

<b>Item No.</b> 7.2	<b>Classification:</b> Open	<b>Date:</b> 30 January 2019	<b>Meeting Name:</b> Planning Sub-committee A
<b>Report title:</b>	<b>Development Management planning application:</b> Application 18/AP/3490 for: Full Planning Application  <b>Address:</b> DULWICH PICTURE GALLERY, GALLERY ROAD, LONDON SE21 7AD  <b>Proposal:</b> Construction of a temporary pavilion building for summer period up to the end of September 2019 to provide ancillary exhibition and gallery facilities comprising an accessible, raised gantry walkway at approximately 2.1m high within a timber cube structure measuring approximately 10m high, 11m wide and 11m deep, to be accessible during standard gallery opening hours (09:00 - 18:00) and for occasional events up to 22:00.		
<b>Ward(s) or groups affected:</b>	Dulwich Village		
<b>From:</b>	Director of Planning		
<b>Application Start Date</b> 30/10/2018		<b>Application Expiry Date</b> 25/12/2018	
<b>Earliest Decision Date</b> 29/12/2018			

## RECOMMENDATION

1. That temporary planning permission be granted, subject to conditions.

## BACKGROUND INFORMATION

### Site location and description

2. The application site refers to part of the landscaped area within the curtilage Dulwich Picture Gallery, which is Grade II\* listed. The gallery and mausoleum were originally constructed 1811-14 and then partly rebuilt following damage in World War II. There is also a contemporary cloister and cafe pavilion were added to the gallery by Rick Mather Architects in 2000. The cafe is situated near to Dulwich Old College which is Grade II listed and is within the Dulwich Village Conservation Area. The site is also located on Metropolitan Open Land.

### Details of proposal

3. The development comprises construction of a large timber cube structure situated atop four large squat red supporting concrete columns approximately 2.1m tall. The cube would be clad in thin angled wooden slats evenly spaced which would be painted various colours on each side which would provide the effect of the structure's (internal and external) facade appearing different depending on the perspective of the viewer, who would be able to freely walk under and around the structure.
4. The structure would be situated approximately 10m – 11m away from the Picture Gallery building located to the west at its nearest point and orientated 45 degrees away from the main axis of its neighbour. Within the slatted structure atop the columns would be a publically accessible gantry walkway which skirts the interior of

the cube providing an additional perspective from which to view the effect created by the proposed design. This would be accessed and egressed from stairs located either side of the westernmost corner of the structure.

5. Beneath the cube would be the gently raised platform space decked in grey stained plywood which would be utilised to host a range of ancillary functions of the gallery including workshops. The platform at this level would also be host to a refreshments counter, located to the south west, and ticket kiosk desks to the north west in eye sight of the site's main entrance on College Road. Both of these aspects would be located to the edge of the structure, above which the wooden slats on these elevations fan out at a depth of approximately 1.5m. The structure including decking itself would be situated within ground layer of compact grey 'self-binding' gravel which would extend to the main paving area and in front of the refreshments counter.

