

<b>Committee Date</b>	05.05.2021	
<b>Address</b>	Selwood House Kemnal Road Chislehurst BR7 6LT	
<b>Application Number</b>	20/01718/FULL1	<b>Officer</b> – Robin Evans
<b>Ward</b>	Chislehurst	
<b>Proposal</b>	Erection of two storey rear extension to provide one additional two bedroom duplex flat with own entrance (accessed from Pickwick Way) and to enlarge four existing flats providing them with a new exclusive entrance (access from Kemnal Road); along with minor external and internal alterations to existing building to form an additional one bedroom flat within the existing building (flat 14) in place of former communal lounge and kitchen. Use of existing highway access off Pickwick Way for additional parking (including EV charging) and additional refuse/recycling and cycle storage.	
<b>Applicant</b>	<b>Agent</b>  Stoneridge Selwood Limited & Others Adrian Lawrence	
Selwood House Kemnal Road Chislehurst BR7 6LT	Kingsley House 5 High Street Chislehurst BR7 5AB	
<b>Reason for referral to committee</b>	Call-In	<b>Councillor call in</b> Yes

## 1. REASON FOR THE REPORT

The application was referred to the Plans Sub-Committee No. 1 on 1st October 2020 where the Planning Committee resolved to grant planning permission.

This report considers new material planning considerations arising since the resolution to grant planning permission for application 20/01718/FULL1 and offers Members an opportunity to take these into account prior to the issue of a decision on the current planning application.

The original report as presented to Members on 1<sup>st</sup> October 2020 is attached.

## 2. RECOMMENDATION(S)

Having regard to the new material considerations set out in the report, Members can ratify their decision made on 1 October 2020.

### **3. COMMENTARY**

#### **General Background to the Report**

- 3.1 As mentioned planning application reference 20/01718/FULL1 was considered by the Plans Sub-Committee 1 on 1 October 2020 following which it has come to the Council's attention that an error in the report, specifically in relation to the application of Paragraph 11 of the NPPF and the presumption in favour of sustainable development, could have impacted on the Committee's ability to undertake a proper balancing exercise in resolving to grant planning permission.
- 3.2 The Committee report drew specific attention to the relevance of NPPF Paragraph 11 and the presumption in favour of sustainable development. Members were accordingly advised to consider the weight that could be afforded to the additional housing proposed in this planning application in the overall planning balance, having regard to the presumption in favour of sustainable development set out in Paragraph 11 of the National Planning Policy Framework.
- 3.3 In summarising and applying NPPF Paragraph 11 the Committee report stated as follows:

*7.3.8 In accordance with paragraph 11(d), for decision taking this means where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, granting permission unless: (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

*7.3.9 In this particular case there are no areas under protection or assets of particular importance and therefore paragraph 11 d) i. does not apply. The proposal is therefore assessed in relation to paragraph 11 d) ii.*

*7.3.10 This application would provide 2 additional residential units providing a modest contribution to the housing supply within the Borough. This aspect of the proposal will be considered in the overall planning balance set out in the conclusion of the report having regard to the presumption in favour of sustainable development. The previous planning applications/appeals are a material consideration and the key issue is whether the current proposal complies with the Development Plan Policies and whether it is material different and/or overcomes the reasons for the refusal/dismissal of the previous scheme(s).*

- 3.4 However, the application site lies within the Chislehurst Conservation Area, which is a designated heritage asset and therefore an "area or asset of particular importance" when applying the NPPF Paragraph 11 d). The Committee report should therefore have made clear that in the event that the policies in the Framework relating to the protection of designated heritage assets were found

to provide a clear reason for refusal, the presumption in favour of sustainable development set out in NPPF Paragraph 11 d) i would not apply.

- 3.5 Whilst this matter would not have changed the Officer recommendation to refuse planning permission, Members resolved to grant planning against this recommendation and are therefore advised to consider their resolution in light of this.

### **Procedural Background**

- 3.6 Section 70(2) of the Town and Country Planning Act 1990 (the 1990 Act) says as follows:

“In dealing with an application for planning permission or permission in principle that authority shall have regard to the provisions of the development plan, so far as is material to the application, and to any other material considerations.”

- 3.7 Case law is clear that if a delegated Officer becomes aware of a new material consideration before issuing a decision, the Authority is bound to have regard to it. It is also clear that in this context a new material consideration must be one that might have had an effect on deliberations had it occurred before the decision was made, but it need not be one that is determinative to a decision. In other words, upon reconsideration, it is open to a Committee to make the same decision as it did before, so long as it has taken into account the new material consideration.
- 3.8 Material planning considerations are not specifically defined in legislation or guidance, however a point of procedure such as a consideration directed by the NPPF would constitute a material consideration. This report provides Officer comments on the points raised in the NPPF and how this relates to the current application, to assist the Committee in its consideration of all relevant matters and in deciding whether to confirm its previous decision to approve the application and upon what basis.

### **Matters raised in the NPPF and the Council's Housing Land Supply position, and the adoption of the London Plan**

- 3.9 As mentioned, Paragraph 11 of the NPPF sets out a presumption in favour of sustainable development. In terms of decision-making Paragraph 11(d) means that in the absence of a 5 year Housing Land Supply the Council should regard the Development Plan Policies for the supply of housing including Policy 1 Housing Supply of the Bromley Local Plan as being 'out of date'. In accordance with Paragraph 11(d), for decision taking this means where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, granting permission unless:
- i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 3.10 At the Plans Sub-Committee 1 meeting, a verbal update was given by Officers, advising Members that following the publication of the report, an updated Five Year Housing Land Supply position had been agreed by the Development Control Committee on 24 September 2020, confirming a significant under supply of housing. Members were therefore advised to consider the weight that could be afforded to the two additional residential units proposed in this planning application in the overall planning balance, having regard to the presumption in favour of sustainable development set out in Paragraph 11 of the National Planning Policy Framework.
- 3.11 However, notwithstanding this, as the site lies within the Chislehurst Conservation Area, which is a designated heritage asset and therefore an area or asset of particular importance, the presumption in favour of sustainable development may not apply as directed in paragraph 11. d) i and Officers can now advise that Members that they should not have been directed to do so in light of the overall conclusions of the report regarding the impact on a designated heritage asset, which officers considered to provide a clear reason for refusing permission.
- 3.12 In addition, since the original report was considered, the new London Plan has now been adopted and forms part of the development plan for the assessment of the application.

### **Commentary on matters raised**

- 3.13 It is clear from the minutes and transcript from the previous meeting that in resolving to grant planning permission contrary to the Officer recommendation, the Committee considered that the proposed development would not harm the character and appearance of the Conservation Area. Accordingly it is clear that Members did not agree with the Officer view regarding the level of harm to the Conservation Area. It may therefore be concluded that the Committee did not consider that the policies in the NPPF relating to the protection of designated heritage assets would have provided a clear reason for refusal and that on balance any harm considered to arise would be outweighed by the benefits of the development.
- 3.14 With regard to the status of the London Plan, relevant policies had been considered in their draft form in the original report where appropriate. Members are advised that the change to the status of the London Plan would not affect the original officer recommendation.

### **Summary**

- 3.15 Members are asked to give consideration to the above matters, and the advice in context to the Committee's previous resolution with particular consideration to the weight that can be afforded to the additional housing proposed in this case

in the overall planning balance considering the location of the site within a Conservation Area, which is an asset of importance for the purposes of NPPF Paragraph 11. A decision to approve the application can then lawfully be given in the light of the new material planning considerations set out in this report, subject to the conditions.

#### **4. LEGAL IMPLICATIONS**

The legal implications are set out in paragraphs 3.6-3.9 of this report. It is important to remember that Members made a resolution to approve the grant of permission on 1 October 2020 (subject to conditions to be determined under delegated authority). The purpose of this report is therefore to enable Members to consider whether having regard to the new material considerations they should change that decision or not, rather than inviting Members considering the matter afresh. The Officer recommendation advises that Members can ratify their previous decision.

#### **5. POLICY IMPLICATIONS**

Addressed in the Committee report. The London Plan 2021 has now been adopted however the policies in the Draft London Plan 2019 references in the Committee report remain applicable.