

PLANNING & ENVIRONMENT COMMITTEE MEETING

Thursday 28 March 2013, 7.00PM

ADDENDUM TO REPORT OF THE ACTING ASSISTANT DIRECTOR OF PLANNING AND DEVELOPMENT MANAGEMENT

Page 1

Reference: B/00235/13

Address: Brunswick Park JMI School

In Condition 1, drawings 3002 P2 and 3004 P5 should be replaced with 3002 P4 and 3004 P7

Page 27

Reference: F/01932/11

Address: Former Parcelforce Depot, Geron Way, London NW2

Recommendation 2

Recommendation 2 on Page 32 should be amended as follows to correct the planning reference number:

‘That upon completion of the agreement specified in Recommendation 1, the Acting Assistant Director of Planning and Development Management approve the planning application reference ~~H/02796/11~~ F/01932/11 under delegated powers subject to the following conditions and any changes to the wording of the conditions considered necessary by the Acting Assistant Director for Planning and Development Management.’

Additional Comments from TfL

TfL (email dated 26th March) have made several comments on the committee report as follows.

- TfL suggests that the wording of Condition 40 be amended to make it clear that the ‘Development shall not be occupied until the approved highway works is completed.’

Response: The current wording makes it clear that the approved highways works “shall be completed before the development is occupied”. Therefore no change to the wording is needed.

- TfL has also confirmed that it is satisfied with the obligation for safeguarding land for transport improvement. TfL has recommended that the section 106 agreement includes a requirement for the developer to enter into separate agreements with the Council under section 278 of the Highways Act.

Response: The draft Section 106 Agreement, under Legal Effect clause 2.2 includes reference to Sections 38 and 278 of the Highways Act 1980. However,

in the circumstances of this case it is considered that including a requirement in the Section 106 Agreement that the developer enter into an agreement under Section 278 of the Highways Act 1980 is unnecessary and a duplication of the powers under the Highways Act.

- TfL has confirmed that it is satisfied that the financial contributions toward various transport improvements will be included in the s106 Agreement.
- TfL maintains its stance for not agreeing with the proposed parking provision for the development.

Response: Council Highways Officers have confirmed that the proposed 1:1 parking provision for the development is considered acceptable.

Pages: 183-254

Reference: H/03904/12

Address: Phase 2, Millbrook Park (former Inglis Barracks), Mill Hill East, London, NW7 1PZ

Corrections to Plan Numbers

The following corrections shall be made to Condition 2 (Approved Plans) plan drawing numbers on page 185 of the report. Deleted text is struck through and new text is shown underlined.

Planting Plans (ref.~~DH~~469-2382-PP-01 Rev H)
Planting Plans (ref.~~DH~~469-2382-PP-02 Rev H)
Planting Plans (ref.~~DH~~469-2382-PP-03 Rev F)
Planting Plans (ref.~~DH~~469-2382-PP-04 Rev F)

Amend to:

Planting Plans (ref.CH469-2382-PP-01 Rev H)
Planting Plans (ref.CH469-2382-PP-02 Rev H)
Planting Plans (ref.CH469-2382-PP-03 Rev F)
Planting Plans (ref.CH469-2382-PP-04 Rev F)

Amend and make correction to the following documents to the list of supporting information on page 190 of the report:

Illustrative Landscape Sections (ref.~~CH~~469-2382-SE-01 ~~Rev C~~)
Illustrative Landscape Sections (ref.~~CH~~469-2382-SE-01 ~~Rev D~~)

Add the following documents to the list of supporting information on page 191 of the report:

Rainwater Recycling Reconciliation Table
Drainage Strategy Issue 2 dated 3 October 2012

Additional Conditions

The following condition should be added to the recommendation as Condition 17.

Prior to development commencing details of a construction management plan showing the route of construction and delivery vehicles shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such details as approved.

Reason:

To safeguard residential amenity in accordance with policy DM17 of the Adopted Barnet Development Management Policies DPD (2012).

The following condition should be added to the recommendation as Condition 18.

Prior to development commencing details of landscaping for the installation of pergolas over the car park to Apartment Block C shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such details as approved.

Reason:

To safeguard residential amenity in accordance with policy DM01 of the Adopted Barnet Development Management Policies DPD (2012).

The following condition should be added to the recommendation as Condition 19.

Prior to development of Plot L (Units 1-19) commencing details showing those windows to remain fixed shut (non-openable) to units 1-19 shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such details as approved prior to the first occupation of these units and the windows thereafter maintained fixed shut for the life of the development.

Reason:

To safeguard residential amenity in accordance with policy DM01 of the Adopted Barnet Development Management Policies DPD (2012).

The following condition should be added to the recommendation as Condition 20.

No dwellings within Plot L shall be occupied until the Pilkington Optiphon glazing type B as specified in the approved Acoustic Design Report 7320-NEA-01 Rev B have been installed to the room windows facing IBSA House. The windows shall thereafter be maintained for the life of the development.

Add Policy MHE3 (Employment) to the relevant Mill Hill East Area Action Plan (AAP) 2009 policies for the consideration of this application on page 192 of the report.

Add the following policy to Appendix 7 under Key Policy Context, Mill Hill East Area Action Plan (AAP) 2009 policies on page 254 of the report:

<u>MHE3 (Employment)</u>	<u>Appropriate mitigation measures including landscaping and boundary treatment or other measures will be required to minimise any potential conflict between employment uses and residents.</u>
--------------------------	--

Additional Comments Received

Since the submission of amended plans and following the second round of consultation, further comments have been received from the Mill Hill Preservation Society, Metropolitan Police Service and the International Bible Students Association (IBSA). These are summarised below and where appropriate, an officer response is provided.

Comments of the Mill Hill Preservation Society

The Mill Hill Preservation Society comments are as follows:

- Generally have no objections to the proposal, but have a concern about Apartment Block C (dwellings 95-103). The front of the block (facing north) is at ground level but the rear is some 4m in the air and this gives rise to an odd arrangement of walls – both those to the car parking area and under the building at the rear. This space is barren and would not be secure.
- The scheme as revised looks quite good, but this corner is not of the same high standard. Should consider turning the building through 90° and letting it step down the slope to the south – with the car parking access off the east/west road - this arrangement may work better.
- One comment on the brickwork generally - feel that they will look better with a recessed or 'bucket handle' joint to give some dynamic to the bricks. A smooth flush joint will do nothing to show off the brick qualities.

Officer response

Due to the levels on this part of the site, the ground floor flats are higher at the rear. The highest part of the wall from the car park is 2.7m in the centre and the height is reduced along other parts of the rear elevation. The applicant proposes a recess in the brickwork on part of this rear wall for the installation of external lights. This would provide some visual interest and lighting to increase the security of the car park. Furthermore, Condition 13 as recommended requires details and location of street lighting and Officer would then ensure adequate lighting would be provided to reduce opportunities for crime and minimise fear of crime. The rear habitable room windows facing the car park would provide passive surveillance. The applicant also discussed the design issue with MHPS and has suggested that pergolas could be added over the car parking area, to further reinforce the landscaping within this area. It is therefore considered that details of these pergolas and lower level planting along the perimeter of Block C could be submitted and approved and to be implemented. Condition 18 as indicated above is therefore added.

It is important to have Block C fronting the east-west road as this is the main internal estate road and should also actively address the Officer's Mess Gardens. By fronting the spine road the building also provides natural surveillance to eastern section of the officer mess gardens. The side elevation is also designed addressing the Bray Road. The original scheme did have a building turning the corner, but due to the challenges of the existing levels, the need for additional stair cores etc, it resulted in a larger/bulkier building, which exceeded the maximum dimensions set out in the outline planning permission parameter plans. As such the Council requested that this is reduced and redesign this apartment building. Officer consider that Block C provides a good

transition between the Central Slopes West Character Area and the future Phase 5 which is in the Central Slopes East Character Area.

