the section. The previous permission was to building the buildings shown in the drawings specified in condition 2. The permission could (and arguably should) have been formulated as a permission to develop in accordance with those drawings. Formulating it as a permission to develop subject to conformity with the drawings specified in a condition does not change the substantive nature of the permission granted. It merely alters the form in which the permission is expressed.
- 10 The same point can be seen from the fact that subsection (2) directs the planning authority to 'consider only the question of the conditions subject to which planning permission should be granted'. It is plain that the section requires the planning authority to look at the effect of the condition on the permission and to review that. If one considers what is required to comply with this obligation in the present case, it would be necessary for the planning authority to review the entire building for which permission has been given because all the drawings are proposed to be changed. It is immediately apparent therefore that the planning authority will have to consider the application as a whole. It is accordingly an application for a new permission requiring full consideration. It is not appropriate for such an application to be made or considered under section 73. It should be rejected and the applicant required to submit the application as a full application for planning permission subject to the normal process of objection and consideration.
- 11 The applicant relies upon the fact that it took pre-application advice from the Council to justify the making of an application under Section 73. I point out that the House of Lords has made clear that advice and indications from a Council cannot be relied upon as definitive or binding: see *R v East Sussex County Council ex p. Reprotech* (2002) UKHL 8. It is plain that the advice was wrong. The present application should be reformulated as a full application.
- 12 Finally, I note that the applicant appears to have sought advice whether the application could be made under section 96A of the Town and Country Planning Act 1990 as a change which is 'not material' (see subsection (1)). For the reasons set out in Mr Ben Rice's letter to you of 27th June 2011, it is self-evident that the present application could not on any basis be regarded as non-material.
- 13 I would accordingly ask that the planning authority rejects this application as made under the inapplicable statutory provision. If the applicant wishes to obtain permission for a different building from that for which permission was previously granted, then it should submit a full application in the normal way and subject to the normal application, objection and review process.

37 Grove Park (additional objection following re-consultation)

- 14 Note that officers have decided the application before the completion of the consultation period which is a message to residents that our views are held in no regard and are only worthy of inclusion in an addendum.
- 15 Question the independence of the structural report given that it was commissioned by the applicant. This follows a pattern in case as a member of the Conservation Area Advisory Group wrote a report which is quoted as independent despite the fact that he clearly was closely linked to Southwark Planning, and one of the directors of CAAG is a paid representative of the developers and spoke on their behalf at the Community Council (response – this appears to be in relation to the original permission granted consent in October last year). The two genuinely independent reports into this, namely those of the Camberwell Society and the Inspector's report at the appeal have been ignored or consigned to footnotes.
- 16 A neighbour has written describing how these alterations should be considered major and material. We completely agree with this and also with the letter from Michael Silverleaf QC as to the process involved and whether this could be subject to judicial review. Common sense would suggest that alterations that make the development 30% bigger (bigger than the plans rejected by the Inspector at the appeal) should deserve a separate planning application. It was a cynical move and the sort of thing which gives developers a bad name within communities. The applicant should build in accordance with the original plans or should be made to apply again. It is the only honest way.

83 Grove Park (additional objection following re-consultation)

- 17 The additional information in the structural report adds nothing to the case for permitting this extension. The Engineer discounts the argument that the site is liable to subsidence, noting that there have been buildings in London on similar sites for many years. Be that as it may, the evidence provided by local residents is clear that this particularly area has already experienced subsidence in most of the adjacent houses which has affected insurance premiums.
- 18 The structural engineers report, the arboricultural consultant and the officer report discount the probability of interference from the large plane tree at the periphery of the site and as previously reported, the evidence from surveys taken at our own property indicates the presence of roots from that tree below the level suggested in the applicant's arboricultural report. It is not good enough to put against this the suppositions that the tree roots may have been damaged in earlier wall building or that some national standard suggests that it is unlikely that tree roots may invade at these depths; the reality is that this tree does so.
- 19 The case officer, despite the earlier view that this cannot be considered a minor amendment, now argues that the revised application can be considered as minor because the 30% plus addition will not be seen behind a 2m wall. However much it is hidden from view, the fact remains that it is a major addition and in our view, would not have been agreed by the Community Council when it considered the main application above.
- 20 In terms of natural justice, the whole application should be reviewed by the main planning authority.

