



Appeal Decision

Site visit made on 14 February 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/G5750/W/22/3293590

Wards Wharf, Royal Docks, London E16 2EX

- 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 Sandhu of Woolbro Morris Limited against the decision of London Borough of Newham.
 - The application Ref 21/00721/FUL, dated 23 March 2021, was refused by notice dated 18 November 2021.
 - The development proposed is erection of a one storey upwards extension comprising three blocks, atop of the existing Wards Wharf to provide 9 dwellings (C3), inclusion of associated cycle parking, refuse and recycling storage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Although not forming a reason for refusal, the officer's report refers to the location of the proposed development as being unsuitable. I have therefore proceeded to consider this matter in my reasoning below.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether or not the proposed development would make adequate provision to ensure fire safety;
 - the effect of the proposal on the long-term protection and sustainable operation of nearby industrial uses;
 - the effect of the proposed development on the living conditions of existing occupants with particular regard to overlooking and outlook;
 - whether the proposed development would make adequate provision for waste and recycling facilities;
 - whether the proposed development would provide an overall reduction in emissions;
 - whether there has been a satisfactory level of community engagement with the existing residents on the site; and

- whether the proposed development is in a suitable location.

Reasons

Character and appearance

4. The appeal property is made up of four connecting blocks (buildings A to D), two of which are eight, one seven and one nineteen storeys in height. This taller building sits at the south of the site fronting the Thames waterside. The appeal relates to buildings A, B and C. Buildings A and C have an L-shape, whilst Building B, which sits between these follows a T-shape. Each feature a westward projection, which steps down in height through a series of balconies and terraces.
5. The proposal is to extend each of the blocks at roof level, to create a ninth floor to Buildings A and B and an eighth floor to Building C. The new storey would align with the existing eastern façade of the building, whilst set back façades at the north, west and south elevations would provide areas of private outdoor amenity space for each unit.
6. The proposals would reflect the stepped design of the building. However, the storey height would be taller than the storey heights below, which would make them appear disproportionate in size atop the building.
7. The existing building is finished in a combination of render and terracotta cladding, with grey galvanised balconies and grey coping fascias. Elements of these would be incorporated into the materials used on the additional storeys which would be finished in grey cladding with matching balustrades. In the context of the terracotta and cream colour of the existing building, the additional grey clad extensions would fail to integrate with the building which in combination with their taller storey height would draw attention to them as later additions to the buildings.
8. The surrounding area is characterised by a mix of other blocks of flats of varying heights both to the north and west, with the river to the south-east and a low rise industrial complex to the east which reflects the areas historic and ongoing industrial and dockland use. In the context of these taller buildings, the additional height itself would not appear out of character. However, because the design of the extension would not assimilate into the host property, it would appear as an incongruous addition and would detract from the appearance of this building. As such, it would fail to add to the quality of the area. This would be prominent in views of the building from the north and east along Thames Road as well as from the west along Booth Road and from within the nearby Thames Barrier Park.
9. I therefore conclude that the proposed development would harm the character and appearance of the area. It would therefore conflict with Policies SP1, SP3 and SP8 of the Newham Local Plan 2018 (the NLP), Policy D9 of the London Plan 2021 (the LP) and the National Planning Policy Framework (Framework). These policies together seek high quality development, that reinforces local distinctiveness, whilst securing integration and coherence with the local context, require architectural quality to ensure the architectural integrity of the building is maintained and for the building to make a positive contribution to the local townscape.

Fire safety

10. Policy D12 of the LP sets out that in the interest of fire safety and to ensure the safety of all building users, all development proposals must achieve the highest standards of fire safety. It sets out a number of measures that should be complied with. It also states that all major development proposals should be submitted with a fire statement, which is an independent fire strategy produced by a third party suitably qualified assessor. Policy SP4 of the NLP relates to tall buildings, requiring that all such schemes will be appropriate in terms of safety, including fire prevention and safe evacuation.
11. The appellant states that fire safety has been considered throughout the design process which has involved specialist fire engineers, BB7 Consulting, as part of the team. Since the appeal was lodged, the appellant has also submitted a Fire Statement¹ which has been prepared by an independent and suitably qualified fire engineer. It provides detailed analysis of the proposed development against the requirements of Policy D12 and concludes that it is in line with Section B of that policy.
12. The proposal is not for a major development and therefore does not require a fire statement. However, as it adds to an existing large-scale development, the provision of this information is reasonable. I note that the fire statement concluded that the proposal was in line with LP Policy D12 Section B but also made a number of assumptions and recommended that a detailed fire strategy report be prepared in the event of planning approval being given.
13. The Council has not provided any comments on this fire statement. In the absence of this, I cannot reach a firm view as to whether or not fire safety requirements have been met. Had I been minded to approve the scheme, I would have sought additional information but as I am dismissing for other reasons I do not need to consider this further.
14. My attention has been drawn to a recent approval² for lawful development for the proposed replacement of existing combustible insulation with non-combustible materials on the building. The appellant has stated that, in the event the appeal were to be allowed, it would be willing to complete this work as a pre-commencement condition and to certify the works to provide additional comfort to residents of the building in respect of fire safety. This would appear to address part of the Council's reason for refusal which cited a concern about replacement fire risk cladding.
15. Thus, on the basis of the evidence available to me, I must take a precautionary approach and conclude that the proposal would conflict with Policy D12 of the LP and Policy SP4 of the NLP as referred to above. As such, it would also not comply with Policies SP3 and SP8 of the NLP and the Framework which together seek a high quality of design that helps to engender safe communities and create places that are safe. I have found no specific conflict in regards to this main issue with Policy SP2 of the NLP, which relates to the promotion of healthy neighbourhoods.

