

G. Nicastro LL.B.

60 Southbury Road Enfield Middx EN1 1YB.



**RE: Studios 1A, 2A, 3A and Flat 4 at
10-12 Lind Road Sutton SM1 4PJ
("the Property")**

Planning Statement

Proposal: The retention of four self contained flats at the Property

Applicant: KPD Properties Ltd

Preliminary

i) This application is a second application submitted to address the refusal reasons set out in an earlier application bearing Ref No. DM2021/01764 (“APP 01”)

ii) The Planning Statement submitted with APP 01 is attached hereto at Appendix 1. It’s contents are repeated herein except in relation to specific comments made to support the balconies then proposed at first second and third floor rear of the Property by APP 01.

ii) In the light of the officer report (“the Report” submitted at Appendix 2) on APP 01, this application differs from that earlier application by the removal of the doors and balconies then proposed for the units 2A, 3A and Flat 4 at the Property.

iii) Therefore, physically, the Property is identical in all respect to that approved by the council under planning application ref DM 2018/01616 for which permission was granted by decision notice dated 9th November 2018 (“PP 01”) attached at Appendix 3. Details relating to design outlook overlooking etc were addressed in the application for PP 01 and all met with the council's approval, including the floor to ceiling height of the levels permitted by PP 01, which allowed for the construction of additional living rooms. The floor to ceiling levels remain unchanged by this application, they are the same as those approved by PP 01. The floor to ceiling levels of the habitable rooms permitted by PP 01 were deemed to be compliant in 2018 when the London Plan of 2016, which being noted as a material consideration, specified a height of 2.3m over 75% of the GIA. The Officer report on PP 01 is attached at Appendix 4 from where the reader will see that the Draft London Plan of 2107 (which ultimately became the London Plan 2021) was also noted as a material consideration.

PP 01 gave permission for:-

Erection of two storey side extension with basement level and accommodation within the roof space to provide additional accommodation to the existing three self-contained flats.

iv) At the rear of the Property there stood a building formerly used for storage for which planning permission was granted (“The Bishops Place Development, for short

“the BPD”) pursuant to application reference DM 2018/01664. Planning permission for the BPD was granted on 26th July 2019 for the

“ Erection of an additional floor to existing building to provide 4 self-contained flats with cycle and refuse stores”

vi) When planning permission for the BPD was granted the development authorised by PP 01 had already been physically completed. A photo verifying the same is attached at Appendix 5. The file properties of the photo report the date of the image as 28 June 2019. By that time the Property was already being marketed by the estate agent as set out in his statutory declaration submitted at Appendix 6 hereto.

vii) The Officer Report on the application for the BPD is attached hereto at Appendix 7 where the officer concludes that the proposed BPD development was “acceptable in terms of impact on neighbouring properties”.

viii) The proposal is for the use of the side extension built to 12 Lind Road pursuant to PP 01 as 3 studio flats and additional living facilities to Flat 4 at 10-12 Lind Road. The proposal meets the Nationally Described Space Standards of at least 37 sqm for studio flats and 50 sqm for 1 bedroom flats. Only the basement unit, Unit 1A, now has any private amenity space. All four units have dual aspect. There is a study space in Flat 4 which is below the required Gross Internal Area (GIA) required by Space Standards should it have been proposed as a second bedroom. The proposal is therefore submitted as, and falls to be determined as, 3 studio flats and a resultant 1 bedroom flat.

ix) We will now deal with each of the refusal reasons quoted in the decision notice relating to APP 01 and will where appropriate refer to the Report and subsequent correspondence conducted with council officers post issue of the decision notice to App 01. In addressing the refusal reasons set out in the decision notice to App 01 the proposed development will be policy compliant for which planning permission for the proposal falls to be granted.

Refusal Reason 1

1.1 The three projecting balconies (and doors leading thereto) to the rear elevation of the Property are no longer proposed. The rear elevation will remain as approved by the Council in PP 01. This reason for refusal is now otiose, serving no purpose. As before the rear elevation successfully preserves and enhances the setting and character of the Newtown Area of Special Local Character. The proposal thus adheres to the principles of the National Planning Policy Framework, policies D3 and D4 of the London Plan, policies 1, 28 and 30 of the Sutton Local Plan, SPD 14 Creating Locally Distinctive Places.

