DEVELOPMENT CONTROL COMMITTEE - Date: 20 July 2011

Report of the Executive Head of Planning and Transportation.

Ref: A2011/64362/RPA  WARD: A04 / CHEAM  Time Taken: 10 weeks, 6 days

Site: 127-129 MALDEN ROAD  Cheam Surrey SM3 8QY

Proposal: Application for a replacement planning permission to extend the time limit for implementation of application number A2007/58004/OUT:- Erection of one 3-bedroomed self contained duplex unit and twelve 2-bedroomed self contained flats in a part two storey with roof accommodation, part three storey building. Provision of refuse store & cycle parking seventeen car parking spaces and vehicular access onto Netley Close.

Applicant: Masonbrook Group Ltd.
Agent: Mr Geoff Bullock

Recommendation:
GRANT PLANNING PERMISSION subject to the submission of a section 106 legal document on or before the 20 July 2011.

Reason for Report to Committee: Major application recommended for approval and 10 or more letters of objection have been received.

Summary of why application proposal is acceptable:

- It is considered that there have been no significant material alterations to planning policy, planning guidance, the site or surrounding area since the approval of application numbered 2007/58004/OUT in May 2008 to justify a recommendation of refusal of this replacement planning application.

- The previous planning permission establishes the principle of developing this site for more intensified residential use and, whilst there have been alterations to PPS3 ‘Housing’ since the appeal was allowed in May 2008, it is considered that these changes would do not render this application as being unacceptable.

- In terms of the design of the proposed building, the previous Inspector considered that the proposal would not cause harm to the character or appearance of the area and the Inspectors views should be given appropriate weight in the consideration of this application.

- The proposed development would not cause significant harm to neighbours’ living conditions in terms of loss outlook, light or privacy. In addition, the proposal would not result in an unacceptable increase
in noise disturbance and pollution. Sufficient on site vehicle parking is provided and the proposal would not cause harm to highway and pedestrian safety.

- It is considered that there would be no harm to biodiversity interest subject to a condition requiring a further inspection for great crested newts before any development takes place. In any event, the protection of these species is covered by other statutory provisions relating to species worthy of protection.

1.0 BACKGROUND

1.1 Site and surroundings:

1.2 The application site is located to the south west of Malden Road and comprises two chalet-style bungalows at 127 and 129 Malden Road. Access to the site is currently from Malden Road from a narrow access drive located between 125 and 131 Malden Road. At present there is no access onto Netley Close which is to the north west of the site. There are no protected trees on the site and it is relevant to note that land levels rise to the rear (west) of the site. To the east of the site are existing detached garages associated with the existing properties within the application site.

1.3 To the east of the site is 125 and 131 Malden Road which are two storey semi-detached buildings and both of these properties appear to utilise the narrow access drive to the site for vehicle parking within their rear gardens. 125 Malden Road is a single family dwelling house whilst 131 Malden Road is a commercial unit (Surrey Building Services UK Ltd/R.W.Blackwell Electrical Contractors) at ground floor level with residential above. The eastern boundary of the site also adjoins the rear garden boundaries of 123, 133, 135 and 137 Malden Road.

1.4 Cheam Recreational Ground is located to the rear of the site and one of the accesses to this park is from a footpath immediately to the south of the site. Beyond this access and further to the south of the site are residential properties at 119, 121 and 121a Malden Road. To the north of the application site is a more recent three storey development comprising a terrace of four residential properties at 31 – 34 Netley Close. Netley Close is accessed from Malden Road further to the north, continues to the west before turning south where it runs parallel with Cheam Recreational Ground before terminating adjacent to the application site. Properties within Netley Close front onto Cheam Recreational Ground with their rear gardens adjoining the rear boundaries of properties within Malden Road.

1.5 The surrounding area could be described as predominantly residential with North Cheam District Shopping Centre within 5 minutes walking distance to the south of the application site. Residential units in the immediate area comprise a mixture of detached, semi-detached and terraced houses along with some flats.

1.6 Site specific UDP designation:
1.7 The site itself has no specific designation. However, the site lies adjacent to Cheam Recreational Ground which is designated as Metropolitan Open Land, Public Open Space and part of the borough-wide Metropolitan Green Chain network as designated in the Sutton Unitary Development Plan 2003 (UDP).

1.8 **Relevant Planning History:**

1.9 There are a number of previous planning applications relevant to this site dating back to 1955. The most relevant planning history is listed below:

- SUT20112'O' - Erection of 2 bungalows on land at rear of and forming part of the existing curtilage of 129 Malden Road – Granted 23.11.55.
- SUT21468 – Erection of 2 private garages – Granted 26.06.57
- 2002/49540/FUL - Erection of a two storey building comprising a 2-bedroomed flat at first floor level with garage and storage under together with a garage for 127 Malden Road - Granted 03.04.03.
- 2004/51949/OUT - Demolition of dwelling house and erection of two 4-bedroomed detached houses each with integral garage – Granted 29.03.04.
- 2006/56503/OUT: Outline application to determine access, appearance, layout and scale for the erection of fourteen 2-bedroomed and three 1-bedroomed self contained flats. Provision of refuse store, cycle parking, twenty one car parking spaces and vehicular access onto Netley Close – Refused 14/12/06.
- 2007/58004/OUT - Outline application to determine access, appearance, layout and scale for the erection of one 3-bedroomed self contained duplex unit and twelve 2-bedroomed self contained flats in a part two storey, part two storey with roof accommodation, part three storey building. Provision of refuse store and cycle parking, seventeen car parking spaces and vehicular access onto Netley Close – Refused 19/10/07 and allowed at appeal 13 May 2008.

1.10 Of particular note, is Outline application 2007/58004/FUL mentioned above which was refused under delegated powers for the following reasons:

1. The proposal, by reason of scale and layout is considered to be an overdevelopment of the site. Given the proposed level of development it is considered that the resulting height, bulk, scale and design of the proposed building over the site would introduce an overdominant and intrusive form of development that fails to relate to its surroundings and would therefore detract from the general openness, character and appearance of this residential area. The proposal would have a negative impact upon the surrounding views to the site and public amenity of the adjacent park. In this respect the proposal would be contrary to Policies BE1, BE4, BE6 and HSG1 of the Sutton Unitary Development Plan.
2. The proposed building by virtue of its siting, bulk, massing and proximity to adjoining houses and garden areas in Malden Road would result in an unacceptable loss of outlook for those occupiers. The proposal is therefore contrary to Policies HSG1 and BE4 of the Sutton Unitary Development Plan and SPG3: Design and Amenity Space.

3. The proposed parking arrangement and lack of adequate boundary landscaping is considered to introduce an unacceptable form of development within this rear garden area and would adversely impact on the current level of residential amenity enjoyed by the surrounding occupiers by virtue of noise and pollution generated from the proposed parking and access arrangement. The development would therefore be contrary to Policy HSG1 of the Sutton Unitary Development Plan.

4. The proposal, due to its unacceptable intensification of residential use and location at the end of a cul-de-sac, would result in higher levels of activity, comings and goings including traffic movements, compared with the existing development in the vicinity causing harm to the character of the area and adversely affecting residential amenity. The application is therefore contrary to policy HSG1 of the Sutton unitary development Plan.

5. The planning application does not satisfactorily demonstrate that secure and convenient cycle parking would be provided as part of the development. The location of this proposed facility is not considered to be appropriately located to reduce the likelihood of crime. The application is therefore contrary to policy TR28 of the Sutton Unitary Development Plan.

1.11 At appeal, the Inspector concluded that the proposal would not have a materially harmful effect on the character and appearance of the area and would not cause significant harm to the living conditions of neighbours in terms of outlook, noise disturbance and pollution. The applicant submitted an Unilateral Undertaking during the course of the appeal for financial contributions towards education, transport and sports and recreation. The appeal was subsequently allowed on 13 May 2008 subject to conditions and details relating to landscaping as the reserved matter.

2.0 APPLICATION PROPOSALS

2.1 Details of Proposal:

2.2 The current application is for a replacement planning permission to extend the time limit for implementation of application reference 2007/58004/OUT. Replacement applications are those submitted to renew extant planning permissions. As such, the same plans and supporting information from the original application are used to determine the replacement application. There is a presumption in favour of granting permissions for such applications if there has been no material change in planning policy, and if the circumstances around the site and on adjoining sites have not changed since the original approval.
2.3 As discussed above, the current application seeks the erection of one 3-bed self-contained duplex unit and twelve 2-bedroomed self-contained flats. The accommodation would be provided within a part two storey, part two storey with roof accommodation and three-storey building. The scheme is in outline to determine access, appearance, layout and scale with matters relating to landscaping to be reserved at this stage.

2.4 The application proposes refuse and cycle storage facilities and a total of seventeen car parking spaces and vehicular access onto Netley Close. The applicants have advised that facing brickwork and render, tile roofing and close-boarded fencing would be used in the construction of the building and enclosure. Existing fencing would also be retained on the boundary to the park.

2.5 **Significant amendments since the application was received:** None

3.0 **PUBLICITY**

3.1 The application was advertised by way of a site notice and 103 individual letters of notification delivered to occupiers of surrounding properties on 20 May 2011. Letters were delivered to local properties within Malden Road, Netley Close, Tudor Close and Tilehurst Road.

3.2 **Number of Letters Received:**

3.3 10 letters of objection have been received from properties at 5, 7, 12, 17, 21, 27, 31, 32, 33 Netley Close and 121a Malden Road, Cheam.

3.4 **Summary of material responses:**

- Harm to pedestrian and highway safety.
- Changes to planning policy in the form of revised PPS3 which seeks to prevent ‘garden grabbing’ and remove minimum density targets.
- Changes to planning policy through the localism bill and neighbourhood planning.
- Double yellow lines have been placed along Netley Close and overspill vehicle parking would not be possible.
- Lack of vehicle parking.
- Increased traffic congestion.
- Ecological survey required and concerns regarding the impact on local ecology/protected species.
- Excess noise and pollution.
- Concerns regarding drainage, sewerage and utilities.
- No priority for new houses.
- Impact on parking for 125 and 131 Malden Road.
- Out of character with the area.
- Impact to neighbours during the course of construction.

3.5 **Summary of non-material responses:**

- Impact on property prices.
3.6 **Official Consultation**

3.7 **External**

3.8 **Thames Water Utilities:**- No objection.

3.9 **Environment Agency:**- No objection.

3.10 **Internal**

3.11 **Senior Highway Engineer:**- Raises no objection to the proposal subject to the conditions imposed on the previous permission (2007/58004/OUT).

3.12 **Housing Enabling Officer:**- No objection to the proposal.

3.13 **Councillor Representation:** None

4.0 **MATERIAL PLANNING POLICIES**

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that when determining a planning application, regard is to be had to the development plan, and the determination shall be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the London Borough of Sutton comprises the following documents:


(1B) The London Plan: Consultation draft replacement plan, October 2009. This document, which will eventually replace the existing consolidated version of the London Plan, was published for public consultation on the 12 January 2010. Although the draft replacement plan will not supersede the existing London Plan until after it has been formally adopted, the draft plan will be a material consideration that should be taken into account in deciding planning applications and will gather increasing weight the further into the replacement process.

In the event that there are discrepancies between the adopted CPS, SDP and Replacement London Plan, legal guidance indicates that the latest adopted document prevails.

(2) The Sutton Unitary Development Plan (UDP) (adopted April 2003). Some of the UDP Policies have now been replaced by the Core Planning Strategy Policies.

(3) The Local Development Framework (LDF) which is to replace the UDP in due course as the official Development Plan for the Borough. At present it comprises two main documents (additional ones for specific areas such as Sutton Town Centre will be produced):

-(a) The Core Planning Strategy (CPS) which sets out the Council’s long term vision, spatial strategy and core policies for shaping the future development in
the Borough and managing change over the next 15 years in line with the principles of sustainable development. Following public consultation and a formal public examination by Government Inspectors the final version of the CPS was adopted by the Full Council on 7.12.09. The adopted CPS replaced a number of the UDP policies and is a material consideration in the determination of planning applications.