85 Grove Park (additional objection following re-consultation)

- 21 The applicants chose to apply for planning permission using section 73 'Variation of conditions / minor alterations' on the advice of Becky Baker (Planning officer) which states that:

"Having discussed the proposed basement with colleagues, we are of the view that the construction of a basement would be material, as it would change the character of the development and may have impacts in relation to matters that were material considerations such as amenity, trees and character and appearance of the conservation area. For this reason we do not consider that an application for minor non-material amendments would be appropriate". She goes on "Having regard to the Government's guidance on flexibility for

planning permission, my view is that it is possible that you could submit an application for minor material amendments...”

- 22 Regrettably she appears to have mis-understood the guidance, I have copied below the relevant words from the Government’s document:

Greater Flexibility for planning permissions guidance (October 2010, DCLG):

62. Is there a definition of ‘minor material amendment?’

We agree with the definition proposed by WYG ‘A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved’.

- 23 Even the most liberal interpretation of these words wouldn’t permit an increased floor area of around 30% being permitted under minor material amendments. Legally, if the developers wish to apply for such dramatic changes to their already approved scheme, they will have to re-apply for full planning permission; I am confident that the Council’s own legal department will be able to corroborate this. I have asked my lawyers to review this anomaly and their opinion is that the Council has no option but to dismiss this application in its present form.

102 Grove Park (additional objection following re-consultation)

- 24 We understand that you are considering an application for a basement extension for the proposed new development. My wife and I strongly object to the basement extension as it is a major material alteration to what has been agreed.

Via email (additional objection following reconsultation):

- 25 As far as I can see the structural report has been commissioned by the applicants, the developer architects for the proposed houses. This cannot be considered an independent assessment. If, as the structural engineer states, the basements will ‘actually mitigate against the risk of subsidence due to clay shrinkage’ why was planning permission not sought for the basements in the original application but two weeks after planning permission had been granted for two 2-storey houses?

- 26 Many of us have lived at this end of Grove Park for decades and we have experienced the instability of the land with great regularity. We don’t need any structural engineer to tell us that subsidence in this instance is highly probable. The developers know this because the house they designed, no. 91, subsided soon after it was built in spite of their measures to try to prevent this. I remain in no doubt that the digging of the basements should only be permitted if the developers produce legal guarantees offering indemnity to all neighbouring properties for any subsidence incurred as a result of their work.

Response from Legal Officer regarding procedure:

- 27 The report on the agenda has been checked by the Council’s legal team. Officers are of the opinion that the application is being dealt with by way of an appropriate procedure.
- 28 The application is to vary condition 2 of the extant permission. There will still be a condition requiring the development to be carried out in accordance with approved drawings but the drawing references will be to new drawings.
- 29 It is open to the Council to deal with applications to vary conditions in this way as is made clear by DCLG guidance “Greater Flexibility for Planning Permissions” which states that a minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved.” The guidance makes it clear that it is entirely appropriate to vary conditions listing the approved drawings and, in fact,

recommends that such conditions are used as a matter of course in future to enable S73 applications to be made.

- 30 For the reasons cited at paragraph 24 in officer's view the development that would be granted pursuant to the S73 application would not be substantially different from the one which was approved in 2010.

Additional conditions:

- 31 The basements hereby permitted shall not be used as habitable accommodation (i.e. as livingrooms, bedrooms or kitchens).

Reason:

The use of the basements as habitable accommodation would provide a poor standard of accommodation for future occupiers, owing to lack of light and outlook, contrary to saved policies 3.2 'Protection of amenity' and 4.2 'Quality of residential accommodation' of the Southwark Plan (2007) and strategic policy 12 'High environmental standards' of the Core Strategy (2011).

