



Appeal Decision

Site visit made on 8 September 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2020.

Appeal Ref: APP/H5390/W/19/3243761
223-229 Dawes Road, London SW6 7RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by GM Developments (London) LLP against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2019/02455/VAR, dated 19 August 2019, was refused by notice dated 29 November 2019.
 - The application sought planning permission for the development described as: 'variation of condition 2 to allow amendments to the approved drawings to include separation of the commercial and residential entrances off Hannell Road and formation of a new entrance to Flat 1 directly off Hannell Road, alterations to the stairwell glazing, variation to wording of conditions 19, 37 and 38 from 'prior to commencement of development' to 'prior to occupation' and removal of condition 39 (obscured windows) of planning permission ref: 2018/01856/FUL granted 12th October 2018' without complying with a condition attached to planning permission Ref 2019/00146/VAR, dated 4 April 2019.
 - The condition in dispute is No 44 which states that: *The use of the terrace at third floor in connection with the proposed three-bed family unit and balcony / terrace at first and second floors to proposed Flats 4 and 7, shall not be occupied until it has been enclosed on all sides by the erection of a privacy screen of a height of 1.7 metres above the finished floor level of the terrace and the obscured glazing forming the privacy screen. Details of the proposed glazing shall be submitted for approval and once installed shall be permanently retained as such thereafter unless agreed in writing by the Council.*
 - The reason given for the condition is: *In order to ensure that the glazing would not result in overlooking and any subsequent loss of privacy, in accordance with Policies DC4 and HO11 of the Local Plan (2018) and Key Principle HS8 of the Planning Guidance Supplementary Planning Document (2018) .*
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Decision

1. The appeal is allowed and planning permission is granted for the development described as: 'variation of condition 2 to allow amendments to the approved drawings to include separation of the commercial and residential entrances off Hannell Road and formation of a new entrance to Flat 1 directly off Hannell Road, alterations to the stairwell glazing, variation to wording of conditions 19, 37 and 38 from 'prior to commencement of development' to 'prior to occupation' and removal of condition 39 (obscured windows) of planning permission ref: 2018/01856/FUL granted 12th October 2018', at 223-229 Dawes Road, London SW6 7RD in accordance with application 2019/02455/VAR, dated 19 August 2019, without complying with condition 44 previously imposed on planning permission Ref 2019/00146/VAR, granted on 4 April 2019, and subject to the schedule of conditions attached to this decision letter.

Procedural Matters

2. During my site visit I observed that the development has commenced as indicated in the application form. However, from the appearance of the proposed building works it was obvious that none of the approved flats were completed or occupied. I have assessed the appeal on this basis.
3. The application form that relates to the appeal proposal refers to condition 18 and 44 as those proposed to be removed or varied, however, the Council's refusal notice only relates to condition 44. I note from the submitted evidence that condition 18 has been varied by an amended permission at this site¹. Therefore, I have determined this appeal on the basis that only condition 44 is in dispute.
4. I have dealt with another appeal (Ref: APP/H5390/W/19/3244962) on this site. That appeal is the subject of a separate decision, albeit I have had regard to my findings in respect of consideration of those conditions.

Background and Main Issue

5. This appeal relates to a condition forming part of planning permission Ref 2019/00146/VAR which was granted on 4 April 2019 (the 2019 permission), however, a subsequent permission has been issued by the Council that amended conditions on the 2019 permission, that being Ref 2019/03805/VAR, (the amended permission). This was issued on 16 April 2020, a copy of which has been provided by the appellant. Therefore, my assessment will also have regard to that amended permission as it relates to the conditions that have been discharged and other conditions which I may choose to reapply in allowing this appeal.
6. The appeal property comprises a corner building with a dual frontage onto Dawes Road and Hannell Road. It is currently under construction and once completed will comprise 9 flats over three and four storeys, with some commercial floorspace at ground floor and basement levels. Condition 44 attached to the 2019 permission required that the terrace and balcony areas relating to the third floor in connection with the proposed three-bed family unit (Flat 9) and Flats 4 and 7 are enclosed by 1.7m obscure glazed privacy screens. In this case the appellant seeks to reduce the height of the privacy screens to 1.3m.
7. Therefore, the main issue in this appeal is the effect that varying the height of the privacy screens, as referred to in condition 44, would have on the living conditions of neighbouring occupiers, with particular reference to overlooking and privacy.

Reasons

8. The proposed balcony and roof terrace areas relating to flats 4, 7 and 9 will occupy the first, second and third floors of the appeal building respectively, and face in the direction of windows in the existing two storey terrace dwellings on the southern side of Hannell Road. The appeal building would be sited a short distance further forward than the existing dwellings on the northern frontage of Hannell Road which already have windows facing the existing dwellings opposite.
9. The appellant's drawings indicate that the appeal building has windows at first, second and third floor level that would be orientated towards, and separated from the properties opposite on Hannell Road in a similar fashion to the proposed balcony and terrace areas relating to Flats 4, 7 and 9. I also observed this relationship on site given the appeal building's advanced stage of construction.

¹ Ref 2019/03805/VAR

Those windows that I observed were not obscure glazed nor have I seen any details in the evidence that they would relate to non-habitable rooms.

10. Lowering the privacy screens to 1.3m in height would allow occupiers standing on the proposed balcony and terrace areas to overlook windows on the opposite side of the street. However, this would have the similar effect as existing windows and would not result in any further overlooking or effect on the privacy of the properties opposite, beyond that which could be experienced from within the appeal building. The proposed 1.3m privacy screens enclosing the terrace and balcony areas would be obscure glazed. This would likely ensure that overlooking, by seated occupiers at these areas, towards properties opposite at Hannell Road would be significantly diminished.
11. I also note from the submitted photographs that the previous building at the appeal site had flat roofs at first floor level enclosed by a single railing that faced the dwellings opposite on Hannell Road. It is possible that these flat roofs could have been accessed by occupiers of the building and overlook windows in the dwellings opposite. The proposed balcony area relating to Flat 4 would be orientated towards properties opposite in a similar manner to the former flat roof areas. However, it would be more enclosed and as proposed have a 1.3m high privacy screen, thus having a reduced outlook and less expansive viewing area towards the properties to the south.
12. The Council has raised concerns that the proposal would be contrary to Key Principle HS7 of the Council's Planning Guidance Supplementary Planning Document – February 2018 (the SPD). However, this policy specifically relates to windows not balcony's or terrace areas. Even if it were relevant, the proposal would meet the overall aim of the guidance in ensuring no loss of privacy given the existing relationship between the appeal building and neighbouring dwellings, as well as the effect from the previous flat roof areas.
13. I note the interested party concerns that the proposed balcony and terrace areas would overlook rooms served by windows inserted in the roofs of dwellings on Hannell Road. I observed the relationship between the appeal building and these windows. Yet, the orientation and angle upon which they would face the proposed balcony and terrace areas would be oblique to the extent that the rooms these windows serve would not be directly overlooked nor would there be a harmful loss of privacy to these neighbouring occupiers.
14. Therefore, I conclude that the proposed lowering of the privacy screens enclosing the terraces and balconies of the areas relating to the third floor flat in connection with the proposed three-bed family unit and Flats 4 and 7 would not result in an unacceptable level of overlooking or loss of privacy. I therefore find no conflict with Policies DC1, DC2, DC4 and HO11 of the Hammersmith and Fulham Local Plan, adopted February 2018. Amongst other things, these require proposals to be designed to respect neighbouring residential amenity including privacy. Furthermore, the proposal would comply with the overall aims of Key Principles HS7 and HS8 of the SPD in ensuring that no significant increase in overlooking and consequent loss of privacy would occur.

Other Matters

15. Interested party concerns have been submitted in respect of inadequate landscaping, additional noise from traffic, flooding, and the extension of commercial opening hours at the appeal building. However, as permission already exists for the development and this appeal relates to the disputed condition in

respect of the height of the privacy screens, these are not considerations which are relevant to my decision.

Conditions

16. The PPG states that, for the purpose of clarity, decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. I have had regard to all the planning conditions attached to the 2019 planning permission as well as those conditions pertaining to the amended permission that require the approval of details prior to occupation of the flats. The decision notice relating to the amended permission also refers to conditions that have been discharged and the relevant planning reference that these related to. As such, I have imposed those that I consider remain relevant, meet the tests of conditions as set out at paragraph 55 of the National Planning Policy Framework, as well as those that have been discharged. In the event that further conditions have been discharged, that is a matter which can be addressed by the parties.
17. The other appeal I have dealt with at this site (Ref: 3244962) relates to the same development, and therefore in issuing that decision I have applied the same set of new planning conditions as this appeal.
18. The condition restricting the height of privacy screens at the flats specified has been amended from 1.7m to 1.3m. This is considered reasonable as it would not result in a harmful loss of privacy to neighbouring occupiers, while also affording some screening. I have also required that details of the obscure glazing to be used for the privacy screens are approved prior to the occupation of the relevant flats. The drawings showing the amended height of the privacy screens have been included in the condition that lists the plans and documents (see below).
19. Works have started on site and therefore this negates the requirement for a condition seeking works to commence within three years of grant of permission. For reasons of clarity and to ensure the development is carried out as approved, I have included a condition that lists the approved plans and accompanying documents.
20. In relation to the other appeal I have determined at this site, I have not imposed conditions that prevented occupiers from obtaining parking permits as I found these would not be necessary or reasonable.

Conclusion

21. For the reasons given above I conclude that the appeal should be allowed and condition 44 should be amended. Permission is therefore granted subject to the conditions as set out in the attached schedule.

R. E. Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following submitted drawings hereby approved:

208(05) 001 Rev.C; 208(05) 002 Rev.C; 208(10) 002 Rev.B; 208(10) 003 Rev.D; 208(11) 001 Rev.D; 208(11) 002 Rev.D; 208(11) 003 Rev.B; 208(12) 001 Rev.C; 208(12) 002 Rev.D; 208(12) 003 Rev.C; 208(12) 005 Rev.A; 208(PC) 044 Rev.B and 208(PC) 045 Rev.A.

Air Quality and Dust Management Plan (Revision 2) issued: 16/01/2019; by GM London Limited) Construction Logistics Plan; Appendix A (Traffic Routes); Site Setup Plans; Demolition, Construction Management: Site Logistics Plan (Revision 6 issued: 22/10/2018); 208(12)002 Rev.C03; 208(12)003 Rev.C04; 208(12)001 Rev.C03; Material Schedule: samples present on site to include: VELFAC 200 window system; Zinc; brick panels; Limestone; Materials Samples - 208(MS)001 rev B Schedule of Material Samples; 208(11)002 Rev.C02; 208(12)001 Rev.C03; 208(12)002 Rev.F; 208(10)006 Rev.C02; 208(21) 001 Rev.C07; 208(21)005 Rev.C05; 208(12)001 Rev.C03; 208(12) 002 Rev.C03; 208(12)003 Rev.C04; 208(PC)003 REV.B; 208(PC)007 REV.A; Updated covering letter received on 19/07/19; 208(21)005 Rev.C03; 208(22)001 Rev.C02; 208(22)002 Rev.C02; Acoustics Technical Notes (REF: 0-1973-5 / 01973-3); Technical Report (Ref: C/23010/T01), by SRL; Construction Logistics Plan; Appendix A (Traffic Routes); APPROVED MANUFACTURERS DETAILS Recd: 04/03/2020 Preliminary Risk Assessment; 4 x Surrey Maps by Envirocheck; Geo-environmental Assessment (Ground Investigation) Report, by JOMAS; Email confirmation regarding testing for condition 33 from JOMAS ASSOCIATES dated 21.6.2019 Design Criteria for the Green Roof Proposal; Roof Plan; Bauder XF301 Sedum Blanket Specification; Roof plan; Dialux Report and drawing 208(12)001 Rev. C04 recd: 14.02.20 208(SK)011 REV.A; Technical Note: #0-1973-4 recd: 20 Dec 2020 let.048.HB.H.19520004 recd: 20 Dec 2020 208(12)001 Rev.E; 208(10)002 Rev.D; 208(10)003 Rev.F; 208(05)002 Rev.C; 208(10)002 Rev.B; No. 208(10) 003 Rev.D; DAWES ROAD CONDITION 19 SAMPLE Flood Risk Assessment Revised Sustainable Drainage Strategy Sustainability and Energy Statement.

2. The development hereby approved shall be implemented in accordance with the details within the approved Demolition Management Plan (DMP) and Demolition Logistics Plan (DLP) under 2018/03502/DET throughout the project period.
3. The development hereby approved shall be implemented in accordance with the details within the approved Construction Management Plan (CMP) and Construction Logistics Plan (CLP) under 2018/03502/DET throughout the relevant project period.
4. Details of all new external materials (including samples where considered appropriate by the Council) to be used in the development including brickwork, stone and metal cladding, windows, balustrades and roofing materials shall be implemented in accordance with the details as approved under application ref. 2019/01146/DET and permanently retained as such.

5. The windows, doors, entrances and gates shall be implemented in accordance with the details as approved under application ref. 2019/00460/DET.
6. Wheelchair access shall be provided to the building and dwellings in accordance with the details as approved under application ref. 2019/01145/DET and thereafter permanently retained.
7. No plumbing, extract flues or pipes other than rainwater pipes shall be fixed on the front elevations of the building(s) hereby approved.
8. No plant, water tanks, water tank enclosures or other structures, that are not shown on the approved plans, shall be erected upon the roofs of the building(s) hereby permitted.
9. No alterations shall be carried out to the external appearance of the building, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the approved drawings, without planning permission first being obtained. Any such changes shall be carried out in accordance with the approved details.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or reenacting that Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any external part of the approved buildings, without planning permission first being obtained.
11. No advertisements shall be displayed on the development hereby approved without details of the advertisements having first been submitted to and approved in writing by the Council.
12. The glass installed for the commercial frontage on Dawes Road shall be clear and shall be permanently retained and not obscured in any way.
13. No external roller shutters shall be attached to the commercial frontages to the Dawes Road Elevation.
14. Measures to ensure that the development achieves "secured by design" status shall be developed in accordance with the details as approved under application ref. 2019/01145/DET. No part of the development thereby effected shall be used or occupied prior to the implementation of the approved details and thereafter be permanently retained.
15. Enhanced sound insulation value $D_{nT,w}$ and $L_{nT,w}$ of at least 5dB above the Building Regulations value, for the floor/ceiling /wall structures separating different types of rooms/ uses in adjoining dwellings, namely eg. living room and kitchen above bedroom of separate dwelling shall be implemented in accordance with the details as approved under application ref. 2019/01785/DET. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
16. The sound insulation of the floor/ ceiling/ walls separating the commercial part(s) of the premises from dwellings shall be implemented in accordance with the details as approved under application ref. 2019/01785/DET. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

17. The use of the premises on the basement and ground floor levels, with the exception of the ground floor flat, shall not be permitted during the hours of 22:00 and 07:00 hours Mondays to Saturday, 18:00 and 08:00 hours on Sundays and Public/Bank Holidays.
18. The development hereby permitted shall not be occupied until the rear windows of Flats 2, 4, 5 and 7 at first and second floor levels, as indicated on the approved drawing (No. 208(10) 003 Rev.D) have been installed with obscure glazing to a height of 1.7 metres from the internal floor level in accordance with the details as approved under application ref. 2020/00446/DET. The obscured windows hereby permitted shall be non-openable. Thereafter the obscured windows and screening shall be retained in the form approved.
19. No part of the flat roof areas provided by the development hereby approved, with an exception of the roof terrace to Flat 9, shall be used as a terrace or other accessible amenity space. No walls, fences, railings or other means of enclosure other than those shown on the approved drawings shall be erected around the roofs, and no alterations shall be carried out to the approved building to form access onto these roofs.
20. No part of the development hereby approved shall be occupied prior to the provision of the cycle storage for the development hereby approved, as indicated on the approved drawing no. 208(10)002 Rev.B and such storage facilities shall be permanently retained thereafter in accordance with the approved details.
21. No part of the development hereby approved shall be occupied prior to the provision of the refuse storage enclosures, as indicated on the approved drawing 208(10) 002 Rev.B.
22. The development shall be implemented in accordance with the recommended flood mitigation measures in the Flood Risk Assessment and revised Sustainable Drainage Strategy hereby approved by the local planning authority. In line with advice from Thames Water, a non-return valve or other suitable device shall be installed to avoid the risk of the sewerage network surcharging wastewater to basement/ground level during storm conditions. The recommended mitigation measures shall be permanently retained thereafter.
23. The development hereby permitted shall not be occupied before implementation of the energy efficiency, low carbon and renewable energy measures detailed in the submitted Energy Strategy and Sustainability Assessment. All details shall be implemented prior to occupation/use of the development hereby permitted, and thereafter be permanently retained.
24. The development hereby permitted shall not be occupied before implementation of the sustainable design and construction measures detailed in the submitted Sustainability and Energy Statement. All details shall be implemented prior to occupation/use of the development hereby permitted, and thereafter be permanently retained.
25. The development hereby approved shall be implemented in accordance with the details within the approved Air Quality Dust Management Plan (AQDMP) under 2018/03502/DET. These approved details shall be fully implemented and

- permanently retained and maintained during the demolition and construction phases of the development.
26. Prior to occupation of the development a Low Emission Strategy for the operational phase shall be submitted to and approved in writing by the Council. The Low Emission Strategy must detail the remedial action and mitigation measures that will be implemented to protect receptors (e.g. abatement technology for energy plant, design solutions). This Strategy must make a commitment to implement the mitigation measures (including NOx emissions standards for the chosen energy plant) that are required to reduce the exposure of future residents to poor air quality and to help mitigate the development's air pollution impacts, in particular the emissions of NOx and particulates from on-site and off-site transport via a Ultra Low Emission Vehicle Plan (ULEVP) e.g. use of on-road Ultra Low Emission Vehicles in accordance with the emissions hierarchy (1) Electric Vehicle (Zero emission), (2) Hybrid (non-plug in) Electric Vehicle (HEV), (3) Plug-in Hybrid Electric Vehicle (PHEV), (4) Alternative Fuel e.g. CNG, LPG, (5) Petrol (6) Diesel (Euro 6-HGV) and energy generation sources. The strategy must re-assess air quality neutral in accordance with the Mayor of London SPG 'Sustainable Design and Construction' (April 2014) guidance. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.
 27. The Ultra Low Nox Gas fired boilers as approved under application ref. 2020/00364/DET shall be fully implemented prior to the occupation/use of the residential development and thereafter permanently retained and maintained.
 28. Approved details in relation to NOx filtration shall be fully implemented in accordance with the details as approved under application ref. 2019/01514/DET prior to the occupation/use of the development and thereafter permanently retained and maintained
 29. The development hereby approved must be carried out in compliance with the details within the approved preliminary risk assessment report under 2018/03485/DET. These works must be carried out by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing
 30. The development hereby approved shall progress and be implemented in accordance with the details within the approved site investigation scheme under 2018/03485/DET. All works must be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling.
 31. All works must be carried out in compliance with the approved details under 2019/01302/DET and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land contamination (Defra 2004) or the current UK requirements for sampling and testing.
 32. All works must be carried out in compliance with the approved details under 2019/01302/DET and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

33. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full if required by the approved quantitative risk assessment, and a verification report confirming these works has been submitted to, and approved in writing, by the Council. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all appropriate waste Duty of Care documentation and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the Council is to be informed immediately and no further development (unless otherwise agreed in writing by the Council) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the Council. Any required remediation shall be detailed in an amendment to the remediation method statement to be submitted and approved by the Council and verification of these works included in the verification report. All works must be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
34. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until an onward long-term monitoring methodology report, is submitted to and approved in writing by the Council setting out where further monitoring is required past the completion of development works (as identified in the approved site investigation scheme or the approved remediation statement or the approved verification report) to verify the success of the remediation undertaken. If required, a verification report of these monitoring works shall then be submitted to and approved in writing by the Council when it may be demonstrated that no residual adverse risks exist. All works must be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
35. Prior to occupation of the commercial units, a Delivery and Servicing Plan shall be submitted to and approved in writing by the Council. Details shall include times and frequency of deliveries and collections, vehicle movements, silent reversing methods, location of loading area and quiet loading/unloading measures. The measures/scheme shall be implemented in accordance with the approved details prior to occupation of the development hereby permitted, and thereafter permanently complied with and maintained in line with the agreed plan.
36. The green infrastructure shall be constructed and planted up in full accordance with the approved details under 2019/02399/DET within the first available planting season following completion of buildings. Any plants which die, are removed, become seriously damaged and diseased within a period of five years from completion of these buildings shall be replaced in the next planting season with others of similar size and species. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

37. Details of any proposed external artificial lighting, including security lights have been submitted to and approved in writing by the Local Planning Authority and no occupation shall take place until the lighting has been installed in full accordance with the approved details under 2020/00447/DET. Such details include the number, exact location, height, design and appearance of the lights, together with data concerning the levels of illumination and light spillage and the specific measures, having regard to the recommendations of the Institution of Lighting Engineers in the `Guidance Notes for The Reduction of Light Pollution 2011 (or relevant guidance) to ensure that any lighting proposed does not harm the existing amenities of the occupiers of neighbouring properties. No part of the development shall be used or occupied until any external lighting provided has been installed in accordance with the approved details and shall thereafter be permanently retained in this form.
38. Prior to the occupation of the development, the dropped kerb serving the development from Hannell Road will need to be reinstated to footway and the single yellow line beside the development should be amended so that more parking bays are provided to the local road. The developer will be required to pay for all the works including reinstatement of dropped kerb and changes associated with amendment to the Traffic Management Order. The council will undertake the works on the highway to ensure that the works are undertaken to the council's adoptable standards and that any disruption to the road network is minimal.
39. The terrace at third floor in connection with the proposed three-bed family unit and the balcony / terrace at first and second floors to proposed Flats 4 and 7 hereby permitted, shall not be used until it has been enclosed on all sides by the erection of a obscure glazed privacy screen to a height of 1.3 metres measured above the finished floor level of the terrace/balcony. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the residential units are occupied. The privacy screens shall be installed in accordance with the approved scheme and shall be retained thereafter.
40. The landscaping scheme approved under 2019/01750/DET shall be implemented in the next winter planting season following completion of the building works, or before the occupation and use of any part of the building, whichever is the earlier.
41. Any tree or shrub planted pursuant to condition 40 being removed or severely damaged, dying or becoming seriously diseased within 5 years of planting shall be replaced with a tree or shrub of similar size and species to that originally required to be planted.
42. Prior to the use of the development, a Noise Management Plan shall be submitted to and approved in writing by the Council in relation to the commercial use. The management plan must be complied with by any future occupier of the site associated with the use.

End of Schedule