
Appeal Decision

Site visit made on 19 November 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2019

Appeal Ref: APP/A5840/W/19/3236234

122-126 Tooley Street, London SE1 2TU

- 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 R West and Mr T Newman against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/0667, dated 4 March 2019, was refused by notice dated 29 April 2019.
 - The development proposed is a roof extension to provide a three bedroom flat.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: (i) the effect of the proposed development on the setting of 115-121 and 139-141 Tooley Street, Grade II listed buildings and the character or appearance of the Tooley Street Conservation Area (TSCA); and (ii) the effect of the proposed development on the living conditions of the occupiers of: Kamen House, with regards to daylight; and the sixth-floor flat, with regards to daylight, sunlight, privacy and overlooking.

Reasons

Heritage assets

3. The appeal building is on the south side of Tooley Street within the TSCA. The site falls within the West Tooley Street sub-area of the TSCA which is based on a tightly defined riverside area hemmed in by London Bridge, Tower Bridge and its approach, and the railway viaduct into London Bridge Station.
4. The existing building comprises of ground and first floor offices with 14 residential units on floors 2 to 6. The building has a modern appearance with a staggered glazed frontage. The Tooley Street façade is constructed from a combination of London stock brick and metal cladding with large glazed openings and inset balconies forming strong horizontal elements. On the corner of Tooley Street and Bursar Street the upper floors project outwards from the main building at different alternating angles. Towards Magdalen Street, the rear of the building steps away from Bursar Street at every floor.
5. The surrounding area has a mixed character with many new and older established commercial uses evident, whilst residential properties are on the upper floors of buildings. Along Tooley Street, buildings display a wide variety

of scales and styles. The south side of the street comprises of 4-6 storey buildings, with shop fronts or office at street level providing an active frontage. Some of the former industrial feel remains in the use and re-use of London stock brick, with occasional stone and stucco, in plain and regularly pierced walls. Shop fronts at street level provide an active frontage. These feature traditional design elements such as separating pilasters, fascias and stall risers.

6. To the east of the site, and on the south side of Tooley Street, there is a short row of buildings which have a 4 or 5/6 storey appearance. Beyond is Magdalen House, which is a larger historic 6 to 7 storey warehouse. These buildings are identified in the Tooley Street Conservation Area Appraisal (CAA) as making a positive contribution to the area. Kamen House, a part 4 part 6 storey development with flats on the upper floors is due south of the site. Kamen House and neighbouring comprise a tight-knit fabric of buildings between 4 and 6 storeys high which are divided by narrow back streets and courtyards. Tooley Street, Shand Street, Bermondsey Street and the railway line out of London Bridge station to the south enclose this area. Some of the buildings retain the essence of the former wharf and dock style buildings, some are modern interpretations. The station itself is a dominant feature with its elevated tracks and platforms, arches and undercrofts. The Shard is a prominent glazed landmark building of considerable scale to the south-west of the site.
7. The CAA describes the sub-area as having a more relaxed character with more pedestrian space, less intrusive traffic, and occasional street trees softening the impact of buildings, while contributing with them to the scale of the street. In this visually less intense environment, buildings can stand out from the background for their detail. This assessment was, however, before the More London Development. This 10 storey development is on the north side of Tooley Street. It comprises of offices, retail and public amenity spaces and includes a hotel. The development has a modern style and is built from glass and panel clad facades. The new City Hall is part of the More London development which includes extensive pedestrianised public open spaces supplemented by landscaping with water features, open-air sculptures and a sunken amphitheatre, called 'The Scoop'. Pedestrian access to the river front is facilitated from Tooley Street. As a result of The More London Development the area on approach to and near to the site is a bustling environment.
8. The Aston Webb designed former Distillery Offices (No 115-121) is to the north-west, while the Alfred Mott designed former Fire Station (No 139-141) is to the north-east of the site. Both Grade II brick-built listed buildings are around 30 metres or so from the site. The Fire Station is a good example of a second stage London Fire Station design following the establishment of the municipal fire brigade in 1866. Hence, the area is also characterised by a mixture of the remnants of earlier buildings, interspersed with former dock/wharf style buildings.
9. Long and short-range views of the appeal building area are available from Tooley Street to the east and west of the site. In this context, the appeal building currently integrates into the varied scale and matrix of buildings that line it. However, it is already taller than its adjoining neighbours. The appeal building has a unique design approach, but not uncomfortably so. Notably, there are several buildings which have a stepped increase in height in the area. Reference to the number of storeys is not, however, synonymous with the actual height of buildings. It is, nevertheless, a general guide.

