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## PLANS SUB-COMMITTEE NO. 2

Meeting to be held on Thursday 12 May 2016

### SUPPLEMENTARY AGENDA

Please see the attached report marked "to follow" on the agenda.

Report No.	Ward	Page No.	Application Number and Address
4.2	Bickley	1 - 44	(15/02145/FULL1) - St Raphaels Residential Home, 32 Orchard Road, Bromley BR1 2PS

*Copies of the documents referred to above can be obtained from*  
[www.bromley.gov.uk/meetings](http://www.bromley.gov.uk/meetings)

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## **SECTION '2' – Applications meriting special consideration**

**Application No :** 15/02145/FULL1

**Ward:**  
**Bickley**

**Address :** St Raphaels Residential Home 32  
Orchard Road Bromley BR1 2PS

**OS Grid Ref:** E: 541423 N: 169768

**Applicant :** Methodist Homes (MHA)

**Objections :** YES

### **Description of Development:**

Demolition of existing care home and erection of a part one/two/three storey building with an additional storey of accommodation within the roofspace comprising 75 retirement living apartments (51x2 bed and 24x1 bed) with basement level ancillary facilities, parking for 52 cars (33 at basement level, 19 surface level), cycle parking spaces, refuse storage and landscaping.

### **Key designations:**

Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
London City Airport Safeguarding Birds  
Local Distributor Roads  
Open Space Deficiency  
Smoke Control SCA 10

### **Report Update:**

Members will recall that this application was considered at Plan Sub Committee 2 on January 21<sup>st</sup> 2016. Members resolved to defer the application without prejudice to seek a reduction in the bulk and mass of the building, in particular to the eastern side adjacent to 34 Orchard Road and 7 Baytree Close. Submissions since that time are summarised below:

On February 15<sup>th</sup> 2016, the Council received revised drawings amending the scheme as follows:

- Reduction in the scale of the building adjacent to the eastern boundary by reducing the height and depth of the first, second and third floors - 0achieved by removing 2 units from this part of the building and reducing the size of one of the 2 bedroom units to a 1 bedroom unit.
- The total number of units is reduced to 75 (from 77) and 51x2 bed units and 24x1 bed units are now proposed.
- Reduction in the number of windows in the eastern elevation. The secondary bedroom windows have been removed. In addition, the windows previously proposed in the part of the extension closest to 34 Orchard Road

and 7 Baytree Close have been removed and replaced with 3 velux windows and 2 high level windows at first and second floor respectively.

- Removal of the east facing balcony at 3rd floor level – it should be noted that a window to a living/dining kitchen will remain.
- The number of parking spaces has increased from 49 to 52 with 3 additional spaces provided in the basement area.

In addition the applicant has submitted 2 further documents:

On March 3<sup>rd</sup> a Transport Impact Assessment was submitted, which is in addition to the previously submitted Transport Statement. This document addresses several issues that have arisen from the previous officer report, comments from Members at the previous committee and comments from residents. The main points are summarised below:

- A parking study of 5 other MHA sites shows an average car ownership of just under 23% of the onsite apartments. The application site provides 52 spaces and with expected peak staff demand for 9 spaces and pro rata resident demand parking of 17 spaces, leaving 26 spaces for visitor parking
- The initial Transport Statement assessed the trip rates for the development against an incorrect figure of 58 residents. This report assesses the trip rates against the correct figure of 85 residents. The data provided continues to indicate that the proposal will have a negligible impact on peak hour traffic attraction and that there will be a reduction in movements compared to the existing care home use. In addition it is reiterated that the majority of visitor and staff movements will not be at peak times.

On March 7<sup>th</sup> a letter responding to comments made by neighbours and local residents was received from the applicant. The main points of this document are summarised below:

- Servicing/deliveries/noise and smells – the proposed service area is in the same location as the existing service area. The bin store will be within a building, and the kitchen will be in the basement rather than at ground floor level as presently. Ventilation will be within the roofspace and the cooking range will have appropriate filters.
- The reduction in the number of units results in a reduction in the mass and scale and the number of windows has been reduced. The applicant offers to remove the eastern facing window to the 3rd floor east facing living/dining kitchen room and replace it with skylights if this is considered necessary.
- The letter reiterates distances to the boundaries.
- The letter reiterates the comments set out above in relation to traffic generation and car parking.

On March 24<sup>th</sup> the applicant submitted the following information:

- A further letter to reiterate and update their position on matters relating to transport concerns, Class C2 and the Mayors Housing SPG, the bulk and mass of the building and the eastern boundary, building service area, communal areas and building efficiency, response to residents questions;

- A 'History of MHA' booklet;
- Proposed accommodation schedule;
- Floor plans annotated to show the most recent usage of the existing building;
- Numerous plans, a number of which have been previously submitted. The additional new plans are site section plans, the service area comparison plan, the building mass plan and the proposed building shadow path diagrams,
- A further Transport Impact Assessment dated March 24<sup>th</sup> 2016

Residents were consulted on February 23<sup>rd</sup> and April 4<sup>th</sup> on the amendments received and further comments have been received from neighbouring properties including the following points:

- The proposed changes do not reduce overlooking to properties in Orchard Road and Baytree Close.
- The proposed plans do not sufficiently reduce the scale and bulk of the building and the size of the building should be further reduced. The reduction proposed amounts to 1.6% of the GIA and 2.6% of habitable rooms.
- A previous pre application scheme for 100 units (41 care suites and 59 1 and 2 bed units) was considered overdevelopment by officers but the current scheme, which has more habitable rooms, is not considered overdevelopment – this is inconsistent.
- If the scheme is significantly further reduced in scale and appropriate mature evergreen trees of a minimum height of 5m to prevent overlooking the development could be acceptable.
- The scheme at St Raphael's is significantly more densely developed than other schemes provided by MHA supporting the need to reduce the extent of development at St Raphael's. The objector has provided a comparison table that can be viewed on the application file.
- The Council should carry out its own parking and traffic survey to understand the congestion problems in Orchard Road.
- The MHA properties referred to in the additional Traffic Impact Assessment are located in more urban areas outside London than the application site so levels of car ownership and subsequent traffic movements are not comparable with the location and accessibility of Orchard Road.
- The Traffic Impact Assessment is not representative of current traffic flow problems in terms of the time the traffic flow was counted.
- Reiterates that the proposed use is a Class C3 use and not Class C2 as claimed by the applicant and should provide affordable housing.
- Reiterates the need to have regard to the existing visual character of the surrounding area
- Reiterate that the detrimental impact of the development on the local highway network and local on street parking capacity from the proposed changes.
- Reiterate that the proposed building in terms of size and scale will result in a serious loss of prospect, visual amenity and privacy to properties in Ashmead Gate and Baytree Close. The amendments do not overcome this position for residents.

- Reiterate that the surrounding area is already overdeveloped from a series of recent developments in the immediate area that are currently under construction.
- Reiterate that Car parking spaces are insufficient for the number of units and visitors.
- Reiterate that Inadequate boundary screening between the site and Ashmead gate properties.
- Reiterate that request to review parking regulations in Orchard Road to improve traffic flow and relieve congestion.
- Reiterate loss of light to the garden and house on the southern boundary. Loss of view from the bedroom windows and loss of privacy to 2 bedrooms.
- Reiterate that if the developer is to provide large trees for screening, they will need to be properly maintained.
- None of the previous residents owned cars so all of the traffic movements were limited to staff and service vehicles.
- It is not correct to compare the traffic impact of previously immobile residents to sizeable group of more mobile residents.
- The provision of additional parking spaces by the applicant is inconsistent with the claim that a low number of residents will own cars, based on the occupancy profile of other MHA properties.
- Concerns regarding location of service access
- Loss of sunlight
- Overlooking remains
- Screening would not be sufficient
- Size and bulk needs to be drastically reduced
- Remaining concerns regarding bulk and mass which is too large
- Existing care home use on site cannot compare with proposal in terms of traffic generation
- Car ownership of future residents is underestimated
- Traffic survey undertaken when Braeside School had broken up for Easter and when temporary traffic lights were in place, invalidating the survey results, and failed to assess the impact of Scotts Park School
- Loss of important garden space and trees
- Evidence gathered from other MHA sites indicates high levels of parking

Members should note that the Highways Authority continues to raise no objections to the development, having carried out a site visit to the area and considered the content of the further submitted Traffic Impact Assessment.

A letter has been received from a firm of solicitors acting on behalf of several residents setting out detailed concerns regarding the acceptability of the applicant position that the proposed development will fall within planning Use Class C2, as well as concerns about the most recently submitted transport related information. The letter states that should the application not be refused, there may be a legal challenge to the Council's decision. The letter is appended to this report and includes the following points:

- By claiming that the proposed use is Class C2 the applicant is allowed to contravene several policies which would apply to Class C3: residential development which results in a development that is excessive in terms of

bulk and mass, not in-keeping with the residential character of the area and will result in overlooking, overshadowing, loss of privacy and impact on residential amenity. Failure by the Council to consider these aspects is a contravention of Articles 1 and 8 of the Convention of Human Rights.

- The Mayor's Housing Supplementary Planning Guidance at paragraph 3.7.4 provides "Extra care accommodation (use class generally C3) Self-contained residential accommodation and associated facilities designed and managed to meet the needs and aspirations of people who by reason of age or vulnerability have an existing or foreseeable physical, sensory or mental health impairment. Each household has self-contained accommodation and 24 hour access to emergency support. In addition extra care accommodation includes a range of other facilities such as a residents lounge, a guest room, laundry room, day centre activities, a restaurant or some kind of meal provision, fitness facilities and classes and a base for health care workers. The exact mix of facilities will vary on a site by site basis. Some domiciliary care is provided as part of the accommodation package, according to the level of need of each resident. Extra care housing aims to create a balanced community, bringing together a balanced proportion of people with different levels of care needs". The MHA's proposal clearly falls within the category of "extra care accommodation", which in turn is stated to be "generally Class C3".
- The Mayor's SPD notes there has been some debate as to how to categorise older persons accommodation. Paragraph 3.7.18 states "Consultants suggest that the most robust way of distinguishing between the two is the 'front door' test" – if the unit of accommodation has its own front door then it is usually C3, if not it is C2. Every unit will have its own front door and self-containment. (The SPD does continue, however, development management experience suggest in many cases this may require some refinement to take appropriate account of the components of care and support and level of communal facilities such as those associated with some Extra Care schemes where units may have their own front door but functionally are effectively C2).
- The Council's own consultation document on its Local Plan Draft Policies while acknowledging there is ambiguity in the Use Class classification for the range of specialist accommodation for the elderly states that "extra care" type housing developments are treated as residential dwellings (C3)
- Little information has been provided as to the level of personal care to be provided. The levels may have been set at a level that would favour a C2 designation, without acknowledging that many residents may only commit to the minimum level of care or at all. One appeal decision cannot be applied to all planning proposals of a similar nature in other parts of the country.
- The further transport statement does not accurately reflect the day to day operation of the local highway network, with local schools being in the run up to the Easter Holidays, temporary traffic lights were in use resulting in a single lane of traffic and traffic using alternative routes, and that Scotts Park would have been a more representative basis for assessment than Braeside since it contains more pupils. Further concerns have been raised that the assessment does not account for the extension at Braeside School and the proposed Scotts Park expansion.

Officer response:

- The principle of the MHA approach to Class C2 has been tested by a Planning Inspector and a S106 and the proposed conditions were recommended to protect the development at Portishead from use as Class C3. This is a material consideration. The Council will require by way of conditions and a section 106 agreement that the occupants of this development shall be in receipt of a minimum level of care as a condition of occupation. The tenants will also have a minimum age (albeit 60 years). The findings of the appeal Inspector are pertinent and the key components of this proposal in terms of Use Class classification are not sufficiently different from the Portishead proposal for the Council to reach an alternative conclusion concerning the appropriate Use Class classification.
- A conclusion that the proposal is within Class C2 is not inconsistent with the Mayor's SPD. As stated above the "Front Door" test is not decisive as the SPD also requires account to be taken of the components of care and support and level of community facilities to be provided. The section 106 agreement for the Portishead development states that the minimum level of care for each occupant will typically average between two and four care hours per week. This level of provision in other cases has been held to underpin acceptance of C2 classification. A compulsory well-being charge was set for the Portishead development at £45 per week for a single person and £65 for a couple. Confirmation is being sought from the applicant that a similar level of care provision will be made for this development as well.
- The Council has to assess the proposal it is given. The applicant has offered a covenant by way of section 106 agreement that the use of the site will remain in Class C2.
- Regarding the emerging local plan, this is at an early stage and it is feasible for the Council to address issues such as the requirement for affordable housing for Class C2 development as part of this process but this is not the case at present.
- With regard to the bulk, mass and amount of development, this has been assessed in detail in the main body of the report and found to be acceptable with regard to the impact of the proposal on the character of the area and the amenities of local residents. The development complies with the relevant internal space standards for new residential development and would provide a satisfactory quality of accommodation for future occupiers.
- The Highway Authority has carried out a site visit and maintains no objection to the proposal. The potential traffic generation of the proposed development will have a minimal impact compared to the existing traffic volumes using Orchard Road, in particular as a large majority of the traffic movements associated with the site are likely to take place outside of the peak school traffic hours. Comments are on file.

A further letter of objection was received from planning consultants on behalf of an adjoining resident and also further objections from other local resident. Set out below are key points and the officer response.

- Insufficient information is provided with regard to illustrative viewpoints to make a decision

- The increased setback adjacent to Baytree Close is insufficient to overcome the impact and the development should be 2 storeys along this boundary especially as the separation distances are less than between the development and Ashmead Gate. The same should be applied to the western boundary as was set out in the appeal decision for the development next to Ashmead Close
- The development would result in marked changes and increased sense of enclosure to residents at 7 Baytree Close and 34 Orchard Road including perception of overlooking and loss of privacy, loss of daylight and sunlight.
- A site visit for Members is requested on the basis that there are no verified views to rely upon.
- The applicant has not considered the worst case scenario for traffic generation and the increased servicing demand has not been considered
- Noise and nuisance will occur from the café terrace.
- Affordable housing provision is within the gift of the applicant
- Loss of mature trees and insufficient replacement proposed.
- A site visit should be made to the gardens of affected properties.

Officer comments:

- Members are advised that none of the photographic visuals provided by the applicant or objectors have been technically verified and they should not be relied upon to provide an accurate representation of the proposed development. Such visuals are not required to make a decision on the application.
- Comparisons of the Baytree Close relationship with the site and the Ashmead Gate relationship including the previous appeal decision are limited in usefulness as the orientation and situation differs for each, however Members should carefully consider the relationship of the proposed development with Baytree Close and 34 Orchard Road as there will be a change in circumstance and some impact in the terms set out in the summary of objections above. The officer recommendation is that that impact would be acceptable.
- Although not a requirement, Members are able to consider whether they wish to visit the site and / or neighbouring properties in order to assist in their consideration of the application.
- The Highway Authority has further considered the application and maintains no objection.
- An additional condition is suggested in respect of noise from the café terrace
- The Council's Tree Officer has no objection to the application scheme.

The original report is repeated below, updated where necessary.

## **Proposal**

Planning permission is sought for the full demolition of the existing care home (Class C2) and the erection of a 1/2/3/4 storey building with rooms in the roof. The original plans showed the provision of the following accommodation

- 77 units comprising 54x2 bedroom flats and 23x1 bedroom flats for retirement living with access to care provision.
- The building will extend east to west across the northern part of the site facing Orchard Road with protruding wings extending southwards from the main part of the building
- At basement level there will be 30 car parking spaces, 12 cycle parking spaces and a plant room, kitchen, laundry and storage area.
- At surface level there will be frontage car parking for 19 cars and an access ramp to the basement in the north-west corner of the frontage. The total number of car parking spaces is 49 including 9 disabled spaces.
- A buggy store and 6 cycle parking spaces are also provided on the ground floor.
- The proposed bin store is located on eastern elevation
- Communal facilities will be provided in the north east corner of the building around the main entrance ground floor level and below at basement level which includes a cinema, resident's lounge/library, craft/multi-purpose room, dining room/café, hairdressing/therapy room, assisted spa bath room, a guest suite, admin facilities and Managers office.
- A total of 26 trees and 5 tree groups of trees will be removed to facilitate the development.
- Landscaping is proposed around the proposed building with a communal garden to the rear.
- Private balconies or a terrace will be provided for most properties with the exception of the four 1st/2nd and 3rd floor flats facing Orchard Road
- Three terraces are provided on the eastern, southern and northern elevations (2 communal and 1 private amenity space).

Following concerns raised by residents, amended plans and documents were received in October 2015 and the changes made to the original scheme are summarised as follows:

- Cross sections to show changes in ground levels
- Outline of existing buildings shown on plans
- Obscure glazing provided to upper floor windows facing east (towards Baytree Close) that are closest to this boundary
- Obscure glazing screens added to balconies in this location
- External bin store has been omitted and incorporated into the building
- The buggy stored has been relocated to the eastern rear 'wing'
- Existing sub-station plotted and plans confirm it will be retained.
- Existing landscaping on the eastern boundary has been reviewed and correctly plotted. All boundary planting to be retained and only cut back if required for the health of the trees and new planting provided to fill gaps on this elevation.
- A photo montage to show the impact of windows in the upper floors of the eastern elevation on 7 Baytree Close
- Existing planting on western boundary to be retained as above.
- Additional planting is proposed for the southern boundary.

- Reorientation and change in size of 1st floor windows facing the southern boundary to reduce the likelihood of overlooking to properties in Ashmead Gate and High Grove.
- Provision of screens to balconies in sensitive locations to avoid overlooking

### **Quantum of development**

The applicant advises the following floor areas:

- |   |          |
|---|----------|
| • Existing gross internal area  | 2950 sqm |
| • Proposed overall gross internal floor area (including basement car park)        | 9130 sqm |
| • Communal floorspace including all corridors                                     | 1828 sqm |
| • Estimated communal space excluding corridors, lifts, cleaning and storage areas | 500 sqm  |

The applicant has submitted the following documents to support the application: Planning Statement and Affordable Housing Statement, Addendum to Planning Statement and Affordable Housing Statement; Design and Access Statement, Tree Survey and Arboricultural Impact Assessment, Transport Statement and draft Travel Plan, Extended Phase 1 Habitat Survey and Bar Building Assessment, Bat Emergence and Reptile Survey report, Landscape Design Statement including Landscape Visual Impact Assessment, Statement of Community Involvement, Phase 1 Site Investigation and Energy Report (including sustainable development and BREEAM) and Proposed Drainage Strategy.

### **Location**

This 0.885 ha site is located on the southern side of Orchard Road between Ashmead Gate to the south and west and Baytree Close to the east. Houses in High Grove also flank part of the southern boundary.

The area is primarily residential and is characterised by large detached houses in spacious plots with some semi-detached houses and flats. There are also 2 schools on Orchard Road (Scotts Park Primary School and Braeside School) in close proximity to the site.

Orchard Road is a busy primary road providing a through route into Bromley from the east. The properties along this road including the application site are set back from the pavement adding to the spacious character of the area.

The buildings on the site are not statutory listed buildings or locally listed and the site does not lie within or adjacent to a conservation area. None of the trees on site are protected by tree preservation orders.

### **Consultations**

Nearby properties were notified of the original scheme and representations from 6 properties in Baytree Close and Orchard Road and the Sundridge Residents Association have been received objecting to the proposals which can be

summarised as follows. Four further letters were received as a result of reconsultation on the revised plans and documents that reiterate previous objections.

- The proposed use is standard Class C3 residential dwellings and should not be classified as a Class C2 use. The scheme should provide affordable housing.
- The existing building is attractive and should be retained and converted to flats or have a cul de sac development of large houses.
- Overdevelopment of the site resulting in a cramped appearance on the site and out of character with the local area.
- Bulk and height will lead to intrusive building which will be highly visible from neighbouring properties. The building adjacent to the eastern elevation is much wider and higher than existing building and setting it back further will not compensate for this.
- The bin store for 77 flats will lead to unacceptable smells and vermin for the adjacent residents.
- Previous appeal for a 2 storey extension to the Care Home was rejected in 1998 on the grounds that the building would be oppressive. The proposed building is much larger and should be similarly refused.
- Significant loss of privacy from people using balconies that do not have adequate screening to protect neighbours from overlooking. Also overlooking from proposed windows that are too close to the boundary.
- Loss of daylight and sunlight to gardens.
- Disturbance from increased activity from additional residents and support services.
- The existing boundary screening is not enough to screen the site on all sides and a sub-station on the eastern boundary will limit the amount of screen planting that can be provided.
- The submitted plans incorrectly show the layout of an adjoining property so the impact on the residents of this property will be more adverse than it appears from the plans.
- The impact on residents on the eastern boundary has not been properly assessed by the applicant. The applicant refers to 'less private parts' of these gardens which misrepresents the use of these gardens by their residents.
- Noise and disturbance from users of the outside seating for the restaurant/café area, which is situated in the rear garden of the building.
- Sundridge Avenue is very busy with traffic and parked cars and additional traffic movements. There is insufficient parking for residents who may have cars into their 70's and 80's which will lead to demand for on street car parking. This will make the existing difficult parking situation much worse.
- The demand for on street car parking should take account of applications for increased pupil numbers at both of the nearby schools and the adverse impact this will have on neighbours, together with the proposed development on this site.
- Not enough visitor parking on the site.
- Provision of 16 cycle parking spaces is well below the minimum requirement.

- The underground car park will be too dark for older car users. Forecourt parking will detract from the visual appearance of the road.
- Disturbance during construction.

One letter recognises the importance of providing for specialist housing for people in need of care in the borough and supports the principle of redevelopment of the site for this purpose. However for the reasons above this objector objects to the excessive scale of the development and the adverse impact that this scheme will have on nearby residents.

### **Comments from Consultees**

- The Council's Highways Officer raises no objections subject to conditions.
- The Council's Housing Officer (Public Protection) raises no objections.
- The Council's Drainage Officer raises no objection to the proposed discharge rate but does not accept the measures to reduce surface water runoff and recommends conditions seeking details to demonstrate how the principle of Sustainable Drainage Systems can be applied to this scheme.
- The Council's Environmental Health Officer raises no objection subject to conditions.
- Thames Water raise no objections subject to conditions and an informative.
- The Metropolitan Police Crime Prevention Design Adviser raises no objections subject to condition.

The Stage 1 report from the Greater London Authority advises that the principle of development is supported in strategic planning terms. The provision of specialist accommodation for older people will help meet the requirements of London's age structure and, in particular, the varied needs of older people in accordance with London Plan Policy 3.8.