- 32 A structural methodology statement prepared and signed off by a Chartered Civil Engineer (MICE) or Structural Engineer (MI Struct.E) that provides specific details of the ground conditions on the site, excavation, temporary works & construction techniques, including details of the potential impact of subterranean development on existing & neighbouring structures shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the details thereby approved.

Add the following informative:

- 33 This permission is based on the drawings and reports submitted by you including a structural report by Structure Workshop. For the avoidance of doubt this report has not been assessed by the Council and as a consequence we do not endorse or approve it in anyway and have included it for information purposes only. Its effect is to demonstrate that a member of the appropriate institution applying due diligence has confirmed that the works proposed are feasible without risk to neighbouring properties or the building itself. The construction itself will be subject to the building regulations and the construction methodology chosen will need to satisfy these regulations in all respects.

- 34 **Add the following to paragraph 9 of the officer report:**

-the addition of basements to both houses, to the same footprint of the upper floors_and lit by glazed panels that would be flush with the ground;

ITEM 6.2 – CAMBERWELL GREEN UNITED REFORM CHURCH, 64 GROVE LANE, LONDON SE5 8SN

Add the following condition:

- 35 Before the development hereby permitted begins, arrangements shall be agreed in writing with the Local Planning Authority and be put in place to ensure that, with the exception of disabled persons, no resident of the development shall obtain a resident's parking permit within any controlled parking zone which may be in force in the area at the time.

Reason:

In order to prevent overspill parking from the development and to encourage alternative means of transport to the private car, in accordance with saved policy 5.6 'Car parking' of the

Southwark Plan (2007) and Strategic policy 2 'Sustainable transport' of the Core Strategy (2011).

- 36 A revised front elevation has been submitted for this application, which is attached to the addendum. Officers consider the elevation as originally submitted to be preferable, but Members may wish to consider this as an alternative.

ITEM 6.4 . – GROUND FLOOR AND BASEMENT, 82-84 CAMBERWELL CHURCH STREET, LONDON SE5 8QZ

Add the following response from Transport for London at Appendix 2

- 37 With respect to the above application, TfL have the following comments:

- The development site is located on the A202 Camberwell Church Street , which forms part of the Transport for London Road Network.
- The A202 is situated upon on a Red Route, where the following parking restrictions are in place:
- “ No Stopping between 7am-7pm Monday-Saturday, except 10am-4pm for loading. Maximum stay 20 minutes”
- TfL welcome the proposed submission of a Travel Plan for the church and would request this is formalised through appropriate planning conditions/ obligations
- TfL would request cycle parking is provided within the development in line with the cycle parking standards outlined within the draft replacement London Plan (2009).

Subject to the above conditions being met, TfL would have no objections to the above mentioned planning application.

- 38 Members are referred to a map attached to the addendum which shows the location of other churches in the area.

REASON FOR LATENESS

- 39 The comments reported above have all been received since the agenda was printed. They all relate to an item on the agenda and Members should be aware of the objections and comments made.

REASON FOR URGENCY

- 40 Applications are required by statute to be considered as speedily as possible. The application has been publicised as being on the agenda for consideration at this meeting of the Sub-Committee and applicants and objectors have been invited to attend the meeting to make their views known. Deferral would delay the processing of the applications/enforcements and would inconvenience all those who attend the meeting.

RESOURCE IMPLICATIONS

- 41 These are contained in the report.

EQUAL OPPORTUNITY IMPLICATIONS

- 42 These are contained in the report.

LOCAL AGENDA 21 (Sustainable Development) IMPLICATIONS

43 These are contained in the report.

Lead Officer: Gary Rice, Head of Development Management

Background Papers: Individual case files.

Located at: Southwark Council, Regeneration and Neighbourhoods, Planning & Transport, Development Management, PO Box 64529 London SE1P 5LX