This application ceases to provide private amenity space for studios 2A and 3A and flat 4 at the Property. Ordinarily these types of properties are occupied by single people or couples without children whose demands on private amenity space are minimal, especially so in the light of a large public park (Manor Park) being only 300 metres away. Notwithstanding, the applicants are happy to contribute to off-site recreation facilities and welcomes condition to that end upon grant of the permission

Refusal Reason 2

2.1 At Appendix 8 evidence is submitted to show that the proposal will meet the council's minimum SuDS performance standards and water efficiency measures. As such, the application complies with Policies SI 5 and 13 of the London Plan 2021 and Policies 32 and 33 of the Sutton Local Plan 2018.

Refusal Reason 3

3.1 Page 14 of the Report States that *“the principle of the proposed development is acceptable in principle, and the intensification of additional housing on the site is accepted”* and at page 15 it states that *“The actual built design of the two storey side extension to the building follows that of the approved scheme under ref: DM2018/01616 which is broadly considered to be acceptable in design terms, reflecting the form of the existing terrace”*

3.2 The refusal reason is specific in that it is limited to *“Failure to comply with internal space requirements for the floor to ceiling heights for units 1A, 3A and 4A”*

The Report lists the officer identified shortfall in floor to ceiling height for each of the units in question. ("the Shortfall").

3.3 The Shortfall is the same as that permitted by PP 01 which granted permission for the construction of additional living rooms at The Property.

3.4 It is submitted that the shortfall is de minimis and as such, it is a not something that the law addresses and so does not fall to be applied in considering this application.

3.5 In the case of R (on the application of Mr C) v London Borough of Hillingdon [2018] UKUT 350 (LC): Judge Amanda Spoor QC stated:-

"Although the ceiling height in the proposed bedroom would be lower than the policy standard, it would nonetheless be usable as a bedroom without impairment, given its floor area and volume. The ceiling height would not interfere unduly with options for furnishing and decorating the room. In my judgment, the shortfall of 150mm from the policy standard was acceptable as de minimis in the circumstances."

In R (on the application of Mr M) v London Borough of Newham [2019] UKUT 222 (LC) a similar 15cm shortfall in floor to ceiling height was judged to be de minimis. The court held that the space complied with the policy standard, notwithstanding the head height shortfall which was considered not to meaningfully impact on the usability of the space as there was ample usable floor space to make the units in that case acceptable

3.6 The judgements amounts to legal precedent which the council is obliged to follow. Such that a 15cm shortfall properly falls within the ambit of de minimis.

Furthermore, the principle is not limited to a shortfall of 15cm. It can extend to any shortfall of between 15-30 cm. The guiding principle is the usability of the space for the intended purpose. Another important factor is its successful use for the intended purpose. If this element is not taken into account, either as de-minimis or as a material consideration, then London may find itself with the major part of its existing housing stock as being not compliant with the London Plan 2021.

3.7 Units 1A and 3A have a uniform floor to ceiling height with policy compliant GIA. Flat 4 is under the pitch roof with floor space above 175 cm in excess of 50sqm to render it policy compliant as noted in the Report.

3.8 Current occupiers of units 1A, 3A and Flat 4 have each executed a statutory declaration (attached at Appendix 9) to confirm that the shortfall is acceptable, it does not impact on their ability to use and furnish the units in question, the sense of space is not suppressed. It does not impact on the usefulness and functions of the space or the individual rooms of flat 4. In short, the units provide an acceptable standard of residential accommodation, with ample usable space that is not unacceptably cramped or suppressed and in no way negatively affect or cause harm to the living conditions of current and future occupiers. The functionality of the spaces is not impaired and should thus be allowed to continue as separate units, as they have successfully been for over 4 years.

3.9 The law, as expressed in the judgement quoted in 3.5 above directs that planning judgement, in the circumstances, governs that this reason for refusal is not warranted. Therefore the shortfall does not amount to a failure to comply with policy.

3.10 It is trite law that when determining a planning application, regard is to be had to the development plan unless material considerations indicate otherwise.

3.11 It has similarly trite law that planning policies are not statutory provisions and in themselves do not have statutory force. Mann LJ in the Court of Appeal in North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P & CR 137, stated:-

"In principle it is always open to the planning authority to weigh considerations of planning policy against any material considerations which may point the other way. Planning policies are not statutory provisions and they do not have statutory force. They provide guidance for the decision-maker but they do not compel any particular decision."

The same principle was applied by the House of Lords in R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23 where Lord Clyde stated:

"The general policies of the development plan may be applicable throughout its area, but their application to the particular facts and circumstances of an individual case may produce different results....To insist on a rigid adherence to the strategic policies of the plan

irrespective of the circumstances of the individual case would be contrary to the provisions of [planning legislation] which requires that applications be dealt with in accordance with the plan unless material considerations indicate otherwise."

3.12 On receipt of the council's decision in APP 01 the applicant's agent was instructed to seek clarification from the officer as to two of the reasons for refusal. The reply to the enquiry is attached at Appendix 10. From the reply it is evident that the officer assessment was limited to considerations of policy only, "as the floor to ceiling heights didn't meet the required standards and as such this formed a reason for refusal"

3.13 In the correspondence, no mention is made of material considerations having been taken into account in accordance with the House of Lords Judgement in Alconbury. Nor is there an acknowledgement that "Planning policies are not statutory provisions and they do not have statutory force. They provide guidance for the decision-maker but they do not compel any particular decision."

3.14 There was a rigid application of policy to this refusal reason contrary to the Alconbury decision. The following material considerations were not taken into account as the law prescribes:-

i) That the floor to ceiling height is exactly the same as that previously approved by the council in PP 01. In both instances, the space permitted is being used for habitable purposes

ii) The units in question have been used as separate self contained dwellings for in excess of 4 years without complaint on their use having been raised either to the landlord or the council

iii) The council have inspected the units internally on two occasions. Once by Ms Maeva Wylie and on a further occasion by Ms Wylie accompanied by her manager. On both occasions they entered the units in question and thoroughly examined the Property from top to bottom. Neither raised any comments on the floor to ceiling height of the units which they clearly had in mind, and attentively examined, given the purpose of their visit.

iv) As a result of these two visits, an enforcement notice was served on the appellants as attached at Appendix 11, The Enforcement Notice gives "flats with inadequate internal floor area" as the reason for issuing the enforcement notice. No mention of floor to ceiling height is made therein. Ergo, the officers assessed the units as being acceptable in terms of floor to ceiling height. Otherwise, they would have stated otherwise and provided otherwise as a reason for issuing the enforcement notice. At the time units 1A 2A and 3A were 1

bedroom flats. Since then internal partitions have been removed, for which planning permission is not required, so rendering these units into studio flats which are now space compliant. Flat 4, is a 1 bedroom flat with a study area, is now also space compliant. The four units are now all space compliant as the Report attests.

v) No mention is made of the floor to ceiling height being not policy compliant. The authority to issue the enforcement notice likewise makes no mention of the floor to ceiling height as a reason to issue the enforcement notice. The council's statement of case (attached at Appendix 12) similarly only deals with floor space, not floor to ceiling height, which the officers obviously found to be acceptable otherwise this aspect would have formed part of the reasons for issuing the enforcement notice.

vi) The council's own past actions in both the planning permissions granted, PP 01 and the BPD development and the reasons for the issue of the enforcement notice are all material considerations which need to be taken into account, as the law states, in assessing this application. There are 3 material considerations in all which support the grant of the permission applied for. Previous decisions of the council officers are material considerations, more cogently so, as they relate to or touch and concern the same subject matter, ie the Property. As a matter of consistency, the reasoning evidenced thereby falls to be followed.

The reader is referred to *Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government and Central Bedfordshire Council [2019] EWHC 127 (Admin)* where the court emphasised that the exercise of planning judgement does not entitle an inspector to disregard earlier and very relevant appeal decisions without comprehensive and robust reasoning. It is not enough for a decision-taker to rely on his or her discretion to justify reaching a contrary view to previous decisions. The principles in Gladman equally apply to council officers and the LPA in their decision making role. Principles of consistency transparency and equality of treatment are fundamental and fall to be applied in this instance to render the shortfall acceptable in these circumstances

3.15 In the email correspondence, Ms Davidson also said :

“The officers report does not need to make an assessment on whether or not something is de minimis”

It is with regret that we have to point out that the statement is wrong in law and wrong in practice. De minimis is a well established principle of law. It applies to every application for planning permission as it does in almost every other area of law.

The de minimis principle is a threshold test. If it succeeds, which we say it does in the light of the precedent quoted at section 3.5 above on the subject of the shortfall in floor to ceiling height, there is thus no infringement of policy that falls to be justified. The reader is referred to the words of Coulson LJ in the Court of Appeal case of *Hatton v London Borough of Camden* [2022] EWCA Civ 190,

A sub element of refusal 3 is the impact on outlook and daylight for flat 1A at the Property. Both issues are precisely the same the same as that which PP 01 approved in relation to the habitable rooms thereby authorised. As the building was approved in PP 01, the same physical features of the building, cannot now be said to give rise to unacceptable impact on outlook and daylight,

3.16 The shortfall in floor to ceiling height is, we submit, de minimis, the rigours of policy in accordance with the judgements specified in section 3.5 above. In the alternative, or in conjunction therewith, sufficient material considerations have been identified in this statement to conclude that the floor to ceiling heights for units 1A, 3A and 4A would provide a suitable level of amenity for future occupiers of the residential accommodation contrary to Policy 9 and 29 of the Sutton Local Plan (2018) and Policy D6 of the London Plan (2021).

Refusal Reason 4

4.1 As before, the Applicants are prepared to execute a signed legal agreement to prohibit the future occupiers of the dwellings from obtaining residential car parking permits in the Sutton Controlled Parking Zone, thus rendering the proposed development compliant with policies T4 of the London Plan 2021 and Policies 36 and 37 of the Sutton Local Plan 2018.

Refusal Reason 5

5.1 The adjoining flats that the Report refers to are those permitted by the BPD development. Midway in that development there is a flight of stairs leading to the upper units which prevents views from the Property into the private amenity space of the ground floor flat at the far end of the BPD development. The Flat immediately above is unaffected by views from the Property. The only two units at the BPD development that could conceivably be affected are those closest to the Property. These are the flats known as Flat 1 and Flat 3 at 1A Bishops Place Sutton SM1 4PH.

5.2 The current occupiers of Flat 1 and Flat 3 at 1A Bishops Place Sutton SM1 4PH have provided statutory declarations to support this appeal. The Statutory Declarations are attached hereto at Appendix 13. The ASTs under which they hold their respective flats are attached at Appendix 14.

5.3 The occupier of flat 3 adjudged that he was not affected by any overlooking by the occupiers of the Property or in any way have his amenities impaired by them. Accordingly he proceeded to take a letting of his flat which he proposes to renew. As his statutory declaration states, he determined that he was unaffected by the proposals initially put forward under APP 01. The windows that currently serve the Property, and thus remain, were not and do not affect his decision to take a letting of the flat and to renew it. The tenant concludes that in reality there is no overlooking or infringement of the facilities appertaining to his flat.

5.4 A similar conclusion is reached by the occupier of Flat 1 weighed down by the fact that she has lived at her flat for almost 3 years and has no intention to move out. She was not affected by any overlooking or other infringement of amenities, either by the windows as they exist or the doors and balconies that were proposed by APP 01.

5.5 It is to be noted that in the Delegated Report to the BPD development, the officer observed that the development proposed thereby “is considered that the proposal would not result in harm to neighbouring occupiers in terms of increased noise and disturbance or loss of outlook, privacy and light” and concluded that the BPD was “acceptable in terms of impact on neighbouring properties”. These followed a site visit carried out by the officer after the Property had been physically completed.

5.6 It is difficult, if not impossible, to see how an existing building (ie the Property) is not affected by the proposed BPD development in terms of light outlook privacy disturbance and other amenity factors and now that same building, unchanged in its physical standing, still with habitable rooms facing the BPD development, with the same approved windows can now negatively impact the dwelling units arising out of the planning permission granted for the BPD

5.7 This reason for refusal set out in APP 01 is thus more imaginary than real. With the windows at the Property remaining the same as before, there is thus no increased overlooking or loss of privacy to the detriment of these neighbouring occupiers, or indeed any others. It is thus the case that the proposed development accords with Policy 29 of the Sutton Local Plan 2018

Refusal Reason 6

6.1 Accompanying this application is a statutory declaration (see Appendix 6) from an experienced letting agent with extensive knowledge and experience of letting properties in Lind Road Sutton.

6.2 The Agent sets out the nature of the demand on Lind Road and the types of properties sought so close to the centre of Sutton and what meets the housing need in this part of Sutton. The agent concludes that there is no demand for 3 bedroom properties on Lind Road. Families look for houses with rear gardens in which their children can grow, a facility that is totally lacking in this part of Lind Road.

6.3 The want of garden space makes the site unsuitable for their use as larger 3 bedroom homes. The proposal provides housing type that is much in demand in the

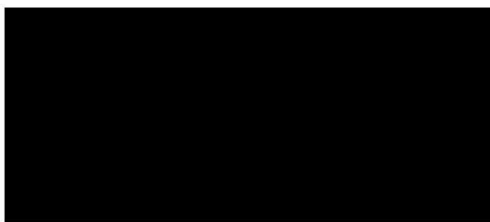
area and enables the Applicants to offer a comprehensive range of housing options spread among their development on Lind Road and Bishops Place/ Bishops Bungalow immediately behind.

6.4 The development has been fully let since completed in June 2019, so testifying to the fact that it provides relief from housing demand in the much admired and required location by the younger generation to whom the want of garden space has no bearing on their decision making process.

6.5 The Agent's statutory declaration provides sufficient cogent evidence to support the fact that the Property is unsuitable for three bedroom homes in this area of Sutton and so complies with policy 9 b (ii) of the Sutton Local Plan 218

Conclusion

For the reasons stated throughout this application, it is submitted that the proposal fully addressees the refusal reasons set out in the decision notice to APP 01. It is policy compliant and falls to be approved for the reasons stated herein. To which end, the Appellants look forward to hearing form the council with its decision on the application, subject to any conditions that the council wishes to specify.



Signed.....

Dated..16-02-24.....

Agent for the Applicant

For list of appendices accompanying this application, see next page

Appendices Accompanying this application:-

- Appendix 1 – Planning Statement to APP 01
- Appendix 2 – Officer Delegated Report consequent on App 01
- Appendix 3 - Decision Notice to PP 01
- Appendix 4 - Officer Report to PP 01
- Appendix 5 – Photo of completed development permitted by PP 01
- Appendix 6 – Statutory Declaration of Letting Agent
- Appendix 7 – Delegated Report on BPD Development
- Appendix 8 – (i) SUDS Report
- Appendix 8 – (ii) Water Efficiency Reports
- Appendix 9 – (i) Statutory Declaration of Tenant of studio 1A at the Development
- Appendix 9 – (ii) Statutory Declaration of Tenant of studio 3A at the Development
- Appendix 9 – (iii) Statutory Declaration of Tenant of Flat 4 at the Development
- Appendix 10 – Emails string with Ms Davidson of the council
- Appendix 11 – Enforcement Notice served
- Appendix 12 – Council’s Statement of Case on the Enforcement Notice
- Appendix 13 – (i) Statutory Declaration of Tenant of Flat 1, 1A Bishops Place Sutton
- Appendix 13 – (ii) Statutory Declaration of Tenant of Flat 3, 1A Bishops Place Sutton
- Appendix 14 – (i) AST to the tenant of Flat 1, 1A Bishops Place Sutton
- Appendix 14 – (ii) AST to the tenant of Flat 3, 1A Bishops Place Sutton