

Committee	PLANNING COMMITTEE B	
Report Title	Flat 1, 2 Algiers Road, SE13 7JE	
Ward	Ladywell	
Contributors	Thomas Simnett/Jesenka Ozdalga	
Class	PART 1	07 July 2022

Reg. Nos. DC/21/124368

Application dated 17/11/2021

Applicant Mr Durmus Ergen

Proposal The construction of a basement extension with patio to the rear of Flat 1, 2 Algiers Road, SE13, together with construction of a two storey rear extension.

Background Papers 1. Submission drawings

Designation PTAL 4  
Air Quality  
Ladywell conservation area Article 4

Screening N/A

## 1 SUMMARY

- 1 This report sets out the Officer's recommendation for refusal of the proposal. The report has been brought before Committee for a decision at the request of the Director of Planning, given the extensive and complex site history. Fourteen objections were received from neighbouring properties.
- 2 Planning officers did not undertake a site visit to the property for this application, but have made site visits prior for two previous planning applications. Planning Enforcement officers and the Councils Building Control service have made multiple site visits. Officers are therefore very familiar with the site, its context and condition of the building. The assessment has also been made using Google Maps.

## 2 SITE AND CONTEXT

### *Site description and current use*

- 3 The site consists of a two-storey dwelling; arranged as two self-contained residential units, built in red brick with partly pebbledash ground floor and with clay roof tiles. The property is located on the north side of Algiers Road. The site includes a small front garden that mainly consists of a path, and previous had a tree which has been removed. The rear garden has also had its landscaping removed, linked to unauthorised works at the property. The application relates to the ground floor flat.



**Figure 1 - Site location plan**

***Heritage/archaeology***

- 4 The site is located within the Ladywell Conservation Area and is subject to the Article 4 Direction, but it is not a listed building or in the vicinity of one.

***Surrounding area***

- 5 The surrounding area is predominately residential in nature and is comprised of a mix of buildings which were built around the 19<sup>th</sup> and 20<sup>th</sup> Centuries, all of distinctive style and form.

***Transport***

- 6 The application site has a Public Transport Accessibility Level (PTAL) rating of 4, where on a scale of 1 to 6, 1 is the lowest and 6 is the highest.

**3 RELEVANT PLANNING HISTORY**

- 7 DC/21/122320 - The construction of a basement extension with patio to the rear of Flat 1, 2 Algiers Road, SE13, together with construction of two storey rear extension. Refused by reasons of:

1. *The proposed horizontal strip window at the bottom of the existing bay window to the front, by reason of its design and appearance would be architecturally inappropriate and incongruous and would therefore detract from the character and appearance of the host building and the special historic character and appearance of the surrounding conservation area contrary to National Planning Policy Framework (2021); Policy HC1 'Heritage conservation and growth' of London Plan (March 2021); Policy 15 'High quality design for Lewisham' and Policy 16 'Conservation areas, heritage assets and the historic environment' of the Core Strategy (June 2011); DM Policies 30 'Urban design and local character', Policy 31 'Alterations and extensions to existing buildings including residential extension' and Policy 36 'New development, changes of use and*

*alterations affecting designated heritage assets and their setting: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens' of the Development Management Local Plan (November 2014); Section 4.8 Basements of Alterations and Extensions SPD (April 2019); and the provisions of the Ladywell Conservation Area SPD.*

2. *Insufficient information has been submitted in support of the application to demonstrate that the proposal would safeguard the structural stability of the host building and the adjacent buildings and the building has been rendered an unsafe structure by unauthorised works. The proposal would therefore fail to comply with the Council's development plan, in particular DM Policy 31 'Alterations and extensions to existing buildings including residential extensions' and the Alterations and Extensions SPD (April 2019).*
3. *The proposed basement relies on objectionable high level strip windows to provide natural ventilation to the basement, therefore in the absence of a scheme of mechanical ventilation the development would fail to provide sufficient natural ventilation to the basement space contrary to Paragraph 130 of the National Planning Policy Framework (2021); Policy 15 'High quality design for Lewisham' of the Core Strategy (June 2011); Policy 30 'Urban design and local character', Policy 31 'Alterations and extensions to existing buildings including residential extensions' of the Development Management Local Plan (November 2014); and the Alterations and Extensions SPD (April 2019).*

8 DC/21/120362 - The construction of a basement extension with lightwells to the front and rear of Flat 1, 2 Algiers Road, SE13, together with construction of two storey rear extension. Refused by reasons of:

1. *The proposed front lightwell and alterations to the front elevation at the basement level, by reason of their design and scale, would be architecturally inappropriate and incongruous, resulting in loss of front garden, soft landscaping and servicing area for bin storage and would therefore detract from the character and appearance of the host building and the special historic character and appearance of the surrounding conservation area.*
2. *The proposed basement extension, by reason of its unacceptable floor to ceiling height and poor levels of light and outlook would result in a poor quality standard of accommodation for future occupiers.*

## **4 RELEVANT ENFORCEMENT HISTORY**

9 ENF/21/00013 - The excavation of a new basement floor level, the excavation of the rear garden to basement level to the rear of the property and the partial excavation of the front garden level at 2 Algiers Road to facilitate the construction of a basement flat.

10 A Temporary stop notice was issued on 11<sup>th</sup> February 2021 to cease all activity on site and specified on notice.

11 An Enforcement notice was served on 8<sup>th</sup> October 2021 with requirement to re-fill the basement and reverse any and all other engineering and excavation works that have taken place. This notice was appealed (Appeal ref: APP/C5690/C/21/3286163), seeking to extend the timeframe for completing the works and did not challenge the contents of the notice. The appeal was dismissed on 9 February 2022.

12 The Council's Building Control service re-filled the basement with concrete in November 2021. The Enforcement case was closed on 6<sup>th</sup> May 2022 as the breach is considered to be resolved with the filling of the basement.

## 5 CURRENT PLANNING APPLICATION

### 5.1 THE PROPOSAL

13 The proposal seeks permission for the construction of a basement extension with patio and two storey extension to the rear.

14 The proposal is to excavate basement area (that is currently infilled with concrete) under the main building footprint and rear outrigger and to construct wrap around two storey extension at basement and ground floor level to the rear with a patio around the outrigger. The proposed basement area would include a bedroom, hobby room/bedroom and bathroom.

15 The two storey extension at basement and ground floor level would wrap around existing two storey outrigger and would protrude additional 1.3m on the boundary with adjacent property at no 4. The proposed two storey extension would be set back by approx. 2.5m from the boundary with property at no 2a. It would feature flat roof with approx. 3.8m height from the existing garden level.

16 The proposed materials to the rear are white render and uPVC windows and doors.

17 There are no alterations to the front elevation.

### 5.2 COMPARISON WITH PREVIOUSLY REFUSED SCHEME

The proposal differs from previous applications as the front light well has been omitted and the layout slightly revised, moving the bathroom and providing a window to the basement room at the rear.

## 6 CONSULTATION

### 6.1 APPLICATION PUBLICITY

18 Site notices were displayed on 6 January 2022.

19 Letters were sent to residents and business in the surrounding area on 15 December 2021 and the relevant ward Councillors on 14 December 2021.

20 Fourteen objection letters were received from local residents.

#### 6.1.1 Comments in objection

Comment	Para where addressed
Not in keeping with conservation area	See paras 48-51, 56 and 57 <b>Error! Reference source not found.</b>
Overdevelopment, excessive excavation	See para 53

Quality of proposed accommodation (lack of natural light in the basement room, floor to ceiling height)	See paras 59-64
Impact on neighbouring amenity	See paras 69-81
Structural impact on neighbouring properties	See paras 69-81

21 Other comments received relate to:

- Risk of re-excavation of the basement in terms of potential collapse of the building
- The flat above was rendered uninhabitable and building structure unsafe due to unauthorised excavation works
- Concerns about quality of any future work on the site, due to previous unauthorised works
- The existing ground floor flat currently left in poor state
- Absence of party wall agreement
- Unacceptable behaviour of builders on site

## 6.2 LOCAL MEETING

22 Due to the number of submissions received, a virtual Local Meeting was held on Thursday 12 May 2022. The meeting was chaired by Michael Forrester - Head of Development Management and attended by 4 people. Notes from the Local Meeting are contained in Appendix 1 of this report.

## 6.3 INTERNAL CONSULTATION

23 The following internal consultees were notified on 14 December 2021.

24 Conservation: this case falls below the current threshold for conservation input and the heritage matters were considered by the case officer with reference to Policy and Guidance.

25 Building control: submitted structural drawings are acceptable in principle, however further calculations would be required to justify design.

## 6.4 EXTERNAL CONSULTATION

26 The following External Consultees were notified on 14 December 2021:

27 Ladywell Society: Submitted comment raising concern over quality of living conditions of the proposed basement in terms of lack of light and lack of details of potential mechanical ventilation in the basement.

## **7 POLICY CONTEXT**

### **7.1 LEGISLATION**

28 Planning applications are required to be determined in accordance with the statutory development plan unless material considerations indicate otherwise (S38(6) Planning and Compulsory Purchase Act 2004 and S70 Town & Country Planning Act 1990).

### **7.2 MATERIAL CONSIDERATIONS**

29 A material consideration is anything that, if taken into account, creates the real possibility that a decision-maker would reach a different conclusion to that which they would reach if they did not take it into account.

30 Whether or not a consideration is a relevant material consideration is a question of law for the courts. Decision-makers are under a duty to have regard to all applicable policy as a material consideration.

31 The weight given to a relevant material consideration is a matter of planning judgement. Matters of planning judgement are within the exclusive province of the LPA. This report sets out the weight Officers have given relevant material considerations in making their recommendation to Members. Members, as the decision-makers, are free to use their planning judgement to attribute their own weight, subject to aforementioned directions and the test of reasonableness.

32 Building Regulations deal with structural integrity of a building, but do not cover the impact of development on neighbourhood amenity, the construction process or the finished development. This is covered by the planning system. In this instance, the complex site history, structural integrity and condition of the building is a material planning consideration as is how any excavation works would take place, given the condition of the building that would not harm the amenity of neighbouring occupiers (upper flat, and attached adjacent property). This follows the Councils Alterations and Extensions SPD.

### **7.3 NATIONAL POLICY & GUIDANCE**

- National Planning Policy Framework 2021 (NPPF)
- National Planning Policy Guidance 2014 onwards (NPPG)
- National Design Guidance 2019 (NDG)

### **7.4 DEVELOPMENT PLAN**

## **8 The Development Plan comprises:**

- London Plan (March 2021) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013) (SALP)
- Lewisham Town Centre Local Plan (February 2014) (LTCP)

## **8.1 SUPPLEMENTARY PLANNING GUIDANCE**

### **9 Lewisham SPD:**

- Alterations and Extensions Supplementary Planning Document (April 2019)
- Ladywell Conservation Area character appraisal (March 2010)

## **10 PLANNING CONSIDERATIONS**

### **11 The main issues are:**

- Principle of Development
- Urban Design
- Residential Quality
- Living conditions of neighbours
- Impact on trees

#### **11.1 PRINCIPLE OF DEVELOPMENT**

##### *General policy*

33 The National Planning Policy Framework (NPPF) at Paragraph 10, states that there is a presumption in favour of sustainable development and that proposals should be approved without delay so long as they accord with the development plan.

34 The development plan is generally supportive of people extending or altering their homes. In this case, a basement has been refused on two previous occasions DC/21/120362 and DC/21/122320.

##### *Principle of development conclusion*

35 There remains no in principle objection to providing additional habitable accommodation, subject to a full assessment of all relevant material considerations. In this case, the applicant has not addressed the reasons for refusal on previous two decisions and the provision a basement remains objectionable.

#### **11.2 URBAN DESIGN and HERITAGE IMPACTS**

##### *General Policy*

36 The NPPF at para 126 states the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

##### *Policy*

37 Heritage assets may be designated—including Conservation Areas, Listed Buildings, Scheduled Monuments, Registered Parks and Gardens, archaeological remains—or non-designated.

- 38 Section 72 of the of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives LPAs the duty to have special regard to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
- 39 Relevant paragraphs of Chapter 16 of the NPPF set out how LPAs should approach determining applications that relate to heritage assets. This includes giving great weight to the asset's conservation, when considering the impact of a proposed development on the significance of a designated heritage asset. Further, that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset that harm should be weighed against the public benefits of the proposal.
- 40 LPP HC1 states that where development would affect heritage assets, it should be sympathetic to their form, scale, materials and architectural details.
- 41 CSP 16 ensures the value and significance of the borough's heritage assets are among things enhanced and conserved in line with national and regional policy.
- 42 DMP 31 states that extensions will not be permitted where they would adversely affect the architectural integrity of a group of buildings as a whole or cause an incongruous element in terms of the important features of a character area.
- 43 DMP 36 echoes national and regional policy and summarises the steps the borough will take to manage changes to Conservation Areas, Listed Buildings, Scheduled Ancient Monuments and Registered Parks and Gardens so that their value and significance as designated heritage assets is maintained and enhanced. DM37 make further reference to the protection of non-designated heritage assets in the borough. These policies implement Core Strategy Policy 16.
- 44 The Alterations and Extensions SPD provides detailed guidance for the design of basement and two storey extensions.

### *Discussion*

#### *Basement Extension*

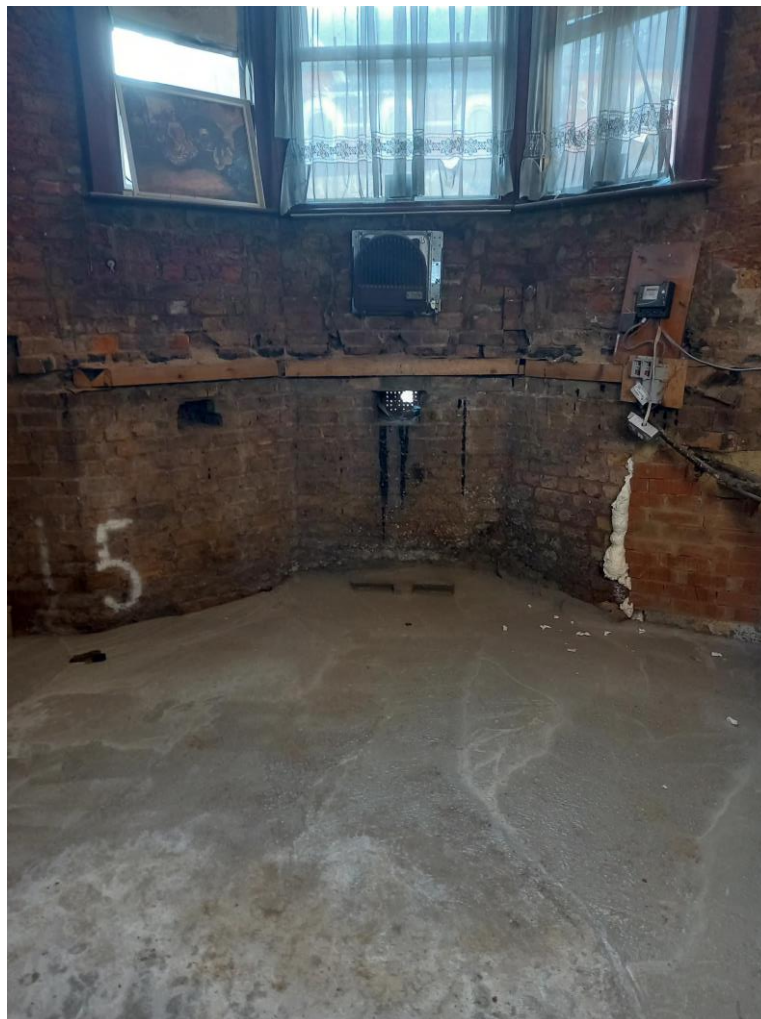
- 45 Alterations and Extensions SPD, under Section 4.8 Basements states that basement development must:
- Retain sufficient garden space
  - Not extend under the pavement.
  - Not materially harm local character or add visual clutter.
  - Retain useable front garden space for soft landscaping and refuse and, where necessary, cycle storage.
  - Ensure habitable rooms provide a good standard of accommodation in terms of outlook, daylight and sunlight and ventilation.
  - Be accessed from the main property and, unless necessary for means of escape, separate access is not appropriate as this would indicate they are to be used as a separate dwelling.
  - Retain or replace established landscape features such as trees and hedges.



- Support sustainable drainage and not increase the instances of flooding or exacerbate drainage problems.
- Avoid material harm to the living conditions of neighbours



**Figure 2: unauthorised excavation January 2021**



**Figure 3: filled in concrete November 2021**

- 46 The application relates to the ground floor flat with previous access to a small basement space (which no longer exists, following the infilling of concrete). An unauthorised basement was excavated in 2021, and following detailed Enforcement investigations, subsequently filled in by the Council's Building Control service after a Dangerous Structure Notice was issued. There is currently no basement area in existence. The proposal is to excavate a full single storey basement area under main building footprint and rear outrigger and to construct wrap around two storey extension at basement and ground floor level to the rear with a patio. The proposal seeks to create additional habitable space ancillary to the ground floor flat, to create a duplex level property. The proposed basement area would include a bedroom, hobby room/bedroom and bathroom accessed from the existing flat at the ground floor. A window/door is proposed for the hobby room/bedroom. To the rear, the proposed bedroom at the basement level would have access to a patio and rear garden. The proposed floor to ceiling height of the basement area would be 2.4m. There would be no alterations proposed to the front of the existing building.
- 47 Paragraph 2.281 of DMP 36 states that: The significance of heritage assets can be harmed or lost through alteration or destruction of the asset or development within its setting. The policy is intended to ensure that the particular significance of a heritage assets and the value it holds for this and future generations is fully understood. This understanding serves as a baseline for assessing the impact of any development so that that proper weight can be given to its conservation.
- 48 The property is set within the boundaries of the Ladywell Conservation Area. Algiers Road form part of Character Area 2A, which comprises Algernon Road, Vicars Hill, Algiers Road Embleton Road and Ermine Road. The appraisal notes that large parts of Vicars Hill, Algiers Road, Algernon Road and Embleton and Ermine Roads were built by the Lewisham builder Samuel J. Jerrard through the 1880 and 1890 who favoured a High Victorian eclectic style. His houses are attractive and highly distinctive as a group. Changes to the front elevations in particular can have a significant impact on the properties and their setting.
- 49 A basement has previously been refused on two separate occasions. The reasons for refusal are considered to have been partially addressed through removal of certain elements of the scheme, primarily the removal of the front light well, however concerns still remain with the provision of the basement. The site context has differed since the consideration of these applications, where significant unauthorised works have taken place, which compromised the structural stability of the building, rendering the first floor flat uninhabitable and a Dangerous Structure Notice being served by the Councils Building Control service. The Council has witness clear and evidenced harm to the existing building.
- 50 Following emergency works undertaken by the Council, the building is now in a safe condition, but remains damaged and in an obvious need of repair. The applicant has sought to address the previous reasons for refusal through submission of construction detail drawings, however, these are submitted in isolation excluding any structural calculations or method statement for how the works would be undertaken given the in-situ concrete and condition of the overall property, for example how the basement walls would be connected to the existing walls of the property to create one structurally stable building. These details are wholly necessary in order to assess the suitability of the basement given the site history and property condition. Therefore the applicant has not addressed the previous reason for refusal and the provision of a basement on this site remains objectionable. Given the clear evidenced high level of harm to the building and its subsequent condition, Grampian conditions for such details is not considered appropriate. The applicant has therefore not demonstrated that the provision of the basement would not cause harm to the host property and its contribution to the Ladywell Conservation Area.

### *Two Storey Extension*

- 51 The two storey extension at basement and ground floor level would wrap around the existing two storey outrigger and would protrude an additional 1.3m on the boundary with adjacent property at no 4. The proposed two storey extension would be set back by approx. 2.5m from the boundary with property at no 2a. It would feature a flat roof with approx. 3.8m height from the existing garden level.
- 52 The proposed extension would not take up more than half of the original rear garden, and would be finished in white render, similar to existing render at adjoining no 2A Algiers Road. Due to the location of two storey extension at basement and ground floor level and its containment to the rear, use of render raises no objection.
- 53 As this part of the proposal is entirely contained to the rear and not visible from public realm, officers consider the proposed two storey extension to be of an appropriate scale and is designed not to obscure the windows at the first-floor level and remains subservient to the host building. However, the provision of the two storey rear extension remains objectionable given it is entirely interlinked with the provision of the basement.

### *Urban Design and Heritage conclusion*

- 54 Paragraph 199 of the NPPF requires great weight to be given to the asset's conservation while para 202 requires harm to be weighed against any public benefits of the proposal. The applicant has not provided substantive evidence of the wider public benefits of the proposal. Officers conclude no public benefits outweigh the less than substantial harm identified above.
- 55 Officers, having regard to the statutory duties in respect of Conservation Areas in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the relevant paragraphs in the NPPF in relation to conserving the historic environment, consider that insufficient information has been submitted that demonstrates the provision of the basement and extensive re-excavation would not compromise the structural integrity of the host property, and its contribution to the Ladywell Conservation Area. There are no mitigating public benefits to outweigh this harm.

## **11.3 RESIDENTIAL QUALITY**

### *Policy*

- 56 NPPF para 130 sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users. This is reflected in relevant policies of the London Plan (LPP D6), the Core Strategy (CS P15), the Local Plan (DMP 32) and associated guidance (Housing SPD 2017, GLA; Alterations and Extensions SPD 2019, LBL).

### *Discussion*

- 57 The SPD, at paras 4.8.13 to 4.8.17, sets out guidance for the standard of accommodation expected in basements. It says dwellings located mostly in a basement will usually be resisted as they do not provide a good standard of accommodation in terms of outlook, daylight and sunlight and ventilation. Where natural ventilation cannot be achieved, mechanical ventilation may be acceptable subject to a suitable acceptable scheme
- 58 In this case, no separate dwelling is proposed, however previous refusals were on the basis of insufficient provision of daylight/natural ventilation to the basement room. The current application amends the proposed layout of the basement to allow for both rooms

to have openable windows/doors to the rear patio/light well and therefore an element of daylight/ventilation. Concerns were raised over appropriate level of daylight provided through the rear window in relation to the size and depth of hobby room/bedroom. This remains a habitable room, which extends in depth along the entire building footprint, this is served by one very narrow window to the rear. Previous applications were refused for lack of details of ventilation arrangements, the plans in this case raise similar concerns for the standard of accommodation.

- 59 The SPD states at 4.8.15 that the basement headroom should be a minimum floor to ceiling height of 2.4m. The proposed sections show this would be achieved.

#### *Summary*

- 60 The standard of accommodation remains objectionable through insufficient details for ventilation of the basement level, the plans submitted have not addressed the reason for refusal.

## **11.4 LIVING CONDITIONS OF NEIGHBOURS**

### *General Policy*

- 61 NPPF para 130 sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users. At para 185 it states decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions.

- 62 This is reflected in relevant policies of the London Plan (D3), the Core Strategy (CP15), the Local Plan (DMP 31) and associated guidance (Alterations and Extensions SPD 2019).

- 63 Daylight and sunlight are generally measured against the Building Research Establishment (BRE) standards however this is not formal planning guidance and should be applied flexibly according to context.

### *Discussion*

- 64 The proposal for a basement extension and creation of a rear patio at basement level are largely contained within existing building envelope and below existing garden and street levels and as such are not considered to result in an adverse impact on the amenities of surrounding properties in terms of overbearing, overshadowing, loss of daylight, sunlight and privacy.

- 65 The proposed two storey extension to the rear, due to its scale, set back, location at basement and ground floor level, is not considered to result in an adverse impact on neighbouring amenities in terms of overbearing, overshadowing, loss of daylight, sunlight and privacy.

### *Basement works and structural impact*

- 66 Paragraph 4.8.26 of Alterations and Extensions SPD states that: Due to their subterranean nature, basement extensions generally do not result in material planning harm to the living conditions of neighbours. Where unacceptable harm would arise, basement development would be resisted. This site has a complex history, where unauthorised excavation works have had material harm to neighbouring occupiers. The upper flat has significant structural damage and has been rendered uninhabitable for a long period of time. The building only being classified as a safe structure, following the direct intervention of the Councils Building Control Service.

- 67 Structural impact, impact from construction works and other related impacts on living conditions on neighbours are generally dealt with through the Building Control regime or conditions attached to the decision notices. It is not considered in this case that planning conditions can be used to effectively mitigate the impacts of construction, when no structural calculations or method statement have been provided. The site circumstances of unauthorised excavation and structural property damage with the building being previously declared as a Dangerous Structure are material considerations. The building has now been confirmed safe by the Councils Building Control service following emergency works to infill the basement. Building Control officers have reviewed the submitted details but have stated that structural calculations are required to make a full assessment.
- 68 Officers were first advised of unauthorised excavations in January 2021. Following site visits, a Temporary Stop Notice was served in February 2021. By mid-February and March 2021 works had re-commenced and a Planning Application for a basement was submitted. Planning Enforcement and Building Control investigations continued across the summer of 2021 with further multiple site visits made. By August independent Structural Engineers had been appointed, and Building Control served a Dangerous Structure Notice in September 2021. An Enforcement Notice was served on the applicant in October 2021, requiring the basement to be filled. Plans to infill the basement with concrete to stabilise the structure were complicated by the requirement to disconnect utilities to the building and required agreement with electricity and gas suppliers – such disconnection affecting the upstairs residential unit, rendering that property uninhabitable. Utilities were disconnected and the basement infilled with concrete in November 2021. Utilities were reconnected in April 2022 and Building Control have confirmed that the structure is now safe.
- 69 There is clear evidence that unauthorised works have resulted in significant harm to the host building (and its occupiers in the first floor flat) and that various measures have been taken to stabilise the structure (through the serving of a Temporary Stop Notice, Enforcement Notice and Dangerous Structure Notice). As detailed above, insufficient information has been submitted for excavation works, and therefore Officers are unable to assess the impact that this further proposal for excavation would have upon the amenity of occupiers.
- 70 Officers consider the recommendation to refuse permission to be robust, and cite dismissed appeal decisions for similar basement developments in London, including where it may be appropriate to secure planning conditions. In this case, given the site circumstances, planning conditions are not considered a suitable form of mitigation in this case.
- 71 Appeal A: APP/F5540/E/06/2016817; Appeal B: APP/F5540/A/06/2016814; 44 Priory Avenue, Bedford Park, London W4 1TY dated 21 March 2007 for the works and development proposed is construction of basement under the rear part of house where concerns were raised over “insufficient detail had been provided to enable an assessment as to the likely impact on the structural integrity and condition of the semi-detached pair of houses.” Under Paragraph 5, Inspector states:

*“I would also have strong reservations as to the appropriateness of granting an approval on the basis of the information submitted, notwithstanding the scope for attaching conditions. There were no cross-sections and little detailed information as to the structure of the proposed basement, nor as to the fabric of the existing building which would be affected. Nor was it indicated in the application documents what arrangements might need to be made to ensure fire safety, or to provide services such as drainage and ventilation/extract systems, which could have consequences for the fabric, character and appearance of the building. There was also little detailed information at the time of the applications as to any movements*

*that had occurred in the structure of the appeal property or its attached neighbour, or that would be likely to occur.”*

72 Another dismissed appeal decision dated 6 December 2016, APP/K5600/W/16/3159143 17 Sidney Street, London SW3 6PU for the works proposed on excavation and extension of existing lower ground floor under existing garage and alterations with new staircases to existing light-well, outlines one of the main issues as the effects of the construction works on the living conditions of neighbouring residential occupiers and the users of the highway. Where Inspector in paragraph 19 states:

*“With regard to stability, the Council note that drawings showing how criterion m) of Policy CL7 would be addressed were submitted late and after neighbour consultation had been carried out. However, there would remain the need to engage with neighbouring owners through the Party Wall process. Having mind again to the nature of the work, whilst it is right that a greater level of detail should have accompanied the application, as required by policy, other regimes such as the Building Regulations and the Party Wall Act 1996 would prevent harmful works from progressing. This could be dealt with by another Grampian condition.”*

73 Officers have considered the appropriateness of Grampian conditions at paragraph 50, and robustly consider these are not an appropriate form of mitigation given the very specific site circumstances of clear demonstrable material harm to neighbouring amenity through unauthorised works and condition of the building which have resulted in two direct Planning Enforcement Actions – Temporary Stop Notice and Enforcement Notice and Building Control servicing a Dangerous Structures Notice, for a building comprising more than 1 self-contained residential unit. The level of harm being so significant that the upper flat residents were forced to vacate the property.

#### **11.4.1 Impact on neighbours conclusion**

74 The applicant has not addressed the reasons for refusal, through submission of insufficient information. Clear material and evidence harm is shown at the property which is not considered can be addressed by Grampian planning conditions.

### **11.5 IMPACT ON TREES**

#### *Policy*

75 Contributing to conserving and enhancing the natural environment and reducing pollution is a core principle for planning. The NPPF and NPPG promote the conservation and enhancement of the natural environment (chapter 15) and set out several principles to support those objectives. S.197 of the Town and Country Planning Act gives LPAs specific duties in respect of trees. Paragraph 174 of the NPPF (2021) requires that decisions should contribute to and enhance the natural and local environment.

76 LPP G7 protects trees of value and replacements. New development should include additional trees wherever appropriate, particularly large-canopied species.

77 CSP 12 seeks to protect trees and prevent the loss of trees of amenity value, with replacements where loss does occur. DM Policy 25 seeks to ensure that applicants consider landscaping and trees as an integral part of the application and development process.

#### *Discussion*

78 Trees and landscaping to the front and rear gardens have been removed, linked to the basement works. Officers consider it unfortunate that the site had been cleared and have no record of any notice being received for the removal of the trees.



**Figure 4: Current state of the rear garden on the site**

79 The previous two applications did not refuse permission linked to the removal of the trees or landscaping and considered that this could be dealt with by planning condition. In this application, the front light well has been removed, and there remains the ability for both front and rear gardens to be landscaped again. A condition for securing such landscaping has not been submitted with this application and is not considered to override such significant concerns with the provision of the basement, or standard of accommodation. As no previous refusal reasons relate to landscaping, it is not considered reasonable to do so in this instance. Officers in future may explore other alternatives to secure improvements, particularly to the front garden.

## 12 LOCAL FINANCE CONSIDERATIONS

80 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:

- a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown; or
- sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

81 The weight to be attached to a local finance consideration remains a matter for the decision maker.

82 The CIL is therefore a material consideration.

83 This application does not attract CIL.

## 13 EQUALITIES CONSIDERATIONS

84 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 85 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - advance equality of opportunity between people who share a protected characteristic and those who do not;
  - foster good relations between people who share a protected characteristic and persons who do not share it.

86 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

87 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

88 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

89 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

90 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

## 14 HUMAN RIGHTS IMPLICATIONS

91 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. “Convention” here



means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including:

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

92 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as Local Planning Authority.

93 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above Convention Rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

94 This application has the legitimate aim of providing an extension to an existing residential property. The rights potentially engaged by this application, including Article 8 and Protocol 1 are not considered to be unlawfully interfered with by this proposal.

## 15 CONCLUSION

95 This application has been considered in light of the policies set out in the development plan and all other material considerations. The sites history of unauthorised excavation and resultant structural condition of the building, within a Conservation Area, is a material consideration. The detail submitted with the application has not demonstrated how re-excavation would take place and clearly attach to the host property. Neither has the applicant demonstrated that they are able to proceed with the works in a safe manner. Clear material harm has been caused to the structure of the building which has required the significant intervention of the Council to ensure the structural safety of the building. It is not considered appropriate to seek further detailed information (as this is the third application on site) or use planning conditions to mitigate the impact. This position is supported at Appeal and Officers consider that a recommendation to refuse permission is robustly justified.

## 16 RECOMMENDATION

96 That the Committee resolve to **REFUSE** planning permission on following grounds:

1. The proposals, by reason of insufficient information have not demonstrated that the proposed excavation of the basement would retain the structural integrity of the host property 2 Algiers Road and adjacent property 4 Algiers Road and therefore amount to harm to neighbouring occupiers amenity and the Ladywell conservation area, contrary to Policy HC1 'Heritage conservation and growth' of London Plan (March 2021); Policy 15 'High quality design for Lewisham' and Policy 16 'Conservation areas, heritage assets and the historic environment' of the Core Strategy (June 2011); DM Policies 30 'Urban design and local character', Policy 31 'Alterations and extensions to existing buildings including residential extension' and Policy 36 'New development, changes of use and alterations affecting designated heritage assets and their setting: conservation areas, listed buildings,

schedule of ancient monuments and registered parks and gardens' of the Development Management Local Plan (November 2014); Section 4.8 Basements of Alterations and Extensions SPD (April 2019); and the provisions of the Ladywell Conservation Area SPD.

2. The proposed basement relies on a single narrow rear window to provide natural ventilation to the basement, therefore in the absence of a scheme of mechanical ventilation, or demonstration that the basement has adequate natural ventilation, the development would fail to provide sufficient natural ventilation to the basement space contrary to Paragraph 130 of the National Planning Policy Framework (2021); Policy 15 'High quality design for Lewisham' of the Core Strategy (June 2011); Policy 30 'Urban design and local character', Policy 31 'Alterations and extensions to existing buildings including residential extensions' of the Development Management Local Plan (November 2014); and the Alterations and Extensions SPD (April 2019).

## 16.1 INFORMATIVES

- 1) **Positive and Proactive Statement:** The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application pre-application advice was sought and advice was given regarding the proposal being unacceptable. No discussions took place during the consideration of the application as it was considered that further discussions would be unnecessary for all parties.

## **APPENDIX 1 – Local meeting minutes**

### **DC/21/124368 – Flat 1, 2 Algiers road, virtual local meeting held on 12 May 2022 – Meeting Minutes**

#### Introductions

The virtual local meeting started at 7pm and was hosted by the council. Representing Council were Michael Forrester - Head of Development Management and Jesenka Ozdalga – case officer. Michael Forrester introduced the local meeting and case officer gave introduction on the purpose of the local meeting. Four local residents were present at the meeting along with the applicant of the scheme.

The applicant introduced himself and outlined that he intends to sell the subject property with planning permission. The applicant also expressed that, initially, he has been working with building control and that problems escalated at the later stage.

Questions submitted prior to the meeting were the following:

1. Question in relation to the trees and greenery of the conservation area and trees that were removed from the site.

Response: Planning officer responded that this issue was addressed in previously refused application DC/21/120362 – refused in April 2021 acknowledges “proposal does not adequately address loss of trees and soft landscaping.” and loss of front garden and soft landscaping were a reason for refusal. The application refused in October 2021 includes further assessment of loss of trees and absence of records of any such permission. If any development is to come forward on this site, soft landscaping enhancement can be sought through appropriate condition.

2. Questions in relation to the use of proposed basement and number of people occupying the flat.

Response: Planning officers responded that every application is assessed on its own merits and with the description as submitted by the applicant. As currently submitted, use of basement is ancillary to the use of the existing ground floor flat. If any different use is to occur in the future, without planning permission, it would be subject to planning enforcement investigation and action. Compared to previously refused schemes, in the current proposal, hobby room features access to daylight and ventilation through French window overlooking proposed rear lightwell.

3. Questions relating to the confidence that further works and excavation would be carried out in a safe manner.

Response: Planning officers responded that structural impacts and safety of excavation are generally not material planning consideration but matter for the building control. However, we are aware that in cases of excavations, other boroughs like Royal Borough of Kensington and Chelsea, have recognised the importance of early engagement with building control in terms of structural assessment. Previously refused application in October 2021 did not include any structural assessment and that formed one of reasons for refusal. Whilst structural details are submitted with current application and would be reviewed by the building control, history of events on this site will also be taken into consideration when forming final view.

Following this, the applicant and council's officers started with answering the questions submitted by local residents present at the meeting. All questions were asked through chat feature and are summarised below.

Questions submitted during the meeting were the following:

1. *Question was raised on why neighbours were not consulted and party wall notice was not served.*

The applicant responded that initially, neighbours were satisfied for the works to the derelict property to take place and that he is willing to do anything required by council to complete works. The applicant also clarified that he verbally offered to repair at his cost if any damage is to occur on neighbouring properties. Council officers clarified that reinstating property to the original condition would not require planning permission.

2. *Question was raised on why is property currently left unfinished and what is the time scale for renovation and returning to the original state of the ground floor flat, whether the applicant receives permission for the basement or not.*

The applicant clarified that he is not able to access the site as there is no confidence that he would carry out works appropriately and authorities are being called to action whenever he approaches the site. Otherwise, the applicant confirmed it would take approximately 2-3 months to complete the works.

3. *Question was raised on the behaviour of previous builders on the site and lack of toilet provision for staff.*

The applicant clarified that because of the excavation works, they had to remove toilet from site, that there was an agreement with local café to provide refreshment and toilet for staff, and that if works are to resume on site, he would provide appropriate toilet facilities for staff within the site.

4. *Council's officer asked for an acknowledgement from the applicant in terms of extent of impact on people's lives and properties from the unauthorised works that have taken place on the subject site.*

The applicant outlined that he would feel the same if this was happening to his property and that he would like to have good relationship with neighbours, and started works in good faith, however was not able to carry on with works because of threat with injunction.

5. *Council's officer clarified that it is extremely unusual to do works that render other properties inhabitable.*

The applicant responded that he would wait for the outcome of the application and if allowed on site, would finish the project, if not, will sell the property, likely via auction.

Case officer confirmed that the planning application would be taken to the planning committee in June/July where members would decide the outcome. Local residents that provided comment on the application would be invited to register to speak at the committee.

Meeting was concluded at 7.49pm.