

Committee	PLANNING COMMITTEE C	
Report Title	Retrospective application for planning permission for the construction of a raised platform (terrace) and new stairs down to rear garden space at 16 Shell Road, SE13.	
Ward	Ladywell	
Contributors	Vincent Murphy	
Class	PART 1	18 October 2018

<u>Reg. Nos.</u>	DC/17/106734
<u>Application dated</u>	13.04.18
<u>Applicant</u>	Mr Krackowizer
<u>Proposal</u>	Retrospective application for planning permission for the construction of a raised platform (terrace) and new stairs down to rear garden space at 16 Shell Road, SE13.
<u>Background Papers</u>	(1) Case File LE/116/16/TP (2) Local Development Framework Documents (3) The London Plan (2016 as amended) (4) NPPF (2018)
<u>Designation</u>	Core Strategy – Areas for Stability and Managed Change PTAL 5 Local Open Space Deficiency Not in a Conservation Area Not a Listed Building Road Unclassified

1.0 Summary

This report sets out officer's recommendation in regard to the above proposal. The report has been brought before members for a decision as:

- Permission is recommended to be approved and:
 - there are 3 or more valid planning objections;
 - there are objections from recognised residents' association or community/amenity groups;

2.0 Property/Site Description

- 2.1 This application relates to a mid-terrace building at 16 Shell Road, SE13 which is located on the western side of the road. The building is used as a small House in Multiple Occupation (C4 use), and has private open space to the rear of the site. This is terraced open space with one wall dividing the garden into two areas of grassed space.
- 2.2 The property is not located in a Conservation Area, and it is not subject to any Article 4 direction.
- 2.3 Surrounding properties are predominantly residential in use, being similarly-constructed terrace dwellings and flats. The underlying topography slopes moderately downwards from east to west, as well as from south to north through the site.

3.0 Planning and Enforcement History

3.1 There is no relevant planning history at this site.

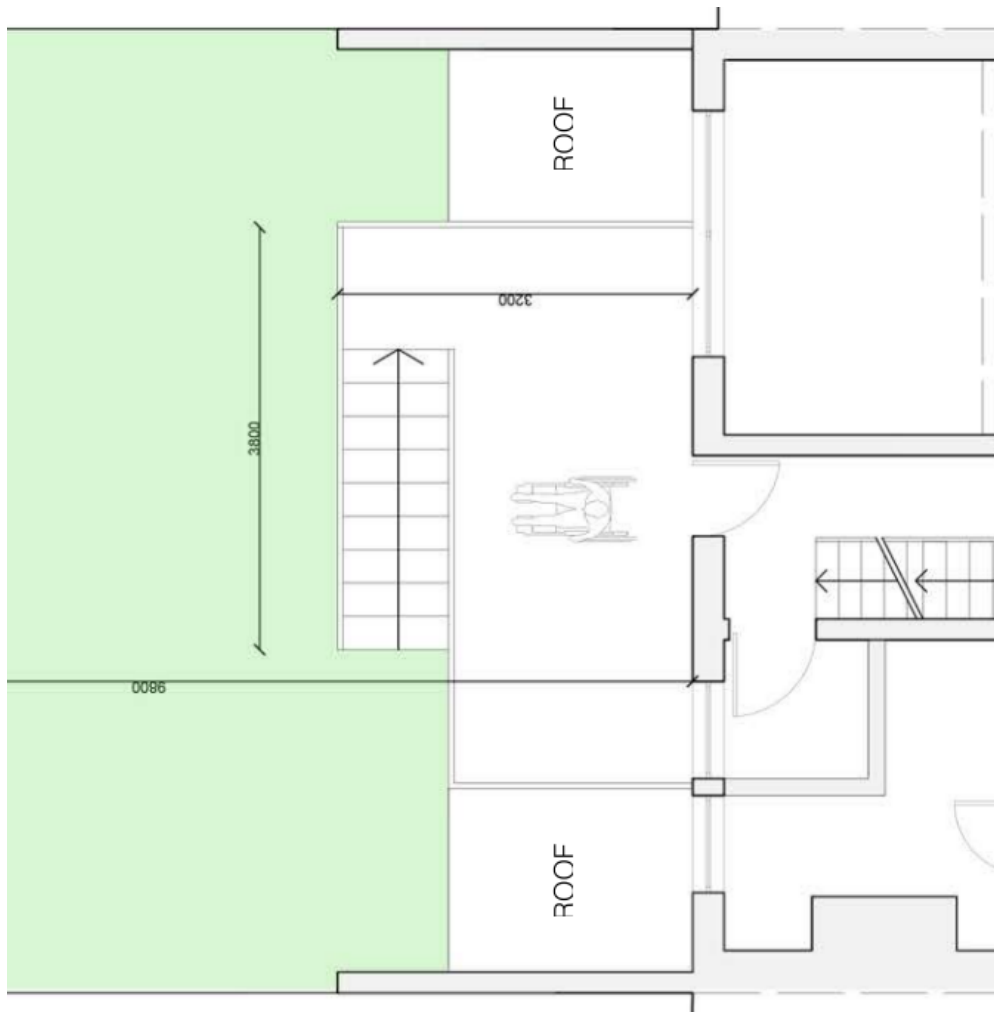
3.2 EN/16/00258 - Alleged unauthorised construction of raised garden terrace. Decision pending, partially relative to outcome of subject planning permission.

4.0 Current Planning Application

The Proposal

4.1 The proposal concerns a retrospective application for the construction of a raised platform (terrace) and new stairs down to rear garden space at 16 Shell Road, SE13. The terrace measures 2.2m in depth and 5m in width. The exception to this is the stair landing to the north of the terrace structure, where the depth increases to 3.2m, as per the images and drawing extract below.

4.2 The northern side of the terrace has a trellis edge with planters in front of it on the terrace surface, facing 14 Shell Road; the southern edge of the terrace has a solid timber screen facing 18 Shell Road.





5.0 Consultation

- 5.1 Neighbour Letters and Site Notice – Four submissions received, all in objection, concerning noise disturbance, security, privacy, and the appearance and structural stability of a wall at the property.
- 5.2 Ladywell Ward Councillors – No submissions received

6.0 Policy Context

Introduction

- 6.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-
- (a) the provisions of the development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and
 - (c) any other material considerations.
- 6.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that ‘if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise’. The development plan for Lewisham comprises

the Core Strategy, the Development Management Local Plan, the Site Allocations Local Plan and the Lewisham Town Centre Local Plan, and the London Plan. The NPPF does not change the legal status of the development plan.

National Planning Policy Framework (NPPF) 2018

- 6.3 The NPPF, originally published in 2012, was revised on 24th July 2018 and is a material consideration in the determination of planning and related applications.
- 6.4 It contains at paragraph 11, a 'presumption in favour of sustainable development'. Annex 1 of the revised NPPF provides guidance on its implementation. In summary, this states in paragraph 213, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF and in regard to existing local policies, that '...due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 6.5 Officers have reviewed the Core Strategy and Development Management Local Plan for consistency with the revised NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 211, and 215 of the revised NPPF.

National Planning Practice Guidance 'NPPG' (2014 onwards)

- 6.6 On 6th March 2014, DCLG launched the National Planning Practice Guidance (NPPG) resource. This replaced a number of planning practice guidance documents, and is subject to continuous periodical updates in difference subject areas

The Development Plan

- 6.7 The London Plan, Lewisham's Core Strategy, together with the Site Allocations DPD, the Lewisham Town Centre Local Plan and the Development Management Local Plan and together constitute the borough's Development Plan. The site is not within the Lewisham Town Centre designation however.

London Plan (March 2016)

- 6.8 The London Plan was updated on the 14 March 2016 to incorporate Housing Standards and Parking Standards Minor Alterations to the London Plan (2015).

The new, draft London Plan was published by the Mayor of London for public consultation on 29 November 2017 (until 2 March 2018). A revision to this draft showing Minor Suggested Changes has been released by the Mayor of London following a review of consultation responses. Given the early stage in this process, this document has some weight as a material consideration when determining planning applications. The draft London Plan however is not considered to change the substance of planning policy as it relates to this site and proposal. As such, a weighting exercise considering the consistency of the proposal with the current London Plan and the draft London Plan is not necessary in this instance.

The policies in the current adopted London Plan (2016) relevant to this application are:

Policy 3.5	Quality of design of housing developments
Policy 7.4	Local character
Policy 7.6	Architecture

London Plan – Supplementary Planning Guidance

6.9 The London Plan SPG's relevant to this application are:

Housing Supplementary Planning Guidance 2016

Core Strategy (June 2011)

6.10 The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Spatial Policy 5 Areas of Stability and Managed Change
Core Strategy Policy 15 High quality design for Lewisham

Development Management Local Plan (November 2014)

6.11 The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Development Management Local Plan as they relate to this application:

DM Policy 30	Urban design and local character
DM Policy 31	Alterations/extensions to existing buildings
DM Policy 32	Housing design, layout and space standards

Site Allocations Local Plan (June 2013)

6.12 There are no relevant Site Allocations relating to this application site.

Residential Standards Supplementary Planning Document (2006, updated 2012)

6.13 This document sets out guidance and standards relating to design, sustainable development, renewable energy, flood risk, sustainable drainage, dwelling mix, density, layout, neighbour amenity, the amenities of the future occupants of developments, safety and security, refuse, affordable housing, self containment, noise and room positioning, room and dwelling sizes, storage, recycling facilities and bin storage, noise insulation, parking, cycle parking and storage, gardens and amenity space, landscaping, play space, Lifetime Homes and accessibility, and materials. Whilst the proposal does not constitute residential development, this SPD is relevant to neighbouring amenity, which is a relevant impact to consider in terms of impacts upon neighbouring amenity as a result of the proposed scheme.

7.0 Planning Considerations

7.1 The pertinent planning considerations are considered to relate to the principle of the development, neighbourhood character impacts and design quality, neighbouring amenity impacts, and standard of accommodation provided.

Principle of development

7.2 Core Strategy Spatial Policy 5 Areas of Stability and Managed Change, and Policy 15 High quality design for Lewisham, are considered to be directly relevant to the issue of the principle of this type of development in this location.

- 7.3 The construction and use of the terrace is for residential purposes. Residential accommodation is established at the site and at surrounding sites. As such, the nature of expected use of the terrace (as part of residential occupation of the site) is not considered to generate a principle-based issue in terms of being incompatible with surrounding land use types (also residential).
- 7.4 Terraces are not in-principle unacceptable at residential sites. This conclusion is made based on terraces and balconies being relatively common at residential sites, a review of recent planning history for Shell Road, as well as considering the lack of express policy direction against terrace and balcony development. Two residential terraces, of varying designs, have been granted planning permission along Shell Road in the last five years.
- 7.5 The design of any terrace is very important with respect to ensuring reasonable privacy is preserved between properties, as well as not creating any other adverse impacts. These impacts are considered later in this report. However fundamentally the development is not considered to be objectionable in principle.

Neighbourhood character, design quality

- 7.6 Development Management Policies 30 Urban design and local character and 31 Alterations and extensions to existing buildings, including residential extensions, are considered to be directly relevant to the issue of whether or not the development is appropriate considering the character of the surrounding neighbourhood.
- 7.7 The terrace is not visible from the public realm and only visible from immediately adjoining neighbouring properties. The terrace balustrades are comprised of timber posts with a rope mesh surrounding the edge of the balcony. The side balustrades, perpendicular to the rear facade of the dwelling, will be conditioned to be solid timber - currently one side is solid timber whilst the other side is a trellis with planting in front. The design however is considered to be visually lightweight and subservient to the form and materials of the existing dwelling.
- 7.8 The terrace has been constructed in a manner compatible with surrounding development patterns - the usable outdoor space being close to the existing dwelling, and not resulting in an uncharacteristic degree of plot coverage with built form. It is noted that a wall which in part serves to retain land at the rear of the sloping garden also has timber features which have a degree of visual similarity to the balustrade detailing of the terrace. As such, the design of the terrace is considered to be suitably high quality and compatible with the character of the surrounding neighbourhood.
- 7.9 For the above reasons, any impacts on neighbourhood character are therefore considered to be acceptable, and the proposal is considered to be consistent with the relevant character and design quality provisions of DM Policies 30 and 31.

Neighbouring amenity

- 7.10 Development Management Policies 31 Alterations and extensions to existing buildings, including residential extensions and 32 Housing design, layout and space standards, are considered to be directly relevant to the issue of neighbouring amenity impacts of the design of the terrace.
- 7.11 As a terrace, there is the inherent potential for overlooking and loss of privacy to neighbouring properties. There is also the potential for overbearing/sense of enclosure, impacts on outlook, shading and loss of ambient daylight due to balustrade design.

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7.12 Four objections have been received which are premised primarily on residential amenity concerns. Loss of privacy, noise disturbance, and increased security risks generated by the construction and use of the terrace are repeated themes raised in submissions. It is noted that the stability and appearance of the wall which in part retains eastern part of the site (the subject site slopes downwards from east to west) is raised in submissions. That is an existing wall which is not changed by the proposal (retrospective construction of a terrace) and has not been erected to facilitate this proposal, and as such consideration of these matters is outside of the scope of the appropriate planning assessment.

Property to the rear - 7 Undercliff Road

7.13 Separation distances between any structures at existing back-to-back terrace developments are inherently constrained by existing separation distances. In this case, compliance with the 21m set-back referred to in DM Policy 32 is not possible - the existing separation distance between the backs of 16 Shell Road and the main rear elevation of 7 Undercliff Road is approximately 20.5m.

There is a minimum separation distance of approximately 16m from the edge of the terrace (at its mid-point adjacent to the majority of the usable area) to the closest rear wall of the neighbouring property to the rear at 7 Undercliff Road (10m to the rear boundary of the site at the same point). It is noted that this closest wall is a rear addition, and the distance to the main rear elevation of the dwelling at 7 Undercliff Road is a minimum of 18m. Whilst not achieving the 21m set-back referred to in DM Policy 32 (which primarily relates to new housing developments, as opposed to alterations to existing housing), it is considered to be a reasonable and adequate separation distance created by the design considering the relatively small size of the terrace.

7.14 The design has been kept to a relatively narrow usable terrace space of 2.2m (for the most part - upper stair landing excluded, which is a further 1m wide), and is considered to represent a genuine effort to provide usable outdoor space to the owner of the dwelling whilst respecting the privacy of neighbouring occupants to the rear.

7.15 The terrace has a usable width of predominantly 2.2m (excluding stair landing), with a total usable area of 11.8 square metres (including stair landing). The relatively small space provided, combined with the dwelling being used as a HMO, is considered to render intense use of the terrace limited in duration and frequency, as the dwelling is made up of multiple 1-person sublet tenancies as opposed to a single household occupying the dwelling.

7.16 Mitigation of the shortcomings of the separation distance provided is achieved fundamentally by the sloping topography towards, and lower elevation of, 7 Undercliff Road. The line of sight from the terrace to the ground floor spaces of these properties is obscured due to the lower ground level of these properties, the staggered elevation of land and a wall between the terrace and these properties, and vegetation when in leaf. As such, only the first floor and higher windows (typically bedroom/bathroom spaces along this street, confirmed by review of Council records of dwelling design as documented in historical planning permission applications) of these properties are visible from the terrace. Use of these spaces, and privacy when using them, is inherently provided as required by the user and by design i.e. frosted windows to bathrooms. This is in contrast to an indoor or outdoor living or kitchen space, which are important collective amenity spaces for dwelling occupants and visitors, and thus are more sensitive to overlooking and loss of privacy. To be clear, privacy to bedroom/bathroom spaces is important, however the separation distance provided combined with the small size of the terrace, likely limited use, and relatively narrow sizes of the upper-level windows at 7 Shell Road is considered to ensure reasonable and adequate privacy to these upper-level windows remains with the terrace in place.

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- 7.17 It is further noted that dwellings along this western side of Shell Road routinely have usable open spaces at ground floor level in a similar if not closer proximity to rear neighbouring properties on the eastern side of Undercliff Road. Whilst an important difference is the height of the terrace, the privacy context for this area is one where some degree of overlooking occurs due to the location of outdoor amenity spaces, which is common for Lewisham. In other words, absolute privacy is not reasonable nor characteristic of terrace dwellings as observed in this context.
- 7.18 Use of the staircase is transient and brief in duration, and as such the use of the external stairs from the terrace to the ground garden at the rear of the subject property is not considered to generate material adverse overlooking effects to the degree that refusal of planning permission is warranted.
- 7.19 The design of the terrace is considered to be consistent with Standard 28 of the London Plan Housing Supplementary Planning Guidance 2016, which acknowledges previous planning 'yardsticks' of 18-21m between back-to-back terraces but explicitly does not advocate for rigid adherence to these distances.
- 7.20 The windows underneath the terrace which face 7 Undercliff Road serve a storage space, and admit light to that space. Given the use of this space, no adverse overlooking impacts are considered to be facilitated by the windows that have been inserted to this space below the terrace which has been constructed.
- 7.21 For the reasons as stated above, the loss of privacy to be facilitated by the subject terrace upon the occupants of 7 Undercliff Road or any other properties on Undercliff Road is not considered to be significant. The degree of privacy provided to Undercliff Road properties is considered to be reasonable for this residential context and therefore acceptable.
- 7.22 The design, explicitly separation distance and transparency of balustrades which are opposite this property, is considered to suitably mitigate any outlook, shading, ambient daylight loss, and overbearing/sense of enclosure impacts of the terrace upon the occupants of 7 Undercliff Road and any other properties on Undercliff Road.

Properties to the side - 14 and 18 Shell Road

- 7.23 Privacy to the side properties is considered to be adequately preserved by the inclusion of timber screens along the sides of the terrace, to be maintained in perpetuity. This is to be secured by way of a recommended condition of planning permission.
- 7.24 The predominant or natural outlook from the terrace is to the rear of the property, whereas the screens prevent a direct line of sight to the rear of the dwellings at 14 and 18 Shell Road. The content of the submissions on this point has been noted, however screens result in any overlooking being restricted to the rear portions of the back yards of these properties. It is further noted that due to the reduction in topography east to west through the location of these properties, this further reduces the directness of any line of sight to the rear corners of the back yards of these properties.
- 7.25 For the same reasons discussed above, use of the stairs is not considered to facilitate overlooking effects to the degree that refusal of planning permission is warranted.
- 7.26 For the same reason as discussed above, overlooking impacts are not considered to be facilitated through the windows that have been inserted below the terrace. It is further noted that boundary fences adequately screen the line of sight from these windows, in any case.

- 7.27 The height of the side screens (1.7m, as required by the recommended condition) are of a height that will suitably eliminate the ability for overlooking towards either property when seated or standing. There is also a minimum separation distance of 1.7m to the closest windows at 14 and 18 Shell Road. As such, the proposal is not considered to generate unacceptable loss of sunlight or ambient daylight, outlook, overbearing or sense of enclosure impacts upon the amenity of neighbours occupying 14 and 18 Shell Road.

Noise and security

- 7.28 Concerns premised on noise and security concerns have been expressed in submissions received. The full-width side screens to the terrace are considered to generate a considerable hindrance to accessing neighbouring windows. This is considered to provide for reasonable security in a terraced residential environment. The likelihood of HMO tenants being a greater security threat than any other neighbour which is alluded to in submissions, is not appropriate or relevant as a planning consideration.
- 7.29 There is no evidence to suggest noise generated by use of the terrace by virtue of it serving a House in Multiple Occupation is legitimately materially greater than typical noise generated by residential use of a terrace by a single-household family and their visitors. Rather, it is conceivable that it would be used less intensely, as a collection of individuals occupy the building rather than a larger social unit (family) with a larger and more connected social circle. In any case, some noise from the use of the terrace can be reasonably generated in conjunction with residential occupation of a dwelling, and there is no firm reason to suggest use of this terrace will regularly emit unreasonable noise.

Other properties

- 7.30 Due to separation distances, no other persons occupying any neighbouring properties are considered to be materially impacted with respect to amenity factors.

Conclusion - Neighbouring Amenity

- 7.31 For the reasons as discussed above, the proposal is therefore also considered to be acceptable with respect to neighbouring amenity impacts, and consistent with the relevant amenity provisions of DM Policies 30, 31 and 32.

Standard of accommodation provided

- 7.32 The proposal will result in the provision of a usable terrace space flush with the kitchen and living spaces interior to the dwelling. This is considered to be a general improvement to the on-site amenity available to the occupants of the dwelling.
- 7.33 The terrace meets the minimum dimension and area requirements for terrace spaces relative to the number of dwelling occupants as recommended in the London Plan Housing Supplementary Planning Guidance.
- 7.34 For these reasons, the terrace is considered to represent an appropriate-quality improvement in on-site amenity for current and future residents of the dwelling at 16 Shell Road. The proposal is therefore considered to be acceptable with respect to DM Policy 32 and London Plan Policy 3.5.

8.0 Local Finance Considerations

- 8.1 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:
- (a) a grant or other financial assistance that has been, or would or could be, provided to a relevant authority by a Minister of the Crown; or
 - (b) sums that a relevant authority has received, or would or could receive, in payment of Community Infrastructure Levy (CIL).
- 8.2 The weight to be attached to a local finance consideration remains a matter for the decision maker.
- 8.3 The Mayor of London's CIL is therefore a material consideration. CIL would not be payable on this application.

9.0 Equalities Considerations

- 9.1 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.
- 9.2 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) foster good relations between people who share a protected characteristic and persons who do not share it.
- 9.3 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.
- 9.4 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>
- 9.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- 1. The essential guide to the public sector equality duty
 - 2. Meeting the equality duty in policy and decision-making
 - 3. Engagement and the equality duty

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- 4. Equality objectives and the equality duty
- 5. Equality information and the equality duty

- 9.6 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>
- 9.7 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, with the exception of disabled access which is provided for in the design, and therefore it has been concluded that there is no impact on equality to any person.

10.0 Human Rights Implications

- 10.1 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:

- Peaceful enjoyment of property
- Right to a fair trial
- Right to respect for private and family life

- 10.2 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.
- 10.3 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with convention rights would 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. This application has the legitimate aim of improving amenity at the site. The rights potentially engaged by this application, are not considered to be unlawfully interfered with by this proposal.

11.0 CONCLUSION

- 11.1 This application has been considered in the light of policies set out in the development plan and other material considerations.
- 11.2 The proposed development is considered by Officers to be acceptable with regards to the principle of development, and impacts upon neighbourhood character and neighbouring amenity, as well as providing an acceptable standard of accommodation, and is considered to be consistent with relevant DM Policies 30, 31 and 32 and the relevant provisions of applicable higher planning instruments.

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12.0 **RECOMMENDATION**

GRANT PERMISSION subject to the following conditions:-

Conditions

1. The development shall be retained strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

'Existing and Proposed Plans', received 01.10.18.

Reason: To ensure that the development is retained in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

2. Within four months of the date of planning permission being issued, solid fencing to the northern and southern edges of the terrace reaching 1.7m high above the finished surface level of the terrace must be erected. The details of the fencing, specifically materials, dimensions and exact location, are to be first submitted to and approved in writing by the Local Planning Authority prior to the erection of the said fencing. Thereafter the fencing to the terrace shall be retained in perpetuity in accordance with the approved details.

Reason: To ensure reasonable and adequate privacy to the occupants of 14 and 18 Shell Road, in accordance with Policy 31 Extensions and alterations to existing buildings, including residential extensions of the Development Management Local Plan (2014) which relates to neighbouring amenity, within the Lewisham Development Framework.

Informatives

- A. **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, no pre-application advice was sought. However, as the proposal was in accordance with the Development Plan, permission could be granted with only minimal discussion regarding further privacy measure to be secured by way of condition of planning permission.
- B. The applicant is advised that a change from a C4 HMO use to Sui Generis HMO use (i.e. an HMO with more than 6 residents) requires planning permission.