

<b>Committee:</b> Development Committee	<b>Date:</b> 10 <sup>th</sup> May 2017	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b>  Corporate Director of Place	<b>Title:</b> Applications for Planning Permission  <b>Ref No:</b> PA/16/1081
<b>Case Officer:</b> Angelina Eke	<b>Ward:</b> Blackwall and Cubitt Town

## 1. APPLICATION DETAILS

**Location:** Balmoral House, 12 Lanark Square, London E14 9QD

**Existing Use:** Residential

**Proposal:** Erection of three additional storeys to building to create nine new residential units (4 x 1 bed, 3 x 2 bed and 2 x 3 bed) plus external amenity space, associated refuse storage and secure cycle storage provision

**Drawing No.'s:** Existing

BALHO\_E001\_Existing\_Front Elevation - Revision A  
BALHO\_E002\_Existing\_Rear Elevation - Revision A  
BALHO\_E003\_Existing\_Side Elevation 1 - Revision A  
BALHO\_E004\_Existing\_Side Elevation 2 - Revision A  
BALHO\_L000\_Existing\_OS map  
BALHO\_P000\_Existing\_Basement Plan - Revision A  
BALHO\_P001\_Existing\_Ground Floor - Revision A  
BALHO\_P002\_Existing\_First Floor - Revision A  
BALHO\_P003\_Existing\_Second Floor - Revision A  
BALHO\_P004\_Existing\_Third Floor - Revision A  
BALHO\_P005\_Existing\_Fourth Floor - Revision A  
BALHO\_P006\_Existing\_Roof Plan - Revision A  
BALHO\_S001\_Existing\_Section AA' - Revision A  
L001 Rev A – Existing Site Plan

Proposed drawings

BALHO\_D202\_Proposed - Wall Detail - Revision B  
BALHO\_D203\_Proposed - Bin Storage - Revision C  
BALHO\_D204\_Proposed - Cycle Parking - Revision B  
BALHO\_E201\_Proposed - Front Elevation - Revision C  
BALHO\_E202\_Proposed - Rear Elevation - Revision C  
BALHO\_E203\_Proposed - Side Elevation 1 - Revision C  
BALHO\_E204\_Proposed - Side Elevation 2 - Revision C  
BALHO\_L201\_Proposed - Site Plan - Revision C  
BALHO\_MS201\_Proposed - Material Strategy - Revision B  
BALHO\_P200\_Proposed - Basement Plan - Revision B  
BALHO\_P201\_Proposed - Ground Floor - Revision C  
BALHO\_P202\_Proposed - First Floor - Revision B  
BALHO\_P203\_Proposed - Second Floor - Revision B  
BALHO\_P204\_Proposed - Third Floor - Revision B

BALHO\_P205\_Proposed - Fourth Floor - Revision B  
BALHO\_P206\_Proposed - Fifth Floor - Revision B  
BALHO\_P207\_Proposed - Sixth Floor - Revision B  
BALHO\_P208\_Proposed - Roof Plan - Revision C  
BALHO\_S201\_Proposed - Section AA - Revision C  
BALHO\_V201\_Proposed - 3d Views - Revision B

**Documents:** Appraisal Report of the existing and proposed structures dated April 2016, Alan Baxter Partnership (Ref D532), Construction Management Plan, Drawing & Planning Ltd Design and Access Statement, Daylight and Sunlight Report Rev A dated 30<sup>th</sup> November 2016, Waldrams Limited (Ref : 1123) Flood Risk Assessment, GTA Civils Limited, April 2016 (First Issue, Ref 6260 2.3 F) Noise Exposure Assessment dated 31/03/2016, Clement Acoustics Ref 11040-NEA-01)

**Applicant:** LGI (Group) Limited

**Ownership:** LGI (Group) Limited

**Historic Building:** N/A

**Conservation Area:** N/A

## 2. Background

- 2.1. Members may recall that this application for planning permission was previously considered by the Development Committee on 08<sup>th</sup> February 2017. A copy of the original planning report is appended.
- 2.2. The Committee, on a vote of 0 in favour, 6 against and 1 abstentions, resolved not to accept the officer recommendation to grant planning permission and resolved that permission should be refused on the following grounds:
  - Overlooking from the proposal to neighbouring properties and the failure to mitigate this
  - The approach to incremental development across the site in terms of affordable housing, communal amenity space and child play space.
  - Density of the proposal
  - Adverse impact on residential amenity during the construction phase
- 2.3. In accordance with Development Committee Procedural Rules, the application was DEFERRED to enable officers to prepare a supplementary report with appropriate wording for reasons for refusal and the implications of the decision.

### **3.0 IMPLICATIONS ARISING FROM A DECISION TO REFUSE THE APPLICATION**

- 3.1. In the event that the Committee resolves to refuse the application, the following options are available to the applicant.
- 3.2. The applicant could withdraw the application and later approach the Council for further pre-application advice on an amended proposal and thereafter submit an amended scheme.
- 3.3. The applicant could exercise their right to appeal to the Secretary of State against the Council's decision and lodge an application for costs. The appeal would be determined by an independent inspector appointed by the Secretary of State.
- 3.4. In this regard, Members should be made aware that the applicant's agent has indicated that they are likely to appeal the decision, if members are minded to refuse the scheme and therefore the officer's report has been written to take account of the robustness and strength of each of the concerns raised by members in the event of an appeal.

#### **Financial implications - award of costs**

- 3.5. In dealing with appeals, all parties, including the Local Planning Authority, are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
- 3.6. Unreasonable behaviour in the context of an application for an award of costs may be either:
  - Procedural – relating to the process; or
  - Substantive – relating to the issues arising from the merits of the appeal.
- 3.7. An example of the former might be failing to keep to the requirements of an appeal timetable to submit statements of case or other evidence. A further example of the latter might be taking a decision which could be described as unreasonable in the context of all of the evidence available to the decision maker. It is this latter aspect that the Committee members in their role as decision makers need to be mindful of.

### **4.0 COMMITTEE REASONS FOR REFUSAL**

#### **Overlooking from the proposal to neighbouring properties and the failure to mitigate this**

- 4.1 Committee members' raised concerns about the new proposal would result in unacceptable overlooking to the neighbouring proposal and felt that the applicant had failed to mitigate this.
- 4.2 As noted in paragraphs 9.49 to 9.51 on the matters of overlooking and privacy of the officers main report, a careful consideration has been given to the objectives and emphasis of Policy DM25 of the Managing Development Document, which seeks to ensure that new developments do not lead to an unreasonable level of overlooking between habitable rooms of adjacent residential properties and their private amenity spaces. It is accepted that whilst the policy aspiration specifies a distance of approximately 18 metres between windows of habitable rooms to reduce inter-visibility

to a degree acceptable to most people, this aspiration is not easily achieved within an inner city context. Given that the residential units within the three adjoining blocks arose from an office conversion, the existing residential units currently experience a limited separation distance.

- 4.3 The proposal will result in an extension of the building in close proximity to AEGON House. Whilst the proposal would be within the existing building envelope, it will result in the introduction of new terrace features on the building elevation, which, without appropriate mitigation measures, is likely to give rise to a degree of overlooking and Officers have assessed the impact of this within the original planning report against other policy considerations of the scheme.
- 4.4 The main report also sets out on a floor by floor basis how the privacy impacts arising from the proposal are to be addressed. At the closest pinch point between the proposal and Aegon House (3.2 metres), the main report explains how the impacts of overlooking are to be addressed through use of obscure glazing, however, the main bedroom to unit 4.03 on the fourth floor does not benefit from obscure glazing and therefore a degree of indirect overlooking will take place. To a lesser extent due to the screening on the terrace, this is repeated at 5<sup>th</sup> floor level in relation to unit 5.01
- 4.5 The privacy impacts of the proposal in relation to the other properties around the site is considered to be generally acceptable due to the positioning of windows and the employment of obscure glazing and as such, officers are of the view that the level of overlooking is not sufficient to warrant a refusal of the application, however officers acknowledge that overlooking may occur in limited instances.
- 4.6 The applicant has submitted a written response to Members' concerns in relation to privacy and overlooking. In summary, the applicant has acknowledged the 'pinch point' between the buildings is close however the development includes mitigation measures in the form of obscured glazing to prevent an unacceptable relationship. This will remove opportunities for intervisibility between the opposing units in the neighbouring buildings. The existing relationship between the building's lower floors has been mitigated in the same way. In addition, the closest terrace spaces to Aegon House will be inaccessible and privacy screens will be included on other balconies to prevent overlooking from private amenity spaces. The privacy screens would be secured by condition giving LBTH control over their details.
- 4.7 In conclusion, officers consider that the proposal including the siting of private amenity spaces, introduces a level of overlooking that can be adequately mitigated. However, there still remains some loss of privacy and if Members are not satisfied that the mitigation measures are sufficient, then this can legitimately form the basis on which to refuse the application.

**Incremental development across the site in terms of affordable housing, communal amenity space and child play space**

- 4.8 Members have raised concerns about incremental development through the residential intensification of the three blocks and the shortcomings of this within the context of the wider infrastructural requirements required to support the additional population growth, whilst this remains an unresolved concern, members would need to assess the application on its own planning merit.
- 4.9 Having assessed the impact of incremental development arising from the total new units within the application building, officers have concluded that the affordable housing trigger would not be applicable and given that the proposal is not a Major

Development there is no planning policy basis for securing amenity space and child play space. Furthermore, the applicant is not the overall freeholder for the three blocks and therefore there is no control over the timing of the additional dwellings on the estate coming forward.

- 4.10 The applicant has provided a response to this and has stated that it is important to delineate between the current application and previous applications which were made historically under different planning policy and were pursued by different applicants with their own land interest in parts of the wider estate. The current applicant has an interest in the 'air rights' at Balmoral House only which allow a discrete application to be made for a roof level extension. The roof extension must be treated as a self-contained development for nine units; meaning that it remains below the threshold attracting affordable housing provision, communal amenity space and play space provision. In addition, there are no reasonable grounds in law for considering the current planning application for nine residential units at Balmoral House as part of a piecemeal or sequential development which could yield an affordable housing requirement and require consideration in terms of play space and communal amenity space provision. In the view of the applicant, this is not a sustainable position which could be defended as a reason for refusal at appeal and any refusal on these grounds would be likely to attract a costs application from the appellant.
- 4.11 Notwithstanding the applicant's response, officers do not consider that a reason for refusal on this ground can be sustained.

#### **Density of the proposal**

- 4.12 Members have raised concerns about the impacts arising from the increased density. Both local and national policy encourages developments which optimises the potential of previous developed sites. The site is considered to be urban locations with PTAL 4, the London Plan (Table 3A.2) and such locations would normally support a density of between 200 – 750 habitable rooms per hectare (HR/HA). The application site currently has 15 units and together with the proposal, the overall density will be 593 habitable rooms per hectare.
- 4.13 The proposed density is considered to be in line with local and national policy requirements and therefore officers do not consider that a refusal of the scheme on the grounds of excessive density is justified. Density ranges are considerations to be relied on as guidance rather than as an absolute rule. Furthermore, the consideration relating to density is based on other wider factors including site context.

#### **Adverse impact of the proposal during the construction phase**

- 4.14 In respect of the construction phase and its impact to the existing residents, it was recommended in the main report that a condition be imposed to secure a construction management plan, which will mitigate noise and dust emissions from demolition and construction works. It is also considered that the hours of construction can also be mitigated to ensure that the amenity of residents is protected. In addition, the applicant has prepared a construction management plan and has responded to state that the design of the proposed extension includes measures to minimise disturbance to residents. For instance, the steel structure of the extension will be independent, creating a noise control buffer, further enhancing the distance between the construction works and sensitive receptors in the building. The design also eradicates the need to fix the new steelwork structure into the existing roof, therefore reducing the noise and vibration created. The applicant has agreed to the principle of relocating residents on the existing top floor of Balmoral House during the first phases of the project.

