

Committee	PLANNING COMMITTEE C	
Report Title	42 Lewisham Park, London, SE13	
Ward	Lewisham Central	
Contributors	Vincent Murphy	
Class	PART 1	29 th November 2018

<u>Reg. Nos.</u>	DC/18/108048
<u>Application dated</u>	10.07.2018
<u>Applicant</u>	Ms Danielle Toyer
<u>Proposal</u>	The construction of a pool house enclosure in the rear garden of 42 Lewisham Park, SE13 (revised plans received 10.09.18 and 17.09.18 reducing height and removing solar panels)
<u>Background Papers</u>	(1) Case File DE/110/42/TP (2) Local Development Framework Documents (3) The London Plan (2016 as amended) (4) Draft New London Plan (5) NPPF (2018)
<u>Designation</u>	Core Strategy – Areas for Stability and Managed Change PTAL 3 Not in a Conservation Area Not a Listed Building Road Unclassified

1.0 Summary

- 1.1 This report sets out officer's recommendation in regard to the construction of a pool house enclosure in the rear garden at the above property.
- 1.2 This report has been brought before members for a decision as officers recommend approval subject to conditions and there has been 3 or more valid planning objections.

2.0 Property/Site Description

- 2.1 This application relates to a two-storey semi-detached dwelling at 42 Lewisham Park which is located on the southern side of the road. The dwelling is used as a single residential household, and has private open space including several trees to the rear of the site.
- 2.2 Surrounding properties are predominantly residential in use, being similarly-constructed detached or semi-detached dwellings and flats, with rear open space and trees to the rear of properties. Trees at the rear of the adjoining property at 43 Lewisham Park are protected by a Tree Preservation Order. The underlying topography slopes gently downwards from south to north through the property.
- 2.3 The property is not located in a Conservation Area, and it is not subject to any Article 4 direction. It is noted that Lewisham Park is currently the subject of an initial proposal for a new conservation area within the borough. A draft Conservation Area has been prepared however

this has not yet been approved by Mayor and Cabinet for consultation purposes, and as such, has no weight as a material planning consideration.

3.0 Planning and Enforcement History

3.1 There is no relevant planning or planning enforcement history at this site.

4.0 Current Planning Application

The Proposal

4.1 The construction of a pool house enclosure in the rear garden of 42 Lewisham Park, SE13 (revised plans received 10.09.18 and 17.09.18 reducing height and removing solar panels). The pool house enclosure will have a footprint of approximately 75 square metres, and will be single-storey in height, positioned at the very rear of the property and will be clad in a part glazed, part green roof, and bricks to walls to match bricks at the existing dwelling.

5.0 Consultation

5.1 Neighbour Letters and Site Notice – Four submissions received in response to the first round of consultation on originally-submitted plans, and three submissions received in response to the second round of consultation on the revised plans – the later three submissions being from three of the original submitters. All submissions were in objection, with objections concerning size and height of the pool house, orientation of the pool house, impacts on outlook, glare from solar panels (included in originally submitted plans). Some objections discuss the removal of a tree to facilitate the proposal, and associated ecological and privacy impacts of this action. This is not considered to be a material consideration to this application as the site is not in a conservation area nor is it subject to a Tree Preservation Order.

5.2 Lewisham Central 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 paragraph 213 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 draft New London Plan was published by the Mayor of London for public consultation on 29 November 2017 (until 2 March 2018) and minor modifications before the EIP were published on 13 August. As such, this document now has some limited weight as a material consideration when determining planning applications. The relevant draft policies are listed below and discussed within the report. These are limited to policies that are materially different to existing London Plan policies.

- 6.9 The current London Plan (March 2016) policies relevant to this application are:

- Policy 5.10: Urban greening;
- Policy 5.11: Green roofs and development site environs;
- Policy 5.13: Sustainable Drainage;
- Policy 7.4: Local character;
- Policy 7.6: Architecture;
- Policy 7.19: Biodiversity and access to nature conservation;
- Policy 7.21: Trees and woodlands;

- 6.10 The draft New London Plan policies relevant to this application are:

- Policy D1: London's form and characteristics;
- Policy G7: Trees and woodlands;

Core Strategy (June 2011)

6.11 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 12: Open space and environmental assets;
- Core Strategy Policy 15: High quality design for Lewisham;

Development Management Local Plan (November 2014)

6.12 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 24: Biodiversity, living roofs and artificial playing pitches;
- DM Policy 25: Landscaping and trees;
- DM Policy 30: Urban design and local character;
- DM Policy 31: Alterations/extensions to existing buildings;
- DM Policy 33: Development on infill sites, backland sites, back gardens and amenity areas;

Site Allocations Local Plan (June 2013)

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

Residential Standards Supplementary Planning Document (2006, updated 2012)

6.14 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 (including impacts on protected trees), and ecological impacts.

Principle of development

7.2 Core Strategy Spatial Policy 5 Areas of stability and managed change, and Policy 15 High quality design for Lewisham, and Development Management policies 30 and 33 are considered to be directly relevant to the issue of the principle of this type of development in this location.

7.3 The proposal is for a detached outbuilding clearly incidental to the existing residential use of the subject site. As such, the proposal is not considered to generate a principle-based issue in terms of the proposed use being incompatible with surrounding land uses (also residential).

7.4 Outbuildings incidental to residential use are not in-principle unacceptable at residential sites. This conclusion is made based on such outbuildings being relatively common at residential sites, in particular being evident at surrounding/nearby sites along Lewisham Park and Mount Pleasant Road. There is a lack of express policy direction against residential outbuilding development, which should be noted in its contrast to back garden new, separate dwelling development.

7.5 The design, size and scale of any residential outbuilding is very important with respect to ensuring reasonable amenity remains available to occupants of the subject and neighbouring properties. 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 33 Development on infill sites, backland sites, back gardens and amenity areas, 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 DM Policy 30, in summary, sets out guiding urban design principles to ensure high quality development to result in well designed, healthy and safe communities that promotes a sense of place. In undertaking an assessment against the specific provisions of DM Policy 30, it is considered that the proposal achieves the following:

- The proposal includes a very clear, separating break between the pool house enclosure and existing buildings, does not affect the setback of the dwelling from the road nor its contribution to the streetscape.
- The height and scale (single-storey, maximum height 3.4m to ridge) and materials are considered to be appropriate to the scale of surrounding development, with materials (brickwork and glazing) being complementary and lightweight in relation to the materials of the dominant surrounding building mass of dwellings. It is noted that properties to the south on Mount Pleasant Road have a notably higher ground level, which diminishes the impression of the height of the building further when viewed from neighbouring properties to the south.
- The proposal does not include the removal of trees to facilitate the construction of the pool house enclosure. It is acknowledged that trees along the common rear boundary of properties accessed from Lewisham Park and Mount Pleasant Road to the south are a distinctive element of the character of the area as appreciated from private back yards. As such, the role of open space and trees in contributing to local character distinctiveness and sense of place within this neighbourhood is not compromised by the proposal

7.8 For the reasons discussed above, in this instance of a construction of a single-storey pool house to the rear of the property is not considered to materially erode the characteristic residential quality of the neighbourhood. The proposed development is therefore not considered to be incompatible with the surrounding characteristic urban typology pattern (Suburban Villa);

7.9 DM Policy 33 concerns certain development opportunities on a variety of commonly-found land arrangements in the borough. Of relevance to this case is development of back gardens, which is what is proposed by the application. In undertaking an assessment against the specific provisions of DM Policy 33, the proposal achieves the following:

- The proposal will not alter the streetscape contribution of the site;
- The space between the proposed outbuilding and existing surrounding buildings are maximised;
- The proposal is not for a residential dwelling, and is restricted to single storey in scale. Whilst it is of a relatively large footprint in comparison to surrounding outbuildings, this is to be expected to a degree as plot sizes and widths on Lewisham Park properties are substantially larger and wider than those on Mount Pleasant Road. The size (footprint) of the outbuilding is also partially softened and mitigated by tree retention and assimilation of the outbuilding.
- Substantial private back garden space (in excess of 75% of the back garden not covered by building footprint) is retained by the proposal.