With regard to the provision of affordable housing, the GLA comment that the applicant should provide further information regarding the details of the extra care component of the scheme clarifying whether it is C2 or C3.

### **Planning Considerations**

In determining planning applications, the starting point is the development plan and any other material considerations that are relevant. The adopted development plan in this case includes the Bromley Unitary Development Plan (UDP) (2006) and the London Plan (March 2015). Relevant policies and guidance in the form of the National Planning Policy Framework (NPPF), National Planning Policy Guidance (NPPG) as well as other guidance and relevant legislation, must also be taken into account.

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

H1 Housing Supply  
 H2 Affordable Housing  
 H4 Supported Housing  
 H7 Housing Density and Design

H9 Side Space  
T2 Assessment of Transport Effects  
T3 Parking  
T5 Access for People with Restricted Mobility  
T6 Pedestrians  
T7 Cyclists  
T18 Road Safety  
BE1 Design of New Developments  
NE7 Development and Trees  
C1 Community Facilities  
C6 Residential Proposals for People with Particular Accommodation Requirements  
IMP 1 Planning Obligations

Supplementary Planning Guidance 1: General Design Principles  
Planning Obligations SPD  
Affordable Housing SPD

#### Emerging Bromley Local Plan

A consultation on draft Local Plan policies was undertaken early in 2014 in a document entitled Draft Policies and Designations Policies. In addition a consultation was undertaken in October 2015 in a document entitled Draft Allocation, further policies and designation document. These documents are a material consideration. The weight attached to the draft policies increases as the Local Plan process advances. Full details of the Council's Local Development Scheme is available on the website.

#### Draft Policies and Designations Policies (2014)

Of particular relevance to this application are policies:

5.1 Housing supply  
5.3 Housing design  
5.4 Provision of affordable housing  
5. 8 Side space  
5.11 Specialist and Older Persons Accommodation  
6.1 Community Facilities  
7.1 Parking  
7.2 Relieving congestion  
8.1 General design of development  
8.7 Nature and trees  
10.4 Sustainable Urban Drainage Systems  
10.10 Sustainable design and construction  
10.11 Carbon reduction, decentralised energy networks and renewable energy  
11.1 Delivery and implementation of the Local Plan

Draft Allocation, further policies and designation document (Sept 2015)  
No relevant proposals

The most relevant London Plan 2015 policies include the following:

2.6 Outer London: vision and strategy

3.3 Increasing housing supply  
3.4 Optimising housing potential  
3.5 Quality and design of housing developments  
3.8 Housing choice  
3.12 Negotiating affordable housing in individual private residential schemes and mixed use schemes  
5.2 Minimising carbon dioxide emissions  
5.3 Sustainable design and construction  
5.6 Decentralised energy in development proposals  
5.7 Renewable energy  
5.8 Innovative energy technologies  
5.9 Overheating and cooling  
5.10 Urban Greening  
5.11 Green roofs and development site environs  
6.9 Cycling  
6.13 Parking  
7.1 Lifetime Homes  
7.2 An inclusive environment  
7.3 Designing our Crime  
7.4 Local Character  
7.6 Architecture  
7.21 Trees and woodlands

London Plan Annex 5 - Specialist Housing for Older People

London Plan Annex 6 - Definition of specialist accommodation for older people  
Mayor of London's Housing Supplementary Planning Guidance 2012

4. The National Planning Policy Framework 2012 (NPPF) is relevant, including Section 6: Delivering a wide choice of high quality homes, Section 7: Requiring good design and paragraphs 211 - 216 (status of adopted and emerging policies).

### **Relevant Planning History**

DC/96/02492: Demolition of nuns accommodation and erection of 2 storey 40 bed nursing wing with part basement. Refused 16.6.1997. Appeal dismissed 16.4.1998.

### **Conclusions**

It is considered that the main planning issues relating to the proposed scheme are as follows:

- Principle of Development
- Scale, Siting, Massing and Appearance
- Impact on Neighbour Amenity
- Standard of Accommodation and Amenity Space
- Highways and Traffic Matters
- Cycle Parking and Refuse
- Trees and Landscaping
- Other technical matters
- Principle of proposed use

- Loss of the existing building

The existing building is a 1-3 storey building and was last used as a traditional care home with 85 rooms providing a facility with nursing and dementia care for residents over 65. The building was vacated in March 2015.

The applicant advises that the property is substantially out of date and does not provide the level of facilities that would be expected in a modern facility. The property has a limited number of ensuite bedrooms and no rooms for couples. The property is no longer fit for purpose to provide the level of independence that residents seek to retain and expect today, nor does it deliver the high quality of accommodation that MHA (the applicants) seeks to provide for all its residents.

The existing building is not a statutory listed building, a locally listed building or in a conservation area. The original building, which appears to have formally been a large detached house, has been substantially altered over a number of years to accommodate the existing use, including the erection of substantial modern extensions to the side and at the rear.

It is considered that the loss of all of the buildings will not result in the unacceptable loss of a heritage asset and is acceptable.

#### Acceptability of the proposed use

It is considered that the current use of the building falls within Class C2 of the Use Classes Order 1987 which is defined as

'Use for the provision of residential accommodation and care to people in need of care (other than a use within Class 3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre.'

If the proposal resulted in the loss of the use of the building as a Class C2 use it is considered that this would be contrary to Policy C1 of the Unitary Development Plan which seeks to retain community uses, including health and social uses unless there is no longer a need for the facility or alternative provision is made for the facility.

This section of the report now considers whether the proposed use as set out in the submitted Planning and Affordable Housing Statement (May 2015) and the Addendum to the Planning and Affordable Housing Statement (October 14th 2015) is a use that falls with Class C2 of the Use Classes Order.

The most relevant and up to date policy guidance relating to the provision of accommodation that falls within Class C2 is in the adopted London Plan 2015 and the approved Housing Supplementary Planning Guidance November 2012.

Policy 3.8 of the London Plan highlights the need to take account of the need for housing choice and also the needs of older people in London. The Housing SPD encourages local authorities to plan positively for specialist provision and to address local and identified needs for specialist accommodation. The SPD

recognises that some forms of specialist housing for the elderly can be on the cusp between Class C2 and Class C3 (dwelling houses).

The SPD goes on to suggest that a simple test as to whether a development is classed as C2 or C3 could be the 'front door' test where the provision of self-contained units with their own front door would usually be Class C3. However account should be taken of the identified components of care and support that are provided for residents for any particular scheme that mean that the development effectively functions as a C2 use. The SPD recognises that some development could be incorrectly categorised as Class C2 without the necessary level of care to avoid S106 contributions for affordable housing.

There have been numerous appeal decisions that seek to clarify the distinction between Class C2 and Class C3 use. The applicant refers to an appeal decision in the Portishead area of Bristol in which the Planning Inspector considered the evidence submitted by the current applicant, MHA, to demonstrate that the model of retirement living with care falls within Class C2 rather than the Use Class C3. In this instance the Inspector granted permission for the development as a Class C2 use subject to conditions and a S106 legal agreement relating to occupancy, tenure, age restriction and care provision.

To demonstrate that the proposed use at St Raphaels is a Class C2 use, the applicant has submitted the following considerations in their Planning and Affordable Housing Statement:

- MHA are a registered charity and are a recognised care provider,
- MHA are registered with the Care Quality Commission
- A requirement for a potential occupier to satisfy MHA's own eligibility criteria which includes having a care requirement,
- The compulsory requirement for residents to pay a Well Being charge which includes 24 hour staffing with a specialist care staff member available 24/7, 365 days a year, daily contact and a provision of social activities and events programme,
- The Well Being package is supplemented by a choice of care packages that are determined by individual assessment and can vary from a few hours per week to more intensive options for more advanced care needs.
- Communal facilities are included as integral to the Well Being package - the development provides communal facilities that are available to all residents including a catering service which can be used in the restaurant or delivered to apartments. The Design and Access Statement indicates that the area given over to communal space is approximately 20% of the total Gross Internal Area of the development.
- Staffing levels - the number of care assistants employed will vary according to the domiciliary and care requirements of the residents
- Tenure mix - all properties are leasehold. MHA is a charity and provides the opportunity for purchase, part purchase (shared ownership) or rent depending on the demand of prospective occupiers
- A proposed age restriction where one occupier must be over 60 and have a care and support requirement.

The applicant has submitted an Addendum to the Planning and Affordable Housing Statement that includes a Proposed Operational Management Plan. The applicant has advised that the Operational Management Plan will form the basis of a S106 agreement that will secure measures to distinguish this development as a Class C2 use rather than a C3 (dwellinghouse) use. This will need to include the same level of planning conditions and obligations as the previously mentioned Portishead appeal decision as the Inspector in that case considered the clauses in that S106 agreement to provide suitable level of control to secure a Class C2 use.

The applicant has advised that they will enter into a planning obligation to secure the Class C2 use.

Subject to planning obligations to secure C2 use, it is considered that the use of the site for retirement living apartments that fall within Class C2 is acceptable, in principle. The planning obligation will need to include provisions that ensure that the proposed building will be occupied and managed consistent with the Use Class C2 and that this can be secured through the leases assigned to occupiers.

### Affordable Housing

In the Planning and Affordable Housing Statement the applicant considers that the use of the proposed development will fall within Class C2 of the Use Classes Order. The applicant recognises that the most relevant policy guidance for this aspect of the scheme is within Policy 3.8 of the London Plan 2015 and, in particular, paragraph 3.51 which supports boroughs in seeking the principles of affordable housing for a range of accommodation including Class C2. It should be noted that Annex 5 of the London Plan identifies indicative annual requirement benchmarks for the provision of specialist housing for older people for the period 2015-2025. For Bromley the targets are 140 market units and 65 intermediate sale units per annum.

The Planning and Affordable Housing Statement also refers to Policy H2 of the UDP which seeks 35% affordable provision within a qualifying development.

Whilst the London Plan 2015 supports boroughs in seeking the application of principles of affordable housing policies to the range of development - including Use Class C2 - which cater for older people, the Bromley UDP and the current version of the emerging Local Plan do not include policies which seek this specific provision.

At this time it is considered that there is not sufficient policy provision to seek the provision of affordable housing should measures to secure the use of the development for Class C2 use be included in the S106 legal agreement as discussed in the previous section.

### Scale, Siting, Massing and Appearance

To assess the impact of the overall massing of the proposed buildings, there are 2 main elements to consider, namely the site coverage of the building and the height of the building

### Site coverage.

At ground floor level the proposed frontage building will extend partly along the same line and partly forward of the line of the existing front elevation. The eastern elevation of the frontage building will be approximately 6m further from the boundary with Orchard Close and 2.5m closer to the boundary with properties in Baytree Close.

There are 2 projecting wings to the rear.

The eastern wing replaces an existing single storey wing and the new wing will be set further back from the site of the existing buildings by approximately between 2m, 6m and 14 m. The wing will be set back between approximately 8m and 21m from the adjacent boundary to properties in Baytree Close. This wing will extend further into the site than the existing wing but does not come closer to the southern boundary than the existing wing.

The western wing is a part of the new building that does not replace an existing structure. This new wing will extend approximately 30m southwards from the line of the existing building and will be between 8m and 14m from the western boundary of the site that adjoins Ashmead Gate

It should be noted that an existing central wing will be demolished.

In terms of overall site coverage it is considered that the footprint of the building is not significantly greater than the footprint of the existing building and, as such, would not result in excessive site coverage. In addition the building is generously surrounded by communal garden and retains a significant amount of undeveloped land on the overall site.

### Height

The frontage building will vary in height from 3 storeys adjacent to Baytree Close rising to 4 storeys within the centre of the site and dropping to 3 storeys adjacent to Ashmead Close. This results in a building that is similar height to the existing ridge height facing Baytree Close and a building a storey taller than the existing facing Ashmead Close.

The extent of 3 storey development as the building turns to face Baytree Close is more extensive than at present and will be visible from the gardens and rear elevations of 34 Orchard Road and 7 Baytree Close. This element will be set back from the boundary by 8m.

The eastern wing, facing Baytree Close, will be a mix of 2, 3 and 4 storeys in height where it was previously single storey. The 2 storey element is approximately 8.5m from the existing land level to ridge height. The existing building is at a lower land level than the boundary and this will be maintained for the proposed building. The 3 storey element is set back approximately 14m from the boundary. The 4 storey development is visible on this elevation but it is set back 22m from the

boundary. The applicant has submitted a 3D photomontage to show the relationship of the building to 7 Baytree Close.

The western wing, facing Ashmead Gate, comprises 3 storey development as the frontage building turns towards this road and then reduces to 2 storeys. The overall height of the wing is 10m to the ridge. The building is set back between 6m and 13m from the boundary and is also an articulated design with set backs and bay sections to reduce the overall bulk.

The southern elevation facing properties in Ashmead Gate and High Grove range from single to 2 storeys. The single storey element faces the flank of 4 and 5 High Grove and are set back from the boundary by 6-7m which is similar to the position of the existing building. The 2 storey element is more central to the site and are set back between 15m and 18m from the flank boundaries with 6 High Grove and 5 Ashmead Gate.

The impact of the overall massing of the building, which is a combination of site coverage and height in this section, varies according to the location of the observer. In all instances it is considered that there will be some visual impact on neighbours surrounding the site. However it is necessary to consider whether the impact is such that it will result in a significantly detrimental impact on these neighbours as to warrant refusal of the planning application.

From Orchard Road it is considered that the overall height and massing is not out of keeping with the scale of development along this road. The frontage forms a long elevation but this is very similar in length to the existing building. The elevation is broken up with the use of a variety of materials and with elements of the elevation set back, the introduction of a communal garden, balconies and bay structures.

From Baytree Close the frontage 3 storey element will return along this elevation and will be closer to the adjacent boundary than the existing 3 storey element but there is still an 8m separation from the boundary. The 4 storey element of this elevation is 22m away from the boundary and the 2 storey element is between 17.5m and 21m from the adjacent boundary with 6 and 7 Baytree Close.

The applicant has designed this elevation with a mixture of pitched roofs and inset and bay elements to try and provide an articulated elevation to reduce the bulk of the building. On balance it is considered that the overall bulk of this element of the building will not be seriously harmful to the adjoining residents in terms of bulk and massing.

From Ashmead Gate the new wing element that is being introduced will be visible from the front rooms of houses in Ashmead Gate. However there is separation of between 31m and 35m between the flank elevation and the front elevation of 1 and 2 Ashmead Gate and approximately 25m to the flank elevation of 20 Orchard Road. In addition there is significant vegetation along this boundary which breaks up the visual appearance of this elevation. It is considered there will not be a seriously harmful impact on these properties from the massing of the proposed building.

On the southern boundary, it is the flank elevation of the existing houses that face the application site. The 2 storey elements are set back between 15m and 18m from this boundary and it is considered that, in terms of massing, there will not be a seriously harmful impact on these properties.

Another factor to consider in terms of the impact of the height of the development is side space. Policy H9 relates to side space and for proposals of 2 or more storeys, there should be provision of either a minimum of 1m side space from the side boundary of the site or, where higher standards of separation already exist, proposals will be expected to provide a more generous side space. In this instance a greater side space is provided to the western boundary and smaller side space is provided to the eastern boundary. In both instances the side space is 8m. The purpose of this policy is to consider the impact of the development on the streetscene and to prevent a cramped appearance and unrelated terracing from occurring.

In terms of side space and separation between the elevations of the development and their adjacent site boundaries, it is considered that the separation offered by this proposal would not lead to unrelated terracing and would result in a building that reflects the visual separation that currently exists and, in this respect, the proposal is acceptable.

In addition to the comments above account should be taken of the existing boundary screening vegetation that can reduce the visual impact of the height and mass on neighbouring properties. Some of this is extensive but it is recognised that there are some gaps around the perimeter. This will be more limited during the winter but it does contribute to breaking up the bulk of the elevations. In addition the applicant has advised that additional planting is proposed to provide further screening. A condition is recommended to secure the submission of a landscaping scheme which will include retention of existing trees and new planting of additional semi mature trees.

### Appearance

The appearance of the building picks up themes from the existing building on the site and other buildings in the locality. Reference has already been made in this report to features to articulate the elevations and add interest to the appearance to all elevations of the building.

In addition the materials will include a mixture of brick, render, tudor style timber and tile hanging for the walls with a red tile roof. Feature brickwork is shown on the submitted plans, particularly on the front elevation.

Policy BE1 of the Bromley UDP expects development proposals to be of a high standard of design and layout and should be imaginative and attractive to look at. They should not detract from the existing street scene and/or landscape.

It is considered that the proposed development, in terms of the appearance, of the building, meets the criteria of Policy BE1.

## Impact on Neighbour Amenity

The relevant policy in the Bromley UDP relating to the impact of the development on the amenity of the residents of adjoining residential properties is Policy BE1 Design of New Development.

In addition to the site coverage, height and massing, which have been discussed previously in this report, it is necessary to assess the impact of overlooking that may result in the loss of privacy, and the potential loss of daylight and sunlight to fully understand the impact of the proposed development on the amenity of occupants of adjoining residential properties.

In terms of overlooking, the properties most likely to be affected are those in Ashmead Gate, High Grove and Baytree Close.

In considering the impact from overlooking on properties in Ashmead Gate it is relevant to consider an appeal decision in 1998 relating to a planning application for a 2 storey 'nursing wing' along the western boundary to provide 40 bedrooms for 'elderly mentally infirm' residents and a communal lounge and dining room. In this scheme the western flank wall would have been approximately 6m from the boundary resulting in a separation of 26m between the new building and the existing houses in Ashmead Gate.

The Inspector concluded that although the separation distance would be in excess of the 20m rule of thumb and therefore exceeding that where problems of overlooking and loss of privacy might be expected "because of the scale of the building and the nature of the proposed use with residents bedrooms on the first floor facing the houses, I believe there would be a perception on the part of residents (in Ashmead Gate) of being overlooked and that in itself would impinge of their living conditions."

On the southern elevation the Inspector considered there to be a degree of overlooking and loss of privacy for occupiers of no 5 Ashmead Gate in the front garden and going up the stairs and in the rear garden.

It is considered that there are significant differences between the appeal scheme and the current proposal that are relevant.

In respect of Nos 1 and 2 Ashmead Gate, the western facing elevation of the proposed development is between 10m and 13m from the adjacent site boundary which results in a separation of between 31m and 35m to the nearest habitable room window. In between is a significant area of screening that has matured since the appeal decision in 1998. On the development site this is shown to be retained and additional screening is provided by trees and shrubs outside the site boundary at this point which would be likely to give rise to a lesser degree of overlooking.

In addition the appeal development comprised windows for numerous bedrooms for residents and this room was their only living space. The first floor windows that

would be facing these properties in the current scheme comprise secondary windows to living rooms and primary windows to 2 bedrooms.

The first floor proposed balconies for 3 flats are also provided on this elevation but these all face sideways (rather than directly facing Ashmead Gate) and are shown to have 1.8m high screening to the side elevation to reduce overlooking to Ashmead Gate.

For 20 Orchard Road, the separation to the side elevation of this property from the proposed development is approximately 17m with one first floor secondary living room and 2 bedroom windows facing this property. Again there is substantial screening in Ashmead Gate that will provide screening from overlooking.

For No 5 Ashmead Gate one balcony, a kitchen window and a secondary bedroom window directly face the flank of this property and are approximately 19m apart. The front garden of this property is well screened reducing the impact of the balcony.

The other south facing first floor windows are a secondary living room window, a bedroom window and a staircase window. Two side facing balconies are proposed in this elevation and these would both have 1.8m high screens to restrict overlooking. The separation distance to the boundary is approximately 17m and there is substantial screening to this part of the southern elevation.

It is considered that the perception of overlooking resulting from the appeal scheme and the proposed scheme is significantly different for the reasons set out above. Subject to conditions to provide relevant balcony screening it is considered that the proposed development would not result in a significant and harmful loss of privacy for the residents of these properties

Turning to the impact of overlooking on the side elevation and gardens of properties at 6 and 7 Baytree Close and 34 Orchard Road, the development along this boundary comprises a mixture of 2, 3 and 4 storeys.

At first floor level there are primary bedroom window and secondary living room windows for 6 flats and side facing balconies for 4 flats. Of these the balconies all have 1.8m high screens where they face Baytree Close. The secondary windows facing 34 Orchard Road are all obscure glazed. The remaining first floor windows are set back from the boundary between 18m and 22m.

At 2nd floor level there are primary windows for 3 bedrooms, secondary windows for 2 living room/kitchens and 2 side facing balconies. The secondary windows facing 34 Orchard Road are all shown to be obscure glazed. The balconies all have 1.8m high screens to reduce opportunities for overlooking. The elevation that includes the windows to 3 bedrooms are set back 22m from the adjoining boundary which is a significant distance.

At 3rd floor level there will be 1 living room window and balcony facing 7 Baytree Close and a side facing balcony. The side facing balcony will have a 1.8m screen. The separation distance between the boundary and the living room window is 22m.

In summary and taking account of the separation distances between the proposed windows and the adjacent boundary, the provision of obscure glazing, balcony screening and the presence of screening vegetation, it is considered that the windows and balconies would not result in a significantly harmful loss of privacy for the occupants of the adjacent houses.

In terms of the impact of the development on the daylight and sunlight received by habitable rooms, the closest residential properties that could be affected in this respect are considered to be 34 Orchard Road and Nos 6 and 7 Baytree Close.

All of these properties present a side elevation to the development and the development is between 8m and 22m from the shared boundary. Habitable room windows face south for 34 Orchard Road and 6 Baytree Close and north for 7 Baytree Close. In addition there is significant existing vegetation along this western boundary that already casts shadow on to garden areas. The existing building is 2/3 storeys adjacent to No 34 Orchard Road. Both of these factors have an impact on the existing daylight and sunlight that these properties currently enjoy.

Whilst there may be some overshadowing to the gardens of these properties in the afternoon and evening, it is considered that the daylight and sunlight enjoyed by the habitable room windows would not be significantly altered and, as such, the development is acceptable in this respect.

#### Standard of Accommodation and Amenity Space

In policy terms there are no minimum unit size standards in the London Plan or the Bromley Unitary Development Plan for retirement living apartments.

However the applicant has submitted an accommodation schedule and plans showing typical layouts for 1 bed and 2 bed flats which show that all of the flats will meet the internal space standards set out in the Mayor of London's Housing Supplementary Planning Guidance. The applicant has demonstrated, in the Design and Access Statement that the development can meet Lifetime Homes Standards, although this is no longer a requirement for residential development and does not apply to retirement living apartments.

