

Planning Committee - Date: 2 December 2020

**Report of the Interim Strategic Director, Environment, Housing and Regeneration Directorate**

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| Ref: DM2020/01024 | WARD: A04 - Cheam | Time Taken: 19 weeks, 6 days |
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Site: 21 Higher Drive, Banstead, SM7 1PL

Proposal: Erection of a single storey rear extension and conversion of existing garage into a habitable room.

Applicant: Mrs S Rajaratnam

Agent: Mrs Arya Sunny

**Recommendation:**

**GRANT PLANNING PERMISSION**  
**Subject to Conditions**

**UPDATE ADDENDUM REPORT**

This application was reported to the meeting of the Planning Committee 4 November 2020 but was deferred in order to investigate options for preventing the future use of the property as either a care home within Class C4 or for assisted living within Class C3b of the Use Classes Order 2020. This addendum report provides an update to the points discussed within the Planning Committee meeting.

1.1 The National Planning Policy Framework sets out the guidance for how the planning system in England should operate and sets out advice on the use of conditions in paragraphs 54 and 55. The relevant parts of those paragraphs are set out below for ease of reference:-

- 54 *Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations*
- 55 *Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.*

- 1.2 The National Planning Practice Guidance (NPPG) goes on to say
- *Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), so that it is clear exactly which rights have been limited or withdrawn.*
- 1.3 In this case, members are advised that a care home within Class C2 of the Use Classes Order there are adequate safeguards to address concerns over a possible conversion to that use because planning permission is required to change the existing use from Class C3 residential to Class C2 care home. The use of a condition to prevent this change of use is not necessary or reasonable nor is it relevant to the development to be permitted which is for extensions to a single family dwelling within Class C3a of the Use Classes Order.
- 1.4 Taking the advice of the NPPG and in particular that set out in the NPPG, the proposed use of a condition to prevent a change between Class C3(a) to Class C3(b) would not pass the test of reasonableness or necessity. The Class C3(b) covers use of a dwelling house of up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems. It is not development to change between uses within Class C3 and so the use of such a condition would be considered ultra vires.
- 1.5 The use of a condition in this way would not be reasonable as it would be made on the presumption that the property will be converted to a care home or for a use within Class C3(b). There is no evidence to suggest that this would be the case and members are advised that the registering of a care home business at a residential address is not the same as registering the property as a care home. There is no evidence that care homes or uses within Class C3(b) are prevalent in this area, giving rise to harm. It would be unreasonable to apply a condition preventing the applicants from exercising a change which would not be development particularly as no other property in the area is subject to the same limitation.
- 1.6 Given the above it is recommended that the application should be approved without such a condition limiting a change of use which does not constitute development.
- 1.7 The applicant has offered to submit a unilateral undertaking under section 16 of the Greater London Council (General Powers) Act 1974 which will mean they will not convert the property into a care home or use it for supported living. This has been provided on a voluntary basis by the applicant which would have the effect of addressing Committees reason for deferral. It would not be linked to the planning file because the acceptability of this application is not dependent on such an undertaking. However, this agreement would run with the land and will be placed on the Land Registry register. In the event of a future breach of such an undertaking this would result in action being pursued in the lands tribunal under civil law.

**Recommendation:**

- 1.8 Grant Planning Permission subject to Conditions.



DM2020/01024

Mrs Arya Sunny

Peters House, Flat 5

20D Netley Close

Cheam

SM3 8DN

DRAFT - GRANT

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

21 Higher Drive, Banstead, SM7 1PL

Erection of a single storey rear extension and conversion of existing garage into a habitable room.

SECOND SCHEDULE

(1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos. AS20/HD/01, AS20/HD/02, AS20/HD/03, AS20/HD/04 Rev 2, AS20/HD/05 Rev 1, AS20/HD/06 Rev 2, AS20/HD/07 Rev 1 and AS20/HD/08 Rev 4.

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

(2) All external facing materials, treatments and finishes shall be as specified within the application form. Where this is not possible the type and treatment of the materials to be used shall be agreed in writing by the Local Planning Authority prior to the development being carried out.

Reason: To ensure that the extension harmonises with the surrounding area in accordance with Policy 28.

(3) The flat part of the crown roof of the extension hereby approved shall not be used, all or in part, as a terrace or other amenity space. No railings, fences, walls or other means of enclosure shall be erected on this flat roof, and no alterations shall be carried out to the elevation of the application property to form access onto the roof.

Reason: Such a use could be harmful to the existing amenities of the occupiers of neighbouring residential properties as a result of overlooking and loss of privacy and the generation of noise and disturbance contrary to Policy 29 of the Sutton Local Plan 2018.

(4) The 1st floor flank window located on the east elevation of the development hereby approved shall be glazed with obscure glass and fixed shut to a height of 1.7 metres above the finished floor level of the rooms in which the windows are installed in a manner that they cannot be opened and maintained as such in perpetuity.

Reason: To safeguard the current level of privacy enjoyed by the occupants of adjoining properties in accordance with and to ensure compliance with the Sutton Local Plan 2018.

## INFORMATIVES

(1) The applicant was provided with pre-application advice. As the submitted application accorded with that advice and complied with the relevant policies Sutton Council has accordingly granted planning permission.

(2) The Council was able to negotiate successfully with the applicant to amend the application so that it complied with the relevant policies. Sutton Council has accordingly granted planning permission.

(3) Preventing Damage to the Public Highway:

Care should be taken by all applicants to ensure that no damage is caused to the public highway adjacent to their site during demolition and/or construction work. The Council will

always seek to recover any costs incurred in repairing or making good such damage from the owner of the development site, except where they are otherwise able to identify the person(s) who caused the damage and are willing to accept the recoverable costs.

#### Pre-Commencement Highways Condition Surveys:

To avoid the above costs arising, and BEFORE ANY WORK COMMENCES on your site, you MUST contact Sutton Highways DC Team at London Borough of Sutton, 24 Denmark Road, Sutton, Surrey SM5 2JG OR BY EMAIL at: [highways@london.gov.uk](mailto:highways@london.gov.uk); to arrange a pre-commencement photographic survey of the public highway conditions around your site; where the Council decides that a survey is necessary. A refundable Deposit is payable at application for the survey; together with an Inspection Fee, payable by cheque to "London Borough of Sutton". The pre-commencement survey will ensure you are not charged for any damage which existed prior to commencement of your works. If you fail to contact us to arrange a pre-commencement survey, it will be assumed that any damage to the highway was caused by your own activities and you will be charged the full cost of repair. Once the site works are completed you need to contact us again to arrange for a post construction inspection to be carried out. If there is no further damage, the case will be closed, and your deposit refunded. If damage is found to have occurred, the Council will carry out the repairs, and the costs will be charged to you, whether less or more than the deposit value.