

Committee	PLANNING COMMITTEE A	
Report Title	38 Ermine Road, London, SE13	
Ward	Ladywell	
Contributors	Thomas Simnett	
Class	PART 1	16 JUNE 2021

<u>Reg. Nos.</u>	(A) DC/21/120892
<u>Application dated</u>	15/03/2021
<u>Applicant</u>	LJT Architects Ltd agent on behalf of Applicant
<u>Proposal</u>	Construction of a single storey rear infill extension to dwellinghouse at 38 Ermine Road, SE13.
<u>Background Papers</u>	None
<u>Designation</u>	PTAL 5 Air Quality
<u>Screening</u>	N/A

## 1 SUMMARY

- 1 This report sets out the Officer's recommendation of approval for the above proposal. The report has been brought before Committee for a decision due to the submission of six objections from neighbouring properties.
- 2 Due to the Covid-19 pandemic, Officers have been unable to undertake a site visit to the property and as such, an assessment has been made using Google Maps.

## 2 SITE AND CONTEXT

### *Site description and current use*

- 3 The site consists of a two-storey Victorian mid-terraced four-bedroom single family dwelling; built in yellow London Stock Brick and a slate roof. The property is located on the western side of Ermine Road, close to the junction with Ellerdale Street. The property has an original two-storey rear projection and has a single storey extension to the rear, together with a rear L-shaped dormer roof extension. The site includes a small front garden and a modest garden to the rear of the property which benefits from soft landscaping.



**Site location plan**

***Heritage/archaeology***

- 4 The building is not listed and it is not within a conservation area. There are no listed buildings within the immediate vicinity of the site.

***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. The application site is in close proximity to Hilly Fields which is a short distance to the east of the property.

***Transport***

- 6 The application site has a Public Transport Accessibility Level (PTAL) rating of 5, where on a scale of 1 to 6, 1 is the lowest and 6 is the highest.

**3 RELEVANT PLANNING HISTORY**

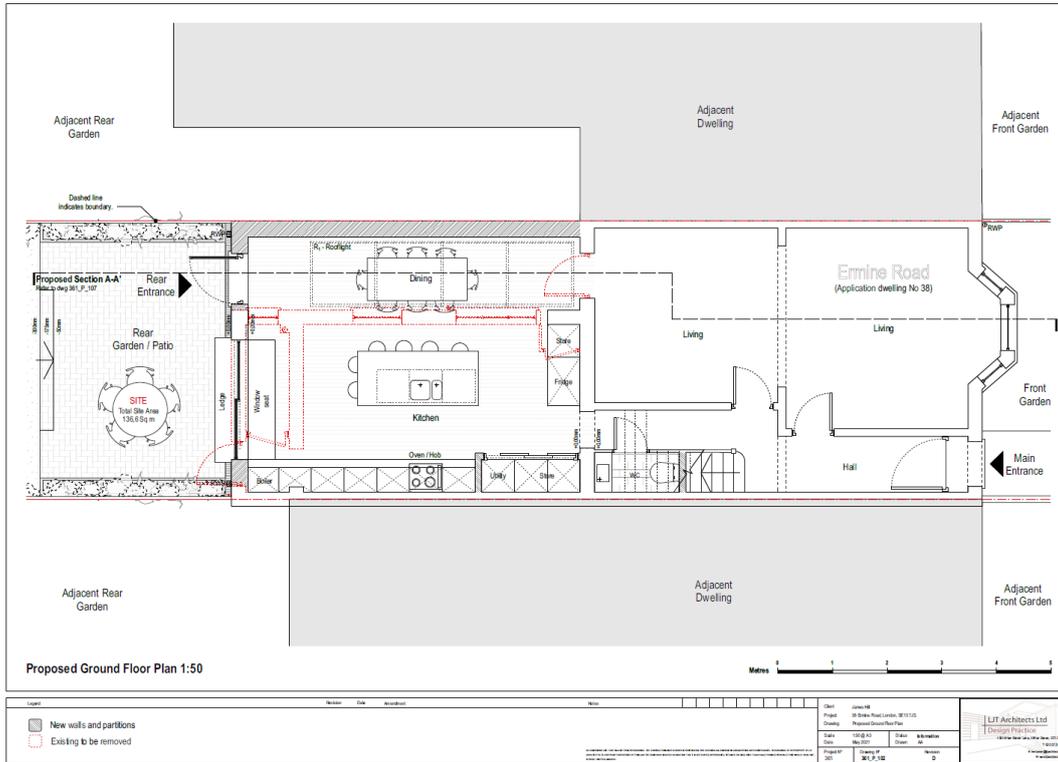
- 7 There is no planning history for the application site.

**4 CURRENT PLANNING APPLICATION**

**4.1 THE PROPOSALS**

- 8 The proposal seeks permission for the construction of a single-storey extension which infills between the outrigger and the boundary wall to the rear of the application property.

- 9 The proposed extension would have a depth of 6.4m and would not extend beyond the existing single storey extension to the rear of the outrigger, it would have a width of 1.5m and a gable roof with a maximum height of 3.6m which slopes down to a height of 2.5 to the boundary wall.



**Proposed ground floor plan**

- 10 The proposed materials would match the existing wherever possible in terms of yellow London Stock Brick, and Eternit artificial slate tiles; the glazing systems and rooflights would be made from aluminium as would the box gutter detail.
- 11 Plans submitted also included details about landscaping and rear fence treatment, however Officers note that planning permission is not required for the planned works to the rear fence treatment and therefore will not form part of this assessment.

## 5 CONSULTATION

### 5.1 APPLICATION PUBLICITY

- 12 Site notices were displayed on 03 April 2021.
- 13 Letters were sent to residents and business in the surrounding area on 23 March 2021 and the relevant ward Councillors on 19 March 2021.
- 14 Six responses were received, comprising of six objections, and no representations of support or comments.

#### 5.1.1 Comments in objection

<b>Comment</b>	<b>Para where addressed</b>
Loss of daylight and sunlight to No. 36	Para 52
Loss of privacy/overlooking to No. 36	Para 53
Reduction of garden reducing local drainage as a result of the overdevelopment and footprint of the building increasing	Para 41
Increased noise once completed and during building	Para 55
An overbearing structure creating a sense of enclosure and loss of outlook	Para 51
Inappropriate materials/design	Para 42

- 15 A number of other comments were also raised as follows:
- 16 Site notice was displayed after the end of neighbourhood consultation: the site notice was displayed on 03 April 2021 according to the Site Notice Certificate and a comment received regarding this was dated 07 April 2021. The site notices which were displayed by the applicant had a consultation closing date of 26<sup>th</sup> April; Officers are satisfied that the site notices were displayed for the required 21 days. However, representations will be always be accepted by the London Borough of Lewisham until a decision notice is issued.
- 17 Comments were raised regarding previous work to the front boundary wall and the standard of that work which resulted in No. 40's gate not closing properly. This is not a material planning consideration and therefore does not form part of this recommendation
- 18 Comments were received regarding the re-location of the downstairs toilet from the back of the property to under the stairs which is a smaller space. This is not a material planning consideration and therefore does not form part of this recommendation.
- 19 Comments were received regarding the impact of the proposals on the house prices of adjoining properties in the area if this application was approved. This is not a material planning consideration and therefore does not form part of this recommendation.
- 20 Comments were received regarding if this were to be approved it would sets a precedent for this type of extension. This is not a material planning consideration and therefore does not form part of this recommendation. When a planning application is received an assessment is made on a case by case basis, Officers do not believe this would lead a precedent for future householder extensions.
- 21 Comments were received regarding additional building work taking place on the street and the impact that this may have. Officers do not believe the scale of the building work proposed would result in any significant harm and as a result this is not a material planning consideration in this application.
- 22 Comments were received regarding the loss of views as a result of the proposed extension. The right to a view is not a material planning consideration and therefore does not form part of this recommendation.
- 23 Comments were received regarding the plans suggesting the proposed scheme will cross the boundary of the two properties. Officers have assessed the plans and believe the proposed works will build to the shared boundary between No. 36 and 38 and not

cross it. Officers will add an informative to remind the applicant that a Party Wall Agreement will be required.

24 Comments were raised regarding the accuracy of the plans on a number of occasions, mainly the location of windows and doors to No. 36 which could impact the result of 45/25 degree tests which the agent has applied to the drawings: Officers raised these concerns with the agent and applicant who have since arranged for accurate measurements to be taken from No. 36 so that the placement of windows and doors are reflected accurately. Officers are satisfied the drawings are accurate.

25 Comments were received that the proposed extension would have an adverse impact on the children of Nos. 36 and 38 and that their best interests should be taken into account were raised by one of the representatives which made reference to guidance by the UK Government when determining planning application. Whilst Local Authorities have a duty to consider the impact of whether children's best interests are relevant to any planning issue under consideration, Officers will address this issue in Section 10.

## **6 POLICY CONTEXT**

### **6.1 LEGISLATION**

26 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).

### **6.2 MATERIAL CONSIDERATIONS**

27 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.

28 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.

29 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.

### **6.3 NATIONAL POLICY & GUIDANCE**

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

### **6.4 DEVELOPMENT PLAN**

30 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)

## 6.5 SUPPLEMENTARY PLANNING GUIDANCE

31 Lewisham SPD:

- Alterations and Extensions Supplementary Planning Document (April 2019)

## 7 PLANNING CONSIDERATIONS

32 The main issues are:

- Principle of Development
- Urban Design
- Impact on Adjoining Properties

### 7.1 PRINCIPLE OF DEVELOPMENT

#### *General policy*

33 The National Planning Policy Framework (NPPF) at Paragraph 11, 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. As such, the principle of development is supported subject to an assessment of the details.

### 7.2 URBAN DESIGN

#### *General Policy*

35 The NPPF at para 124 states the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.

36 CSP 15 outlines how the Council will apply national and regional policy and guidance to ensure highest quality design and the protection or enhancement of the historic and natural environment, which is sustainable, accessible to all, optimises the potential of sites and is sensitive to the local context and responds to local character.

37 DMLP 30, Urban design and local character states that all new developments should provide a high standard of design and should respect the existing forms of development in the vicinity. The London Plan, Core Strategy and DMLP policies further reinforce the principles of the NPPF setting out a clear rationale for high quality urban design.

38 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.

#### *Discussion*

- 39 The extension would extend 6.4m from the rear elevation of the host property, infilling the space between the outrigger and boundary with No. 36. It would not extend beyond the existing extension to the rear of the outrigger. The entirety would be within the curtilage of the subject site. It would have a height along the boundary with No.36 of 2.5m. Officers raise no concerns with the height of the proposed extension in terms of design.
- 40 Officers consider the proposed infill extension to be of a modest scale and is sensitively designed not to obscure the windows at the first-floor level and remains subservient to the host building.
- 41 The proposed extension would not take up more than half the depth of the original rear garden, and as such Officers do not consider the proposals would lead to the overdevelopment of the site. It also would not have an increased impact on local drainage due to the surface having already been concreted over.
- 42 The extension would be built using yellow London Stock brick which matches the host building, whilst the roof would be tiled using Eternit artificial slates. The glazing system, rooflights and box guttering would all be made from coated aluminium material. The materials are considered high quality and would complement the existing character of the building.
- 43 The proposed extension would comply with the relevant guidance in terms of its scale, siting and the use of high-quality materials. Officers also have no concerns regarding the level of light from which the proposed extension would benefit, due to the extensive use of rooflights which may improve the level of daylight entering the rear of the property.

### **7.2.1 Urban design conclusion**

- 44 In summary, the extension, due to its scale and design and use of high-quality materials, would preserve the character and appearance of the host dwelling.
- 45 Officers conclude that the proposal responds sensitively to its context and the character of the surrounding area and therefore should be approved in terms of its design.

## **7.3 LIVING CONDITIONS OF NEIGHBOURS**

### *General Policy*

- 46 NPPF para 127 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 180 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
- 47 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).
- 48 The Council has published the Alterations and Extensions SPD (2019) which establishes generally acceptable standards relating to these matters (see below), although site context will mean these standards could be tightened or relaxed accordingly.
- 49 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



### 7.3.1 Impact on neighbours conclusion

55 The proposed development would not introduce any unacceptably harmful impacts to the living conditions of any of the neighbouring properties and therefore would be compliant with LPP D3, CSP 15 and DMPs 31 and the provisions of the 2019 SPD.

## 8 LOCAL FINANCE CONSIDERATIONS

56 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).

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

58 The CIL is therefore a material consideration.

59 This application does not attract CIL.

## 9 EQUALITIES CONSIDERATIONS

60 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.

61 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.

62 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.

63 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>

- 64 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
- 65 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>
- 66 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.

## 10 HUMAN RIGHTS IMPLICATIONS

- 67 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 3: United Nations *Convention on the Rights of the Child* ("NCRC")
  - Article 8: Respect for your private and family life, home and correspondence
  - Protocol 1, Article 1: Right to peaceful enjoyment of your property
- 68 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.
- 69 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.
- 70 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.

71 Objectors have raised the matter of taking the best interest of children into consideration when determining this planning application see para 25, the best interests of children are not considered to be unlawfully interfered with by this proposal under Article 3 of the United Nations *Convention on the Rights of the Child* (“*NCRC*”), which requires a child’s best interests to be a primary consideration. This requires the decision-maker to identify what the child’s best interests are. Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue.

72 Officers do not consider in this case how the interests of children are any different to the interests of anyone else who are living in Nos. 36 and 38, as a result the same interests are being considered in this recommendation and is proportionate to the other impacts which have been weighed accordingly.

## 11 CONCLUSION

73 This application has been considered in the light of policies set out in the development plan and other material considerations.

74 The proposed development would preserve the character and appearance of the host building in terms of the design. No unacceptable harm would arise to the living conditions of neighbours. Therefore Officers recommend that planning permission should be granted, subject to the imposition of suitable planning conditions.

## 12 RECOMMENDATION

75 That the Committee resolve to **GRANT** planning permission subject to the following conditions and informatives:

### 12.1 CONDITIONS

1) FULL PLANNING PERMISSION TIME LIMIT

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) DEVELOP IN ACCORDANCE WITH PLANS

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

361\_P\_000; 361\_P\_001 REV D; 361\_P\_002 REV D; 361\_P\_003 REV D;  
361\_P\_004 REV D; 361\_P\_005 REV D; 361\_P\_006; 361\_P\_007; 361\_P\_101  
REV D; 361\_P\_102 REV D; 361\_P\_103 REV D; 361\_P\_104 REV D; 361\_P\_105  
REV D; 361\_P\_106 REV D; 361\_P\_107 REV D; 361\_P\_108

**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) MATERIALS/QUALITY DESIGN

(a) The development shall be constructed in those materials as submitted namely: London Stock Brick, Eternit artificial slate tiles, aluminium glazing

systems, rooflights and box guttering and in full accordance with 361\_P\_104 REV D; 361\_P\_108.

- (b) The scheme shall be carried out in full accordance with those details, as approved.

**Reason:** To ensure that the design is delivered in accordance with the details submitted and assessed so that the development achieves the necessary high standard and detailing in accordance with Policies 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character.

## 12.2 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, positive discussions took place which resulted in further information being submitted.
- 2) You are advised that all construction work should be undertaken in accordance with the "London Borough of Lewisham Code of Practice for Control of Pollution and Noise from Demolition and Construction Sites" available on the Lewisham web page.
- 3) You are advised that before construction commences the appropriate agreements will be needed as required by the Party Wall Act.