- 7.10 Considering the assessment above, it is acknowledged that the size (footprint) of the pool house enclosure is relatively large in comparison to neighbouring outbuildings. Mitigating factors include plot size differences and amount of open space retained, relatively low height, prevalence of outbuildings in the area, lack of tree removal and the degree of tree retention and assimilation of the pool house. Considering these mitigating factors, the proposal is not considered to be of a poor design quality or uncharacteristic use or coverage relative to the surrounding neighbourhood context to warrant refusal of the application.
- 7.11 For the above reasons, any impacts on neighbourhood character of this proposal 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 33.
- 7.12 It is noted that neighbour objections are premised in part upon the size and height of the pool enclosure. The character impacts of these components of the design are addressed in the assessment above.

Neighbouring amenity

- 7.13 Development Management Policy 31 Alterations and extensions to existing buildings, including residential extensions is considered to be particularly informing of important considerations with regard to neighbouring amenity impacts. Aforementioned DM Policies 30 and 31 are also relevant. Important and relevant amenity factors include shading, loss of ambient daylight, overbearing/sense of enclosure, outlook, privacy/overlooking, noise and glare.
- 7.14 Due to separation distances, the lowering topography and elevation from south to north through the proposed development site, the height being restricted to 3.4m to the ridge of the roof, and partial obscuration by neighbouring outbuildings and trees, the proposal is not considered to be unreasonably imposing or overbearing or generating an unreasonable sense of enclosure upon the occupants of any neighbouring property.
- 7.15 Considering the separation distances to the proposed outbuilding and the location of dwellings and outdoor living spaces relative to the trajectory of the sun, and impacts from existing vegetation and structures, the proposal is not considered to give rise to material adverse shading impacts upon the occupants of any neighbouring property. Considering the separation distances from the proposed outbuilding, the proposal is not considered to give rise to material adverse loss of ambient daylight impacts upon the occupants of any neighbouring property.
- 7.16 The roof will be constructed with a partly planted green roof and glazed roof. Whilst this roof will be visible from neighbouring properties, considering the relatively low height and partial obscuration of the building by existing vegetation, the outlook from neighbouring properties is not considered to be unacceptably altered, constrained or imposed upon. Significant visibility of the outside natural environment from neighbouring windows will remain upon the erection of the pool house enclosure.
- 7.17 Proposed windows only face north towards the existing dwelling at the subject site. As such, no adverse overlooking impacts are considered to be created with respect to properties to the south accessed from Mount Pleasant Road. Considering the separation distance to the dwellings and outdoor living spaces to the north-east/north-west (41 and 43 Lewisham Park) and screening generated by existing vegetation and boundary fencing, any adverse overlooking impacts are considered to be minimised to be acceptable. This conclusion is made cognisant that there will be greater use of the rear of the site as the pool house will be able to be used year-round.
- 7.18 Noise is not expected to be materially greater than reasonably expected incidental use of a rear garden. No material adverse noise impacts are considered to result to affect the amenity of neighbouring properties.

- 7.19 Solar panels have been removed from the roof design. This was one premise of objections received, specifically glare from solar panels. The glazed components of the roof face north into the site, away from the direction of the sun. As such, glare attributable to the design of the proposal is considered to be sufficiently mitigated by the amended design of the building.
- 7.20 For the above reasons, any impacts on neighbouring amenity available to the occupants of any neighbouring property generated by the proposal are therefore considered to be acceptable. The proposal is considered to be consistent with the relevant neighbouring amenity provisions of DM Policies 30, 31 and 33.
- 7.21 It is noted that neighbour objections are premised in part upon several amenity factors. These are considered to be addressed in the assessment above.

Ecology

- 7.22 The proposed inclusion of a living roof assists in providing opportunity for biodiversity retention or increase, which is recommended to be secured by condition of planning permission. As such, the inclusion of the living roof is considered to add to the quality of the design and minimise the magnitude of any impacts on biodiversity, in accordance with DM Policy 24.
- 7.23 The proposal results in excavation and construction in close proximity to trees at 43 Lewisham Park that are protected under a Tree Preservation Order. It is noted that excavation for the swimming pool had commenced at the time of a site visit. Whilst permitted development rights exist for such building operations, the protection of these trees is of particular importance.
- 7.24 The applicant has made it clear through existing and proposed plans that it is firmly the intention that all existing surrounding trees be retained by the development. Considering the proximity of the building to existing prominent trees however, it is considered necessary and reasonable that a condition of planning permission ensuring the protection of surrounding trees is imposed. Subject to this condition, impacts of the proposal (construction of a pool house) upon long-term tree health are considered to be suitably minimised and the trees in question protected, in accordance with DM Policy 25.

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
 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, 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 design, neighbouring amenity, and ecology, and is considered to be consistent with relevant DM Policies 24, 25, 30, 31 and 33 and the relevant provisions of applicable higher planning instruments.

12.0 RECOMMENDATION

GRANT PERMISSION subject to the following conditions:-

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: As required by Section 91 of the Town and Country Planning Act 1990.

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

288-P-000 Rev *; 288-P1_001 Rev A; 288_P_002 Rev A; 288_P_010 Rev A; 288_P_012 Rev *; 288_P_013 Rev *; 288_P_014 Rev *; 288_P_101 Rev A; 288_P_110 Rev *; 288_P_111 Rev A; 288_P_112 Rev *; 288_P_113 Rev *; 288_P_115 Rev *; 288_P_116 Rev A; 288_P_117 Rev *; 288_P_118 Rev *, received 17.09.18.

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

3. No development shall commence on site until a Tree Protection Plan (TPP) has been submitted to and approved by the Council. The TPP should follow the recommendations set out in BS 5837:2012 (Trees in relation to design, demolition and construction – Recommendations). The TPP should clearly indicate on a dimensioned plan superimposed on the building layout plan and in a written schedule details of the location and form of protective barriers to form a construction exclusion zone, the extent and type of ground protection measures, and any additional measures needed to protect vulnerable sections of trees and their root protection areas where construction activity cannot be fully or permanently excluded.

Reason: To safeguard the health and safety of trees during building operations and the visual amenities of the area generally and to comply with Policy 12 Open space and environmental assets of the Core Strategy (June 2011), and DM Policy 25 Landscaping and trees and DM Policy 30 Urban design and local character of the Development Management Local Plan (November 2014).

4. (a) The development shall be constructed with a biodiversity living roof laid out in accordance with plan nos. 111 Rev A, 112 Rev *, 113 Rev *, 116 Rev A hereby approved and maintained thereafter.
- (b) The living roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair, or escape in case of emergency.
- (c) Evidence that the roof has been installed in accordance with (a) shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved.

Reason: To comply with Policies 5.10 Urban greening, 5.11 Green roofs and development site environs, 5.12 Flood risk management, 5.13 Sustainable Drainage and 7.19 Biodiversity and access to nature conservation in the London Plan (2016), Policy 10 managing and reducing flood risk and Policy 12 Open space and environmental assets of the Core Strategy (June 2011), and DM Policy 24 Biodiversity, living roofs and artificial playing pitches of the Development Management Local Plan (November 2014).

5. Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the residential accommodation hereby approved shall only be used for purposes ancillary to the residential use of the dwellinghouse known as 42 Lewisham Park, SE13 6QZ and shall not be occupied as any form of self contained residential accommodation without prior the benefit of planning permission.

Reason: The application has been assessed only in terms of this restricted use and any other use may have an adverse effect on the character and amenity of the area and amenity for future occupiers contrary to relevant Policies in the London Plan (2016), Core Strategy (2011) and Development Management Local Plan (2014).

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, positive

discussions took place which resulted in further information being submitted and amendments made to address neighbourhood character and neighbouring amenity concerns.

- B. The applicant is advised that the implementation of this planning permission or the exercise of permitted development rights does not absolve the need to adhere to the Tree Preservation Order in place on the neighbouring property at 43 Lewisham Way. The link below provides further information:

<https://www.lewisham.gov.uk/myservices/environment/Documents/ApplicationForTreeWorks.pdf>