

**PLANNING APPLICATION SUBJECT OF AN APPEAL
REPORT ON APPEAL DECISION**

APPLICATION NO:	PA/08/00001/LBTH
LOCATION:	Devon Wharf, Leven Road, Tower Hamlets, London, E14 0LL
PROPOSAL:	Erection of 4/5 and 14 storey buildings to provide 1,000 sq m of commercial space comprising one unit for use as A1 (Shop) or A2 (Financial and professional services) and 14 B1 (Business) units together with 66 residential units, 21 car parking spaces, landscaping and riverside walkway.
APPLICANT:	Chilton Transport (Bow) Ltd

1 Summary

- 1.1 On the 1st of October 2008, an appeal was lodged with the Planning Inspectorate against the Corporation's non-determination of the application to develop the Devon Wharf site in Poplar. The application was put to the Planning Committee of the 13th of November 2008, where Members resolved that had the appeal not been lodged with the Planning Inspectorate, the application would have been refused on four reasons, being that 1. the high residential density in an area of low public transport, services and open space would constitute an overdevelopment of the site, 2. the design, height, layout and massing would be inappropriate in the context of the riverside setting, 3. the application failed to demonstrate sufficient justification for the proportion and mix of affordable housing, and 4. the application failed to demonstrate sufficient commitment to energy efficient measures and sustainable design.
- 1.2 After considering the representations made by the Appellant, the London Borough of Tower Hamlets, the Health and Safety Executive and the Corporation, the Inspector found in favour of the Corporation. On the 10th of February the appeal was dismissed.

2 Issues Considered in the Appeal Decision

- 2.1 In coming to the decision, the Inspector regarded the main issues of the appeal as being:
- a) the safety of the proposed development in the context of the nearby gasholder station,
 - b) whether the proposed development constitutes an overdevelopment of the site,
 - c) whether the proposed development would be in keeping with the surrounding area
 - d) public access to the River Lea
 - e) the mix and proportion of affordable housing
 - f) energy efficient and sustainable design

3 Discussion

- 3.1 The Inspector found that there were sufficient grounds to dismiss the appeal on safety (a), overdevelopment (b) and affordable housing (e) on each of their own merits. The Inspector also

regarded that the outstanding issues in relation to energy (f) could be secured by condition. However, the Inspector did not agree with the Corporation's argument in relation to the local and riverside context (c) or public access to the River Lea (d).

Site Safety in the Context of the Nearby Gasholder Station

- 3.2 In the committee report put before Members in November of 2008, safety was not included as a deemed reason for refusal. This decision was a conscious one, despite the Health and Safety Executive's objection to the scheme in principle. The reasons for the Corporation deciding against the advice of the HSE was the formulaic (rather than site specific) nature of the advice received from the HSE, the previous decision of the HSE not to request that the Secretary of State call in and determine the application and the role of the Corporation in bringing about the regeneration of the wider Leaside area.
- 3.3 Given the standpoint of the Corporation, the HSE made their own separate representation to the Inspectorate. This representation reiterated the PAHDI generated 'advise against' objection received during the life of the application then went on to explain at length the PAHDI method and why they had come to their advice. It is important to note that the HSE chose not to undertake a more site specific risk assessment of the appeal site, a technical risk assessment of the gasholder structure, nor did they take into account local area characteristics such as existing housing proximity to the gasholder but relied entirely on the PADHI method of risk assessment. The PADHI method relies on rigid consultation zones and in our view would at best be considered an indicative assessment of risk. This view is also shared by Tower Hamlets and more generally the GLA.
- 3.4 The Inspector took only three short paragraphs to establish that the appeal should be dismissed on safety grounds. This may be attributed to the Appellant's decision not to challenge the HSE advice by undertaking an independent risk assessment. It is also interesting to note that the decision was based almost entirely on the advice of the HSE and offered only a vague policy justification, referring to policy 4B.1 of the London Plan in relation to safety. The Inspector was incorrect in referencing this policy, as the context of safety in 4B.1 actually relates to secure by design principles, whereas 4B.34 refers to hazardous substance installations.

Whether the Proposal Would Result in an Overdevelopment of the Site

- 3.5 This issue was the first deemed reason for refusal of the Corporation. The Corporation argued that public transport, community services and open space in the area were all low and while the intention of the Corporation and the Borough is to improve this situation, these improvements are yet to be committed. Furthermore, the development would offer no improvement to this situation, but place further pressure on already stretched community infrastructure.
- 3.6 The Appellant argued that the development would be a high quality development and act as a catalyst for the regeneration of the wider area. The Appellant also cited other high density residential scheme that had been approved within Tower Hamlets and stated that the scheme was compliant with the adopted policies for the area.
- 3.7 The Inspector placed weight on the density matrix contained within the London Plan and the density ranges specified within the Lower Lea Valley Opportunity Area Planning Framework. In doing so, the rationale given by the Appellant in support of the application was found to be insufficient and therefore the proposal deemed to be overdevelopment.

Whether the Proposal would be Appropriate in the Location and in Keeping with the Surrounding Area

- 3.8 The Inspector chose to separate the Corporation's second reason for refusal into two elements. The first dealt with the proposal in the context of the surrounding area. The Inspector was satisfied

that the proposal would be, in broad terms, appropriate in the location and in keeping with the surrounding area.

