



Appeal Decision

Hearing held on 12 March 2024

Site visit made on 12 March 2024

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2024

Appeal Ref: APP/A5840/W/23/3332400

Clove Building, 4 Maguire Street, London SE1 2NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Spice Property Investment Limited against the decision of Southwark Council.
 - The application Ref is 21/AP/3131.
 - The development proposed is construction of one storey upward extension to create a seven-storey building with mezzanine at roof level, providing office floor space (Use Class E), with landscaping, green roof and plant room including, installation of roof terrace and fifth floor infill extension with basement cycle parking, refuse storage and other associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the site falls within a conservation area as well as the settings of listed buildings, I have had special regard to the statutory duties set out under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. An agreement pursuant to Section 106 of The Town and Country Planning Act 1990 (as amended) (the legal agreement) is before me. This is dated 4 April 2024 and signed by the appellant, the relevant lender, and the Council. The legal agreement seeks to secure the on-site provision of affordable workspace and the undertaking of highway works. I shall return to the legal agreement later.

Main Issues

4. The main issues are:
 - The effect of the proposal upon the setting and thereby the significance of the Grade II listed building known as 'Anise Warehouse';
 - Whether or not the proposal would preserve or enhance the character or appearance of the Tower Bridge Conservation Area;
 - The effect of the proposal upon the setting and thereby the significance of the St Saviours Dock Conservation Area; and

- The effect of the proposal upon the living conditions of residential occupiers at Cinnamon Wharf, having particular regard to access to daylight.

Reasons

Anise Warehouse

5. Anise Warehouse is of early 19th-century origin, and of four storey height. It adjoins the southern side of the appeal site and, like the Clove Building, addresses Maguire Street to the west and Shad Thames to the east. Its significance and special interest as a designated heritage asset is drawn, in-part, from its identifiable warehouse form, which reflects the area's dockland heritage and remains despite conversion. This significance and special interest is further derived from the asset's traditional materials and array of characterful and formally arranged original architectural features.
6. The appeal building is sited immediately adjacent and provides the backdrop against which Anise Warehouse is viewed from southern street-level vantage points. It thus comprises an influential part of the designated asset's setting, which is otherwise typically made up of various compactly laid out former commercial buildings of different ages, forms, styles, and scale set within an historic network of tight streets.
7. The Clove Building was completed in the 1940s as a warehouse and later converted to office space as part of a modern rejuvenation of the wider area that occurred towards the end of the 20th-century. It already rises to a height that noticeably exceeds that of the relatively diminutive Anise Warehouse. However, owing to the stepped back nature of a number of its highest elements and the somewhat plain and uncomplicated composition of its south-facing elevation, the Clove Building is currently read and experienced as an innocuous and inoffensive component of Anise Warehouse's setting that does not materially detract from one's ability to appreciate its special architectural and historic interest. This is despite its stark white rendered finish.
8. However, the proposal that is before me would exaggerate the Clove Building's bulk and mass immediately adjacent to the asset and introduce an array of new large-sized modern window openings to its south-facing side. Whilst I accept that, when viewed from the southern end of Maguire Street, the voids and setbacks of the Clove Building's existing architecture would remain the key visual reference, with the additional height that is intended being set further back in the streetscene, similar findings do not apply when considering the scheme's effect when viewed from the south along Shad Thames.
9. Moreover, the proposal would introduce a considerable degree of additional bulk at high level in immediate proximity to both the western side of Shad Thames and the northern edge of Anise Warehouse. A domineering and unbalanced relationship would ensue. To exacerbate this, the array of new south-facing openings that are intended to be installed would noticeably complicate, and thus draw attention to, the southern elevation of the appeal building in northward views.
10. I have given full account to the viewpoint analysis that is contained within the submitted Heritage and Townscape Visual Impact Assessment (September 2023). However, with specific respect to View Three, I am not

persuaded that this comprehensively illustrates the extent to which the proposed extensions would be experienceable from Shad Thames.

11. Indeed, from a range of locations set comparatively further back from the asset it is not the case that merely a single south-facing window at sixth floor would be visible nor that the proposed seventh-floor office pavilion (to be set close to the southern edge of the site) would be merely glimpsed. Instead, an excessively busy, varied, expansive, and inherently modern built backdrop to Anise Warehouse would ensue that would, to my mind, materially diminish its status/importance in the streetscene and detract from one's ability to fully appreciate its special interest.
12. Thus, the scheme would cause harm to the heritage significance of Anise Warehouse by virtue of development within its immediate setting. In the terms of the National Planning Policy Framework (December 2023) (the Framework), I would qualify that the degree of harm would be less than substantial. The Framework requires less than substantial harm to be outweighed by public benefits, which I shall return to within my Heritage Balance below.

Tower Bridge Conservation Area (the TBCA)

13. The TBCA lies immediately east of Tower Bridge and encompasses part of the southern bank of the Thames and adjoining compactly developed inner-urban land. The significance and special interest of the TBCA as a designated heritage asset is drawn, in part, from a prevalence of former warehouses that often cover large footprints and rise to considerable heights, with the area's tallest buildings tending to front the Thames and other principal routes. This significance and special interest is further underpinned by an historic street pattern of narrow streets, which promotes a sense of enclosure and limits the availability of expansive views.
14. The Clove Building exhibits characteristics that promote the appreciation of its warehouse origins, with it covering a large footprint and full plot, rising to six stories, and displaying a regular rhythm of fenestration. Moreover, in a location where evolution over time has led to some variety and juxtapositions of scale, style and materials, the Clove Building in its current guise makes a neutral contribution to the TBCA's character and appearance.
15. It has been suggested that the proposal would fail to conform to the general hierarchy of development that is in place locally, with the height and number of stories proposed akin to that of buildings that face either the river or other main routes through the TBCA. However, an appreciable step down in height when compared to the river-fronting Butlers Wharf would remain. As such, from riverside locations, the intended upper floor additions would be glimpsable from only a highly constrained range of potential vantage points. I also see merit in the suggestion made that the architectural language of the proposed extensions, which would incorporate recessed/stepped building lines and matching fenestration, would represent an organic continuation of the existing Clove Building.
16. However, in accordance with my reasoning above, the scale and detailed composition of upper floor elements of the proposal would not be suitably sensitive to the makeup of its immediate historic surroundings to the south and be experienced as unacceptably domineering and incongruous within a range of northward views along Shad Thames. The proposal would thus fail to fully

preserve the character or appearance of the TBCA and cause harm to its heritage significance as a designated heritage asset as a result.

17. Under the terms of the Framework, I would qualify this as less than substantial harm. Nevertheless, in view of the specific design approach that has been taken, the variations in age, scale, and finishes that can be observed upon inspection of the area's building stock, the clear sense of enclosure that is applicable along both Maguire Street and Shad Thames, and the localised nature of identified adverse effects, the level of less than substantial harm would be at a low level, which I shall address within my Heritage Balance.

St Saviours Dock Conservation Area (the SSDCA)

18. The SSDCA is bound by Shad Thames and sits to the east of the site. Its significance and special interest as a designated heritage asset is drawn, in-part, from St Saviours Dock, which is a distinctive feature that comprises the SSDCA's centrepiece and that is defined by groups of large former warehouse buildings that combine into frontages that overlook the water. The main parties agree that the adjacent TBCA and SSDCA strongly complement each other, such that it is difficult to decipher on the ground where one ends and the other begins.
19. I accept that the proposal would bring the appeal building up to a full height broadly comparable to those of dockside buildings situated on Shad Thames. However, owing to the often stepped-back design of proposed upper floor additions and the built variety that is apparent along and in proximity to the western edge of the SSDCA, the proposal would satisfactorily respect the general hierarchy of development in place and have an acceptable effect upon the setting of this neighbouring designated asset. Thus, notwithstanding my above findings specific to Anise Warehouse or the TBCA, no harm would be caused to the heritage significance of the SSDCA and compliance with Policy P20 of the SP would be achieved in so far as it sets out that development relating to conservation areas will only be granted where it preserves or enhances the character or appearance of conservation areas and their settings.

Daylight – Cinnamon Wharf

20. It has been clarified through the Statement of Common Ground and subsequent discussion at the Hearing that the main parties agree that no sunlight considerations are required due to the orientation of site-facing windows serving Cinnamon Wharf. This is despite sunlight amenity having been specifically referenced in the Council's third reason for refusing planning permission. I shall proceed on this basis, with my attention focussed upon the scheme's daylight effects.
21. The BRE Guidelines, Site layout planning for daylight and sunlight (June 2022), set out two main measures to assess the impact upon daylight from development, namely Vertical Sky Component (VSC) and No Skyline (NSL). Despite references made to Average Daylight Factor values in the written and oral evidence provided, I am satisfied that the VSC and NSL tests are those that have the greatest relevance in the circumstances of this case. I nevertheless acknowledge that BRE Guidelines are purely advisory and should be interpreted flexibly in view of the variations that naturally occur between different case and site circumstances.

22. As set out in the signed Statement of Common Ground, there is agreement between the main parties that VSC impacts are, on balance, considered acceptable. Indeed, 69 of the 71 windows tested adhered to BRE Guidelines. Whilst the two windows that did not comply serve habitable rooms, namely a single-aspect studio flat (Flat 509) at fifth floor and an open plan living/kitchen/dining space that forms part of a single-aspect flat (Flat 607) at sixth floor, there is acceptance from the Council that the calculated percentage VSC reductions are not unduly excessive for an inner London location.
23. However, the NSL test, which involves mapping out a calculated reduction to the region within a room where light can permeate directly, has indicated a wider and more pronounced extent of non-compliance with BRE Guidelines. These Guidelines suggest that if the area of the working plane within a room that can receive direct skylight is reduced to less than 0.8 times its former value, the effect will be noticeable. At Cinnamon Wharf the appellant's calculations indicate that within 10 separate rooms there would be identifiable breaches against this standard.
24. Three of these breaches would be marginal and could be fairly considered as acceptable in the context of the tightly built-up urban environment in question. Furthermore, four of the other seven breaches relate to bedrooms where appreciable flexibility should rightfully be applied in view of such spaces not constituting main habitable rooms.
25. Nevertheless, at the three remaining rooms (the key habitable rooms), which comprise the aforementioned fifth floor studio flat and sixth floor open plan living/kitchen/dining space (Flats 509 and 607 respectively), as well as a living/dining room at Flat 510 on the fifth floor, relative NSL reductions of 42.7%, 36.6% and 49.3% would respectively apply. These are significant breaches which indicate in no uncertain terms that noticeable daylight reductions would be experienced by the occupiers of these three key habitable rooms.
26. The relevant NSL Contour Plan¹ that has been produced maps the extent and location of NSL losses to the key habitable rooms. The mapping illustrates that only very marginal proportions of the working planes of each of these rooms currently fall beyond the relevant existing NSL Contour. As depicted on the relevant NSL Contour Plan, this situation would change markedly within each of the key habitable rooms should the proposed development proceed.
27. Upon internal inspection of Flat 607, I was able to obtain a first-hand appreciation of the extent and composition of the key habitable room to be directly impacted. It should be noted that, whilst I experienced the kitchen area that is located to the rear of this room to be gloomy presently (this was during mid-afternoon hours in the presence of an overcast sky), it still received some natural light that would inevitably be harmfully diminished should the proposed development be implemented. I am suitably satisfied that, following my full consideration of all available evidence, adverse daylight effects of a similar considerable magnitude would materialise at both Flats 509 and 510 on the floor beneath.
28. I acknowledge that it is set out in the BRE Guidelines that if an existing building contains rooms lit from one side only and greater than five metres deep (which

¹ Ref: P2631/NSL 06

would be applicable to each of the key habitable rooms here), a greater movement of NSL may be unavoidable. I also accept that the inherent vernacular of the area, with its tight streets and often tall and deep buildings, naturally limits opportunities for natural light to permeate deep into interior spaces. Furthermore, I have had regard to the contextual analysis provided of the Shad Thames area and to the multiple examples of where daylight distribution levels are much lower than one might ordinarily expect in a more suburban environment.

29. However, even though it could be suggested that retained daylit areas would be commensurate with those that are broadly indicative of the wider site context, it is the significant percentage decreases in NSL within each of the key habitable rooms that would lead to noticeable and, to my mind, unacceptable effects. Moreover, whilst daylight constraints are an inevitable consequence of the area's general makeup, this wider context does not justify reduced daylight distribution to the extent calculated, albeit on a localised basis, nor the associated unacceptable losses of amenity.
30. My attention has been drawn to a recent successful appeal decision at William Road, London where NSL distribution effects were considered by the Inspector and the depth of rooms influenced findings. However, it is apparent that the particular configuration of the appeal building in that case also influenced the Inspector accepting relatively large NSL reductions. As it has not been clearly demonstrated that the individual site/case circumstances now before me are directly comparable, the William Road appeal decision is of limited relevance to my considerations. Moreover, it has not been persuasively demonstrated that NSL measurements are of little use or low importance for the purposes of assessing the proposal now before me.
31. On a separate note, it has been highlighted that the Council has previously accepted, at sites elsewhere, NSL reductions well above those identified at Cinnamon Wharf. However, it has not been demonstrated that comparable site circumstances prevailed, nor that the same development plan policies and iteration of the BRE Guidelines were in place to govern/guide decision-making in any such other case. In any event, it is my responsibility to consider the proposal that is before me upon its own individual merits.
32. I note that balconies exist immediately above the windows that serve the key habitable rooms that are contained within Flats 509 and 607, and it has been shown through 'without balconies' assessments that the existing balconies have a meaningful impact on calculated VSC values for these windows. However, on the basis that the existing balconies in question are not intended to be removed as part of the proposal that is before me, and do not, in any event, cause or contribute to material NSL reductions, this form of assessment holds limited relevance and does not demonstrate acceptable daylight effects.
33. A mirror massing exercise forms a supplemental assessment carried out by the appellant, whereby a replica of Cinnamon Wharf has hypothetically been positioned in place of the appeal building for the purposes of illustrating daylight distribution comparisons. However, whilst it has been demonstrated that NSL results would be worse in this alternative scenario, mirror massing would be of more potential relevance where a vacant development site is under consideration. This is not the case here whereby upper floor extensions at a

constrained inner urban site are instead proposed, such that I attach little relevance to the analysis provided in this sense.

34. For the above reasons, having particular regard to access to daylight, the proposal would cause unacceptable harm to the living conditions of residential occupiers at Flats 509, 510 and 607 Cinnamon Wharf. The scheme conflicts with Policy P56 of the SP in so far as this policy sets out that development should not be permitted when it causes an unacceptable loss of amenity to present or future occupiers or users.

Other Matters

35. I have noted objections/concerns raised by interested parties with respect to matters including: the effect upon daylight and sunlight at locations other than Cinnamon Wharf; potential noise disturbance; the effect upon privacy; and an alleged lack of need for additional office space. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters any further here.

Legal Agreement

36. Various affordable workspace-related provisions are contained within the legal agreement that accord with the detailed requirements of Policy 31 of the SP. These include a requirement to submit an affordable workspace strategy to incorporate various specified elements, including a marketing strategy and evidence of collaboration with local groups/providers. Consistent with Policy 31, there is a provision for an in-lieu payment to potentially be made should an end user not be found. Minor highway works within the immediate vicinity of the site, in response to a specific request raised by the Council's Highways Development Team, are also secured via the legal agreement.
37. I am satisfied that the various provisions contained within the legal agreement are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind.

Heritage Balance

38. I have identified above that the scheme would cause less than substantial harm to the significance of Anise Warehouse and fail to preserve its setting and special interest, contrary to the expectations of Section 66(1) of the Act. I have also found that the proposal would cause a low-level of less than substantial harm to the heritage significance of the TBCA through failing to fully preserve its character or appearance contrary to the expectations of Section 72(1) of the Act. It must be noted that even less than substantial harm to a designated heritage asset carries importance and attracts great weight.
39. In terms of public benefits, the scheme would deliver additional modern and energy-efficient office space in a Central Activities Zone location and contribute to the provision of new jobs. In view of the not inconsiderable extent of new floorspace under consideration, I attribute moderate weight to the economic benefits to be drawn in this sense. Further, I separately attach moderate weight to the economic and social benefits of delivering a policy-compliant level of affordable workspace at ground floor.

40. The scheme would also generate jobs and investment in the local economy during the construction phase. I attribute limited weight to such benefits in lieu of their time-limited nature. In addition, a net gain in biodiversity and an improvement in urban greening are forecast. However, owing to the physical constraints of the site, such benefits would necessarily be modest and attract minor weight. This is notwithstanding the high percentage biodiversity net-gain forecast, which I note has been taken from a very low baseline.
41. The public benefits associated with the scheme would be considerable when assessed in cumulative terms. Indeed, I am satisfied that they would be sufficient to outweigh the low-level harm I have identified would be caused to the heritage significance of the TBCA so as to achieve compliance with Policy P20 of the SP in so far as this policy requires that any harm to the significance of a conservation area or its setting that results from a proposed development must be robustly justified. However, in the circumstances of this case, the scheme's public benefits would not, in my judgement, outweigh the noteworthy level of less than substantial harm that would be caused to the heritage significance of Anise Warehouse.
42. The proposal conflicts with the historic environment conservation and enhancement policies contained within the Framework. Conflict also arises with Policy P19 of the SP in so far as this policy sets out that development relating to listed buildings, structures and their settings will only be permitted if it conserves or enhances their special interest and that any harm to the significance of the listed building or structure that results from a proposed development must be robustly justified.

Overall Planning Balance

43. In addition to the harms identified to the significance of Anise Warehouse and the TBCA, I have separately identified harm to the living conditions of neighbouring occupiers at Flats 509, 510 and 607 Cinnamon Wharf having particular regard to access to daylight. Consequently, the proposal conflicts with the development plan when read as a whole and the material considerations I have identified above do not outweigh that conflict.

Conclusion

44. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT

James Armitage-Hobbs	Planning Consultant, DP9
Nick Collins	Townscape and Heritage Consultant, KM Heritage
Lance Routh	Architect, Stiff and Trevillion
Matt Harris	Daylight and Sunlight Consultant, Point 2

FOR THE COUNCIL

Zaib Khan	Planning Officer
Catherine Jeater	Design, Conservation and Heritage
Kaivin Wong	Daylight and Sunlight Consultant, Lumina London

INTERESTED PARTIES

Emily Tester	Local Councillor
Jon Round	Local resident
Mike Richards	Local resident

DOCUMENT SUBMITTED AFTER THE HEARING

Completed version of Agreement pursuant to Section 106 of The Town and Country Planning Act 1990, dated 4 April 2024, received via email dated 5 April 2024