-(b) The Site Development Policies Development Plan Document (DPD) which identifies sites for future development (outside Sutton Town Centre) and sets out detailed development management policies to be used to help decide planning applications. The DPD has been through two stages of public consultation and was approved by the Full Council on 7.12.09 for submission to the Secretary of State. At the PAG meeting on 12 October 2010 it was agreed not to progress with the Sutton Area Action Plan and instead that specific policies and proposals for the town centre should be incorporated into the Site Development Policies DPD as a result of existing and future anticipated reductions in available resources. As these changes are unlikely to be considered as minor, a period of further consultation would be needed on these specific changes. The DPD is now accorded weight by the Council in determining planning applications (and is a material planning consideration.)

In the event that there are discrepancies between the adopted CPS, DPD and Replacement London Plan, legal guidance indicates that the latest adopted document prevails.

Also a material consideration in determining planning applications are:


(b) Adopted London Borough of Sutton Supplementary Planning Guidance/Documents.

**National Planning Guidance:**

- Planning Policy Statement 1 ‘Planning for Sustainable communities’
- Planning Policy Statement 9 ‘Biodiversity and Geological Conservation’
- Planning Policy Statement 22 ‘Renewable Energy’
- Planning Policy Statement 23 ‘Planning and Pollution Control’
- Planning Policy Guidance Note 13 ‘Transport’
- Planning Policy Guidance Note 24 ‘Planning and Noise’
- Planning Policy Statement 25 ‘Development and Flood Risk’

**The London Plan (February 2008):**

- 3A.3 - Maximising the potential of sites
- 3A.9 – Affordable housing targets
- 3A.10 – Negotiating affordable housing in individual private residential and mixed-use schemes
- 3C.1 - Integrating transport and development
- 3C.23 - Parking strategy
- 3D.15 - Trees and Woodland
- 4A.3 - Sustainable Design and Construction
- 4A.4 - Energy assessment
- 4A.7 - Renewable Energy
- 4B.1 - Design principles for a compact city
- 4B.3 - Enhancing the quality of the public realm
- 4B.5 - Creating an inclusive environment
- 4B.8 - Respect local context and communities

**The Sutton Unitary Development Plan:**

- BE4 - Building relationships
- BE5 - Daylight and sunlight
- BE6 - Design of the Public Realm
- BE7 - Public Art
- BE9 - Access for Disabled People
- BE12 - Landscape provision in new development
- BE17 - Private amenity space
- BE18 – Privacy
- HSG1 - Environmental impact
- HSG8 – Loss of Backgarden Land in Established Residential Areas.
- HSG11 - Housing mix
- TR12 - Parking provision for new development
- TR13 - New development and On-street parking
- TR18 - New Development and Public Transport Accessibility
- TR28 - Cycle Parking and Storage
- TR29 - Improvements for Pedestrians and Cyclists
- OE30 - Tree Stock Protection.
- PNR6 - Residential Development and Traffic Noise

**The Core Planning Strategy:**

- PMP1 - Housing Provision
- PMP2 – Suburban Heartlands
- BP1 - Housing Density
- BP2 – Affordable Housing
- BP6 – One Planet Living
- BP7 – Flood Risk and Climate Change Adaptation
- BP8 – Waste Reduction and Management
- BP9 – Enabling Smarter Travel Choices – An Area – Based Approach.
- BP10 – Transport – Strategic and Borough Wide Proposals.
- BP12 - Good Urban Design and Heritage.
- DP2 - Planning Obligations
- DP3 – Infrastructure Requirements and Delivery

**Site Development Policies DPD– Proposed Submission**

- DM1 – Character and design
- DM2 – Protecting Amenity
5.0 PLANNING CONSIDERATIONS

5.1 The main issues to be taken into consideration including whether any material planning objections have been reasonably addressed in relation to this application are:

- Principle
- Design Quality
- Affect on residential amenity
- Layout and the amenity of Future Occupiers.
- Traffic, Access and Parking
- Biodiversity and Trees
- Sustainability
- Flood Risk and Utilities
- Planning Obligations

5.2 Principle:

5.3 This proposal is for a replacement planning permission which is an application to extend the time limit for the implementation of a previously approved application. In this case, the proposal is to extend the 3 year time limit for the implementation of A2007/58004/OUT granted permission on 13 May 2008 at appeal. The applicant is required to submit the same plans and supporting information as the original application which will form the basis of the determination in accordance with the Development Plan as required by section 38(6) of the Planning and Compulsory Purchase Act 2004. Whilst the
development, the subject of this application is considered to be acceptable in principle by virtue of the previous permission, the Council should consider the proposal against the most up to date Development Plan Policies and other material considerations which may have changed significantly since the original grant of permission.

5.4 Since the grant of planning permission on 13 May 2008 there have been a number of changes to Development Plan policies which predominantly consists of the suite of documents that comprise the Council’s Local Development Framework.

5.5 Since the approval of the previous application a revised Planning Policy Statement 3 has been revised twice, in June 2010 and later amendments adopted in June 2011. Planning Policy Statement 3 (PPS3) Housing requires the Council to make the most efficient use of land by maximising the re-use of previously developed land and the conversion of existing buildings. Policy HSG1 of the Sutton Unitary Development Plan encourages the use of corner sites, infilling and conversions and recognises that good design is a key to providing good quality accommodation. Policy BP1 of the Core Planning Strategy states that the Council will ensure that new housing development will make the most efficient use of land in accordance with the London Plan having regard to, amongst other things, local character and transport accessibility.

5.6 The revised PPS3 ‘Housing’ has removed private residential gardens from the definition of previously developed land, often referred to as ‘brownfield’ sites. However, it is considered that revised PPS3 does not introduce a presumption against the development of ‘private residential gardens’ as a matter of principle, but, by excluding private residential gardens from the definition of ‘previously developed land’ elevates the status of private residential gardens for those developing policy and determining planning applications. It should be noted that this guidance is but one of many material planning considerations that have to be taken into account in assessing the merits of an individual applications. The Ministerial statement on revised PPS3, gives the Council greater powers to decide where new development, particularly for housing, should be located, having regard to the priority for new development on previously developed land.