- 3.9 The Inspector mentioned some specific design considerations in coming to this view. Firstly, it was stated that the cylindrical shape would take its cue (to a degree) from the nearby gasholders. This comment was likely to be a personal view considering that the gasholders are not mentioned in this context by the architect in the Design and Access Statement, or any of the appeal documentation.
- 3.10 Also with regard to the tower, the Inspector was satisfied that the structure would relate well to the river and satisfies London Plan policy 4B.3. Again, the reference to policy in the context of the paragraph appears to be unusual as 4B.3 relates to public realm, which the Inspector discussed later in the decision. For the information of Members, Policy 4B.9 refers to tall buildings and 4B.10 refers to the impact of large scale buildings to, among other things, water spaces.
- 3.11 With reference to four storey element of the scheme, the Inspector considered that this bulk would be much less than the nearby former tram sheds and cited the development under construction behind the trams shed and to the north on Leven Road. No mention was made of the two storey terrace of residential housing located directly opposite the site.
- 3.12 Overall, the Inspectors conclusion on the design and massing of the scheme was contrary to the Corporation's view, which was informed by Design for London and Tower Hamlet's design advisor. Furthermore, the Inspector made no mention of the layout of the scheme in reaching this opinion. With respect to the latter, the layout of the affordable business space units was a particular concern of the Corporation and was highlighted in both the committee report and appeal statement.

Public Access to the River Lea

- 3.13 As mentioned earlier, layout and access formed part of the second reason for refusal, but was treated separately by the Inspector. The only policy reference made in this section is to the Interim Leaside AAP where it seeks to ensure access is made to the riverfront in Poplar Riverside sub-area. Notably absent in this regard are London Plan policies 4B.1, 4B.3 and 4C.11 which all emphasis the importance of public realm in the waterside developments. This was a key element of the Corporation's argument against the development. The Inspector was not convinced by these arguments and concluded access to the river could be provided and any further detail of the access could be secure by way of condition.
- 3.14 The Inspector also makes reference to the comments provided by Design for London in this section, acknowledging the point made by DfL that the site requires strong public access links to the river. However, the Inspector only gave 'moderate' weight to these comments due to the absence of supporting material in the emerging Poplar Riverside Implementation Plan.

Proposed Proportion and Mix of Affordable Housing

- 3.15 During the assessment of the scheme, the financial viability appraisal of the scheme was examined by the Corporation's housing advisors and found to require further information. The appellants did not make any changes to the appraisal in the lead up to the appeal, therefore the Inspector found no justification for the proposed mix and agreed with the Corporation's third reason for refusal.

Energy Efficiency and Sustainable Construction

- 3.16 The Inspector rightly concluded that the Corporation finds no specific fault with the energy assessment provided by the appellants. The objections to the energy assessment were actually

raised by the GLA in their Stage 1 consultation response and the Corporation had relied on the GLA's expertise in this matter to inform the decision. However, the GLA chose not to make representation on this appeal. The Inspector concluded that details of energy measure could be secured by condition and therefore need not be a reason for refusal. On the information provided, it is not known whether such a condition would require a material change in fabric of the building, which potentially could result in an additional planning permission being required. Furthermore, it is not known whether the GLA would accept such a condition at their Stage 2 consultation.

4 Conclusion and Implications

- 4.1 The largest implication of the Appeal is the Inspector's decision to rely on the advice given by the Health and Safety Executive in relation to the gasholder site. This is a significant consideration not only in terms of the assessment of the new application for Devons Wharf but for the redevelopment of the wider Polar Riverside area. This should not necessarily change the approach that the Corporation takes to developments near gasholder installations. It should still be the role of the Corporation to encourage high quality and sustainable development on brownfield sites such as this, just as it should remain the role of the HSE to provide advice on safety. However, this potential consequence of this decision may be that the HSE may decide to request the Secretary of State to call in the new application. The applicant has been informed of this view, but for now this is only the view of the case officer. In future, any new application coming forward on land in proximity to these or other gasholders should be accompanied by a detailed risk assessment, fully demonstrating a level of detail beyond the PADHI system of assessment.
- 4.2 The reason for Inspector to separate the second reason for refusal into two elements is not apparent in reading the decision letter. The Corporation's argument emphasised the importance of the riverside setting and the public linkages through the site, placing particular emphasis on the opinion that access and layout should be an integral element of urban design. However in this regard the Inspector seemed to place more importance on the context of the surrounding built environment. The development's relationship with its riverfront setting did not appear to carry significant weight, which is the opposite approach taken by the Corporation and the policies contained within the London Plan and Lower Lea Valley OAPF. It was disappointing that the Inspector appeared to conclude that the development would be appropriate when compared with the gasholders, former tram sheds and a new development behind another structure. The Inspector appeared also to be of the opinion that simply providing public access to the River Lea would be sufficient, subject to securing details at a later date.
- 4.3 An encouraging sign from this decision was the weight placed upon the Lower Lea Valley OAPF, although some references made to the London Plan appeared to be out of context with the wording or statement being made. Although only speculation, it may be that the Inspector was mistakenly referring to the 2004 London Plan rather than the later 2008 version. This may have occurred as the Appellant makes several references to the original application, which pre-dated the London Plan alterations of February 2008.
- 4.4 A new application was lodged on the 21st of January and is expected to go before Members on the 9th of April Planning Committee.

CASE OFFICER: Stephen Allen

DATE: 12/03/2009