## 6. Planning history

<p>10/AP/3204 Application type: Listed Building Consent (LBC)  Changes to existing external approach to the main entrance to provide step free access for disabled visitors and staff. Internal modifications to entrance lobby to improve accessibility for visitors coat and bag storage.  Decision date 14/01/2011 Decision: Granted (GRA)</p>
<p>11/AP/1166 Application type: Approval of Details - Article 30 DMPO (AOD)  Details of 1) portland stone kerbs/edging Portland stone paving as required by condition 3 of planning permission dated 14/01/2011 LBS.REG.NO.10-AP-3204 for changes to existing external approach to the main entrance to provide step free access for disabled visitors and staff. Internal modifications to entrance lobby to improve accessibility for visitors coat and bag storage.  Decision date 27/05/2011 Decision: Granted (GRA)</p>
<p>11/AP/2432 Application type: Advertisement Consent (ADV)  Display of three single mast banner advertisement signs  Decision date 21/09/2011 Decision: Granted (GRA)</p>
<p>13/AP/1061 Application type: Advertisement Consent (ADV)  Display of 1 no. non-illuminated fascia sign applied to the exterior of the Gallery Cafe  Decision date 10/07/2013 Decision: Granted (GRA)</p>
<p>13/AP/3793 Application type: Tree Works in Conservation Area (TCA)  1: Line of Holm Oak trees overhanging College Gardens - Face to be trimmed back where necessary up to 3 metres to uncover street lights, reduce overhang of larger trees to create a more uniform effect.  2: Line of London Plane trees overhanging College Road - To be lifted as necessary to give clearance of road and pavement with special emphasis on the bus stop end where two small branches require removing and some clearance needed of the picture gallery sign.  3: Evergreen Magnolia by north end of gallery - To be trimmed and reshaped as much as possible without creating unsightly gaps in the upper shape.  4: Dawn Redwood to the right of Magnolia (3) - Remove lower tier of branches, trim growth towards Cloister, reshape for best effect and removal of dead branch.  5: Evergreen Magnolia left hand side of building - Prune in similar way to other Magnolia with less emphasis on the height.  6: Beech trees on Gallery Road side - To be lifted and trimmed as necessary over the road and pavement.  7: Dawyck Beech by Gallery Road gate - To have crown carefully lifted to reveal the base of the main stem.  Decision date 11/12/2013 Decision: Works acceptable - no intervention (TCAA)</p>

<p>16/AP/1851 Application type: Variation: non-material changes (VNMC)  Details pursuant to non-material amendments including:  Omission of approved changes on existing second floor;  Omission of approved dormer;  Retention of existing residential staircase in 16a;  Retention of existing layout of the offices in the south range of the Old College;  Omission of approved changes to existing flat 16  of planning permission 14AP4868 'Fit out of existing Gallery Offices, including the removal of internal partitions, addition of shower, removal of existing residential fit out of Flat 16a; Introduction of dormer between South Range of the Old College and the West Wing; Modification of the escape route from Dulwich Estate Offices.'  Decision date 06/06/2016 Decision: Agreed - for app types VLA &amp; VNMC (AGR)</p>
<p>16/AP/1825 Application type: Listed Building Consent (LBC)  Minor rearrangement of internal partitions and removal of existing residential functions including kitchen and bathroom on first floor in Flat 16A. New connection between south range of the old college, and the west wing on first floor only.  Relocation of existing disabled accessible WC.  Decision date 01/07/2016 Decision: Granted (GRA)</p>
<p>17/AP/0372 Application type: Tree Works in Conservation Area (TCA)  4x London Plane trees overhanging College Road - to be lifted as necessary.  2x Evergreen Magnolia's to be trimmed and uplifted.  Decision date 10/03/2017 Decision: Works acceptable - no intervention (TCAA)</p>
<p>17/AP/0624 Application type: Full Planning Application (FUL)  Construction of a detached single storey temporary pavilion building.  Decision date 26/04/2017 Decision: Granted for Limited Period (GFLP)</p>
<p>17/AP/2003 Application type: Variation: non-material changes (VNMC)  Non-Material amendment to planning permission 17AP0624 granted 25/05/2017(Construction of a detached single storey temporary pavilion building.)  Addition of decked terrace to south of pavilion, to extend seating area.  Decision date 15/06/2017 Decision: Agreed - for app types VLA &amp; VNMC (AGR)</p>
<p>17/AP/3271 Application type: Full Planning Application (FUL)  Creation of a new crossover from Gallery Road and installation of a gate  Decision date 01/11/2017 Decision: Granted (GRA)</p>
<p>17/AP/4093 Application type: Tree Works in Conservation Area (TCA)  T1: Oak - Remove dangerous and damaged stem (large clear split in left hand stem at about 7 metres high). This would leave the seemingly healthy more upright stem intact.  Decision date 23/11/2017 Decision: Works acceptable - no intervention (TCAA)</p>
<p>18/AP/1569 Application type: Full Planning Application (FUL)  Relocate 1.3m wide tarmac footpath in the grounds next to Dulwich Picture Gallery due to intrusion on roots of a 43 year old Wellingtonia tree.  Decision date 04/07/2018 Decision: Granted (GRA)</p>

### Planning history of adjoining sites

7. None of relevance.

## KEY ISSUES FOR CONSIDERATION

### Summary of main issues

8. The main issues to be considered in respect of this application are:
  - a) The principle of the development in terms of land use and conformity with strategic policies
  - b) The impact of the development on the amenity of the adjoining properties.
  - c) Design Quality
  - d) Impact on adjacent Listed Building/Conservation Area.
  - e) All other relevant material planning considerations.

### Adopted planning policy

#### National Planning Policy Framework (NPPF)

9. The revised National Planning Policy Framework ('NPPF') was published in July 2018 which sets out the national planning policy and how this needs to be applied. The NPPF focuses on sustainable development with three key objectives: economic, social and environmental.
10. Paragraph 215 states that the policies in the Framework are material considerations which should be taken into account in dealing with applications.

Chapter 2 Achieving sustainable development  
Chapter 5 Delivering a sufficient supply of homes  
Chapter 6 Building a strong, competitive economy  
Chapter 7 Ensuring the vitality of town centres  
Chapter 8 Promoting healthy and safe communities  
Chapter 9 Promoting sustainable transport  
Chapter 10 Supporting high quality communications  
Chapter 11 Making effective use of land  
Chapter 12 Achieving well-designed places  
Chapter 14 Meeting the challenge of climate change, flooding and coastal change  
Chapter 15 Conserving and enhancing the natural environment  
Chapter 16 Conserving and enhancing the historic environment

#### London Plan 2016

11. The London Plan is the regional planning framework and was adopted in 2016. The relevant policies of the London Plan 2016 are:  
  
Policy 7.4 - Local Character  
Policy 7.6 - Architecture  
Policy 7.8- Heritage assets and archaeology  
Policy 7.15 - Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes  
Policy 7.17- Metropolitan open land

#### Core Strategy 2011

12. The Core Strategy was adopted in 2011 providing the spatial planning strategy for the borough. The strategic policies in the Core Strategy are relevant alongside the saved Southwark Plan (2007) policies. The relevant policies of the Core Strategy 2011 are:

Strategic policy 12 - Design and conservation  
Strategic policy 13 - High environmental standards

Southwark Plan 2007 (saved policies)

13. In 2013, the council resolved to 'save' all of the policies in the Southwark Plan 2007 unless they had been updated by the Core Strategy with the exception of Policy 1.8 (location of retail outside town centres). Paragraph 213 of the NPPF states that existing policies should not be considered out of date simply because they were adopted or made prior to publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework. The relevant policies of the Southwark Plan 2007 are:

Policy 3.2 - Protection of amenity

Policy 3.12 - Quality in design

Policy 3.13 - Urban design

Policy 3.16 - Conservation areas

Policy 3.17 - Listed Buildings

Policy 3.18 - Setting of listed buildings, conservation areas and world heritage sites

Policy 3.25 - Metropolitan Open Land

Policy 5.2 - Transport Impacts

Area based SPDs

14. Dulwich SPD 2013

**Emerging planning policy**

Draft new London Plan

15. The draft New London Plan was published on 30 November 2017 and the first and only stage of consultation closed on 2 March 2018. Minor suggested changes to the plan were published on 13 August 2018 and an Examination in Public (EIP) is scheduled to begin on 15 January 2019. Given that the plan has not yet been to an EIP it can only be attributed limited weight.

New Southwark Plan

16. For the last five years the council has been preparing the New Southwark Plan (NSP) which will replace the saved policies of the 2007 Southwark Plan and the 2011 Core Strategy. The council concluded consultation on the Proposed Submission version (Regulation 19) on 27 February 2018. It is anticipated that the plan will be adopted in 2019 following an Examination in Public (EIP). Similarly with the OKR AAP, as the NSP is not yet adopted policy, it can only be attributed limited weight. Nevertheless paragraph 48 of the NPPF states that decision makers may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to the policy and the degree of consistency with the Framework.

**Summary of consultation responses**

17. There were 13 responses submitted as part of the statutory consultation on the application.
18. Eleven of these were from members of the public/interested persons.
19. One was from the council's ecology officer.

20. One was from Historic England as a statutory consultee.

#### Public comments

21. Ten of the eleven public comments submitted were in support of the proposal. The submitted comments can generally be summarised as follows:

- Design described as striking, joyful, fun, imaginative, innovative.
- Scheme would benefit the local area, including residents and businesses and residents from further afield.
- Scheme would help diversify the gallery's visitor profile and attract new audiences.
- Scheme would increase the offer for and benefit families and young children, including encouraging use and exploration of associated gardens and main gallery.
- Support that the pavilion will be free of charge.
- Sensible hours of use proposed.

22. The single objection was submitted on the grounds of the height of the proposal and concern about the refreshments counter providing a bar service. Design issues are discussed in further detail in paras 40 - 52 of this report, while amenity impacts, including that of the refreshments counter, are discussed in paras 34 - 37. The objector was also concerned regarding the period of permission being applied for, on the understanding the previous 2017 pavilion permission was originally for six weeks but which was subsequently extended to twelve.

23. Given the current application is for a pavilion for the summer period up to the end of September 2019, officers are not of the view that an extension is likely. Nevertheless, officers would advise that the committee are only making a decision informed by what is proposed by this current application, regardless of potential further applications.

#### Internal consultees

24. The council's ecology officer confirmed that there was no objection to the proposal on ecology grounds.

#### Statutory consultee

25. Historic England provided a response noting that while there could be some perceived harm, this was less than substantial and any incurred would be significantly outweighed by the public benefit of the scheme given its temporary nature, and overall felt it appropriate to express strong support for the scheme.

#### **Principle of development**

26. Paragraphs 143-147 of the NPPF sets out the considerations for development affecting the Green Belt (as outlined within the London Plan, MOL should be treated as Green Belt). It notes that "when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the

Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations".

27. It goes on to suggest that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Paragraph 145 of the NPPF sets out that the exceptions to this are:
- a) buildings for agriculture and forestry;
  - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
  - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
  - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
  - f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
  - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
    - not have a greater impact on the openness of the Green Belt than the existing development; or
    - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
28. Paragraph 146 of the NPPF set out a number of other exceptions which are not relevant for consideration.
29. The proposal would not meet the above exceptions. However, officers are of the opinion that the current proposal should be considered as a very special circumstance as a result of its temporary nature, the building's exceptional quality of design and the cultural public benefit of enhanced access to the heritage asset and attracting additional visitors that may not otherwise visit the gallery. For these reasons, officers are satisfied that the proposal is considered acceptable against the NPPF.
30. The application site is situated within Metropolitan Open Land and part (ii) saved policy 3.25 of the Southwark plan states that development will be allowed for:
31. "(ii) Essential facilities for outdoor sport and recreation, for cemeteries, and for other uses of land which preserve the openness of MOL and which do not conflict with the purposes of including land within MOL;"
32. Whilst the pavilion would be relatively large and would have the potential to affect on the openness of MOL, it is for a temporary period up to the end of September 2019 and as such, given the short term nature of the proposal, it is not considered that this

is harmful to the openness of MOL. There would also be a public benefit that would result from the development.

33. For these reasons, the principle of the development in accordance with Metropolitan Open Land policies is considered acceptable.

#### **Impact of proposed development on amenity of adjoining occupiers and surrounding area**

34. The proposed structure, would be located within the gardens of the gallery, in front of the main gallery building and close to the entrance fronting College Road. The proposal would not have a significant impact on the users of the gallery. It would be situated over 50m from the nearest residential properties located to the east across College Road, a distance that would mean that there would be no adverse impact with respect to daylight, sunlight, outlook or privacy.
35. The hours proposed by the applicant for the use of the pavilion are in line with the standard gallery opening hours (09:00 - 18:00 Mon - Sun) with the occasional 'salon' or 'lates' event on Fridays which would run up to 22:00. There would not be any amplified music allowed on the site as part of the pavilion offer. Proposed use of the structure includes community workshops during the week and family-oriented activities during the weekend. During the later events access and egress of the site is not permitted from the main College Road entrance from 21:30 onwards so the risk of noise of people coming and going would cease following this time.
36. The interior portion of the platform beneath the structure is at maximum 90sqm which is anticipated to be able to accommodate a maximum of 90 persons. Given the enclosed nature of the space noise disturbance from the use of the structure is not considered to be significant were the platform to be utilised to this intensity. It should be noted that this would be substantially smaller than the previous pavilion building which was approximately 150sqm to accommodate 150 persons.
37. One comment on to the proposed development objected to the introduction of an open air bar use selling alcoholic beverages which could lead to nuisance for neighbours. The proposed cafe counter would likely sell alcoholic drinks as currently permitted by the Gallery's existing cafe offer, which is subject to licencing controls. The refreshments counter would be located underneath the pavilion structure, as would the area where visitors would congregate, so would be limited in the extent that noise could travel to impact on the nearest neighbours over 50m away.

#### **Transport issues**

38. The application site has a Public Transport Accessibility Level of 2 which denotes a relatively poor access to public transport. Notwithstanding this, the site is located within a short walk from both West Dulwich and North Dulwich overground stations. There are also access to buses from College Road. The existing site also contains a small car park and a number of cycle parking spaces.
39. Given the relatively small scale of the structure and the temporary nature of the building, officers are satisfied that there would not be a significant impact on the surrounding transport network.

#### **Design issues and impact on character and setting of a listed building and/or conservation area**



### Site context

40. Dulwich Picture Gallery is a grade II\* listed building, located within the Dulwich Village Conservation Area. The building was primarily designed by John Soane in 1811-14, however has been remodelled, including the facade extensively in 1911 by ES Hall, and again in 1954 following bomb damage. A large extension to the north and east, creating a contemporary addition including a glazed cloister, was added by Rick Mather Architects in 1911. The building is two storeys, of yellow stock brick, with stone plinth and parapet and large central porch, with blind arches to either side. The main building has an E shaped plan, with a sequence of galleries and a mausoleum located centrally in a neo Grecian style. The building sits on a formal east/west axis, with the principal facade facing College Road, and is visible prominently through railings and gates, and across mature landscaped gardens of an informal character. The building is also notable as being the first purpose built art gallery in England. The significance of the building is its age, architectural composition and materials and notable architects, as well as its historical association with Soane, and its form and detailing as a formal building, set in a loosely formal landscape, visible on a purposeful east/west axis from the street. The building's historic significance is also derived from its use as a purpose built gallery, and its location in a suburban setting surrounding by gardens.
41. Historic mapping suggest that the form and the setting of the building has altered throughout its life. The 1879 map suggests there was limited or no access from the east facade, and the central porch with formal access facing east is not shown until the 1915 map, suggesting the re-ordering of the facades at this time, and the landscape design on an east-west axis following in the 1960s. The visibility of the east facade from the street was altered in 1999 with the completion of extension and gates to College Road. Thus the significance of the building and its setting should be looked in context with the continuous development of the building and its setting, including extensions and relocation of the principal access.

### Policy context

42. Paragraph 192 of the NPPF requires that local planning authorities should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. NPPF sets out the presumption in favour of the conservation of designated assets and the aims of the policies within the NPPF are to conserve these assets, for the benefit of future generations. Any harmful impact on the significance of the designated asset needs to be justified on the ground set out in paragraph 194 and 195 (substantial harm or total loss) or paragraph 196 (less than substantial harm). The NPPF stresses the importance of good design and states in paragraph 124 that: "Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."
43. Conversely, paragraph 130 states that that: "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents."
44. Policy SP12 of the Core strategy states that "Development will achieve the highest possible standards of design for buildings and public spaces to help create attractive and distinctive places which are safe, easy to get around and a pleasure to be in." Strategic Policy 12 – Design and Conservation, of Core Strategy 2011, requires that development will achieve the highest possible standards of design for buildings and

conserve or enhance the significance of Southwark's heritage assets.

45. With regards to local plan policies, Policy 3.12 asserts that developments should achieve a high quality of both architectural and urban design, enhancing the quality of the built environment in order to create attractive, high amenity environments people will choose to live in, work in and visit. When we consider the quality of a design we look broadly at the fabric, geometry and function of the proposal as they are bound together in the overall concept for the design. Saved Policy 3.13 of the Southwark Local Plan asserts that the principles of good urban design must be taken into account in all developments. This includes height, scale and massing of buildings, consideration of the local context, its character and townscape as well as the local views and resultant streetscape.
46. Saved Policy 3.15 'Conservation of the historic environment', requires that development should preserve or enhance the special interest or historic character or appearance of buildings or areas of historical or architectural significance and planning proposals that have an adverse effect on the historic environment should not be permitted. Policy 3.16 Conservation Areas states that within conservation areas, development should preserve or enhance the character or appearance of the area and 3.18 required applications which affect the setting of listed buildings, conservation areas and world heritage sites to also preserve and enhancing the heritage asset by not harming the building.

#### Assessment on impact on the neighbouring listed building and conservation area

47. Taking in to account the alterations which have taken place to the Picture Gallery building and its setting over its lifetime and the currently existing facade, entrance and experience of the building in an informal landscape setting, it is considered that this existing setting would be compromised by the introduction of a structure in the proposed location. While the setting is not the original, the experience of the double frontage with central porch, a primary component of the architectural significance of the asset would be eroded by the location of the pavilion in the proposed area.
48. The location of the structure would also introduce a large built form in a largely open garden, and a garden setting which has remained connected with the gallery over its lifetime. There would therefore be some minor harm to the significance of the asset by the proposals which affect the setting of the listed building. This would be contrary to 3.18 Setting of Listed Buildings, Conservation Areas and World Heritage Sites.
49. Mitigating factors in this case are the temporary nature of the proposal, the high quality design of the pavilion and the scope of the project to attract more visitors to the gallery, enhancing its public access offer and thus alerting more of the public to the heritage asset and better revealing its significance.
50. In conclusion, the significance of the Picture Gallery building would be harmed by alteration of its setting. The open garden character would be eroded in this respect and the experience of the double frontage facade would be obscured by the development. Owing to the temporary nature of the building and its high quality design, the impact is considered to be of "less than substantial harm" Para. 196 of the NPPF allows for less than substantial harm to be weighed against public benefits.

#### Detailed design

51. The proposed design of the pavilion structure is considered to be a dynamic and exciting, if, as noted above, disruptive, addition to the setting of the Picture Gallery

listed building. The scale, height and massing of the structure combined with the proposed design approach with regard to the facade will provide a striking point of visual interest from the street, being located within eye sight of the main entrance on College Road and increase the likelihood of passers by to experience not only the pavillion building but the heritage significance of the Picture Gallery building itself.

52. The boldness of the proposed design, contrasted with the typically more reserved character of Dulwich Village is an aspect of the proposal which has attracted strong support from commenters on the application, with one objector disapproving of the height. However, on the basis of the proposal's temporary nature, any harm to the character of the wider area by virtue of the design is considered to be minimal and would be eliminated following the removal of the structure in October 2019. The proposed design approach to the pavillion is therefore considered to be acceptable.

### **Impact on trees and biodiversity**

53. The proposal is a temporary structure that would require light temporary landscaping. It would be located within a position that would not impact upon any of the surrounding trees root protection areas.
54. The council's ecology officer has reviewed the submitted Protected Species Assessment letter and confirmed that it adequately covers the issue of the lighting and impacts on bats. As the lighting is quite low level with limited levels of lux extending into the sky, officers are satisfied that it would not result in any detrimental impacts on bats migrating within the area.

### **Other matters**

#### Public Sector Equalities Duty

55. The Public Sector Equalities Duty as set out in the Equality Act 2010 requires public sector decision makers to, in addition to other things, 'foster good relations between persons who share a relevant protected characteristic and those who do not share it.' This involves 'having due regard, in particular, to the need to tackle prejudice and promote understanding' (see paragraphs 63 - 66 of this report below for more information). Protected characteristics can come in the form of race and ethnicity.
56. The submitted design and access statement sets out that the previous 2017 pavillion building saw 40% of visitors as during the pavillion's tenure as new with 20% of visitors to the gallery during the same period as being non-white, with this resultant impact of the pavillion being described as 'transformative' by the applicant.
57. Many of the supporting comments on the application also explicitly reference support for the designer of the scheme, the construction of which would see representation of a local artist (based in SE15) celebrating and utilising for inspiration the local culture of Rye Lane and their wider heritage (including Nigeria and Lagos markets). Officers consider that given the impact on the demographics of visitors that the 2017 pavillion had, the proposed 2019 pavillion has the potential to significantly build on diversifying the gallery's visitor profile. This is particularly due to the designer, their design and their inspiration which will provide the opportunity for and draw sections of the local community in Southwark to visit the gallery who otherwise might otherwise not be inclined to visit.
58. Therefore it is considered that in approving the proposal the council would be helping to foster good relations between persons who share a relevant protected characteristic and those who do not share it, including promoting understanding, as set out above. This consideration should be given material weight in determining the

application.

### **Conclusion on planning issues**

59. The principle of the proposed pavilion building within MOL is considered acceptable by virtue of the cultural public benefit anticipated to be accrued as a result of its implementation, in addition to its short term temporary nature which would see any impact on the openness of the MOL diminish following close of any temporary permission period. The proposed design, both overall (scale, height, massing, siting) and details of the facade are considered to harm the setting of the adjacent Grade II\* Listed Building given the striking contrast and disruption to the otherwise open and symmetrical form of the building and its setting. However, similarly given the proposal's public benefit, temporary nature, and otherwise high quality, bold and imaginative design, the harm is considered to be 'less than substantial' and therefore acceptable. The lack of amenity impacts and transport impacts as well as the potential positive impact on enabling the gallery to diversify their visitor profile, should the pavilion be implemented, further provides the justification for the recommendation for approval of temporary planning permission which is put forward in this report.

### **Consultations**

60. Details of consultation and any re-consultation undertaken in respect of this application are set out in Appendix 1.

### **Consultation replies**

61. Details of consultation responses received are set out in Appendix 2.

### Summary of consultation responses

62. See section 17 - 25 of this report.

### **Community impact statement / Equalities Assessment**

63. The Public Sector Equality Duty (PSED) contained in Section 149 (1) of the Equality Act 2010 imposes a duty on public authorities to have, in the exercise of their functions, due regard to three "needs" which are central to the aims of the Act:
- a) The need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act.
  - b) The need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
    - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
    - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
    - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
  - c) The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having

due regard, in particular, to the need to tackle prejudice and promote understanding.

64. The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership.
65. The council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights.
66. The council has given due regard to the above needs and rights where relevant or engaged throughout the course of determining this application.

#### **Human rights implications**

67. This planning application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
68. This application has the legitimate aim of providing a temporary pavilion. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Site history file: TP/2083-C Application file: 18/AP/3490 Southwark Local Development Framework and Development Plan Documents	Place and Wellbeing Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone: 0207 525 3841 Council website: www.southwark.gov.uk

#### **APPENDICES**

<b>No.</b>	<b>Title</b>
Appendix 1	Consultation undertaken
Appendix 2	Consultation responses received
Appendix 3	Recommendation

## AUDIT TRAIL

<b>Lead Officer</b>	Simon Bevan, Director of Planning	
<b>Report Author</b>	Thomas Weaver, Planning Officer	
<b>Version</b>	Final	
<b>Dated</b>	15 January 2019	
<b>Key Decision</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES /CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	No	No
Strategic Director of Environment and Leisure	No	No
Strategic Director of Housing and Modernisation	No	No
Director of Regeneration	No	No
<b>Date final report sent to Constitutional Team</b>		18 January 2019

# APPENDIX 1

## Consultation undertaken

**Site notice date:** 27/11/2018

**Press notice date:** 06/12/2018

**Case officer site visit date:** 03/12/2018

**Neighbour consultation letters sent:** 28/11/2018

### Internal services consulted:

Ecology Officer

### Statutory and non-statutory organisations consulted:

Historic England

### Neighbour and local groups consulted:

5 Woodyard Lane London SE21 7Bh  
The Grange Grange Lane SE21 7LH  
The Wardens Flat The Old College SE21 7AD  
Flat 15 Edward Alleyn House SE21 7AS  
Flat 14 Edward Alleyn House SE21 7AS  
Flat 13 Edward Alleyn House SE21 7AS  
Flat 16 Edward Alleyn House SE21 7AS  
25 Kingsthorpe Road Sydenham SE26 4PG  
10 Overhill Road London Se22 0ph  
C/O Bell House 27 College Road SE21 7BG  
Bell Cottage 23 College Road SE21 7BG  
42 Cheltenham Road London SE15 3AQ  
7 College Road Dulwich SE21 7BQ  
7 College Road Dulwich SE217BQ  
11 Druce Road London SE21 7DW  
7 Druce Road London SE217DW  
11, College Road Dulwich SE21 7BG  
7 College Road Dulwich SE217BQ  
93 Dulwich Village London SE21 7BJ

11 College Gardens London SE21 7BE  
13 College Road London SE21 7BG  
15 College Road London SE21 7BG  
12 Gallery Road London SE21 7AD  
11 College Road London SE21 7BG  
Cloisters Flat 16a Gallery Road SE21 7AD  
The Old College 16 Gallery Road SE21 7AD  
Dulwich Picture Gallery Gallery Road SE21 7AD  
Flat 12 Edward Alleyn House SE21 7AS  
Flat 10 Edward Alleyn House SE21 7AS  
Flat 11 Edward Alleyn House SE21 7AS  
Flat 9 Edward Alleyn House SE21 7AS  
9 Grove Hill Road London SE5 8DF  
29 Burbage Road London SE24 9HB  
100 Drummond Road SE14 4DG  
The Old College Gallery Road SE21 7AE  
3 Arnhem Way East Dulwich Grove SE22 8TS  
Elm Lawn Dulwich Common SE21 7EW  
7 Brenthouse Road London E9 6QG

**Re-consultation:** n/a

## APPENDIX 2

### Consultation responses received

#### Internal services

None

#### Statutory and non-statutory organisations

Historic England

#### Neighbours and local groups

Elm Lawn Dulwich Common SE21 7EW  
100 Drummond Road SE14 4DG  
The Grange Grange Lane SE21 7LH  
The Old College Gallery Road SE21 7AE  
11 College Gardens London SE21 7BE  
11 Druce Road London SE21 7DW  
15 College Road London SE21 7BG  
25 Kingsthorpe Road Sydenham SE26 4PG  
29 Burbage Road London SE24 9HB  
3 Arnhem Way East Dulwich Grove SE22 8TS  
5 Woodyard Lane London SE21 7Bh  
7 Brenthouse Road London E9 6QG  
9 Grove Hill Road London SE5 8DF