5.7 The Council’s existing policies concerning back garden land seek to resist the loss of backgardens that are considered to be of ecological value and/or would harm the character of the area. However, in view of the changes to PPS3, the Council will be considering whether to make any amendments to its emerging policy concerning the loss of backgarden land, in light of any future Central Government guidance or case law. It should be noted that policy DM30 of the emerging Site Development Policies DPD submission document places a greater emphasis on controlling development on backgarden land and states that the Council will not grant planning permission for the development of backgarden land where the site either individually, or as part of a larger street block, makes an important contribution to the character and appearance of the surrounding area or adversely affects the amenities of future occupiers or those currently occupying adjoining or nearby properties, as well as meeting the criteria for assessing the ecological value of gardens currently required by policy HSG8 of the UDP. Whilst policy DM30 can only assume limited weight
as the Site Development Policies DPD has not been examined in public and will not be adopted until later this year, the change in emphasis of this policy is considered to show generally conformity with the meaning and intent of revised PPS3 'Housing' as it requires the Council to give even greater emphasis to how the development of private residential gardens will impact on the character and appearance of a particular area.

5.8 The other significant change introduced by revised PPS3 is to remove the requirement to achieve minimum densities currently set out in policy BP1 of the adopted Core Planning Strategy UDP, which currently states that the Council will seek to achieve minimum densities of 150 habitable rooms per hectare, and states that the density guidance set out in the London Plan will be applied more flexibly recognising that higher densities will be more appropriate in and around Town Centres.

5.9 In this case, a relevant material consideration is that the site has previously been developed as two bungalows, which occupy a significant part of the sites overall footprint. As such, it would be difficult to argue, in the context of the revisions to PPS3 (Housing), that the existing site constitutes 'backgarden land' which would preclude its further development for housing at a higher density. A key consideration in this case is whether the development can be regarded to respect the character and appearance of the area. Notwithstanding the Councils earlier refusal, the Inspector, in allowing the appeal, had given due consideration to this issue and concluded that the development would not be materially harmful to the character and appearance of the area. Specifically, the Inspector considered that, whilst being significantly greater in size than the existing bungalow, the development would appear integrated with its surroundings by virtue of its design which incorporated stepping of roofs, set backs, dormers and contrasting materials, whilst maintaining reasonable spacing from existing properties. The Councils concerns regarding the impact on the parkland setting and the openness of the area was not, in the Inspectors view, sustainable as it was noted that there were "clear views of existing houses" from the park that created "a urban edge to the adjacent open space." The Inspector also considered that "the building would make a positive and distinctive statement on a more coherent basis than piecemeal development of the site of the two existing bungalows." Given the above, and noting that the appeal decision is a material consideration of some weight, it is considered that a reason for refusal based on an argument that the proposal, as a matter of principle, is out of character with the area, and therefore contrary to PPS3, would be difficult to sustain.

5.10 In terms of affordable housing, the current threshold for requiring affordable housing is 10 residential units or more in line with the alterations to the London Plan which was adopted in February 2008. Prior to February 2008 the threshold for affordable housing was 15 units and, as such, at the time of the Council refusing permission on 19 October 2007 the lack of affordable housing was not of concern. However, the threshold was reduced to 10 units prior to the appeal being decided in May 2008. Whilst this current scheme is for a total of 13 units which would now normally trigger a requirement for affordable housing, it is noted that the Inspector did not require the applicants to provide affordable housing when considering the decision in May 2008. As such, it would be unreasonable to require the applicant to provide affordable housing
given that this replacement planning applications must only consider material alterations to planning policy since the granting of permission on appeal in May 2008. Since this date there have been no material alterations to affordable housing policy which would now make the scheme unacceptable on these grounds. In addition, it is considered that the housing mix proposed is acceptable and relevant policy has not altered since the previous application was approved.

5.11 Whilst the principle of the proposal is considered acceptable in land use terms, this is subject to the consideration of all other policy advice and material considerations.

5.12 **Design Quality**

5.13 The previous application was considered against the relevant design policies applicable at that time contained primarily within saved policies of the Unitary Development Plan (UDP 2003) and SPD14 whilst the Core Planning Strategy has since been adopted in December 2009. Whilst there have been a number of alterations to development plan policy and Central Government Guidance since this date, it is considered that the fundamental principles of design policy have remained broadly unchanged. The site and surroundings have not been significantly altered since May 2008 to the extent that would render this proposal unacceptable on design grounds. As such, there have not been any changes to other material considerations relating to the design of this development since the previous application (2007/58004/FUL) which would warrant a refusal of this current application.

5.14 Policy BP12 of the adopted Core Planning Strategy, policy DM1 of the Site Development Policies DPD – Proposed Submission and SPD14 ‘Urban Design’ requires development to respect or reinforce the character and identity of the area and avoid developments which do not integrate well into the surroundings. PPS1 reinforces UDP policy by seeking to achieve good design and states that “Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted.”

5.15 The context of the area is one of residential properties of varying type, size and style ranging from detached, semi-detached, terraced and flatted residential units. The majority of dwellings in the area are two storey houses although Netley Close does contain some three storey town houses adjoining the site with flats further to the north. The proposed building has been designed to increase in height centrally stepping down to two storeys with the first floor contained in the roof on the north western wing and two/three storeys with additional roof accommodation expressed principally as dormers on the south eastern wing. A series of dormer windows are proposed to provide accommodation within the roof space, which assist in breaking up the elevations along with balconies and bay windows.

5.16 The Council previously considered that the development was unacceptable in design terms resulting in an overdevelopment of the site. However, the subsequent appeal was allowed with the Inspector stating that the proposal would not cause harm to the character or appearance of the area as stated
above. The views held by the Inspector in this previous appeal decision is a material consideration in this replacement planning application which must be given appropriate weight.

5.17 The Inspector concluded at paragraph 11 and 12 of the appeal decision that “The proposed building would clearly be larger than the bungalows currently on the site and would appear more prominent. It would also be of greater overall scale and bulk then other properties in the vicinity. However, the impact of the building would be much reduced by changes in roof levels, the use of set backs and features such as dormers and bays and by use of varied and contrasting external materials. These would add visual interest rather than visual clutter and a sense of rhythm and movement…. The design approach, including stepping up of roof levels, would thus avoid a sharp contrast in scale with nearby dwellings.”

5.18 Paragraph 14 of the appeal decision continues by stating that “Views of the site from the surrounding area would change but this would not, in my assessment, result in an unacceptable impact on visual amenity. I consider that the building would make a positive and distinctive statement on a more coherent basis than piecemeal development of the sites of the two existing bungalows”.

5.19 This is a replacement planning permission where the presumption is in favour of approval unless changes to policy and/or other material considerations indicate otherwise. In design terms, the relevant policies and other material considerations in this case remain broadly similar to those applicable when permission was granted in May 2008. On this basis, and noting that there is no new policy basis that could be used to justify any other conclusion, together with the weight attached to the appeal decision it is considered that the proposed height, bulk, design, siting and finish of the building is acceptable in design terms.

5.20 As discussed above, the Inspectors comments should be given appropriate weight in the consideration of this application and, as such, it must be concluded that the proposed scheme is acceptable in design terms as it would maintain the character and appearance of the area and not detrimentally impact on the openness of the adjacent Cheam Recreational Ground.

5.21 Affect on residential amenity

5.22 Policy BE4 of the UDP states that proposals for new development should ensure that the relationships between new and existing buildings, particularly in terms of private spaces, do not prejudice the proper use of the accommodation. This policy is applied to protect the amenity of the occupants of buildings which adjoin, or are likely to be affected by the proposed new development. Policy BE5 specifically seeks to protect the amenities of neighbouring properties from loss of light, and BE18 seeks to ensure development does not result in overlooking and loss of privacy. These policies are complemented by policy DM2 of the Site Development Policies – Proposed Submission which seeks to protect the amenities of neighbouring properties from overlooking, loss of outlook and loss of light.
5.23 There have been no significant alterations to planning policy, the surrounding area or the site that raise new issues with regard to the impact of this proposed development on neighbouring occupiers.

5.24 The Councils concerns in relation to the impact on neighbours were considered during the course of the previous appeal. However, the Inspector did not uphold the Councils objection to the loss of outlook from properties in Malden Road. The Inspector concluded that the siting of the building and distance from its rear elevation to adjacent properties would mean that its bulk and scale would not have an unduly dominating or overbearing effect. The Inspector considered that the building would not have an unreasonable impact on residents’ enjoyment of their houses or gardens, noting that their outlook is already affected by features at the end of their properties, such as garages or planting.

5.25 In terms of the potential impact from noise disturbance and pollution, it is noted that the site is in a relatively sustainable location in close proximity to North Cheam District Shopping Centre with good accessibility to public transport which will potentially reduce single car trips. The proposal would inevitably increase the number of people within the site with an associated increase in activity. However, it was concluded during the previous appeal that the transport and noise assessments submitted by the appellants demonstrated that the number of vehicle movements would not have an unacceptable effect on residents’ amenity through additional noise disturbance or pollution.

5.26 The Inspector concludes at paragraph 20 and 21 of the decision that “Noise disturbance from manoeuvring and parking of cars within the site could be dealt with by a combination of landscaping, suitable boundary fencing and low noise emission surfacing. Concerns about disturbance from opening and closing of the proposed access gate at the end of Netley Close can be addressed through the boundary treatment condition…. I conclude that the proposed development would not have a materially harmful effect on neighbours’ living conditions, with particular reference to outlook, noise disturbance and pollution.”

5.27 The sufficient separation distance between the proposed development and neighbouring occupiers noting the comment of the Inspector outlined above, means that the proposal would not result in harm to neighbouring occupiers. There have been no significant alterations to relevant planning policy or the context of the site that introduces new issues that were not previously raised with regard to the impact on neighbouring occupiers. As such, there are no grounds on which this application could be refused in terms of its impact on residential amenity.

5.28 **Layout and the amenity of Future Occupiers.**

5.29 The Councils adopted standards relating to room sizes and amenity space are contained with Supplementary Planning Document 14 (SPD14) which was an adopted document at the time that the previous application was considered. SPD14 requires adequate provision of private amenity space advising that each flat should have 25 sq m of amenity space. The proposal has a level of amenity space commensurate with the Councils standards and it is important to note that this was not a matter of concern previously. It is considered that the
rooms proposed are of a sufficient size to provide an acceptable standard of living accommodation for future residents.

5.30 Traffic, Access and parking

5.31 Policy TR12 of the UDP seeks to ensure that provision is made for off-street parking for new proposals in line with the Council’s maximum car parking standards, whilst policy TR13 states that planning permission will not be granted for development that is likely to result in increased on-street parking where it would adversely affect traffic flows, bus movements, road safety and the amenities of local residents and the environment. Recent alterations to Planning Policy Guidance Note 13 ‘Transport’ has removed the requirement for maximum car parking standards allowing Local Planning Authorities to consider what would be a acceptable level of parking for the site.

5.32 It is proposed that 17 car parking spaces would be provided and vehicular access is proposed from Netley Close. The development proposes car parking in accordance with the maximum standards of policy TR12 of the UDP and the Councils Senior Highways Engineer has not raised objection to the proposal. This matter was considered at appeal where the Inspector concluded that as the site is close to public transport and within walking distance of shops and local facilities, the proposal would encourage travel by more sustainable means than the car and, therefore, there would be no justification for a higher level of car parking on the site. It is considered that the recent changes to PPG13 in terms of removing maximum standards would not justify refusing this replacement planning application.

5.33 Local residents have objected to the proposal on parking and highway safety grounds and the potential for congestion in Netley Close. The Inspector considered this matter at paragraph 29 of the appeal decision stating that “I have no reason to doubt residents’ representation that parking on Netley Close is difficult at weekends in particular. However, competition for parking spaces between residents and users of the recreation ground appears to be an existing problem. I do not consider that the proposal would exacerbate the situation or that a gated access would encourage visitors to park in the street. Insofar as emergency or other large vehicles would have difficulty in reaching the end of the road because of parked cars this again appears to be a reflection of the current parking situation.” Although letters of representation have stated that yellow lines have been provided along Netley Close since the appeal was allowed, it is considered that the parking provision provided is acceptable in its own right. In light of the Inspectors comments, it is considered the proposal would not result in pressure to park cars on the surrounding road network and a reason for refusal on those grounds would not be sustained.

5.34 Concern was raised regarding the parking for 125 and 131 Malden Road due to the alterations to the access. However, it is understood that the existing access would still remain open to residents at 125 and 131 Malden Road should the occupiers wish to park vehicles within the garages located to the rear of their properties. In any event, this is primarily a private issue that does not have a bearing on the merits of this planning application. Letters of representation have also raised concern regarding noise and disturbance during the course of construction and the impact on neighbours. However,
these concerns are dealt with by other legislation as stated by the Inspector at paragraph 30 of the decision.

5.35 The drawings indicate that 14 cycle spaces are to be provided which accords with the Council’s standards. No specific details have been submitted with regard to the cycle storage and, therefore, a condition is recommended requiring the submission of further details. In addition, the drawings show the location of the bin store at the north western corner of the site and a condition is also recommend for precise details of the size, height and scale of this bin store.

5.36 As there has been no significant change to parking policy or physical changes to the highway since the previous application was approved other than marking out of double yellow lines referred to above, the Senior Highways Engineer has raised no objection to the proposal and, as such, the proposal is considered acceptable in terms of traffic, access and parking.

5.37 **Biodiversity and Trees**

5.38 Policy OE30 of the Sutton UDP seeks to protect trees that are of significance and under threat from development. Policy HSG8 of the UDP advises that the Council will resist the development of back garden land that is considered to be of local ecological value. An ecological assessment of the effect of the loss of an area of backgarden will take account of several principal factors i.e. the depth of the individual gardens; the overall size of the back gardens within which the development site is located; and, the degree to which the back gardens have been affected by previous developments. Planning Policy Statement 9 seeks to conserve, enhance and restore the diversity of England’s wildlife by sustaining, and where possible improving, the quality and extent of natural habitat, enhancing biodiversity in green spaces and among developments.

5.39 The development proposes the removal and retention of existing trees on the northern site boundary and there is no objection to this aspect of the proposal. During the course of considering the previous application, the Council’s Principal Tree Officer confirmed that there were no trees worthy of protection within the site. In addition, the proposed building footprint has been set in from the south-western site boundary to retain the integrity of the Oak tree on adjacent land. In addition, it is important to note that landscaping is a reserved matter for later consideration, and this will provide the appropriate opportunity of introducing good quality planting around the new building.

5.40 The applicant provided an ecological survey as part of the previous application (2007/58004/OUT) which indicates that the proposed development would not have an adverse impact on local ecology. Concern has been raised within a number of letters of representation regarding the ecological impact. The Inspectors decision confirms that matters relating to biodiversity can be conditioned by stating that “in the light of Planning Policy Statement 9 Biodiversity and Geological Conservation and related documents, and as discussed at the Hearing, I consider that conditions would be needed to prevent disturbance of breeding birds and to require a further inspection for great crested newts before any development took place. These conditions do
not override the statutory requirements relating to species protection.” On this basis, it is considered that subject to condition the proposal would not result in harm to biodiversity.

5.41 As there has been no significant change to the site or development plan policy in relation to trees or biodiversity since the previous application was approved, it is considered that there are no grounds to refuse this replacement planning permission on this basis.

5.42 **Sustainability**

5.43 The London Plan 2008 requires developments to make the fullest contribution to the mitigation of, and adaptation to, climate change and to minimising carbon dioxide emissions (Policy 4A.1), according to the following hierarchy: use less energy through the use of passive design and energy efficiency measures, supply energy efficiently through the use of decentralised energy provision and generate renewable energy on-site. Policies 4A.2 to 4A.8 of the London Plan focus on how to mitigate climate change, and the carbon dioxide reduction targets that are necessary across London to achieve this. Policy 4A.7 of the London Plan requires that 20% of a site's predicted carbon dioxide emissions are off-set through the use of energy produced on site from renewable energy technologies.

5.44 Further guidance is contained in the Council's IPG11 'Sustainable design and construction' and policy BP6 'One Planet Living' of the Core Planning Strategy, which promote the highest standards of sustainable design and construction within the Borough in support of the Council's vision of 'Creating a sustainable suburb' and long-term aim of promoting Sutton as a 'One Planet Living' Borough. The Core Planning Strategy was adopted in December 2009 after the appeal decision and the Council's IPG11 was adopted in May 2008 around the same time when the previous application (2007/58004/OUT) was allowed at appeal. The Inspector stated that “EcoHomes standards for new housing in England have been replaced by the Code for Sustainable Homes. Compliance with the Code is currently voluntary and I do not consider that a condition requiring compliance with it would be justified.” However since the application was allowed in May 2008, planning policy now requires developers to meet sustainability objectives set out in the London Plan, and through the Council's IPG11 and emerging policy.

5.45 Whilst no details have been submitted with this current application to demonstrate how the proposal could meet current sustainability requirements, it is considered that this could be addressed by additional conditions that were not included in the previous decision. As such, conditions are recommended that require the development to achieve Level 3 of the Code for Sustainable Homes and a 20% reduction in CO\textsubscript{2} emissions. On this basis, the application would be in accordance with up to date development plan policies.

5.46 **Flood Risk and Utilities**

5.47 The application site is not an area at risk from flooding. In line with the previous application it is, however, considered that appropriate conditions are included to control surface water run off due to the level of additional hardstanding areas
proposed. A Sustainable Urban Drainage System (SUDS) will be required on this site to be approved in consultation with the Environment Agency and an appropriate condition is included. A condition is recommended to ensure that the proposal accords with the guidance in PPS25 ‘Development and Flood Risk’ and provides an adequate sustainable drainage system.

5.48 Concern has been raised within letters of representation regarding the impact on utilities. However, no evidence has been provided that the proposal would cause significant harm to the existing infrastructure and it is noted that Thames Water and the Environment Agency have not objected to the proposal subject to a condition relating to drainage as discussed above.

5.49 **Planning Obligations**

5.50 Policy DP2 of the Core Planning Strategy and Circular 1/97 states that, where necessary, the Council can seek planning obligations from developers to provide community benefits necessary to facilitate implementation of an acceptable development scheme. In March 2007, the Council adopted Supplementary Planning Document No.5 – Planning Obligations, which sets out the basis on which the Council will seek contributions from appropriate development proposals in order to facilitate improvements and benefits to the community and to the local environment.

5.51 The Community Infrastructure Levy Regulation 2010 (Regulations issued Pursuant to the 2008 Act) have now put three tests on the use of planning obligations into law. It is now unlawful (since 6th April 2010) to request planning obligations that do not meet the following tests:

(i) necessary to make the development acceptable in planning terms
(ii) directly related to the development, and
(iii) fairly and reasonably related in scale and kind to the development

5.52 The effect of the Regulations is that this Council must apply the tests much more strictly and is only to ask for planning obligations that are genuinely necessary and directly related to a development. Should planning obligations be requested that do not meet the policy tests the Council would have acted unlawfully and could be subject to a High Court challenge.

5.53 In terms of seeking financial contributions towards schemes, since the CIL regulations there has not been a significant alteration to policy given that the previous application was resolved to be granted in November 2007 after the adoption of SPD5. However, the new Community Infrastructure Regulations now places greater emphasis on the Council to justify contributions requested. It is considered that it would be unreasonable for the Council to request an increased level of contributions given the limited changes to policy since the previous application was resolved to be granted.

5.54 Planning obligations towards the following were previously requested:

- Education contribution of £3,632.
- Sport and Recreation contribution of £18,000.
- Sustainable Transport contribution of £10,500.
- Transport Works contribution of £10,500
- Monitoring Administration Fee of £1066
- Total contribution - £43,698

5.55 The Unilateral Undertaking associated with the previously approved application (2007/58004/OUT) required the payment of the above contributions upon the commencement of the development.

5.56 This recommendation in respect of this application is subject to the Council receiving a supplementary deed of variation to the original S106 agreement by the date of the Development Control Committee on 20 July 2011. This is to link the planning obligations previously sought to this current replacement planning permission.

6.0 CONCLUSION AND RECOMMENDATION

6.1 It is considered that there have been no significant material alterations to planning policy, planning guidance, the site or surrounding area since the approval of application numbered 2007/58004/OUT in May 2008 to justify a recommendation of refusal of this replacement planning application.

6.2 The previous planning permission establishes the principle of developing this site for more intensified residential use and, whilst there have been alterations to PPS3 ‘Housing’ since the appeal was allowed in May 2008, it is considered that these changes would do not render this application as being unacceptable.

6.3 In terms of the design of the proposed building, the previous Inspector considered that the proposal would not cause harm to the character or appearance of the area and the Inspectors views should be given appropriate weight in the consideration of this application.

6.4 The proposed development would not cause significant harm to neighbours’ living conditions in terms of loss outlook, light or privacy. In addition, the proposal would not result in an unacceptable increase in noise disturbance and pollution. Sufficient on site vehicle parking is provided and the proposal would not cause harm to highway and pedestrian safety.

6.5 It is considered that there would be no harm to biodiversity interest subject to a condition requiring a further inspection for great crested newts before any development takes place. In any event, the protection of these species is covered by other statutory provisions relating to species worthy of protection.

6.6 The proposed development accords with relevant development plan policy and guidance. It is therefore recommended that this replacement planning permission be granted.

Background Papers: A2011/64362/RPA

Drawings and other documents can be viewed on line –

1) Go to page: http://82.43.4.135/FASTWEB/welcome.asp
2) Enter Planning Application Number: A2011/64362
3) Click on Search and View Current Applications
4) Click on View Plans & Documents

Mr Geoff Bullock
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Ltd.
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A2011/64362/RPA

WARNING: It is in your interests to ensure you obtain the approval of the Local Planning Authority, where the conditions require that to occur. Failure to comply with the following conditions may lead to enforcement action to secure compliance.

FIRST SCHEDULE

127-129 MALDEN ROAD  Cheam Surrey SM3 8QY

Application for a replacement planning permission to extend the time limit for implementation of application number A2007/58004/OUT:- Erection of one 3-bedroomed self contained duplex unit and twelve 2-bedroomed self contained flats in a part two storey with roof accommodation, part three storey building. Provision of refuse store & cycle parking seventeen car parking spaces and vehicular access onto Netley Close.

SECOND SCHEDULE

(1) Details of landscaping (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. These details shall include soft landscaping (including trees to be retained), hard landscaping (including surface materials for car parking areas and shared surfaces), a path to the bicycle store, and low-level lighting for the car parking areas.

Reason: To ensure adequate control over the form of the development given that this approval is outline only.
(2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason: To avoid the accumulation of unimplemented permissions and so that the Council retains the right to reconsider in due course the principle of the development.

(3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: To avoid the accumulation of unimplemented permissions and so that the Council retains the right to reconsider in due course the principle of the development.

(4) Notwithstanding the details shown on the approved plans, no development shall take place until details of the existing and proposed ground levels of the site and of the proposed finished ground-floor levels of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory standard of development is provided.

(5) No development shall take place until a scheme for disposing of surface water from the development hereby permitted, in accordance with the principles of sustainable drainage systems set out in Planning Policy Statement 25 Development and Flood Risk, has been submitted to and approved in writing by the local planning authority. The scheme, which shall include a programme for its implementation, shall be carried out in accordance with the approved details and thereafter retained.

Reason: To ensure the scheme complies with local and regional planning guidance on surface water drainage.

(6) No development shall take place, and no equipment, machinery or materials brought onto the site of the development hereby permitted, until measures for the protection of all trees that are to be retained have been put in place in accordance with a scheme submitted to and approved in writing by the local planning authority. Such measures shall be retained until the development has been completed and all equipment, machinery and surplus materials have been removed from the site.

Reason: To ensure compliance with Policy OE30 of the Unitary Development Plan which seeks to ensure the retention of trees.

(7) No development shall take place until a scheme for the protection of trees on land adjoining the site of the development hereby permitted has been submitted to and approved in writing by the local planning authority. All such trees shall be protected in accordance with the approved scheme until the completion of the development.
Reason: To ensure compliance with Policy OE30 of the Unitary Development Plan which seeks to ensure the retention of trees.

(8) Notwithstanding the details shown in the application and on the approved plans, no development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted (including the glazing of the windows) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and any windows to be fitted with obscure glazing or fixed shut shall be retained in that condition.

Reason: To safeguard the visual amenities of the area and to ensure compliance with Policy BP12 of the Sutton Unitary Development Plan which seek to ensure buildings are of a high standard of design and where applicable compatible with existing townscape. To ensure the proposal does not negatively impact on neighbouring occupiers.

(9) No development shall take place until details of the vehicular access shown on the approved plans have been submitted to and approved in writing by the local planning authority. The access shall be provided in accordance with the approved details before the building hereby permitted is occupied and thereafter retained.

Reason: To prevent obstruction and inconvenience to other highway users (especially pedestrians, cyclists and those with disabilities), and also in the interest of highway safety.

(10) No development shall take place until a scheme for provision of boundary treatments (including acoustic fencing adjacent to the boundary with No 34 Netley Close and access gating) has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in accordance with the approved details before the building hereby permitted is occupied and thereafter retained.

Reason: To safeguard the amenity of adjoining residential occupiers and in the interests of visual amenity.

(11) No development shall take place until a survey to ascertain the presence of great crested newts on the site has been undertaken in accordance with a timetable to be agreed in writing by the local planning authority and the results provided to the local planning authority. A scheme setting out measures to protect any such species present and likely to be affected by the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with a timetable agreed in writing by the local planning authority.

Reason: To protect the biodiversity value of the site and surrounding environment.

(12) The building hereby permitted shall not be occupied until space has been laid out within the site in accordance with the approved plans for 17 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The space shall not thereafter be used for any purpose.
other than the parking and turning of vehicles.

Reason: To prevent obstruction and inconvenience to other highway users (especially pedestrians, cyclists and those with disabilities), and also in the interest of highway safety.

(13) The building hereby permitted shall not be occupied until facilities for the storage of 13 bicycles have been provided in accordance with a scheme submitted to and approved in writing by the local planning authority. The facilities shall thereafter be retained for the use of the occupiers of the building hereby permitted.

Reason: To ensure compliance with Policy TR28 of the Unitary Development Plan which seeks to ensure that provision is made for cycle storage as part of new development.

(14) The building hereby permitted shall not be occupied until facilities for the storage of refuse have been provided in accordance with a scheme submitted to and approved in writing by the local planning authority. The facilities shall thereafter be retained for the use of the occupiers of the building hereby permitted.

Reason: To ensure that this necessary facility is provided in a manner that does not adversely affect the amenities of nearby premises.

(15) Any clearance of vegetation in connection with the development hereby permitted shall take place outside the bird-breeding season (March to August inclusive).

Reason: To protect the biodiversity value of the site and surrounding environment.

(16) Prior to work starting on site, a sustainable design and construction statement, explaining how the development will meet all the requirements outlined in IPG 11: Sustainable Design and Construction should be submitted to the Local Planning Authority for its written approval. The development shall then be carried out in accordance with the approved details and shall be retained thereafter.

Reason: To meet the requirements of Sutton Council’s Interim Planning Guidance IPG 11 (Sustainable Design and Construction).

(17) Prior to work starting on site, a Code for Sustainable Homes Interim (Design Stage) Certificate, issued by the Building Research Establishment (BRE), must be submitted to the Local Planning Authority to show that a minimum Level 3 rating will be achieved. Prior to first occupation of the building, a Code for Sustainable Homes Final (Post-Construction) Certificate, issued by the BRE, must be submitted to the Local Planning Authority to demonstrate that Level 3 has been achieved. All the measures provided as required by the code shall be retained for as long as the development is in existence.

Reason: To comply with Core Policy BP6, Interim Planning Guidance IPG 11 (Sustainable Design and Construction) Guideline SDC2 and to ensure the overall environmental sustainability of the development.
Prior to building work commencing, an energy assessment will be submitted to the Local Planning Authority which includes a prediction of baseline energy demand and CO2 emissions and shows a) the subsequent reduction in CO2 emissions achieved through the use of energy efficiency measures and b) a reduction in CO2 emissions of at least 20% from the use of renewable energy technologies (below the baseline as re-calculated after the application of energy efficiency measures). These figures should be calculated using SAP (Standard Assessment Procedure) and the associated worksheets should be submitted as part of the application, alongside full details of the proposed energy efficiency measures and renewable energy technology(ies) should be submitted as part of the statement.

Reason: To comply with Core Policy BP6, Interim Planning Guidance IPG 11 (Sustainable Design and Construction) Guidelines SDC4 and SDC5, the London Plan Policies 4A.1-4A.7 and to ensure the overall environmental sustainability of the development.

The development hereby permitted shall be carried out in accordance with the following approved plans:

115, NCC2 221, NCC2 230, NCC2 231, NCC2 232, NCC2 233, NCC2 234, NCC2 235, JLH0629/01 and JLH0629/DS01.

Reason: For the avoidance of doubt and in the interests of proper planning.

INFORMATIVES.

This application has been assessed against the relevant policies of the Sutton Unitary Development Plan. The proposal is generally in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and for this reason planning permission is granted.

Should you require details of the consideration of the application that has led to this decision, the file may be inspected under the provisions of the Local Government (Access to Information) Act 1985. An appointment can be made for this purpose by telephoning 020 8770-5070.