10. The character and appearance of the TSCA has evolved since the CAA was prepared as a result of the More London Development. It has also changed since the appeal building was first built and then extended. However, in the current context the proposed development would add to the scale and massing of the existing building. This is an evident consequence of the proposal, which has been designed specifically in response to the appeal building's design and existing use of materials.
11. Sightlines of the appeal building from the east and west vary from the public domain according to the alignment of Tooley Street, the presence of buildings that line it and street trees. The additional floor would be visible against the sky when viewed from the junction of Tooley Street and Duke Hill Street. This situation is not unique given that most views of the appeal building and those on Tooley Street would be experienced from pavement level. Even so, the proposal would result in an uncomfortable scale of development in comparison to that which neighbours on the south side of Tooley Street given that it is already higher. This harmful change to the scale of development on the south side of the TSCA would be evident to passers-by and occupiers of the various buildings along the road. Thus, the proposal would not be of a high quality as it would not preserve or enhance the quality of the historic environment.
12. The proposal would not, however, detract from the setting of the Distillery Office due to its siting in relation to the proposal, the alignment of the road and the presence of modern large-scale development either side of it.
13. The proposed setback design would help in short range views, but less so from a distance when viewed from the west due to the alignment of the road and the built form that lines it. Even though there is larger scale of development on the northern side of the road, the lower scale of development found on the southern side is separated from this by the road. I do not, however, agree with the Council that the proposal seeks to replicate the large office block opposite.
14. In contrast to this, the proposal would not appear out of sync with the varied height of built form on the southern side of the street when viewed from the east. This due to the elongated scale and massing of Magdalen House, which has been extended upwards, but also due to the backdrop offered by The Shard. The same circumstances do not apply to the site when viewed from the west. Hence, from an eastern vantage point, the proposal would not harm the TSCA or the setting of the Fire Station, which is flanked on either side by development of a greater scale. These buildings form part of its setting and in my view show how buildings of competing heights can be close to one another without detracting from the setting of a heritage asset.
15. The Appeal Heritage Statement concludes that a neutral/slight impact would be caused by the appeal scheme to the TSCA and a neutral impact on the setting of the Fire Station and the Distillery Office. I agree with this assessment in terms of the two listed buildings. However, I am of the view that the level of change would be higher than 'minor' as the proposal would harm a key view along Tooley Street as it forms the backbone of the TSCA.
16. But, even if I were to take the appellant's 'neutral/slight' analysis, this would in my view still represent a degree of harm to the TSCA. As such, the proposal would result in less than substantial harm to the TSCA. This harm would adversely affect the significance of the TSCA as a designated heritage asset. Having regard to paragraph 196 of the National Planning Policy Framework (the

Framework), the proposal would make effective use of an existing building to provide an additional dwelling that would contribute to the mix and supply of homes available in a highly accessible location near to services and facilities. The proposal would contribute towards mitigating and adapting to climate change and moving to a low carbon economy. There would also be limited economic benefits associated with the construction of the flat, jobs and future occupants spending in the local economy. Drawing these matters together, the harm to the setting of the TSCA, to which I attach great weight, in my view, clearly outweighs these modest public benefits.

17. I conclude, on this issue, that despite my finding in respect of the listed buildings that the proposed development would not preserve or enhance the character or appearance of the TSCA. As such, the proposal would not comply with Strategy Policy 12 of the Southwark Core Strategy (CS), saved policies 3.12, 3.13, 3.15, 3.16 and 3.18 of the Southwark Plan (SP) and Framework paragraph 196. Jointly, these seek, among other things, high quality development appropriate to local context and not to dominate its surroundings so that it can make a positive contribution to the character of the area, with regards to the height of the development and important local views. When less than substantial harm would be caused to the significance of the designated heritage asset, this harm must be weighed against the public benefits of the proposal, including securing its optimum viable use.

Living conditions

Sixth-floor flat

Privacy and overlooking

18. Two terraces are proposed to serve the new flat. The larger of the two would be to the front of the building facing Tooley Street, with access gained from the kitchen, dining, living room and bedroom one. The second terrace would be to the rear and take advantage of this elevations south-facing orientation. This terrace would be smaller than the front terrace and have a tapered layout.
19. The existing sixth floor flat has a rear facing terrace which wraps around the south-east corner of the building. Due to its location and size it offers the occupants a usable amenity space. During my site visit I observed that the space was covered with artificial grass and contained numerous plant pots. It is evidently an amenity space that is used.
20. I agree with the main parties that the proposed front terrace would not cause privacy or overlooking issues. However, the proposed rear terrace would allow clear views of the sixth-floor terrace to the rear. I recognise that the view would be oblique if future occupants of the proposed flat were to face Kamen House square on, but the shape of the proposed terrace would lend itself to occupants using the wider section which would naturally mean that they are more likely to look over towards the terrace a floor below. The appellants' may well be right about the proposed rear terrace being used less intensively based on its size, but its southern orientation along with its direct connection to the kitchen, dining, living room would promote its use during afternoon and evening hours, especially during periods of warmer weather. The proposal would cause a loss of privacy and result in overlooking. This would mean that the occupants of the sixth floor flat would not have a high standard of amenity.

Daylight and sunlight

21. The flat on the sixth-floor benefits from a single large roof light towards the front of the building. The roof light is directly above the kitchen. The proposed flat would be to the south of the roof light, but next to it.
22. As part of the appellants' appeal submissions, an External Daylight Study – Revised to Account for Planning Refusal (the Study) was lodged. The Study considers both daylight and sunlight, and it responds to the inaccuracy of the initial assessment submitted as part of the planning application which indicated that there are two roof lights serving the sixth-floor flat.
23. BRE Guidelines states that if the Vertical Sky Component (VSC) at the centre of a window is more than 27% of available light, then the diffuse daylighting will not be adversely affected. VSC measures the general amount of light available on the outside plane of the window as a ratio of the amount of total unobstructed sky viewable following the introduction of visible barriers such as buildings. The existing roof light has a VSC value of 100% as it is currently unobstructed. The Study indicates that the roof light would receive over 27% of available daylight.
24. While the Council does not dispute the Study's finding or that the proposal would meet the BRE Guidelines, my attention has been drawn to an appeal decision¹ which the Council say is directly comparable to the appeal scheme. I understand that this scheme was for a roof top extension to an existing block of flats which had roof lights, albeit of a different scale to that proposed. The Council also explain that this scheme met the BRE Guidelines in terms of daylight, but the Inspector went on to consider the qualitative experience that existing occupiers would experience. Although this site is in Bermondsey, I do not know the address of this site, nor do I have copies of any plans or the full appeal decision before me. Given this, I cannot agree with the Council that the two schemes are directly comparable, and I attach greater weight to the substantive evidence that is before me relating to daylight found in the Study.
25. In terms of sunlight, the Annual Probable Sunlight Hours (APSH) test applies to windows which face 90 degrees of due south. The roof light is horizontal and is not therefore subject of the APSH test. That said, this does not mean that the proposal would not, due to its siting to the south, together with its scale and mass, have a bearing on the sunlight received through the roof light. The effect would be likely to be felt most by the occupiers outside of the summer months and the large glazed window serving the kitchen in the sixth-floor flat would similarly be unlikely to receive sunlight during these months due to its orientation. During the summer months, sunlight could potentially be received through the large front window, albeit this could be affected by the scale of development on the opposite side of Tooley Street. Based on my observations, I consider the occupants of the sixth-floor flat would suffer a loss of amenity in terms of sunlight due to the proposal. In my judgement, they would not, in this regard, enjoy a high standard of amenity.

Kamen House

26. Within the Officer Report the Council stated that "in light of the site's central London location and the distance to the occupiers in the wider area, such as

¹ Appeal Decision Ref: APP/A5840/W/3202899

those in Ashton Webb House, Kamer House to the south and Oxford Drive to the west, the impact to these occupiers in terms of the harm to their amenity incurred has not been given any weight in the assessment of this application.” However, this stance was not reflected in the second reason for refusing planning permission which cited “unacceptable harm to the amenity of the adjoining occupiers firstly by way of reduction in access to daylight for the occupiers of Kamer House to the south.”

27. For clarity, Kamer House is in fact Kamen House. In response to the reason for refusal, and the Council’s Appeal Statement, the appellants have submitted an External Daylight Study. This assesses the proposal’s effect on the daylight received by the occupants of the flats in Kamen House. There are multiple windows on each floor in Kamen House directly to the rear of the appeal building. The Council were particularly concerned with the second-floor level windows which all serve habitable rooms. The assessment concludes that each of the windows considered would accord with the BRE Guidelines with the degree of impact considered ‘negligible’. There is no substantive evidence to the contrary and I do not consider that the occupants of these flats would suffer a loss of amenity in terms of daylight as a result of the proposal.

Conclusion on this main issue

28. The proposed development would not result in harm to the living conditions of the occupiers of Kamen House and the sixth-floor flat, with regards to daylight. However, I conclude, on this issue, that my findings on these matters are outweighed as the proposed development would result in significant harm to the living conditions of the occupiers of the sixth-floor flat, with regards to sunlight, privacy and overlooking. As such, the proposal would not accord with saved SP Policy 3.2, CS Policy 13 and Framework paragraph 127 f); which jointly seek development to provide a high standard of amenity for existing and future occupiers.

Other matters

29. I note the concerns raised by residents, but I agree with the Council’s view about the proposal’s effect on car parking, access, refuse storage provision and noise. In the event that I were minded to allow the appeal, a planning condition could be imposed to secure a construction management plan. The appeal scheme, as the appellants point out, is not of a scale which requires any planning obligations or the provision of affordable housing. Even so, these matters do not alter or outweigh my findings in respect of the main issues.

Conclusion

30. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR