



Appeal Decision

Hearing held on 10 October 2019

Site visits made on 28 June 2019 and 10 October 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2019

Appeal Ref: APP/A5840/W/19/3222719

Hatchers Mews, Bermondsey Street, London SE1 3GS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Hatcher, Hatcher Bros Ltd, against the decision of the Council of the London Borough of Southwark.
 - The application Ref 17/AP/3918, dated 11 October 2017, was refused by notice dated 17 August 2018.
 - The development proposed is the demolition of an existing commercial use building and the erection of a new mixed use building comprising 6 residential units and 5 new commercial units, alongside the modification of a conjoined existing mixed use building to add 2 new residential units.
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Decision

1. The appeal is dismissed.

Main Issues

2. Taking account of all the representations I have read and heard, the main issues are the effect of the proposed development on:
 - the living conditions of surrounding occupiers, with particular regard to light, outlook, and privacy in flats 6 and 9 of the Rankin Building;
 - Tanner Street Park with particular regard to overshadowing, the effect on retained trees, outlook, and privacy; and,
 - the setting of surrounding listed buildings, and the character and appearance of the Bermondsey Street Conservation Area (CA).

Reasons

Living conditions, Rankin Building, first floor flat 6

3. 1F flat 6 light: Beside the proposed building, across an open yard, stands the Rankin Building, a former warehouse with characteristic metal-framed windows set in large curved-headed openings. The main space of flat 6, which includes living, dining, kitchen and working areas, has five windows, four of them opposite the proposed building.
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4. The Building Research Establishment guidance¹ indicates that where the vertical sky component (VSC) of a window, with a new development in place, is both less than 27% and less than 0.8 times its former value, occupants of the existing building will notice the reduction in the amount of skylight, the area lit by the window is likely to appear more gloomy, and electric lighting will be needed more of the time.
5. Of the four windows, two (W3 and W4) would fail the VSC test. I acknowledge that windows W1 and W2, in the same wall as the failed windows, pass the VSC test. However, the room has been informally divided into different activity areas, with the area directly beside window W4 used for writing scores and playing musical instruments. This area would be particularly sensitive to the reduction in skylight. Moreover, the reduction in skylight at W4, by the appellant's own measure² in his Daylight and Sunlight Assessment, February 2017 (DSA), is described as a major noticeable change to the occupant. The reduction in skylight at W4 therefore counts against the scheme.
6. I have taken into account that the average daylight factor for the main space in flat 6 was calculated as 2.02%. However, there was agreement at the Hearing that this measure was more appropriate to the assessment of new build rather than existing dwellings. In this case, the calculation was based on light coloured walls whereas the walls are actually of a dark brick. It was agreed that with the brick of the walls taken into the calculation, the factor would fall below 2%. I have noted that the scheme the subject of this appeal was reduced in height after the daylight calculations were made. However, without data that reflects the scheme before me, I cannot be sure that the room would not appear dull or rely more on electric lighting to supplement the daylight after development.
7. 1F flat 6 outlook: The proposed building has been carefully designed to turn the external corner on its park boundary, and I recognise the gap which would be retained between its new edge and the existing 2-storey commercial unit. However, because of the position and proximity of the turned section of units 3 and 5 and the height of the building above W4, the width of the gap, whose sensitive intention I acknowledge, would not be quite sufficient to prevent the overbearing effect of the nib-sections of units 3 and 5 on the outlook from within flat 6, particularly from W4. The outlook from the other windows in flat 6 is already constrained by surrounding development. The effect on W4 would result in unacceptable living conditions within flat 6.
8. 1F flat 6 privacy: Though the terraces of units 3 and 5 face towards the windows of flat 6, the proposed privacy screening would reduce the risk of overlooking to an acceptable degree. Fleeting glimpses towards the windows of flat 6 would be possible when the occupiers of unit 3 climb the external stair to their front door, as well as obliquely from within unit 3. However, given the commonly accepted toleration of a degree of mutual overlooking in the centre of London, I find no material harm from this arrangement. A condition to secure details of the stair structure and its materials to reduce the risk of disturbance by noise would reduce the risk of loss of privacy by disturbance. There would be no conflict with policy 3.2 and 3.11 of the Southwark Plan 2007 (LP) which protect the amenity of neighbouring occupiers.

¹ Site Layout Planning for Daylight and Sunlight, A guide to good practice, PJ Littlefair, 2nd edition

² Table 5.2, Daylight and Sunlight Assessment, February 2017

9. In summary, the living conditions of the occupiers of flat 6 of the Rankin Building, with particular regard to light and outlook would thus be harmed by the proposed development. While policy 12 of the Core Strategy 2011 to which the Council refers has less relevance to this issue, the development would nonetheless conflict with LP policies 3.2 and 3.11.

Living conditions, Rankin Building, second floor flat 9

10. 2f flat 9 light: The main space of flat 9 is open-plan and is used for living, dining and cooking. It is lit by four windows, two of which share the light passing through its conservatory. The end window passes the VSC test, but each of the three windows in the long wall fail, by a substantial margin, which again, by the appellant's measure would result in a major noticeable change to the occupants. I have noted the average daylight factors and that the height of the proposed building has been reduced. However, for the reasons above, and given the depth of the room and the uses within it, I cannot conclude other than that the change in skylight as a result of the development would result in a more gloomy interior and would require more electric lighting to supplement the shortfall. This counts against the proposal.
11. 2f flat 9 outlook: The mass of the proposed building has been carefully manipulated to reduce its effect on flat 9, stepping opposite the conservatory of flat 9, and retaining a gap by the existing 2-storey commercial unit which broadens as the building rises. However, despite the stepping, the proximity of the stairway and the proposed building to the conservatory and roof terrace of flat 9 would have a marked effect of over-enclosure on its occupiers, most particularly, but not exclusively, from their roof terrace. I recognise that the expectation of outlook from a flat in the very centre of a city may be less than that from a house in the open countryside. Nonetheless, the combined effect of the proposed building's enclosing effect to the north and to the east would overwhelm the outlook from flat 9, even allowing for a notional reduction in sensitivity for its city centre location.
12. Without the details of the planning permission, described as extant, to develop flat 9, I cannot conclude with accuracy on the effect of the appeal proposal were that permission developed. The section drawings in the appeal scheme appear to suggest an effect which may be less than the present arrangement. However, this does not change my findings concerning the living conditions of the occupiers of the building as I saw it on my visit.
13. 2f flat 9 privacy: A condition to secure privacy screening alongside the stairway leading to units 4, 5, and 6 and beside the terrace of units 5, 6, and 8 would reduce the risk of overlooking of the conservatory and terrace of flat 9 to an acceptable degree. A condition controlling the details of the structure and finishes of the stair would reduce the risk of disturbance from those using the stair. I appreciate that the proposed stair would be close to the Rankin Building, but its proximity would not result in a significantly adverse loss of privacy and would not be unusual in a city centre location. There would be no conflict with LP policies 3.2 and 3.11 in respect of privacy.
14. To summarise, the living conditions of the occupiers of flat 9 of the Rankin Building, with particular regard to light and outlook would be harmed by the proposed development, placing it in conflict with LP policies 3.2 and 3.11.

Living conditions, Rankin Building, third and fourth floor flats

15. The openings to the third and fourth floor flats in the Rankin Building and the terraces in front of them would retain good outlooks to the east and south, despite losing a part of their aspects to the north as a result of the proposed development. Subject to conditions to reduce the potential to overlook into their rear openings and terraces there is no evidence of harm to the living conditions of the occupiers of these flats. The appellant's DSA indicates no transgressions of the daylight and sunlight guidance concerning these flats, and I have no reason to disagree with its conclusions. Taking into account the other surrounding dwellings which I saw, and the scheme to redevelop the front of the building already granted planning permission, I can identify no harm to the living conditions of other surrounding occupiers.
16. I note that the National Planning Policy Framework indicates in paragraph 123(c) that to avoid homes being built at low densities local planning authorities should take a flexible approach in applying guidance relating to daylight. However, this applies where there is an existing or anticipated shortage of land for meeting identified housing needs. There is no substantive evidence of such a shortage.
17. In summary, I have found that planning conditions would secure the privacy of surrounding occupiers. While I recognise the limitations of the BRE tests which are only guidance, the effect of the proposed development on the light and outlook of the occupiers of flats 6 and 9 of the Rankin Building would, in my assessment, result in gloomy interior spaces with insufficient light and over-enclosed outlooks, in clear conflict with the development plan policies highlighted above.

Tanner Street Park

18. Overshadowing: The park is made up of several areas with different uses including tennis courts, a play area, a café, as well as informally laid out areas of grass and seating like the area in front of the appeal site. I visited the park in summer and autumn, in the afternoon, and found it popular with residents, workers and visitors playing sport, talking, eating lunch, or simply relaxing.
19. The appellant's DSA shows that the park passes the BRE test to ensure that the area which receives at least two hours of direct sunlight on 21 March would not be reduced to less than 0.8 times its former size. Though this indicates that there would be sufficient direct sunlight received into the park as a whole, it does not show the overshadowing effect of the proposed development on the informal area to the north of the appeal site.
20. During my site visits I saw this informal area well used by people sitting on the grass, some in full sun, others sitting under the dappled shade of the groups of trees on the boundary with the appeal site. At the same time, I saw the sterilising effect of the overshadowing of the park from the buildings developed behind the tennis courts. The overshadowed area, despite landscaping, was devoid of people. I appreciate that this area is less connected than the area by the appeal building. Nonetheless, its desolate appearance in a popular park, elsewhere full of people, suggests that overshadowing here has a critical bearing on the amenity of this public open space.
21. I note that the proposed building has been stepped and has a varied silhouette which would reduce its overshadowing effect. However, the informal area in

front of the appeal site is a substantial part of the informal areas in the park and is well used. Its enjoyment is sensitive to overshadowing and critical to the amenity of the park. There are no shadow plans showing the effect of the development on this area at different times of day and year. The only reference I have in this regard is the building to the east, which overshadows the space beside the tennis courts.

22. I appreciate that the existing buildings and groups of trees already overshadow this area and the length of shadows depend on the time of day and year. A small, city-centre park will inevitably be overshadowed to varying degrees by the buildings which surround it. However, the present overshadowing I saw was small and the informal area was still popular with the public. On the evidence before me, my judgement is that the overshadowing effect of the proposed building would be significant and to the extent that the park would become a less pleasant public environment.
23. I acknowledge the references to buildings developed close to parks in the area, though their comparability to this proposal is limited and I am not aware of the considerations which led to their approval. This limits their parallels to this case.
24. While LP policy 3.26 to which the Council refers concerns development within borough open land and has less relevance, I conclude that the proposed development would overshadow Tanner Street Park to the degree that the enjoyment of its amenity would be adversely affected. It would conflict with CS policy 11 and LP policy 3.1 which protect parks and seek to improve the quality of open spaces and say that permission will be refused for uses that cause a material adverse impact on the environment and quality of life.
25. Effect on retained trees: The groups of trees standing alongside the boundary between the park and the appeal site, despite being categorised by the appellant as Class C, provide a soft, green foil to its edge. They are a relief to the harder edges of buildings which have been developed upwards on the park's boundaries. However, they have been planted so close to the boundary that a substantial proportion of their canopies now overhang the appeal site.
26. While the tree report indicates that the foundations of the proposed building could be designed to avoid conflict with the root protection areas of the trees, which could be secured by a precautionary condition, the canopies of the trees in these two groups climb higher than indicated on the elevation, which is dated June 2016. Given the density of the canopies of these trees, the views out of the windows of the proposed flats on the first and second floors would be severely restricted and the north light entering them diminished. I acknowledge that not all these windows serve habitable rooms, and that the flats served by them have alternative aspects. Nonetheless, given the open outlook towards the park and the attractive close and longer distance views across it, there is likely to be considerable pressure on the Council to fell or cut-back the trees in groups 1 and 2 to the degree that the substantial, soft foil they presently provide would be reduced to nothing more than a hedge.
27. I identify no conflict from the construction of the proposed building that could not be resolved by planning conditions. However, the proximity of the flats on the first and second floors of the development to the canopies of the groups of trees, even allowing for boundary line reductions, would lead to unsustainable pressure to reduce or fell them. In this respect the proposed development

- would conflict with London Plan policy 7.21 which says that existing trees of value should be retained and any lost as the result of development should be replaced. It would conflict with CS policy 11 and LP policy 3.1 referred to above, and LP policy 3.28 which indicates that the Council will take biodiversity into account in determining planning applications.
28. Outlook: Given the stepped outline of the park elevation, its height, and the relatively open nature of the park, I do not consider that the proposed building would have an overbearing effect on those enjoying the amenity of the park. There would be no conflict in this respect with CS policy 11 and LP policy 3.1.
29. Privacy: In terms of privacy, a degree of overlooking from the openings in the proposed building onto the informal area would assist the natural surveillance of the park. I appreciate that despite the public nature of the park its users anticipate a degree of privacy. However, in this case the ground floor openings would serve commercial uses whose occupiers would generally overlook the park less than the residential occupiers, concentrated on the upper floors at which distance the risk of loss of privacy would be reduced to an acceptable degree. This would be similar to the arrangement cited in Leathermarket Gardens, where a graduated glazed screen, reducing but not eliminating intervisibility between a commercial use and the park, reduces the risk of privacy loss but without affecting surveillance. I can identify no conflict with CS policy 11 and LP policy 3.1.
30. I conclude on this issue that despite there being no harmful loss of privacy or outlook to the users of the park, the proposed development would overshadow the park to a harmful degree and lead to the felling or radical cutting-back of the two groups of trees in the park, placing it in clear conflict with the development plan.

The setting of surrounding listed buildings

31. The C19 buildings at 124-132 Bermondsey Street, listed Grade II for group value, stand opposite the park, displaced from the appeal site. There would be little direct relationship between their frontage and the proposed building, the front section of which I was informed at the Hearing is similar to an extant planning permission. The upper section of the proposed building facing the street would continue the proportions, arrangement of openings, and materials of the warehouse vernacular set below, with an attic storey set substantially back from the street facade using modern materials but maintaining the grid order of the openings below. Given the displacement of the proposed street façade and its architectural language, I can identify no harm to the setting of the listed buildings.
32. The park elevation of the proposed building would stand in close quarter to the listed buildings and it would form a prominent enclosure leading at a right angle from the direction of their facades. It would have a direct and significant bearing on the listed buildings. However, the height, grain and solidity of the park façade, the rhythm of openings, their proportion and detailing, would tie the proposed building sufficiently to the warehouse aesthetic which is characteristic in Bermondsey Street, and across the park. The architecture of the proposed building would not disrupt or diminish the integrity of the listed buildings which have a quite different appearance.

33. Thus, while I have had regard to my statutory duty pursuant to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed buildings or their setting, for the reasons above, I consider that the setting of the listed buildings would be preserved. There would be no conflict in this respect with CS policy 12 and LP policy 3.15 which expect development to preserve or enhance the significance of Southwark's heritage assets.

The character and appearance of the CA

34. There was agreement at the Hearing that as far as the proposed development is concerned, the significance of the CA centres around three tenets; buildings, movement routes, and green space.
35. The height and breadth of the proposed building would reflect those on the opposite side of the park. While I acknowledge that these are set back from the park by the width of Tanner Street, I cannot see how the height of the proposed building would harm the character of the CA when neighbouring buildings are equally tall. Its siting directly on the boundary of the park would be similar to the buildings enclosing Leathermarket Gardens and the churchyard of St. Mary Magdalen.
36. The design of the park elevation reflects the order of the warehouse openings which are a townscape feature in the CA, while introducing references in the proposed roofline to the gabled buildings which once stood close to the site. The blocking in the park elevation avoids the monolithic mass of many of the buildings in the area, having more affinity with the vertical grain of the listed buildings in Bermondsey Street. The proposed materials and detailing are sensitive to the buildings in the surroundings, but the design avoids pastiche.
37. Views of the Rankin building from within the park would be diminished by the proposed building, but these are undesignated, partial, distant and across other buildings. Glimpses would remain, which is similar to the experience of the views to other buildings in this tightly grained historic street pattern built-up by C18 houses and shops where buildings in the centre of urban blocks are more usually glanced amid the C19 and C20 warehousing or industrial buildings than admired in broad isolation.
38. I appreciate that the present low height of the buildings on this park boundary form a low enclosure to the park, however, this is not now a significant historical or architectural feature of the CA. From what I saw of the close texture of plots and fine grain of the buildings in the CA, it is less the height of the enclosure here which is significant to the CA, than the soft green edge provided by the two groups of trees on the boundary which enrich the open space. This contrasts with the tight, tall, regular and compact pattern of development surrounding it. Thus, it is this horizontal interplay between landscape and buildings which adds to the significance of the CA rather than the height of the enclosing buildings. In terms of the design of the proposed building, I find no harm to the character or appearance of the CA.
39. The proposed building would front directly onto Bermondsey Street like its neighbours. The passageway and opening would be retained and reused for access to the new development, reflecting the spaces between buildings that extend back from the street edge. The footprint and design of the proposed building would preserve the distinctive townscape of narrow streets and

building plots, and arched alleyways to rear yards. It would provide the opportunity for the vibrant range of uses and activities described in the CA Appraisal³. In terms of movement routes, the proposal would have a neutral effect on the significance of the CA.

40. Despite my finding of no harm from the design of the building and the arrangement of movement routes to the character or appearance of the CA, the two groups of trees standing alongside its park elevation bolster the green character of the park. Their loss would remove a soft foil between the park landscape and the building townscape and harden the enclosure of the park, reducing its effect of extending space and the visual interest of texture, colour and shade which the trees provide. The trees contribute substantially to the fragile interplay between buildings and landscape, an important part of the significance of the whole CA. Their loss, for the reasons already given, would diminish the green character of the CA and undermine part of its significance.
41. Therefore, solely because the proposed development would lead to the loss or drastic diminution of the trees in groups 1 and 2 for the reasons already given, and not because of the height, siting or appearance of the proposed building, I find the development would harm the character of the CA. It would, in this respect, fail to preserve the CA in accordance with the requirements of section 72 of the Act, the special attention to which, the Courts have determined, I am required to give considerable importance and weight.
42. In the context of paragraphs 195 and 196 of the Framework I would, in relation to the CA as a whole, define the magnitude of the harm identified as less than substantial. This does not however equate to a less than substantial planning objection. Indeed, paragraph 193 indicates that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to its conservation.
43. Paragraph 196 requires that any such harm be considered against any public benefits a scheme may bring. While I recognise the social benefit of the additional housing, the economic benefit from the construction work, the spending of future occupiers in the local economy and additional office space, together with the provision for cycle transport rather than car parking, these public benefits are modest. They would not outweigh the harm to the designated heritage asset identified above.
44. The proposal would fail to satisfy the requirements of the Act and paragraph 192 of the Framework, and conflict with London Plan policies 7.4 and 7.6 which protect local character and seek development that enhances the public realm, CS policy 12 and LP policies 3.12, 3.13, 3.15 and 3.16 which seek high quality design including in the relationship between buildings and parks, and which expect development to preserve or enhance the significance of Southwark's heritage assets, and not to involve the loss of traditional features of interest which make a positive contribution to the character of the CA.

Other Matters

45. I have had regard to CS policy 5 which expects developments in this location to have a density of between 650 to 1,100 habitable rooms per hectare. I see nothing in the Council's density calculation guidance⁴ which justifies the

³ Bermondsey Street Conservation Area Appraisal, January 2003

⁴ 2015 Technical Update to the Residential Design Standards (2011)

Council's double counting of rooms with a floor area greater than 27.5m². The density of the development would fall within the range sought in CS policy 5.

Conclusion

46. I have identified no ill-effect from the proposed development to the privacy of the occupiers of flats 6 and 9 of the Rankin Building, but found that it would harm their light and outlook. While it would preserve the setting of surrounding listed buildings, it would overshadow the park to an unacceptable degree and lead to the loss of the soft green foil along the edge of the park, an important part of the significance of the CA whose green character it would undermine, the harm to which would not be outweighed by public benefits.
47. While I recognise the benefits of the proposed development, they do not outweigh the harm identified above and the conflict with the development plan as a whole. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be dismissed.

Patrick Whelan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Hatcher	Appellant
Mr Mark Hatcher	Appellant
Mr Jeremy Young	Featherstone Young Architects
Mr Simon Herrington	Herrington Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Mr Alex Cameron	Team Leader, Planning Council of the London Borough of Southwark
Mr Phil Barwell	Senior Arboricultural Officer Council of the London Borough of Southwark

INTERESTED PERSONS:

Mr Mike Washbourne, Savills	For the local community
Mr Tristan Squire, Squire Heritage Consulting	For the local community
Ms Jessica Beattie	For the local community and bermondseystreet.london

DOCUMENT SUBMITTED AFTER THE HEARING

Drawing 103 revision H, Third Floor Plan