¹ BB7 - Fire Statement Policy D12 Wards Wharf Approach

² Council Ref: 21/01210/CLP

Effect on nearby industrial uses

16. A number of wharves on Thameside are safeguarded in the LP (and by a Direction from the Secretary of State), protecting them from development which could prejudice their future use for transporting goods by river. The Tate and Lyle Refinery and associated safeguarded wharf is located approximately 350m to the east of the appeal site. It forms part of a Strategic Industrial Location (SIL) defined in the LP. Other safeguarded wharves exist on the opposite side of the river. These operate 24 hours a day throughout the year. In addition, the site adjoins an existing industrial estate, the Thames Road Industrial Estate, although this does not form part of the SIL and has been allocated for redevelopment in the NLP.
17. Policy D13 of the LP relates to the Agent of Change principle. It places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-sensitive development. It requires development to be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue or grow without unreasonable restrictions being placed on them.
18. The proposed development would have bedrooms facing the east towards the industrial areas including the safeguarded wharf. Concerns have been raised by the Port of London Authority (the PLA) that the importance of this safeguarded wharf is recognised and a robust assessment undertaken to ensure a worst case scenario is established and appropriate mitigation measures identified to ensure that the safeguarded wharf can continue to operate as required.
19. The appellant has submitted a noise assessment³. Using the guidance and calculation methods contained within British Standards, BS 8233: 2014 'Guidance on sound insulation and noise reduction for buildings', the report concluded that the recommended maximum internal noise levels for each room under BS 8233 can be achieved through the provision of suitable glazing and ventilation. It recommended that a suitably worded condition be imposed to secure this.
20. Due to the national lockdown in place at the time of the noise assessment being undertaken and therefore the noise levels being representative, data was used in connection with another site rather than the appeal site. This was an adjacent site at Unit 3 Thames Road where noise measurements had been taken in both 2018 and 2020.
21. The noise assessment does not include reference to the need to undertake an assessment using British Standard BS 4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'. This would have been appropriate given the proximity of industrial noise sources to the proposed development. Applying the methodology set out within BS 4142, would establish the rating level of the noise emission level plus a correction for the character of the noise, which can then be compared to the background sound level. In the absence of this, the noise emissions from the industrial sources are not fully known and therefore the assessment is not robust.
22. I appreciate that the noise assessment was reviewed by the Council's environmental health officer who raised no objection subject to the imposition

³ Hawkins environmental – Noise Assessment, 29 January 2021

of a condition to secure sound insulation. I also note that the PLA did provide a subsequent response setting out its concerns about the absence of an assessment applying BS4142 methodology. The PLA also stated that provided that there have been no previous complaints from existing residents at this site from nearby wharf activities, and if the level of mitigation at the proposed new units are at least the same as the existing residential units facing the eastern boundary of the site, then this would be appropriate for the PLA to remove its objection.

23. This suggests that sound mitigation could be addressed. However, I have not been provided with evidence that there have been no complaints. I also have no certainty that the submitted noise assessment was robust given it did not apply the methodology set out in BS 4142. Therefore, whilst I accept that a condition could be imposed to secure the level of mitigation would be at least the same as the existing residential units, I am unsure as to whether or not these would provide satisfactory mitigation.
24. I am therefore unable to conclude that the proposed development would not adversely impact the long-term operation and sustainable use of the nearby employment sites. As such, it would conflict with Policy D13 of the LP as referred to above. It would also conflict with Policies SP2 and SP8 of the NLP and the Framework which together seek development that takes into account environmental impacts of economic development including noise and for change brought about by development to not cause problems for existing lawful neighbours. I have found no specific conflict with Policy SP4 of the NLP in respect of this main issue.

Living conditions

25. The Council has indicated that at roof level, where the proposed extensions would be, there are existing roof terrace amenity areas. The appellant has confirmed that the existing roofs of the building are for maintenance only and not accessible to residents. There would therefore be no overall loss of amenity space for existing occupants.
26. The proposed terraces to the new units appear to extend to the edge of the existing roof. Given that the submitted plans provided very limited details of the existing floor plans, including the position of existing windows, balconies and terraces in the floors below, it is therefore not possible to ascertain how the proposed development would relate to these properties and their private outdoor space.
27. I am therefore unable to conclude that the proposal would not adversely affect the living conditions of existing occupants in respect of overlooking and outlook. For this reason, I cannot reach a firm conclusion that the proposal would comply with Policy SP8 of the NLP, Policy D3 of the LP and the Framework which together seek neighbourly development that minimises overlooking and loss of privacy, deliver appropriate outlook and create places that provide a high standard of amenity for existing users. I have found no specific conflict with Policy SP2 of the NLP which deals with the promotion of healthy neighbourhoods.

Bin storage

28. The Council in its reason for refusal has indicated that the appellant has referred to the incorrect waste guidelines, referring to those in relation to a different local authority, and cannot therefore provide confirmation that it meets requirements. Moreover a number of residents have raised concerns that the existing bin and recycling storage would not have the capacity to accommodate additional use.
29. The appellant has acknowledged the erroneous reference to the waste guidelines. It has revised its submissions as part of the appeal process using the Council's 'Waste Management Guidelines for Architects and Property Developers' and British Standards guidelines BS5906:2005 for capacity calculations.
30. As part of the appeal, the appellant has submitted plans of the ground floor showing the existing areas for bin storage for each of the blocks and stating that 1 extra 1100L Eurobin for general waste and 1 extra 360L wheelie bin for mixed recycling would be provided for each. It is not clear from the submitted plans what the existing arrangements are and whether there is sufficient space to accommodate these additional bins. Furthermore, whilst reference has been made to the Council's guidance, I have not been provided with an assessment of whether the proposed bin provision would meet the requirements arising from the proposal as set out within that guidance.
31. The Council has not commented on these details, in the event I was minded to allow the appeal, I may have sought further information. However, as I am dismissing for other reasons, this has not been necessary.
32. Therefore, given that I have insufficient information before me to reach a firm conclusion on this matter, I cannot conclude that the scheme would make adequate provision for waste and recycling facilities. On this basis, I am unable to conclude that it would comply with Policies SP8 and INF3 of the NLP, Policies D3 and D6 of the LP and the Framework. These policies together require development to ensure the provision of waste and recycling storage that minimise negative impacts on the environment and to ensure that on-site handling and storage can meet the needs of the development. I have found no specific conflict with Policies S1 and SP3 of the NLP which deal with the overall strategy for the borough and urban design principles.

Reduction in emissions

33. Policy SI 2 of the LP sets out targets for major developments and therefore does not apply to this scheme. Nevertheless, it notes, within the reasoned justification, that all development is expected to maximise opportunities for on-site electricity and heat production from solar technologies and use innovative building materials and smart technologies. NLP Policy SC1 requires mitigation and adaptation measures that development should employ to respond to the changing climate, whilst Policy SC2 requires all development to minimise and reduce carbon emissions by following the lean, clean and green energy hierarchy.
34. It is proposed to install photovoltaic panels to reduce emissions from the building. However, limited details of these have been provided, only showing the layout but not the elevations of the panels. Consequently, it is not possible

to ascertain whether these could be installed so that they are effective and not overshadowed by the nearby taller tower to the south. Moreover, depending where they are installed, the panels may create glare issues into the proposed units as suggested by the Council, thereby harming the living conditions of future occupants. It also seems to me that they could affect the design of the proposed development, with impacts upon the character and appearance of the development.

35. In the absence of full details of these installations, I cannot reach a firm conclusion that the proposal would reduce emissions. I am therefore unable to conclude that it would comply with either Policies SC1 and SC2 of the NLP as referred to above or with the Framework which together require all development to minimise and reduce carbon emissions.

Community engagement

36. The Council's fourth reason for refusal referred to insufficient information having been provided setting out how the applicant has engaged with the residents on site in accordance with the principles set out in the statement of community involvement. The Newham draft Statement of Community Involvement 2021 recognises that most applications are subject to a period of public consultation to ensure the council can take into account the views of local people and other stakeholders. It also encourages developers to consult locally prior to submission of large-scale proposals.
37. The appeal proposal is not a large-scale proposal in that it is an extension to an existing building providing nine flats. However, given that it proposes an extension to a building with a high number of occupants, it is reasonable to encourage engagement with the community in these circumstances.
38. The appellant has advised that due to the pandemic, it was not possible to hold a public exhibition. In advance of the submission of the application, letters were sent to all residents in November 2020 informing them of the proposals and giving them the opportunity to comment. However, there is limited evidence of how any comments received from local residents were dealt with.
39. I recognise that more detailed engagement would be appropriate once permission is in place and there is greater certainty about how construction works would be managed. This could be secured by way of a condition. However, this does not overcome the fact that better community involvement may have generated a more acceptable scheme to the local community.
40. I therefore conclude that there has not been a satisfactory level of engagement with the existing residents. This therefore fails to comply with Framework which encourages engagement with the local community before submitting their application.

Suitable location

41. Policy D9 of the LP sets out that boroughs should identify what is considered a tall building for specific localities. They should determine locations where tall buildings may be an appropriate form of development, identify any such locations and appropriate building heights on maps in development plans and only develop tall buildings in those locations. It also sets out the impacts that need to be considered in determining applications for tall buildings.

42. Policy SP4 of the NLP deals with tall buildings. Part 2 of that policy sets out the spatial strategy for tall buildings and identifies suitable locations for this type of development. The appeal site is not within such an area. Policy SP4 explains that 'elsewhere, new tall buildings will generally be inappropriate...with sensitively scaled tall buildings the exception rather than the norm and only where there is good public transport access of at least a PTAL score of 4 and the opportunity to create generous public realm.'
43. The site lies within Royal Docks/Beckton Riverside Opportunity Area where Policy S3 of the NLP sets out that additional new housing is supported. The appeal site is in an area which is well-established with tall buildings of varying height, including some of more than 12 storeys and the southern tower within Wards Wharf itself, at 19 storeys. In this context, despite not being within a defined area where tall buildings are considered acceptable, the additional storey would not be inappropriate subject to a suitable design.
44. The appeal site is located within an area with a PTAL of 2. It therefore falls below the PTAL score of 4 sought by the policy. However, the site is within less than 500m from a DLR station, approximately 550m from a bus stop and 1.8km (1.2 mile) from Custom House Station which is served by Crossrail.
45. I appreciate that PTAL scores are not just calculated on the basis of distance and other factors including reliability and frequency of public transport are taken into account in scoring any particular location. Nevertheless, given the site's proximity to the DLR station as well as other public transport opportunities, in combination with the modest scale of the proposal which is for an extension and not for a new tall building which the policy specifically refers, the accessibility of the site is acceptable.
46. Policy S1 of the NLP states that sites should be designed and developed comprehensively, and that piecemeal development of sites will be resisted, particularly where this would prejudice the realisation of the overall vision for an area. The Council considers that the proposal serves to undermine the strategic borough wide approach to locations of tall buildings by incrementally increasing heights after the development has been built out.
47. Whilst I recognise this, I am mindful that the Framework promotes the use of land for housing, including extensions utilising airspace above existing residential premises for new homes. Specifically at paragraph 120 e) it lends support for the upward extension where the development would be consistent with the prevailing height and form of neighbouring properties and the overall streets scene, is well-design and can maintain safe access and egress for occupiers.
48. I have already set out my assessment about the overall design of the proposal in terms of its effect on character and appearance. Notwithstanding my concerns about the design, I consider that an appropriately designed additional storey would not prejudice the realisation of the overall vision for the area.
49. I conclude that the proposed development would be in a suitable location. It would therefore accord with Policy D9 of the LP, Policies S1, S3 and SP4 of the NLP and the Framework in respect of locational factors as referred to above.

Planning Balance

50. The appellant states that the Council cannot demonstrate a five year housing land supply, indicating that based on the most recent Annual Monitoring Report, which was dated September 2020, it has 4.01 years. The Council has not set out its housing land supply position nor has it disputed the appellant's assertion. On this basis, paragraph 11 of the Framework should apply.
51. The proposal would provide nine additional dwellings in a reasonably accessible location. It would therefore contribute to housing supply within the borough. However, due to the small scale of the proposal only limited benefits in this regard would arise from this.
52. I have found that in principle, the scale of the proposal in this location would be acceptable. This is a neutral factor.
53. However, I have found that the design of the scheme would be harmful to character and appearance. I have also found that insufficient evidence has been submitted to demonstrate that the proposal would meet fire safety requirements; would provide suitable noise mitigation to ensure that nearby industrial uses are safeguarded; would not give rise to harm to neighbouring occupiers; would provide adequate facilities for the management and storage of waste and recycling; and would effectively provide an overall reduction in emissions. I have also found, that given the size of the scheme and its location above a large residential development, that adequate community engagement was not carried out. Together these are all factors which weigh significantly against the grant of permission.
54. In my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

Conclusion

55. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR