



Appeal Decision

Hearing Held on 4 February 2020

Site visits made on 3 and 4 February 2020

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Appeal Ref: APP/A5840/W/19/3236753

Land at Lawrence Wharf, Rotherhithe Street, London SE16 5UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Matliwala Family Charitable Trust against the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1249 is dated 9 April 2018.
 - The development proposed is described as "Construction of an infill extension over five floors with the top three floors creating 3, one bedroom flats – Infill to the side of Christian Court and to the rear of Tivoli Court, Rotherhithe Street, London, SE16."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application to which the appeal relates was originally described as 'partial infill of 4 x 1 bedroom apartments over 4 levels, starting at the 2nd floor of the complex, with access via internal staircase'. During the application process, the scheme was amended to 'Construction of an infill extension over five floors with the top three floors creating 3, one bedroom flats – Infill to the side of Christian Court and to the rear of Tivoli Court, Rotherhithe Street, London, SE16'. This has been agreed by both parties. I have therefore determined the appeal on the basis of the amended description.
3. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council's appeal statement sets out the grounds for refusal had it determined the application. I have had regard to these in reaching my decision.
4. Prior to the Hearing I made an unaccompanied site visit on 3 February 2020 and was able to view the site and its surroundings from Rotherhithe Street, the Thames Path and from the opposite bank of the River Thames. As part of an accompanied site visit on 4 February 2020, I viewed the appeal site from Flats 85, 86 and 95 Tivoli Court and Flat 75 Christian Court.
5. At the Hearing, the appellant submitted an update to Appendix 2 of the Daylight and Sunlight Study (dated 7 June 2019) (Hearing Document 2). This provided information about the use of rooms served by specific windows. This updated information was shared with 3rd parties at the Hearing to either verify

or add further detail. It was agreed with both parties that the late evidence should be accepted. I have taken this into account in assessing and determining this appeal.

Main Issues

6. The main issues are the effect of the proposed development on:
- the character and appearance of the surrounding area; and
 - the living conditions of neighbouring occupiers, with particular regard to daylight, outlook and privacy.

Reasons

Character and appearance

7. Lawrence Wharf is a development of brick-built three-storey mews houses fronting Rotherhithe Street and six and seven-storey apartment buildings. These are positioned around a central courtyard area comprising surface parking, a tennis court, communal gardens and a number of single-storey buildings including the former manager's office which has permission for a first-floor extension and conversion to residential use. Two apartment buildings, namely Mermaid Court and Christian Court, have a frontage to the River Thames adjacent to the Thames Path. Tivoli Court, forms the southern boundary of the complex, beyond which there is an area of parkland at Durand's Wharf. To the north, there is a large hotel, forming part of the same group of buildings as Lawrence Wharf and positioned on both sides of Nelson's Dock.
8. The apartment buildings date from the late 1980s and are typical of riverside development within the London Docklands area from that period. The riverside frontage of the apartment blocks are brick built, featuring a recessed ground floor and columns and large dark framed, oriel windows above, positioned at regular intervals along the frontage. These give a strong vertical emphasis and a rhythmic pattern to the buildings. At roof level, the buildings feature grey clad single-storey accommodation with curved roofs set back from the main elevation. Whilst there is some architectural variation between the residential blocks forming Lawrence Wharf and the adjoining hotel complex, these buildings, together form a prominent and attractive, largely uniform grouping of buildings on the south bank of the Thames when viewed from both the river itself and from Canary Wharf on the opposite bank.
9. The appeal site is an area of land within Lawrence Wharf between the flank wall of Christian Court and Tivoli Court. The proposed development would infill this gap with a contemporary, five-storey flat roofed building featuring a two-storey cut away at ground and first floor adjacent to Tivoli Court thereby forming a broadly L-shape at second, third and fourth floor levels. The building would align with the flank wall of the recessed ground floor of Tivoli Court, so it would be set back from the upper floor riverside elevation. It would similarly align with the ground floor of Christian Court but would additionally feature a cut away and an angled window to the upper floors. An access from the riverside would be retained through the cut away section of the building.
10. There are gaps of varying sizes between the apartment blocks and hotel buildings fronting the Thames. Visually these gaps provide glimpses both

through the development to the riverside and Canary Wharf beyond and into the development from the riverside. I also observed that the gap between Tivoli and Christian Courts provides a view through the development from Rotherhithe Street to Canary Wharf on the opposite side of the river. However, with planning permission approved for an infill between 301 and 303 Rotherhithe Street, once implemented this visual link will no longer exist. Nevertheless, the proposed infill of the gap between Tivoli and Christian Courts would significantly reduce this visual connection and linkage to the riverside, although I acknowledge that views through would still be possible at ground level beneath the oversailing upper floors.

11. The proposed development was designed to be a contemporary addition rather than a pastiche with visual references to the existing buildings. It would be lower in height with a flat façade to the river and finished in grey cladding and glazing. As such it would be unlike the adjoining brick built buildings with their oriel windows and balconies. This reduced height and use of neutral colours, would go some way towards making the infill appear subservient to the existing buildings. However, the plans indicate the proposed building would have horizontal banding to the upper floors which would follow the line of the window surrounds on the neighbouring blocks. This horizontal emphasis would be inconsistent with the prevailing vertical emphasis of the adjacent buildings.
12. The use of glazing attempts to visually link the proposed development with the glazed stairwells to Christian Court. However, these stairwells are set back from the main façade, forming slender glazed towers with a curved roof finishing above the main roof which provide a vertical break between the more prominent brick and oriel sections of the building. These contribute to the rhythm of the building. The glazed sections to the proposed development, being lower and flat roofed, would not integrate with the form and rhythmic pattern of these stairwells and would therefore be of limited success in visually linking to the existing buildings.
13. Furthermore, the form of the development, including the use of slender supporting columns rather than the thicker columns characteristic of the existing development, whilst intentionally in a more contemporary style would appear inconsistent and at odds with the existing features of the buildings.
14. The Council has indicated that some form of infill may be acceptable. However, the shape of the proposed building, with a cut away section to the front elevation would create an awkward relationship with the adjacent building. This would be prominent from the public footpath along the Thames Path although less so from more distant viewpoints.
15. Lawrence Wharf has a balanced and uniform appearance, especially when viewed from the riverside. Although the proposed infill with its lower height and neutral palette of materials would not compete with the existing buildings, it would nevertheless be prominent especially when viewed from the public footpath and the riverside and would appear unrelated to the neighbouring buildings. As such, it would be an incongruous form of development that would unacceptably harm the character and appearance of the existing development.
16. I conclude that the proposed development would significantly harm the character and appearance of the surrounding area. It would therefore conflict

with Policies 7.4 and 7.6 of the London Plan 2016¹, Strategic Policy 12 of the Southwark Core Strategy 2011 and Saved Policies 3.12 and 3.13 of the Southwark Plan 2007. These policies together and amongst other things require development to be a high quality design that enhances the quality of the built environment, improves an area's visual connection with natural features, appropriate to local context and that complements the local architecture. It would also not comply with the design objectives of the National Planning Policy Framework.

Living Conditions

a) Daylight

17. The appellant's Daylight and Sunlight Study (DSS) followed the Building Research Establishment guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice' (2011) (BRE guide). The BRE guide sets out two tests to measure diffuse daylight, the Vertical Sky Component (VSC) and the Daylight Distribution tests, the latter which can be used where room layouts are known. In this case, the study assessed the VSC as room layouts were unknown. The VSC is the percentage of the sky visible from the centre of a window. Diffuse daylight may be adversely affected if after a development the VSC is both less than 27 per cent and less than 0.8 times its former value.
18. The DSS assessed the diffuse daylight to windows either facing towards or adjacent to the proposed development within apartments 85 to 126 Tivoli Court and 49 to 84 Christian Court. The data set out in Appendix 2 showed that the primary windows of 11 rooms within Tivoli Court (windows numbered 18, 20, 22, 23, 24, 25, 29, 30, 32, 35 and 39) would experience an adverse loss of daylight in terms of the VSC test as a result of the development. At the hearing, it was confirmed that all these windows serve bedrooms within 9 apartments.
19. Some of the impacted windows (numbered 20, 30 and 39) currently have a VSC of less than 5 per cent which is due to their recessed position to the balcony. I accept that for these rooms which already receive very limited daylight, the loss of daylight may be less noticeable. The remaining impacted windows have a VSC of over 23 per cent or more and currently receive a reasonable amount of daylight. For these better lit rooms, the loss of daylight would vary from a marginal loss of around 30 per cent in the case of windows 25, 29, 35 and 39 to a more significant loss in daylight with some of these rooms (windows 18, 22, 23 and 24) experiencing over 50 per cent reduction of their existing daylight levels and in the worst case, this would be 85 per cent. This would be noticeable to occupants, resulting in a dark and gloomy living space where they would be reliant on electric lighting when using these rooms.
20. It was argued at the hearing that since the apartments are dual aspect and benefit from open plan living and large areas of glazing towards the park at Durand's Wharf, that the rooms facing towards the appeal site are less important in terms of the amount of daylight they receive. Furthermore, it was suggested to me that as these rooms are bedrooms occupants would spend less time in them. This was strongly contested by local residents who use these bedrooms flexibly and throughout the day, for example as playrooms or for home working. I accept that in flatted development, where there is restricted

¹ The Spatial Development Strategy for London consolidated with alterations since 2011

living space and several occupants within one unit, that bedrooms would be used more flexibly as in the case of these apartments. As such, I find that the proposal would adversely impact on the daylight of some neighbouring residents.

21. The BRE guide makes it clear that in areas with modern high rise buildings, a higher degree of obstruction may be unavoidable where new developments are to match the height and proportions of existing buildings. However, the existing gap between the adjoining blocks evidently enables daylight to penetrate these windows. I am not persuaded that the proposed development which would significantly restrict daylight to a number of these windows would be justified.
22. I acknowledge that the Council in its initial assessment of the application found the loss of daylight acceptable in isolation from any loss of outlook. However, I note that this reflected the Council's position on the basis of several of these windows (numbered 18-25) being identified as non-habitable rooms instead of bedrooms.

b) Outlook

23. The windows in the front elevation of Tivoli Court face towards the featureless brick built flank wall of Christian Court some 9 metres away. However, these windows additionally enjoy a relatively open outlook either side of Christian Court, both towards the river and into the central courtyard to Lawrence Wharf which provides a more meaningful outlook. Apartments within Christian Court which directly face towards the river enjoy a more open outlook from their fully glazed oriel windows.
24. The proposed development would be five storeys high, directly opposite and some 4 metres from a number of windows in Tivoli Court. The oversailing three-storey section at second, third and fourth floor would extend from a position very close to the bedroom windows of apartments 89, 91 and 93 as well as projecting above the windows to apartments 85 and 87. The appellant argued that the proposed development would hide the imposing blank and featureless wall. Whilst I accept that this wall does not provide a particularly interesting outlook for residents, it is nevertheless sufficiently far away to enable the outlook from these windows to be wider. The proposed development would not only reduce this wider outlook, due to its close proximity to these windows it would also have an enclosing effect, particularly for apartments 85 and 87 where the building would project above their windows. This would have an unacceptable effect on the living conditions for these residents
25. There would be some loss of outlook for occupants within Christian Court where the proposed building projects forward of the building line. However, the building has been angled on its riverside frontage, so it is visually less prominent when viewed from the windows within Christian Court. Given this, I am satisfied that the outlook for occupiers of Christian Court would not be unacceptably harmed by the development.

c) Privacy

26. Whilst not one of the Council's reasons for refusal, local residents in both Christian Court and Tivoli Court have expressed concerns that they would be overlooked from the proposed development.

27. The proposed flats would each have an open plan kitchen/living area served by windows on three sides. The side window to the living area would be a short distance from and face directly towards the projecting windows in the adjacent apartments within Christian Court. With the proposed windows serving an open plan space, it would be possible for occupants using this space to gain a direct view into the Christian Court windows, which I observed during my site visit form part of the living area to the Christian Court apartments, with several of the occupiers using this area as a seating area. This would cause an unacceptable loss of privacy for the occupiers of the adjacent Christian Court apartments. I accept that the distance between these windows is not dissimilar to the existing relationship between the oriel windows along the riverside elevation of Christian Court. However, occupants of these flats would need to be within the projecting window in order to overlook each other unlike in the appeal scheme where the window provides outlook from the entire living area and would give rise to constant overlooking of the Christian Court windows.
28. The windows facing towards Tivoli Court are shown on the drawing to be glazed in obscured glass. These would be positioned adjacent to bedroom windows in three apartments in Tivoli Court. With obscured glazing, it would not be possible to overlook these windows although due to their proximity, there could potentially be some noise disturbance. However, it would be possible to impose a condition to ensure that the windows would be retained in obscured glass and fixed shut to protect the neighbouring properties from a loss of privacy as well as any noise. In this regard, the proposed development would not cause an unacceptable loss of privacy.
29. The occupier of the ground floor flat in Tivoli Court has also expressed a concern about additional loss of privacy as a result of people entering and exiting the building in close proximity to her windows. However, the space between the proposed building and the entrance door whilst reduced, would still be wide enough to ensure people do not need to pass directly in front of this apartment's windows. As such, the privacy of this occupier would not be materially harmed by the proposal.
30. I conclude that the proposed development would adversely affect the living conditions of neighbouring occupiers, with particular regard to daylight, outlook and privacy. It would therefore conflict with Saved Policy 3.2 of the Southwark Plan and Policy 7.6 of the London Plan. These policies together require development to not cause unacceptable harm to the amenity of existing occupiers. It would also not accord with the guidance contained within the 2015 Technical Update to the Residential Design Standards Supplementary Planning Document regarding daylight, outlook and privacy for existing occupiers.

Other Matters

31. The Council accepts that there is a pressing need for housing provision within the Borough, with 2,500 new homes to be provided within the Canada Water Action Area between 2011 and 2026 in which the appeal site lies. The proposed development would make use of brownfield land, providing 3 residential units in a location with access to a range of facilities and services and public transport. There would be some economic benefits arising from both the construction and occupation of these units. These are factors that weigh in favour of the scheme.

32. The appellant asserts that the Council's position during the application process was that the scheme was acceptable and would be granted planning permission until it was called in by local members. I appreciate that such circumstances are frustrating for the appellant. However, members are entitled to take a different view to that of their officers. In any case, this is essentially a procedural matter that does not relate to the planning merits of the appeal proposal.

Conclusion

33. The Government is seeking to significantly boost the supply of housing. There would be some limited social and economic benefits from the provision of 3 additional dwellings in an accessible location. However, the environmental harm I have identified to the character and appearance of the area and the living conditions of neighbouring occupiers outweigh these limited benefits. For this reason, I conclude that the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Annabel Graham Paul	Of Counsel, instructed by Alban Cassidy
Alban Cassidy MRTPI MIEMA	Cassidy & Ashton
Paul Fawell BSc (Hons) MRICS	Right of Light Consulting
Anthony Fawell BSc (Hons)	Right of Light Consulting

FOR THE COUNCIL:

Martin McKay	Design & Conservation Team Leader
Yvonne Sampoh	Planning Officer
Michelle Sterry	Planning Officer

INTERESTED PERSONS

Peter Dines MRICS, MRTPI	Planning Consultant on behalf of local residents
Andres Monsalve	Local resident
Valerie Clampin	Local resident/Owner
Malcolm Clampin	Local resident/Owner
Saima Malik	Owner
David Feldman	Owner
Rob King	Owner
Elizabeth Aquilina	Local resident and on behalf of Lois Blair
Joe Stone	Owner
Carolyn West	Local resident/Owner
Colin West	Local resident/Owner
David Lewis	Owner
Christian Abanda Bella	Local resident
Juliya Yakovleva	Local resident
David Begbie	Local resident & Director of Lawrence Wharf Management Committee
Varuna Porter	Local resident

Linda Butcher	Local resident/owner and Director of Lawrence Wharf Ltd and on behalf of Nicola Head, Candida Mercian, Yves Rousette and Dorothy Blake
Dr Gerard Griffin	Local resident/owner and on behalf of Alan Blake
Richard Kerr	And on behalf of Linda Sargent
Keston Robinson-Price	Local resident/owner
Chris Vesey	Local resident/owner
Laura Mitchell	Local resident/owner
Dr Werner Wiethège	Local resident/owner
Sarah Lewczynski	Local resident

Hearing Documents

1. Site Location Plan numbered 9183/L14/P3
2. Updated Appendix 2 of the Daylight and Sunlight Study (7 June 2019)
3. Bin Store Location Plan numbered 9183/SK35