The applicant has confirmed that where there is a soldier course in the elevation that matches the face brick these would project by a small amount. If the soldier course is contrasting in colour then it would be flush with the main brickwork.

Where there is a stone head proposed, this would be flush except for the projecting key stone shown. The mortar would be bucket handle pointing in all elevations.

Comments of the Metropolitan Police Service

Having seen the amended plans, Barnet Borough Police have no objections in principle to the proposals as detailed within the reserved matters application for Phase 2 of the Millbrook Park development.

The comments contained within the first letter dated 30th November 2012 remain relevant to this amended plans application.

Comments from International Bible Students Association (IBSA House)

IBSA made the following additional comments (email dated 20th March 2013):

IBSA's original representations identified a number of the key issues relating to Plot L and the adjacent boundary with IBSA House to the North of the application site. IBSA consider that there are minimal differences to the revised Design & Access Statement and that the changes do not address their core issues raised.

IBSA have raised the following comments:

- When Plan CS-03 'landscape constraints: Trees, IBSA house buffer, levels' as appearing in the DAS Addendum is overlaid onto drawing AA2999/2.1/003P6, the extent of the infringement into the buffer zone area of Plots 1 and 17 is clearly demonstrated. IBSA notes that Plan CS-03 is drawn to illustrate the minimum 5m width only and not the preferred 9m width.
- Whilst alternative ventilation has been provided for some habitable rooms facing or tangential to the IBSA House boundary, all windows on this aspect remain openable, thus increasing the potential for nuisance noise to be heard by occupants of the proposed residential units. It is unrealistic to expect residents of this high end development to rely on mechanical ventilation. Therefore, the acoustics report wrongly assumes that bedroom/living room windows would be closed to reduce noise and that this would not give rise to complaint.
- Whilst the acoustic fence has been extended, it still does not run to the front of Plot 1. Immediately inside the IBSA House boundary adjacent to the position of Plot 1 is a Gas booster station. The pumping equipment in this building runs continuously but has no protection other than for the existing boundary treatment and therefore questions what assessment has been made in locating Plot 1 so close to this potentially hazardous building.

- IBSA is already in negotiation with the Council for an extension to IBSA House to facilitate increased operating requirements. Should the resulting planning application not succeed, then IBSA will need to relocate its operations and questions the future use of the site should another commercial operator take over the premises. All current assessments are based on the operating noise generated by IBSA, not the potential for noise by other future operations.
- IBSA questions whether assessment has been made on the potential fuel odours and hazard controls from within their site and their impact on future residents.
- IBSA is concerned that after Condition 12 was approved based on the Halcrow report, the new report prepared by the applicant is claiming that significantly less noise attenuation is actually required to achieve the same results. There should be a detailed analysis of the acoustics as well as the potential for expansion to protect businesses and families.
- IBSA notes that the amended DAS makes the case for an exemption from the Sustainable Design & Construction SPD. It would appear that the applicant feels that on a technical note the provisions of this document can be sidestepped. The required standard for noise levels in the Sustainable Design & Construction SPD requires a BS8233 standard of 'good' to be obtained. The application itself notes that only a 'reasonable' level is reached. The Mayor of London's document 'Sustainable Design and Construction – The London Plan Supplementary Planning Guidance', also states that where new properties should achieve BS 8233:1999 (Table 5) 'good' standards for external to internal noise'.
- IBSA does not feel that these established policies should be so easily set to one side in such a contentious location.
- IBSA considers that there has been insufficient time to obtain the detailed technical advice required and further technical information is in preparation and is to follow before the Committee sits.
- IBSA have had no opportunity to participate in the preparation of this revision to the application documentation, and have not had the benefit of any pre-consultation meetings with Linden Homes. IBSA therefore request that the application is deferred while attention is given to the matters raised, further technical information currently in preparation is provided, and a more sympathetic design is developed which better protects future residents and conforms to the SPDs and Design Code.

A further letter from IBSA dated 27th March was submitted and circulated to the Chair and Vice-Chair of the Planning and Environment Committee.

The following additional comments were made:

The matters for which approval is sought depart from mandatory requirements of certain of the conditions in the outline planning permission granted, and of documents subsequently approved pursuant to those conditions. The approval of details which conflict with the requirements of the outline permission would be unlawful.

IBSA wishes to make known its legal misgivings in advance of any decision, to avoid the possibility of having to raise a challenge after the event should approval be given without further modification of the proposals.

The approved Design Code in relation to the buffer zone around IBSA House boundary is a 'Must Do' item and the indicative section shown in Figure 5.11 shows a 5-9metres buffer zone between IBSA boundary and the residential development. The applicant's Design and Access Statement Addendum claims that the new layout for Plot L would have a substantial landscape buffer along the boundary with IBSA House with additional verges to the southern edge of the new access road to create a good screen. However, IBSA considers that this claim providing a substantial landscape buffer is unjustified. IBSA states that the only element of the layout which can be described as contributing to a landscape buffer is a strip along the northern side of the access road, but this is less than the minimum required width of 5m. The area required for a buffer zone is shown to be intruded upon by parts of the development such as buildings etc.

IBSA makes reference to Condition 12 of the outline consent and the approval of the original Acoustic Design Report by Halcrow (2011). They consider that the terms of the approved Acoustic Design Report became central to the consideration of the submission of details of residential development on the affected plots as the noise mitigation measures approved are required to be provided prior to the occupation of the relevant phase. A condition was also imposed on the approval of the Acoustic report by Halcrow and requires the development permitted to be carried out in accordance with the report.

IBSA points out that a scheme which satisfies the requirements of the aforementioned document as regards its noise implications could be expected to be approved if otherwise acceptable; and where a scheme that does not do so could be expected to be rejected, having regard to the condition subject to which the note was approved. The details now submitted for reserved matters approval are not consistent with the requirements of the acoustic report.

IBSA disputes the applicant's argument in the Design and Access Statement Addendum in relation to the layout of Plot L. Condition 13 of the outline consent (Height and Building Footprint) states:

"Notwithstanding any illustrative information contained in supporting documentation maximum width, length and height of all buildings shall accord with Parameter Plan 4: Scale (A6157/2.1/06), unless otherwise agreed in writing by the Local Planning Authority. Unless as a result of the noise survey required by Condition 12, the local planning authority require that there be a greater distance between the IBSA boundary and the proposed residential boundary, in which case details revising the layout of this area shall be submitted to and approved in writing by the Local Planning Authority."

The applicant has claimed that Condition 13 allows for the layout (as defined on the parameter plans) of Plot L to be revised if necessary following the conclusions of the Acoustic Design Report. However, IBSA claims that the reasoning in reliance on Condition 13 is illegitimate as the Council did not as a result of the Acoustic Design Report require that there be a greater distance between the IBSA boundary and the

proposed residential boundary; and even if they had, this would not have had the effect of rendering the requirements of the Acoustic Design Report inapplicable. IBSA claims that the applicants have no licence to opt out of the requirements of Condition 12 and the approved acoustic report, but that is what the applicant has done by proposing their own acoustic report. The proposed scheme as submitted diverges from the approved Halcrow report. Halcrow's report recommends a combination of

- a) layout and orientation of dwellings to have the non sensitive rooms facing IBSA House and noise sensitive rooms orientated away from IBSA House;
- b) provision of boundary fences at least 2.5m high on southern side of IBSA House adjoining any gardens;
- c) acoustic glazing.

Furthermore, the Halcrow report requirements were derived after making an allowance of +3dB for noise from IBSA House and the reasons for this was to allow for an intensification of activities at IBSA House equivalent to double that observed during surveys in March 2011. If the requirements of the approved acoustic report are respected, it indicates satisfactory conditions will be achieved in both dwellings and gardens when windows are open and that this is the case after making the agreed +3dB allowance for noise from IBSA House. IBSA highlights that the details now submitted in this application proceed on the footing that the Halcrow requirements at a) and b) above are unnecessary and that satisfactory conditions can be achieved in reliance on acoustic glazing and mechanical ventilation. Furthermore, IBSA claims that this reduced performance does not factor in the required +3dB allowance for noise from IBSA House.

IBSA highlights that the documents approved in the outline permission, the requirements in the Design Code and the acoustic design report approved under Condition 12 must be respected by all, including the Council when deciding whether to approve details of reserved matters. IBSA accepts that the LPA can make immaterial variations informally, but this limited flexibility cannot apply in this present case.

IBSA concludes that approval by the Council of the details within this application in relation to Plot L in Phase 2 would be unlawful.

In addition to the above comments, IBSA has also submitted additional technical acoustic comments made by Sandy Brown Associates (received 20th March 2013).

Sandy Brown Associates's (SBA) comments in summary:

- In summary, it is considered that the night noise assessment is not sufficiently conservative, and maximum noise levels have not been taken into account.
- None of the unattended surveys managed to capture IBSA in full operation with truck movements. As such, the day and night-time average levels used in the submission's assessments must be viewed with caution.
- Maximum noise levels do not appear to have been addressed, either from the existing unattended surveys or from an assessment of IBSA activity. BS 4142 states bedrooms should have maximum noise levels that do not regularly exceed 45 dB LAFmax at night.

- Maximum noise levels in Clement Acoustics survey showed levels which do not appear to have been addressed. Further, in the SBA report in 2011, maximum noise levels from truck yard activities of 78 dB LAFmax at 15-20 meters from the trucks were measured.
- The predicted noise levels inside habitable rooms shows these levels would be within the BS 8233 'good' levels when windows are closed (see the statement's Table 3). Taking these windows-closed values at face value, it appears unlikely these 'good' levels would be exceeded even with IBSA operating at night.
- However, for such an assessment to be valid, an alternative form of ventilation (i.e. mechanical or attenuated trickle vents) needs to be provided. It is not clear from these documents which alternative is being provided, and it appears that the alternative is actually just the 'other window'. If this is the case, internal levels must be assessed with that window or skylight open.
- The applicant has predicted average noise levels when windows are open. These levels are higher than the 'reasonable' levels recommended in BS 8233, and would not be acceptable unless adequate alternative ventilation was provided when windows are closed.
- Even if there is adequate alternative ventilation provided, these windows-open values do not show a night when IBSA are operating, nor do they assess maximum noise levels at these times. When the trucks move in and out of the yard, maximum noise levels in a bedroom with an open window are likely to be ~59-64 dB LAFmax [that is, 78 dB LAFmax at 15 m from trucks, minus some distance attenuation, minus 10-15 dB through an open window]. If this occurs regularly in a given night, sleep will be disturbed, and complaints are likely.
- The primary ways to be sure to reduce the likelihood of complaint is to seal the windows facing IBSA, provide mechanical or attenuated trickle ventilation, or follow the original intention to locate habitable rooms on the opposite sides of buildings from IBSA.

Officer response to IBSA comments

Many of the above comments had been raised by IBSA following the first round of consultation and are addressed in the main committee report. However, Officers have provided the following responses to the additional points raised.

Response to the email dated 20th March from IBSA:

- *The Plan CS-03 'landscape constraints: Trees, IBSA house buffer, levels' contained in the DAS Addendum is for illustrative purposes. The main report acknowledged Plots 1 and 17 have a depth ranging from 1m to 4m (the 1m is at the pinch point between the corner of Plot 1 house and the splayed IBSA boundary). However, due to the position of the proposed houses, it is not possible to have a minimum 5m deep landscape buffer in the garden area and furthermore, there are no flank windows on Plots 1 and 17 that face onto IBSA House. Officers note that the depth does not strictly conform to the Design Code, but the Code adopts an approach which allows for flexibility and*

encourages design innovation. Therefore should the scheme achieve the same optimum objective but via a justifiable alternative means (which has been demonstrated in the application and revised plans), it is not considered acceptable to deviate from these particular 'Must Do' items contained in the Design Code.

- The main report explained that where habitable rooms do face IBSA House, side windows are proposed to the front bedrooms. These side windows (oriel windows) are treated with apertures to angle them away from IBSA House. Glazing is proposed on both sides of these windows but only openable on the aspect facing away from IBSA House, which allows for natural ventilation (should residents choose to turn off the mechanical ventilation). The applicant has since submitted indicative plans to show that the windows facing IBSA can be permanently fixed shut. It is recommended that an additional condition (Condition 19) be added to the report requiring details showing the exact locations and means of the windows to be fixed shut prior to the development commencing. The above solutions would only allow bedrooms to have an openable window that does not face towards the IBSA boundary and thus residents would have a choice in terms of the method of ventilation.*
- IBSA has now raised the concerns for fuel odours and hazard controls and questions whether the impact of this has been assessed. With respect to odours, tankers deliver fuel via a system that does not give rise to leaks. The only problem would be if there were an accident in fuel delivery and this is akin to having residents living next to a petrol station. The Environmental Health Officer is satisfied with this situation.*
- IBSA has reiterated their aspiration to expand their activities on the site, but since no formal planning application has been submitted for future expansion at this stage, the current application for Phase 2 can only be determined based on the existing environment and situation.*
- It is acknowledged that the Mayor of London's Sustainable Design & Construction SPD specify a BS8233 standard of 'good' to be obtained. The Council's new draft Sustainable Design and Construction SPD (to be formally adopted in April 2013) no longer specifies the standard to be achieved, but requires that new dwellings are designed using the standards set out in BS8233 for internal noise levels.*
- The outline application was subject to an Environmental Impact Assessment (EIA). The Environmental Statement determines that acceptable noise levels for internal and external amenity space are the 'reasonable' levels stated in British Standard 8233 and this is therefore a material consideration. Table 9.20 in the ES (addendum 2) points out that the internal noise level criteria (i.e. the design target) for this location is 35dB. The level of attenuation is reconfirmed in the final bullet of para 9.180. The planning authority approved the planning application on the basis of the ES, therefore confirming the acceptability of achieving internal noise levels of 35dB for dwellings in this location. 35dB equates to a 'reasonable' level as defined in BS8233. Whilst the Council's SPDs provide guidance on noise levels to be achieved, it should be noted that they can only be treated as*

guidance. In this instance, other material considerations indicated above are considered to outweigh the guidance.

- IBSA considers that there has been insufficient time to obtain the detailed technical advice. However, the Council has given consultees the statutory 14 day re-consultation period and following discussion with IBSA, the Officer also extended this for another two days to allow for their comments to be received. This is considered sufficient and as such the application should not be deferred.*

Response to IBSA's further letter received on the 27th March:

IBSA makes reference to the requirements of Condition 12 of the outline consent and the approval of the original Acoustic Design Report by Halcrow (2011).

Condition 12 required an acoustic design report to be submitted and approved by the LPA to show how internal noise standards with reference to BS8233 both internal for noise sensitive rooms (day and night) and external gardens (daytime) shall be achieved for Plots L, A1 and A2 along the IBSA boundary. The Acoustic Design Report by Halcrow (2011) was submitted and approved in December 2011 under ref H/04018/11 in relation to this condition.

The Acoustic Design Report carried out by Halcrow (2011) submitted to discharge Condition 12 was not based on the layout the applicant has proposed under this application. The applicant has proposed an alternative layout to that shown in the indicative masterplan contained in the Design Code which provide a number of benefits as detailed in the main committee report. The reconfigured design and layout for Plot L consists of some habitable rooms facing the IBSA House boundary with the existing vehicular access being reused to serve the proposed houses. Accordingly, the applicant has submitted a new acoustic report which reflects the different layout. The new acoustic report is necessary to demonstrate to the Local Planning Authority (LPA) that the different layout proposed works and meets the standard specified in Condition 12 as well as the required thresholds stated in the Outline Environmental Statement.

Therefore this application also seeks approval for the new acoustic report in order for Condition 12 to be 're-discharged'.

The decision for the Council is whether or not the acoustic report provided by the applicant in support of the application in order to comply with condition 12 is acceptable. It does not need to consider whether the application is consistent with a previously approved acoustic report which was based on a different layout. There is nothing in the relevant planning legislation which prevents the Local Planning Authority from considering successive applications under the same consent. It is normal practice to re-discharge conditions. For example, if a planning condition requires the type of brick used in the development to be approved and the brick approved under the condition becomes unavailable, it is normal practice for details of a new brick to be submitted to the local authority for approval. The developer does not have to submit a whole new planning application.

Therefore provided the submitted scheme and associated acoustic report achieve the same optimum objective and meet the requirements of the condition but via justifiable alternative means (which has been demonstrated), then the 're-discharging' of

Condition 12 and the approval of the reserved matters application for Phase 2 should be considered acceptable.

IBSA has compared the new recommended mitigation measures to those set out in the originally approved Halcrow report. The current application still provides an acoustic boundary fence of at least 2.5m high on southern side of IBSA House adjoining the scheme and acoustic glazing to the windows facing IBSA. The difference between the layout of the dwellings now proposed consists of some habitable rooms facing the IBSA House boundary as the existing vehicular access would be reused.

Where there are habitable rooms facing IBSA House, side windows are proposed to the front bedrooms. These side windows (oriel windows) are treated with apertures to angle them away from IBSA House. Side facing rooflights are also proposed to allow for natural ventilation without direct line of sight onto IBSA House. The above solutions would increase the distance, screening and the degree of directness attenuation to noise emissions from IBSA House. Further comments from the Council's Environmental Health Officer has confirmed that the solutions proposed would be acceptable (see below for response to Sandy Brown's technical comments).

IBSA has reiterated that the landscape buffer zone of 5-9m between IBSA House boundary and the development should be complied with in accordance with the Design Code as this is a 'Must Do' item. However, the Design Code broadly adopts an approach which allows for flexibility and encourages design innovation. Condition 4 part b) of the Outline Consent provides:

"Site-wide or phase related Reserved Matters must be in compliance with the agreed Design Code. Any non-compliance with the Design Code should be identified and clear reasons given for that noncompliance."

It is clear from part b) of Condition 4 that there can be deviations from the Design Code in specified circumstances. The condition is clear that 'any non-compliance' with the design code must be identified and that reasons are given for the non compliance. The applicant has stated in the application that parts of the application are not wholly in compliance with the terms of the Design Code. Clear reasons have been given by the Applicant for that non-compliance as has been assessed in the main committee report.

This does not constitute a breach of condition and it is for the Council to determine whether or not the proposed design is acceptable. The main Committee report has considered this point. Whilst it would be preferable that these be conformed to, should the scheme achieve the same optimum objective but via justifiable alternative means (which has been demonstrated), it is not considered that these 'Must Do' items should be strictly applied and the current proposals are considered to be acceptable.

Response to Sandy Brown Associates additional technical comments received 20th March:

The Council's Environmental Health officer has given their advice on the latest technical comments submitted by IBSA's consultants. BS8233, which is referred to, provides information and guidance on sound insulation for new buildings close to an existing noise source. In this case, noise control measures have been proposed that will reduce internal noise levels down to 'good' levels according to the standard (30dB(A) at night and 35dB(A) during the day). If the windows are opened, then these levels cannot be

achieved. Therefore an alternative form of ventilation – mechanical ventilation – has been proposed for all units nearest to IBSA (Units 1-17). This is consistent with Barnet's SPD requirements to provide adequate noise insulation.

As explained above, the other windows referred to are additional windows that have been added after consultation, in the form of skylights or windows designed to open away from IBSA to reduce noise levels. If residents open these windows then the internal noise levels as stated in the Design and Access Statement Addendum range from 32-39dB(A) for 16 bedrooms and under 32dB(A) for 4 bedrooms. Although these noise levels are higher than the aforementioned good standards, this is considered acceptable as there is the choice of ventilation by other means and windows can be closed if wished. Notwithstanding this as highlighted above 'reasonable' levels had been accepted at outline stage.

It should also be noted that of the 20 bedrooms that would experience higher noise levels than the BS8233 'good' standards if windows were opened, these are spread over a number of units, so there is a majority of bedrooms in each unit that face completely away from IBSA and do not require further noise mitigation to meet the standards.

There were also comments on maximum noise levels. There is no clear guidance on the use of LAMax levels with respects to sound insulation, and the amount of times that a figure of 45dB(A) may be "regularly exceeded". Rather, the noise source is assumed to a steady source and so averages are used. However, if maximum noise levels outside a window are 78dB(A) as stated in the Sandy Brown comments, then inside a room with a closed window this will be brought down to below 45dB(A). Therefore, in respect of maximum noise levels, the Environmental Health Officer's opinion is that the mitigation outlined in the application would be sufficient when windows are closed. Again, this is acceptable, as there are alternative means of ventilation.

If residents were to complain of nuisance, then the Council would have a statutory obligation to investigate under the Environmental Protection Act 1990. In an investigation Environmental Health would go into residents' habitable rooms and observe the sound and record noise levels when windows are closed. This is because the occupier does not need to open windows and can close them against a noise. For noise to be a nuisance it has to be of an intrusive nature in terms of duration, noise level or type of noise. For noise from a commercial premises, it also has to be proved that the premises is doing something unreasonable and is not using best practical means in its operations. Therefore standard operations by the print-works are unlikely to be judged a statutory nuisance in the future.

The former Planning Policy Guidance 24 gave noise exposure categories for new dwellings. Although superseded by the New Planning Policy Framework, these categories are replicated in the Council's new Sustainable Design and Construction SPD. Noise levels experienced at this location would not be such that development should be refused according to this categorisation. Instead, mitigation measures should be employed for ventilation and glazing to reduce noise levels.

The noise levels are not high enough to cause undue concern, because mitigation is feasible. Allowing for a doubling of activities at IBSA will result in a maximum of 3dB

increased noise level. The noise mitigation proposed will comfortably allow for this noise increase and still keep good internal noise levels.

Furthermore, IBSA's own noise advisers (Sandy Brown Associates) conclude that the primary ways to be sure to reduce the likelihood of complaint is to seal the windows facing IBSA, provide mechanical or attenuated trickle ventilation, or follow the original intention to locate habitable rooms on the opposite sides of buildings from IBSA. In this instance, the scheme proposed achieves this with mechanical ventilation and seal windows facing IBSA.

Applicant's response to the additional Sandy Brown Associates comments:

The applicant, Linden Homes, was passed the additional comments submitted by IBSA's consultants and have provided the following response.

- The note suggests that the baseline surveys may not have captured all potential noise events on the site. This is despite 3 separate baseline surveys having been undertaken (including a survey by IBSA's appointed acoustic consultant). The applicant considers that the existing baseline data to provide a very robust understanding of typical noise levels on the site and do not consider further technical work needs to be undertaken.*
- The proposals accord with the concluding recommendations made by Sandy Brown (sealed windows and install mechanical ventilation to rooms at risk of exposure to IBSA noise) and therefore the applicant concludes that the proposals do in fact satisfy the points raised in Sandy Brown's note.*

Applicant's Counsel's Opinion

The applicant has submitted Counsel's opinion (received 28th March) confirming that it is perfectly lawful for the applicant to make a second application to discharge condition 12; there is no breach of condition 4 because the non-compliance with the Design Code has been identified and explained; and there is no reason in law why the LPA cannot determine and grant the reserved matters application.