The majority of flats are single aspect served from internal central corridors which is contrary to the guidance for Class C3 residential dwellings. There are no specific standards in this respect for retirement living apartments. However the majority of the flats are either internal facing or facing side and rear boundaries so not likely to be significantly affected by traffic noise. A total of 16 single aspect flats are facing Orchard Road.

In terms of amenity space the majority of the flats will have access to private amenity space. Balconies will be provided for most properties with the exception of 4 flats facing Orchard Road. There will also be one private terrace serving a first floor flat facing south and 2 communal terraces facing Orchard Road and Baytree Close respectively.

In addition a significant amount of communal amenity space is provided around the proposed building with footpaths allowing access to all parts of the site. On the

eastern side of the building there will be a ground floor external seating terrace for the residents and visitors using the proposed restaurant and a therapeutic garden. A formal courtyard will be formed in the centre of the site around the existing Cedar tree. There are also gazebo structures with seating.

In conclusion it is considered that the proposed development will provide an acceptable standard of accommodation for future residents.

### Highways and Traffic Matters

This site lies on Orchard Road which is a busy through road taking traffic from the east of the borough to the Bromley town centre. As previously stated Orchard Road has additional parking pressure at specific times of the day generated by 2 schools that are situated very close to the application site.

The applicant has submitted a Transport Statement that analyses the traffic generated by the development, the impact on the local highway network and the acceptability of the number of on-site car parking spaces. The document has been assessed by the Council's Highways Officer as follows:

- The existing vehicular exit and entry access will be retained and slightly modified to provide an improved alignment. The proposals are considered to be acceptable.
- In terms of traffic generation the average trip rates for the proposed development has been estimated and indicates that around 150 two-way vehicle movements per day it 75 arrivals and 75 vehicle departures per day with a peak flow of around 17 two-way movements per hour. Due to the nature of the resident group it is unlikely that the peak flow will coincide with the local highway network peak period.
- The previous care home would have generated a peak two-way flow of around 11 vehicles per hour so the traffic generated by the proposed development does not represent a significant increase in traffic movements.
- The site will accommodate 49 car parking spaces at basement and surface level. A total of 9 spaces will be allocated to people with disabilities. The Highways Officer is satisfied with the applicants assessment of the number of parking spaces required for residents and staff. In addition the appropriate number of electric vehicle charging points are proposed.
- 12 cycle parking spaces are proposed at basement level and this is considered to be acceptable.

On this basis no objections are raised to the proposal in terms of its impact on the local highway network.

The Design and Access Statement indicates that the existing arrangements for refuse collection will remain and these are considered to be satisfactory.

### Trees and Landscaping

A total of 26 trees and 5 tree groups of trees will be removed to facilitate the development. Four of the trees are in category B/C and defined as modest quality

with a life expectancy of at least 20 years. The remainder are category C trees which are defined as trees of lower quality with a life expectancy of at least 10 years or young trees with a stem diameter below 150mm. The majority of the trees to be removed are located centrally within site.

Further tree planting and hedging is proposed around the boundaries to fill existing gaps in the boundary screening. Significant areas of shrub planting is shown throughout the site and details of the species and planting density will be sought by the application of appropriate conditions.

The submitted plans show a minor incursion of the north east corner of the building into the root protection area of the Cedar tree in this vicinity. The crown of the tree will not be adversely affected and the Tree Report does not anticipate that this will be rise to a significant impact on the longevity of the tree in future.

It is considered that the proposed tree works and planting and landscaping proposals for this development are acceptable.

Other technical matters:

#### Sustainability and Energy

The applicant has submitted an Energy Strategy Report which sets out measures to meet London Plan Policies 5.2: Minimising carbon dioxide emissions and Policy 5.7: Renewable energy. The report concludes that there will be a significant reduction in carbon dioxide emissions with the new building. In addition the report proposes the use of a combined heat and power installation and photovoltaic panels on the roof. The report further concludes that the development can meet BREEAM accredited rating of 'Very Good.'

A condition requiring a detailed energy strategy is recommended.

#### Sustainable Urban Drainage Systems

The site lies within a Flood Zone 1. The Council's Drainage Officer accepts the discharge rate for surface water but does not accept the proposed tank and oversized pipes as the only control measure to reduce surface water run-off. A condition requiring a drainage proposal that meets the criteria of London Plan policy 5.13; Sustainable Drainage is therefore recommended.

#### Contaminated Land

A Phase 1 Site Investigation Report has been submitted and assessed by the Council's Environmental Health Officer who advises that there are no objections to the granting of planning permission in this respect subject to relevant conditions relating to the submission of a Demolition and Construction Noise and Dust Management Plan and Contaminated Land follow up requirements.

#### Ecology

A Phase 1 Habitat Survey and Bat Roosting Assessment and a Bat Emergence and Reptile Survey Report have been submitted. The reports conclude that there are no rare or protected botanical species or habitats within the site. In addition no bats were seen emerging from the building and no further surveys or constraints in relation to demolition are required.

No reptiles were recorded during the survey and no further constraints are required. Any vegetation removal should consider the bird breeding season.

A condition requiring the submission of measures to enhance the development to improve biodiversity has been recommended.

### Environmental Impact Assessment

It should be noted that an Environmental Impact Assessment Screening Opinion is not required for this site

### Mayoral Community Infrastructure Levy

The development will also be liable for payment of the Mayoral CIL.

### **Summary**

In summary the proposed development seeks to replace an existing care home that previously provided 85 rooms in a traditional care home arrangement for nursing and dementia care for those over 65 with 77 retirement living apartments comprising 1 and 2 bed self-contained apartments with communal space, a compulsory service charge package and well-being package and a separate range of care packages available to each resident depending on their individual level of care requirement.

The existing traditional care home use falls within Class C2 of the Use Classes Order. The applicant seeks to retain this designation for the existing development and a draft Operational Management Plan has been submitted setting out the measures that the applicant offers to demonstrate that the use of the proposed building will fall under Class C2 and not Class C3 (dwellinghouse). In addition the draft Heads of Terms for a S106 legal agreement have also been submitted setting out some of the detailed definitions that are crucial to securing a Class C2 use for the site. The planning obligation will need to include provisions that ensure that the proposed building will be occupied and managed consistent with the Use Class C2 and that this can be secured through the leases assigned to occupiers.

With regard to the impact of the development on the character and appearance of the surrounding area and also, more specifically, the occupants of adjacent residential properties, this has been considered in detail in the preceding paragraphs.

It is recognised that this development represents an increase in the built form of development on the site and that there have been objections on numerous grounds from residents in the immediate vicinity.

However due to the specific nature of the proposed use the additional impact on the highways network is limited and is unlikely to result in a significantly adverse effect.

In terms of the impact of the street scene and character of the area, the site is occupied by a large, elongated building which extends almost the full width of the site. The proposed building will occupy a similar footprint but will be a storey higher with a pitched roof. However the impact of this has been mitigated by the use of gables, bay windows, set backs, a wide range of materials, all of which pick up aspects of the prevailing character of the area. In this respect the development is considered to be acceptable.

With regard to the impact on immediate neighbours, it is considered that the rearward 'wings' could have the greatest impact. However in terms of the impact on privacy, the windows in the closest elevation to the western boundary will be obscure glazed. The remaining windows will be between 14m and 21m from the nearest boundary. To Ashmead Gate the separation distances are greater between habitable room windows. In each of these cases the screening vegetation has matured since development was last proposed on the site.

To the southern boundary, the number of overlooking windows is reduced and are primarily secondary windows and face the flank elevation and gardens of the adjacent properties. Separation distances to the boundary are 15m to 18m.

In this respect it is considered that there will be some impact on occupants of neighbouring properties but that this will not be significantly harmful and can be overcome with mitigation measures and additional tree screening.

In terms of the standard of accommodation for future residents it is considered that this is acceptable for the proposed Class C2 use, in principle.

Taking all of the factors into account and subject to continuing negotiations with the applicant, it is considered, on balance, that the provision of a Class C2 use in a development comprising self-contained flats with the proposed 27/7, 365 days specialist staff attendance on site is acceptable on this site, in principle, subject to the signing of a legal agreement to secure the use of the site within Class C2 of the Use Classes Order 1987.

The Portishead Legal Agreement make reference to a care statement that provides an illustration of the care provision, sets a minimum level of care hours for an occupier of each apartment to be on average between 2-4 hours and for this to be funded as part of a compulsory Wellbeing Charge set at a level of £45 per week for a single person and £65 for a couple. The applicant has been asked to confirm that the offer of a Legal Agreement, if Members resolve to grant permission, is being made on a similar basis for this development.

Background papers referred to during the production of this report comprise all correspondence on file ref: 15/02145, excluding exempt information.

**RECOMMENDATION: PERMISSION - SUBJECT TO THE PRIOR COMPLETION OF A S106 LEGAL AGREEMENT to ensure that the use will remain within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended)**

**and the following conditions:**

- 1 The development hereby permitted shall be begun before the expiration for 3 years from the date of the permission.**

**Reason: To comply with Section 91 of the Town and Country Planning Act 1990**

- 2 The development hereby permitted shall only be carried out in complete accordance with the details shown on the submitted plans and documents, as follows:**

**Plans**

**PL001 Rev B; PLOO2 Rev B; PL003 Rev B; PL004 Rev B; PI005 Rev B; PI006 Rev B; PI008 Rev B; PL09 Rev B; PI010 Rev B; PL011 Rev B; PL 012 Rev B; PL015 Rev A; PL016 Rev B; PL017 Rev APL018;PL024; PL025; PL026; PL 027; PL028; PL029; PL030; PL031; PL032; CWA-15-167-500 P1**

**Documents**

**Planning and Affordable Housing Statement dated May 2015  
Addendum to Planning and Affordable Housing Statement including MHA Operational Management Plan dated October 2014  
Design and Access Statement PRC Ref 10053  
Arboricultural Impact Assessment dated May 7th 2015  
Transport Statement dated May 2015  
Landscape Design Statement dated May 7th 2015  
Landscape Visual Impact Assessment dated May 7th 2015  
Extended Phase 1 Habitat Survey and Bar Building Assessment dated April 2015  
Bat Emergence and Reptile Survey report dated August 2015  
Sustainability Statement dated May 15th 2015  
Statement of Community Involvement dated May 2015**

**Reason: For the avoidance of doubt and to ensure the satisfactory implementation of the development in accordance with Policy BE1 of the Bromley Unitary Development Plan.**

- 3 Details and sample boards of all external materials to be used for the development, including roof cladding, wall facing materials and cladding, windows and door frames, window glass, decorative features, rainwater goods and any parts of the site not covered by buildings, where appropriate, shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced. The development shall be carried out in accordance with the approved details.**

**Reason: In order to comply with Policy BE1 of the Bromley Unitary Development Plan and in the interest of the appearance of the building and the visual amenities of the area.**

- 4** Details of a scheme of landscaping, which shall include the materials of paved areas and other hard surfaces and planting plans, shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development hereby permitted. The approved scheme shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.

**Reason:** In order to comply with Policy BE1 of the Bromley Unitary Development Plan and to secure a visually satisfactory setting for the development.

- 5** No demolition, site clearance or building works shall be undertaken, and no equipment, plant, machinery or materials for the purposes of development shall be taken onto the site until an arboricultural method statement detailing the measures to be taken to construct the development and protect trees is submitted to and approved in writing by the Local Planning Authority.

The statement shall include details of:

- Type and siting of protective fencing, and maintenance of protective fencing for the duration of project;
- Type and siting of scaffolding (if required);
- Details of the method and timing of demolition, site clearance and building works
- Depth, extent and means of excavation of foundations and details of method of construction of new foundations
- Location of site facilities (if required), and location of storage areas for materials, structures, machinery, equipment or spoil, and mixing of cement or concrete;
- Location of bonfire site (if required);
- Details of the location of underground services avoiding locating them within the protected zone
- Details of the method to be used for the removal of existing hard surfacing within the protected zone
- Details of the nature and installation of any new surfacing within the protected zone
- Methods proposed for the watering of the trees during the course of the project

The method statement shall be implemented according to the details contained therein until completion of building works, and all plant, machinery or materials for the purposes of development have been removed from the site.

**Reason:** To ensure that all existing trees to be retained are adequately protected and to comply with Policy NE7 of the Unitary Development Plan.

- 6** Details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to and approved in writing by the Local Planning

**Authority before work commences and the development shall be completed strictly in accordance with the approved levels**

**Reason: In order to comply with Policy BE1 of the Bromley Unitary Development Plan and in the interest of the visual and residential amenities of the area**

**7 No part of the development hereby permitted shall be commenced prior to a contaminated land assessment and associated remedial strategy, together with a timetable of works, being submitted to and approved in writing by the Local Planning Authority.**

**a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval in writing. The desk study shall detail the history of the sites uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the Local Planning Authority prior to investigations commencing on site.**

**b) The site investigation, including relevant soil, soil gas, surface water and groundwater sampling shall be approved in writing by the Local Planning Authority.**

**c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors, a proposed remediation strategy and a quality assurance scheme regarding implementation of remedial works, and no remediation works shall commence on site prior to approval of these matters in writing by the Authority. The works shall be of such a nature so as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment.**

**d) The approved remediation works shall be carried out in full on site in accordance with the approved quality assurance scheme to demonstrate compliance with the proposed methodology and best practise guidance. If during any works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to the Authority for approval in writing by it or on its behalf.**

**e) Upon completion of the works, a closure report shall be submitted to and approved in writing by the Authority. The closure report shall include details of the remediation works carried out, (including of waste materials removed from the site), the quality assurance certificates and details of post-remediation sampling.**

**f) The contaminated land assessment, site investigation (including report), remediation works and closure report shall all be carried out by contractor(s) approved in writing by the Local Planning Authority.**

**Reason: In order to comply with Policy ER7 of the Unitary Development Plan and to prevent harm to human health and pollution of the environment.**

**8 No development shall commence on site, including demolition until such time as a Demolition and Construction Noise and Dust Management Plan has been submitted to and approved in writing by the Local Planning**

**Authority. The Plan shall be implemented in accordance with the approved details and to the agreed timescale throughout the period of the works.**

**Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the amenities of adjacent properties and the wider area.**

- 9** Prior to the commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site, measures to secure provisions of on-site delivery, off-loading, turning and parking of construction and operatives vehicles and the hours of operation, but shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details.

**Reason: In order to comply with Policies T5, T6, T7, T15, T16 and T18 of the Unitary Development Plan and in the interest of the amenities of the adjacent properties.**

- 10** Details of a surface water drainage system (including storage facilities where necessary) shall be submitted to and approved in writing by the Local Planning Authority before any part of the development hereby permitted is commenced and the approved system shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.

**Reason: To ensure satisfactory means of surface water drainage and to accord with Policy 5.2 of the London Plan 2015**

- 11** The development hereby permitted shall incorporate measures to minimise the risk of crime and to meet specific needs of the application site and the development. Details of those measures shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development hereby permitted and implemented in accordance with the approved details. The security measures to be implemented in compliance with this condition shall achieve the Secured by Design accreditation awarded by the Metropolitan Police.

**Reason: In the interest of security and crime prevention and to accord with Policy BE1 of the Unitary Development Plan**

- 12** Details of arrangements for storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) shall be submitted to and approved in writing by the Local Planning Authority before any part of the development hereby permitted is commenced and the approved arrangements shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.

**Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in order to provide adequate refuse storage facilities in a location which is acceptable from the residential and amenity aspects**

**13** Details of the layout of the access road and turning area including its junction with Orchard Road and dimensions of visibility splays shall be submitted to and approved in writing by the Local Planning Authority and these access arrangements shall be substantially completed before any part of the development hereby permitted is first occupied. There shall be no obstruction to visibility in excess of 1m in height within the approved splays except for trees selected by the Authority, and which shall be permanently retained.

**Reason:** In order to comply with Policy T18 of the Unitary Development Plan and in the interest of pedestrian and vehicular safety.

**14** Before any work on site is commenced a site wide energy assessment and strategy for reducing carbon emissions shall be submitted and approved by the Local Planning Authority. The results of the strategy shall be incorporated into the final design of the buildings prior to first occupation. The strategy shall include measures to allow the development to achieve an agreed reduction in carbon dioxide emissions of at least 35% above the TER level required by the Building Regulations 2013. The development shall aim to achieve a reduction in carbon emissions of at least 20% from on-site renewable energy generation. The final design, including the energy generation shall be retained thereafter in operational working order, and shall include details of schemes to provide noise insulation and silencing for and filtration and purification to control odour, fumes and soot emissions of any equipment as appropriate.

**Reason:** In order to seek to achieve compliance with the Mayor of London's Energy Strategy and to comply with Policy 5.2 and 5.7 of the London Plan 2015.

**15** Before the development is first occupied details of screening to the balconies shown to be screened on the approved plans shall be submitted to and approved in writing by the Local Planning Authority. The screening shall be installed prior to the first occupation of the units and shall be permanently retained thereafter

**Reason:** In order to comply with Policy BE1 of the Unitary Development Plan and in the interests of the amenities of the occupants of adjacent properties

**16** Before any part of the development hereby permitted is first occupied boundary enclosures of a height and type to be approved in writing by the Local Planning Authority shall be erected in such positions along the boundaries of the site as approved and shall be permanently retained thereafter.

**Reason:** In order to comply with Policy NE7 and BE1 of the Unitary Development Plan and to ensure a visually satisfactory setting for the development.

**17** If any trees are felled in order to implement the development hereby permitted, trees of a size and species to be agreed in writing by the Local Planning Authority shall be planted as replacements in such positions as shall be agreed by the Authority in the first planting season following completion of the development. Any trees which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.

**Reason:** In order to comply with Policy NE8 of the Unitary Development Plan and to secure a visually satisfactory setting for the development

**18** A replacement tree or trees of sizes and species to be agreed in writing by the Local Planning Authority shall be planted in such positions as shall be agreed by the Authority within 12 months of the removal of the tree(s). Any replacement tree which dies, is removed or becomes seriously damaged or diseased within 5 years of the date of this consent shall be replaced in the next planting season with another of similar size and species to that originally planted.

**Reason:** In order to comply with Policy NE8 of the Unitary Development Plan and to secure a visually satisfactory setting for the development.

**19** Prior to first occupation an electric vehicle charging point shall be provided to a minimum of 20% of car parking spaces and for all buggy parking spaces with a passive provision of electric charging capacity for an additional 20% of car parking spaces

**Reason:** To minimise the effect of the development on local air quality in the vicinity of an Air Quality Management Area and to accord with National Planning Policy Framework paragraph 124 and Policies 6.13 and 7.14 of the London Plan 2015.

**20** Details of any external lighting within the application site shall be submitted to and approved by the Local Planning Authority prior to its installation. The lighting shall be installed in accordance with the approved details and permanently retained thereafter.

**Reason:** To comply with Policy BE1 of the Unitary Development Plan and to safeguard the visual appearance of the building and the area

**21** Detailed plans of the appearance of and the equipment comprising a ventilation system which shall include measures to alleviate fumes and odours (and incorporating activated carbon filters where necessary) shall be submitted to the Local Planning Authority for approval; after the system has been approved in writing by the Authority, it shall be implemented in accordance with the approved details before the use hereby permitted first commences and shall thereafter be permanently retained in an efficient working manner.

**Reason:** In order to comply with Policy ER9 of the Unitary Development Plan and in the interest of the visual and residential amenities of the area.

**22** A Service and Delivery Plan shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of any part of the development, and the Plan shall be implemented in accordance with the approved details and permanently retained thereafter.

**Reason:** In order to comply with Policy BE1 and in the interest of the amenities of the future occupants of the development and the adjacent properties.

**23** Before any part of the development hereby permitted is first occupied parking for 12 bicycles shall be provided in the basement area in

accordance with details to be submitted and approved by the Local Planning Authority and the approved facilities shall be permanently retained thereafter.

**Reason:** In order to comply with Policy T7 of the Unitary Development Plan and in order to provide adequate bicycle parking facilities at the site in the interest of reducing reliance on private car transport.

**24** Prior to the commencement of the use hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan should include measures to promote and encourage the use of alternative modes of transport to the car. It shall also include a timetable for the implementation of the proposed measures and details of the mechanisms for implementation and for annual monitoring and updating. The Travel Plan shall be implemented in accordance with the agreed timescale and details.

**Reason:** In order to ensure appropriate management of transport implications of the development and to accord with Policy T2 of the Unitary Development Plan.

**25** Prior to the completion of the superstructure, details of the provision of measures to encourage valued landscapes for bats, birds and reptiles in accordance with the Bat Emergence and Reptile Survey report dated August 2015 shall be submitted to and approved in writing by the Local Planning Authority and measures shall be carried out in accordance with the approved details and permanently retained thereafter

**Reason:** To accord with Policy NE5 of the Unitary Development Plan and Policy 7.19 of the London Plan 2015 and in the interest on improving biodiversity on the site.

**26** (i) the use of the apartments within the building hereby approved shall, at all times and unless otherwise agreed by the Local Planning Authority in writing, be used for the designed purpose of providing self-contained independent living units of accommodation for person or persons who, for the purpose of acquiring purchase or lease of any of the approved apartments, are contracted into a care package and who will have a minimum age of not less than 60 years of age as required by condition 27 of this permission. Furthermore details of the supporting staff and resources associated with the management of the site and the delivery and implementation of the individual care package(s) associated with the terms of the purchase and occupancy of each apartment, together with the occupants' permitted use of facilities provided within the approved building, shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any of the units and shall be retained as such unless agreed in writing by the Local Planning Authority.  
(ii) The building shall not be used or occupied for any other purpose (including equivalent provision in Class C2 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 or any equivalent provision, and notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015) no permitted changes of use shall occur, unless express written permission of the Local Planning Authority has been obtained.

**Reason:** The development is a form, density and type of accommodation which has been justified on the basis of meeting a defined need for this type of accommodation and this condition is required to ensure that the development is occupied and managed on this basis and to prevent the conversion of the property to other forms of residential accommodation which may not meet the specified need and which may have impact on the neighbouring uses and the character of the area and to comply with Policy 3.8 of the London Plan 2015 and Policy BE1 and T3 of the Bromley Unitary Development Plan.

**27** The occupation of the apartments hereby approved shall at all times, and unless otherwise agreed by the Local Planning Authority in writing, be limited to a person aged 60 or over and any resident dependent who satisfies the requirements referred to in condition 26 of this permission. No other person shall occupy any of the approved apartments.

**Reason:** The development is a form, density and type of accommodation which has been justified on the basis of meeting a defined need for this type of accommodation and this condition is required to ensure that the development is occupied and managed on this basis and to prevent the conversion of the property to other forms of residential accommodation which may not meet the specified need and which may have impact on the neighbouring uses and the character of the area and to comply with Policy 3.8 of the London Plan 2015 and Policy BE1 and T3 of the Bromley Unitary Development Plan.

**28** Before first commencement of the use of the building hereby permitted parking spaces and turning spaces shall be completed in accordance with the approved details and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on land indicated or in such a position as to preclude vehicular access to the said land.

**Reason:** In order to comply with Policies BE1 and T3 of the Unitary Development Plan and to avoid development without adequate parking provision, which is likely to lead to parking inconvenient to other road users and would be detrimental to amenities and road safety.

**29** While the development hereby permitted is being carried out a suitable hardstanding shall be provided with wash-down facilities for cleaning the wheels of vehicles and any accidental accumulation of mud of the highway caused by such vehicles shall be removed without delay and in no circumstances be left behind at the end of the working day.

**Reason:** In the interest of pedestrian and vehicular safety and in order to comply with Policy BE1 and T18 of the Unitary Development Plan.

**30** Whilst the development hereby permitted is being carried out, provision shall be made to accommodate operatives and construction vehicles off-loading, parking and turning within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority and such provision shall remain available for such uses to the satisfaction of the Local Planning Authority throughout the course of the construction

period and shall be removed within 3 months of the first occupation of the development.

**Reason:** In the interests of pedestrian and vehicular safety and the amenities of the area and to accord with Policy T18 of the Unitary Development Plan

**31** Before the development hereby permitted in first occupied, the proposed windows shown to be obscured glazed on the approved plans shall be glazed to a minimum privacy level 3 and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above floor level of the room in which the window is installed and shall be subsequently permanently retained as such.

**Reason:** In order to comply with Policy BE1 of the Unitary Development Plan and in the interests of the amenities of the occupants of adjacent properties

**32** Other than structures shown on the approved plans, no other structures, including water tanks, plant and lift rooms shall be erected upon the roof(s) of the approved building without the written approval of the Local Planning Authority.

**Reason:** To comply with Policy BE1 of the Unitary Development Plan and to safeguard the visual appearance of the building and the area

**33** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Order) 2015, or any future re-enactment of that Order, no satellite dishes, telecommunications masts or equipment or associated structures, shall be installed on the building without the prior written approval of the Local Planning Authority.

**Reason:** To comply with Policy BE1 of the Unitary Development Plan and to safeguard the visual appearance of the building and the area.

**34** The applicant should ensure that storm waters are attenuated or regulated into the receiving public network through on and off site storage. When it is proposed to connect to a combined sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of groundwater. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required.

**Reason:** In the interests of the protection of the sewerage system and to comply with Policy 5.14 of the London Plan.

**35** No impact piling shall take place until a piling impact method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority in consultation with Thames Water. Any piling must be undertaken in accordance with the team of the approved piling statement

**Reason:** In the interests of the protection of the sewerage system and to comply with Policy 5.14 of the London Plan.

**36** The outside seating area associated with the proposed restaurant, located adjacent to the eastern boundary, shall not be used by staff, residents or guests of residents for the consumption of food and drink before 07.00 and after 23.00 on any day.

**Reason:** In the interests of the amenity of the occupants of nearby residential properties and to comply with Policy BE 1 of the Unitary Development Plan.

**37** No amplified music shall be played in the outside seating area associated with the proposed restaurant, located adjacent to the eastern boundary, before 07.00 and after 23.00 on any day.

**Reason:** In the interests of the amenity of the occupants of nearby residential properties and to comply with Policy BE 1 of the Unitary Development Plan.

You are further informed that :

**1** You are advised that this application may be liable for the payment of the Mayoral Community Infrastructure Levy under the Community Infrastructure Levy Regulations (2010) and the Planning Act 2008. The London Borough of Bromley is the Collecting Authority for the Mayor and this Levy is payable on the commencement of development (defined in Part 2, para 7 of the Community Infrastructure Levy Regulations (2010)). It is the responsibility of the owner and/or person(s) who have a material interest in the relevant land to pay the Levy (defined in Part 2, para 4(2) of the Community Infrastructure Levy Regulations (2010))

If you fail to follow the payment procedure, the collecting authority may impose surcharges on this liability, take enforcement action, serve a stop notice to prohibit further development on this site and/or take action to recover the debt.

Further information about the Levy can be found on the attached information note and the Bromley website [www.bromley.gov.uk/CIL](http://www.bromley.gov.uk/CIL).

**2** Regarding the condition concerning provision of a ventilation system, the Planning Division have prepared a technical guidance note; this covers specification of

- the canopy or slot hood over fume generated equipment, which should be fitted with a readily cleanable grease filter
- coarse and fine pre-filters
- an insulated carbon filter unit
- installation of the system (including fan(s)) to prevent transmission of noise and vibration onto adjacent premises.

It is suggested that you may wish to seek advice from the Council's Environmental Services Division, though when you have finalised the details of the system they should be sent to the Planning Division, if possible for the attention of the planner dealing with the planning application. The Council will be concerned that the ventilation system does not have a detrimental impact on the appearance of the building and the area generally. You are advised not to install it prior to Council

**approval and you should ensure that you have the agreement of any other landowners or tenants onto whose property the system will be attached.**

**A copy of the technical guidance note can be obtained from the Development Control Section at the Civic Centre. Please write to the Planning Division at the Civic Centre, telephone 020 8313 4956 or email [planning@bromley.gov.uk](mailto:planning@bromley.gov.uk)**

- 3 Thames Water aim to provide customers with a minimum pressure of 10m head (approx. 1 bar) and a flow rate of 9litres/minute at the point where it leaves Thames Water pipes. The developer shall take account of this minimum pressure aim the design of the proposed development.**

**Thames Water Developer Services can be contacted on 0800 009 3921**

- 4 You should consult Street Naming and Numbering/Address Management at the Civic Centre on 020 8313 4742, email [address.management@bromley.gov.uk](mailto:address.management@bromley.gov.uk) regarding Street Naming and Numbering.**

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OUR REF GSLE/BUR/0247/00001  
YOUR REF DC/15/02145/FULL1

**mms** | Maclay Murray  
& Spens LLP

Ms Karen Bradshaw  
Principal Planner  
London Borough of Bromley  
Stockwell Close  
Bromley  
Kent  
BR1 3UH



13 April 2016

Dear Ms Bradshaw

**Mr Marcin Burda and Others**  
**Planning Application ref: DC/15/02145/FULL1 ("the Application")**  
**Former Care Home Site, St Raphael's, 32 Orchard Road, Bromley ("the Property")**

We are instructed on behalf of (1) Mr and Mrs Marcin Burda of 7 Bay Tree Close, Bromley BR1 2TS, (2) Mr John Wright of 34 Orchard Road, Bromley BR1 2PS and (3) Mr Vincent White of 36 Orchard Road, Bromley BR1 2PS (together "our Clients") in relation to the Application lodged on behalf of Methodist Housing Association ("MHA") for the proposed development of the Property for retirement living with care.

We have reviewed the Application, supporting documentation and e-mail correspondence among yourself on behalf of the London Borough of Bromley as local planning authority ("the LPA"), the Greater London Authority ("GLA"), MHA and our Clients and other objectors and we have also had an opportunity to review the letter dated 24 March 2016 prepared by MHA's agents, Savills. We set out below our Clients' key concerns which primarily are (1) the overdevelopment of the Property which arises as a direct result of (2) an incorrect designation of the proposed development as falling within Use Class C2 of the Town and Country Planning Use Classes Order 1987 ("the UCO"), which subsequently leads to (3) adverse impact on traffic and on-street parking in Orchard Road and its surroundings.

#### **Overdevelopment of the Property**

Notwithstanding MHA's submission of revised plans showing a reduction from 77 to 75 units, the proposal which is currently before the LPA still represents gross overdevelopment of the Property.

No cognisance has been taken of the scale and design of the existing surrounding properties and the proposed building would be out of keeping and inappropriate.

Policy H7 of the LPA's Unitary Development Plan sets out the considerations which are applied to housing density and design in relation to Class C3 developments. By inappropriately agreeing to designate the proposed development as Use Class C2 the LPA is allowing MHA to contravene several policies of the Unitary Development Plan which would otherwise apply to Class C3 residential development, a distinction which suits MHA's purposes. This has resulted in a development proposal which significantly deviates from planning norms in terms of bulk and mass, is not in keeping with the residential character of the area and will have a detrimental effect on our Clients' enjoyment and use of their property, due to overlooking, overshadowing, loss of privacy and impact on residential amenity.

Failure by the LPA to have proper regard to the material considerations referred to above would be an infringement of our Clients' rights in terms of Articles 1 and 8 of the First Protocol of the European

Convention of Human Rights, being the substantive right of peaceful enjoyment of one's possessions (including one's home and land) and the right of respect for a person's home. In addition, our Clients are entitled to the protection afforded by Article 14 (the prohibition of discrimination).

### **Designation of the Development as Use Class C2**

Our Clients' key concern stems from the designation of the proposed development as a use falling within Class C2 of the UCO. The Application seeks permission for the demolition of an existing care home and the erection of a part one/two/three storey building with an additional storey within the roofspace comprising 75 (originally 77) retirement living apartments, with basement level ancillary facilities, car parking, cycle parking, refuse storage and landscaping.

MHA's contention is that the proposal would fall within Use Class C2 of the UCO, being "use for the provision of residential accommodation and care to people in need of care (other than a use within Class 3 (dwelling houses))..."

There is no debate that the previous use of the Property, as a care home, fell within Use Class C2, but, in our Clients' view there is no doubt that the proposed redevelopment falls outwith a C2 classification.

In Savills' letter of 24 March 2016 they correctly state that the most up to date relevant policy guidance is the Mayor's Housing Supplementary Planning Guidance ("SPG") which was adopted in March 2016, but what they do not do is accurately refer to critical paragraphs of the SPG which make it clear that the case should be made for the proposed development falling within Use Class C3 of the UCO. Following the issue of Circular 8/2010, Class C3 is a dwelling house which is defined as "... C3(b) those living together in a single household and receiving care", which definition clearly applies to the proposed development .

"Care" is defined in the UCO as "personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or past or present mental disorder".

MHA propose to provide residential accommodation with care, to individuals or couples living in their own self-sufficient apartment, but having access to various communal facilities on site, such as a dining room/restaurant, residents' lounge and well-being suite/therapy room.

The SPG at paragraph 3.7.4 refers to categories of older persons' and specialist housing (Use Class C3) where planning policies to increase supply are likely to be required. This includes "extra care accommodation (Use Class generally C3); self-contained residential accommodation and associated facilities designed and managed to meet the needs and aspirations of people who by reason of age or vulnerability have an existing or foreseeable physical, sensory or mental health impairment. Each household has self-contained accommodation and 24 hour access to emergency support. In addition, extra care accommodation includes a range of other facilities, such as a residents' lounge, a guest room, laundry room, day centre activities, a restaurant or some kind of meal provision, fitness facilities and classes and a base for health care workers. The exact mix of facilities will vary on a site by site basis. Some domiciliary care is provided as part of the accommodation package, according to the level of need of each resident. Extra care housing aims to create a balanced community, bringing together a balanced proportion of people with different levels of care needs." It can be seen from this wording that MHA's proposal clearly falls within the category of "extra care accommodation", which in turn is stated to be "generally Class C3".

Further supporting our assertion that the proposal for extra care accommodation should be designated as Class C3 is the LPA's own Local Plan Draft Policies and Designations Consultation document which acknowledges that whilst there is currently ambiguity in the Use Class classification for the range of specialist accommodation for the elderly, "extra care" type housing developments "are treated as residential dwellings (C3) and therefore subject to other residential policies, including affordable housing policies".

The Consultation document goes on to state that "the application of affordable housing principles to specialist elderly accommodation which falls within Class C3 would undermine the Specialist & Older Peoples Accommodation policy, which seeks to encourage provision of specialist, and supported accommodation, and would create a perverse financial incentive favouring the provision of care homes over Extra Care Housing. It is the Council's intention to amend Bromley's adopted Affordable Housing SPG removing the requirement for affordable contributions from the full range of elderly specialist

accommodation". Whilst this document is a consultation document, it is of value in that it demonstrates the LPA's view that extra care accommodation should be designated as Class C3 but that, going forward, the LPA would be looking to remove the requirement for affordable housing, recognising that developers seek alternative use class designations in order to circumvent the current policy requirement to provide affordable housing as part of a C3 development.

The SPG also recognises that there has been debate about how to categorise specialist older persons' accommodation in terms of the UCO. At paragraph 3.7.18 it is noted that consultants suggest that the most robust way of distinguishing between C2 and C3 use is the "front door" test; ie if the unit of accommodation has its own front door then it is usually C3. If not, then it is C2. It is our understanding that every unit within the proposed development will be self-contained, with its own living room, bedroom, bathroom, kitchen and front door. The provision of communal facilities and care do not by themselves change the nature of the character of the use. The availability of communal function rooms and the option of communal dining do not alter this characteristic. It is also worth noting that each resident will be responsible for payment of their own Council Tax.

It is accepted that appropriate account should be taken of the components of care and support and level of communal facilities provided. Most extra care housing is designed for people who have a range of needs from little or no care to a high level of care. It is not like a residential care home where everyone has a similar, high level of need from the outset. Care is made available on an individual basis, using a domiciliary care model where care and support staff visit the individual in their own personal dwelling, further supporting the C3 use argument.

Very little information has been provided on behalf of MHA as to the level of personal care to be provided should the development proceed and our Clients are concerned that the information provided has been set at a level which would favour a C2 designation, without acknowledging that many of the residents may only commit to the minimum level of care available or no care at all. From the information which has been made available, it appears that the level of care may be as little as two hours per week, which we would contend is insufficient to constitute Class C2 use, a view which was shared by both the LPA and the GLA in e-mail correspondence from November 2015. We note further that there is nothing in the proposed Section 106 draft agreement that makes provision of care mandatory, beyond what is covered by the well-being charge, a view supported by the information about levels of care usage at MHA's development in Portishead where today only five residents have subscribed to any care package out of the total of fifty or so residents. Hence we are struggling to understand how the proposal can now be recommended by the LPA for approval as a C2 development.

Savills have argued that the principles of the Portishead appeal decision (appended to the Planning & Affordable Housing Statement and the Addendum thereto) which concluded that the use in that particular case was C2, should be applied in relation to the Application. The LPA will be well aware that one appeal decision reached in specific circumstances in relation to the planning policies of a particular Development Plan for a particular planning authority cannot be universally applied to all planning proposals of a similar nature in other parts of the country and whilst MHA may argue that the Portishead decision should be taken as an all-encompassing precedent, it would be inappropriate and unlawful for the LPA to have scant regard to its own Development Plan and supplementary guidance.

In any event, it should be remembered that every planning decision is a matter of professional judgement for the decision maker (in this case, the LPA), having regard to the individual circumstances of the particular Application and it is our contention that the current proposal can be distinguished from the Portishead decision when one has regard to the relevant Development Plan policies and current guidance contained in the SPG. In the Addendum to the Planning & Affordable Housing Statement Savills agree that an assessment has to be made on the individual circumstances of the proposed development.

Further, it is interesting to note that in the GLA report on the Application dated 11 August 2015, it states that previous cases have shown that where independent living units can be bought as if they were residential properties (as is the case here), they should be treated as C3 use and, therefore, subject to affordable housing policy (amongst other relevant policies). The Council's view at that time was that the proposed development could be more closely classified as C3 sheltered accommodation and that the level of care to be provided did not constitute a Class C2 use.

There are several reasons why it suits MHA for the proposed development to be categorised as C2. Firstly, Policy C1 of the LPA's Unitary Development Plan seeks to retain community uses, including health and social uses, unless there is no longer a need for the facility or alternative provision is made for the facility. Therefore, it can be seen that if the proposal was deemed to be Use Class 3, it would be deemed to be contrary to Policy C1.

As mentioned above, a C2 designation avoids the need for the proposed development to comply with Policy H7 of the LPA's Unitary Development Plan and, accordingly, the opposite would hold true should the proposed development be correctly designated as C3.

Perhaps most significantly, a C2 designation generally avoids the requirement to provide affordable housing

It is also worth mentioning that there can be tax advantages to a Class C2 designation, in that HMRC accept that extra care units can meet the definition of "dwelling" for VAT purposes despite having a C2 planning use, in situations where a Section 106 Agreement is not used in order to restrict disposal of the units. This means that the construction costs of units meeting the definition of "dwelling" are also zero rated and that the sale of such units will also be zero rated for VAT purposes. Where a Section 106 Agreement is utilised to restrict disposal of the units, this can lead to overdevelopment of sites in order to minimise the losses which would be incurred by the imposition of the ongoing C2 use.

### **Transport Assessment**

We have seen the previous comments made by our Clients and other residents in relation to the inadequacies of the original Transport Statement carried out in May 2015 by Northern Transport Planning Limited and we note that a further assessment was carried out by Mayer Brown on 22 March 2016. We would urge caution when considering the detail of the further assessment as we are advised by our Clients that the figures do not accurately reflect the day to day operation of the local highway network, due to the fact that (1) attendance at both of the nearby schools, Breaside Preparatory School and Scotts Park Primary School, was likely to be lower than usual in the run up to the Easter holidays at the time of the assessment; (2) Thames Water were carrying out works in Orchard Road and temporary traffic signals were in use, resulting in (i) a single flow of traffic and (ii) traffic utilising alternative routes as to avoid being detained by the signals; and (3) Scotts Park has a greater number of pupils than Breaside and would have been a far more relevant and representative basis for assessment than Breaside. We are of the view that the most recent assessment has been carried out on a particularly selective manner. Further, it is of great concern that the assessment takes no account of the extension at Breaside School and the proposed extension to Scotts Park (submitted November 2015), both of which developments will exacerbate the already considerable traffic congestion issues in Orchard Road.

In summary, we are fully supportive of our Clients' view that the LPA has no option but to refuse the Application based on the facts before it and the material considerations set out in this letter. Should the LPA not do so, our Clients will be forced to take further legal advice on the options available to them to challenge the LPA's decision. Please acknowledge receipt of this letter and confirm that it will be passed to all members of the relevant Committee.

Yours faithfully



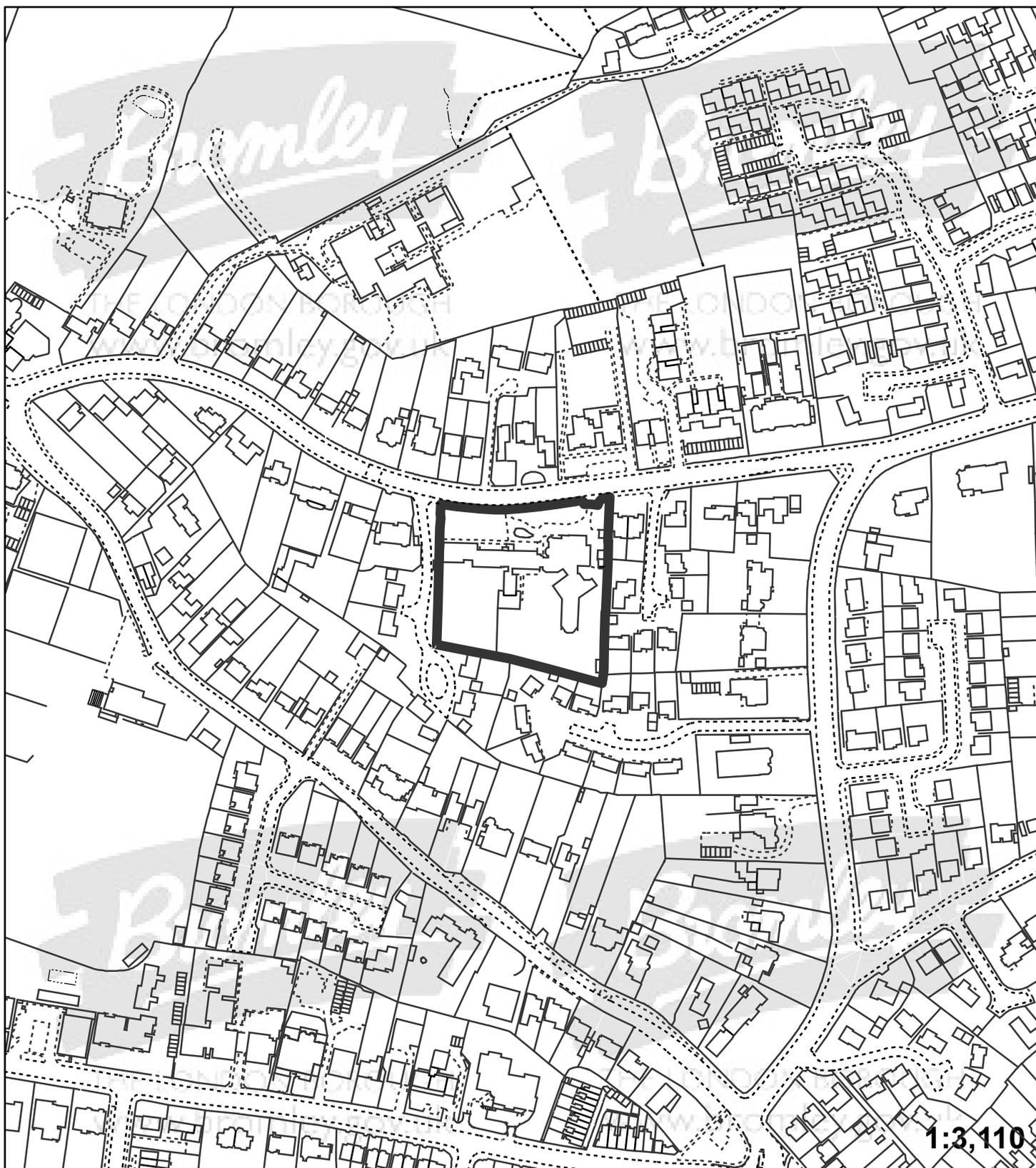
For Maclay Murray & Spens LLP

Cc: Mr Jim Kehoe, Chief Planner, London Borough of Bromley

**Application:**15/02145/FULL1

**Address:** St Raphaels Residential Home 32 Orchard Road Bromley  
BR1 2PS

**Proposal:** Demolition of existing care home and erection of a part one/two/three storey building with an additional storey of accommodation within the roofspace comprising 75 retirement living apartments (51x2 bed and 24x1 bed) with basement level ancillary facilities, parking for 52 cars



"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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