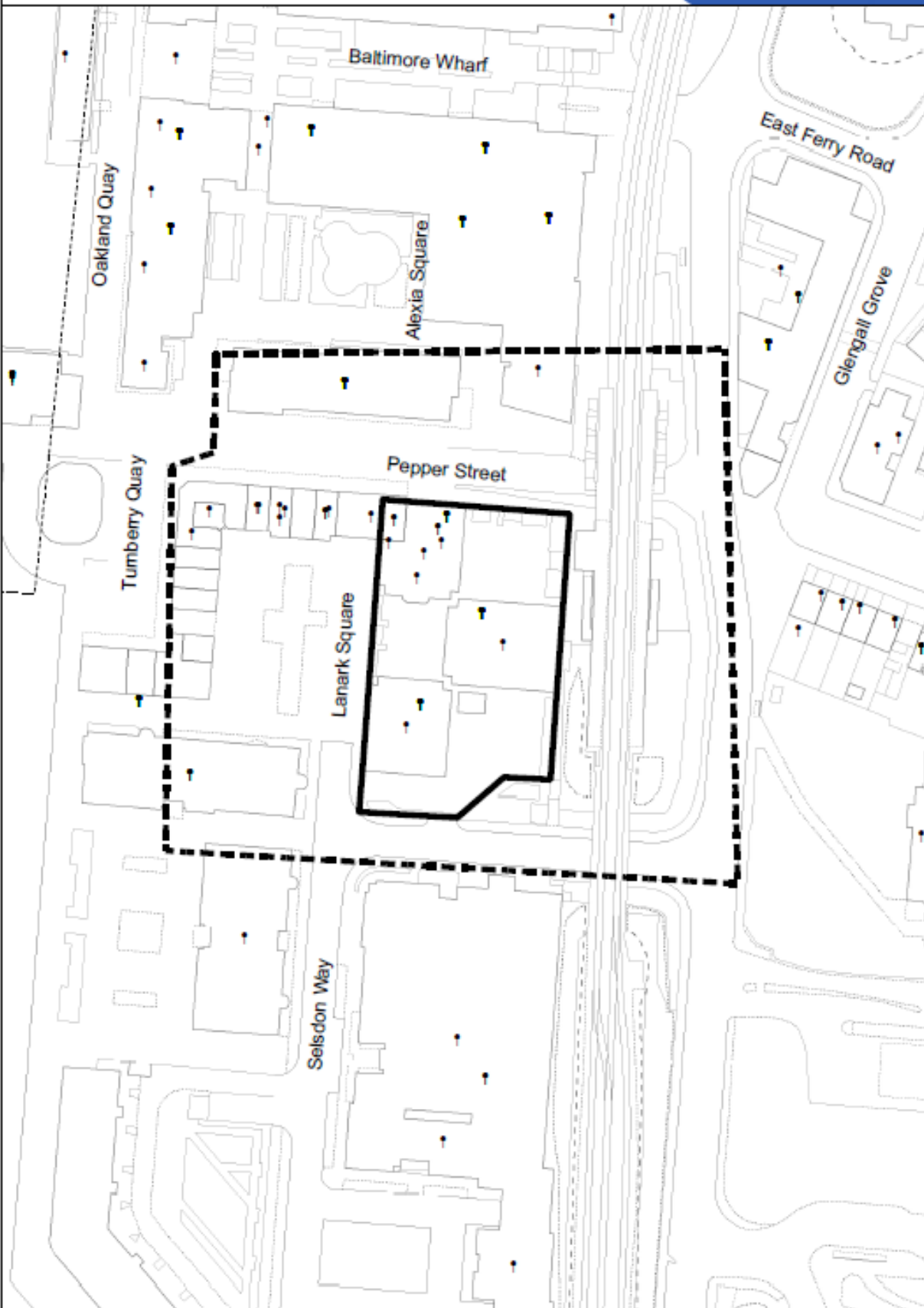
In conclusion, officers consider that a reason for refusal on this ground would be difficult to defend, however there does exist an appeal precedent (Appeal Ref: APP/E5900/A/12/218429 - Ability Place, 37 Millharbour, London E14 9DL) that takes a contrary approach where the Inspector commented “...it is difficult to see that adequate measures could be put in place which would overcome the effects of noise and disturbance which local residents would experience during the construction period “


Given the above appeal precedent, it is not considered unreasonable for Members to refuse planning permission on the basis of noise and disturbance during the construction phase and a reason for refusal is drafted below.


## **5.0 RECOMMENDATION**


- 5.1 The proposal has not been amended and has been considered in the context of the relevant Development Plan policies and all other material consideration and the officer recommendation to GRANT planning permission remains unchanged.
- 5.2 However, if members are minded to REFUSE planning permission, the following two reasons are recommended, as officers consider issues around density and affordable housing cannot be defended at an appeal.
1. The proposed development will result in unacceptable level of overlooking to the habitable rooms on the northern elevation of Aegon House, due to the proximity of the blocks. The proposal will therefore be contrary to policy SP10 of Tower Hamlets Core Strategy (2010) and Policy DM25 of the Managing Development Document 2013.
  2. The proposal extension of the building would have detrimental impact in terms of noise and nuisance from the construction noise to the existing residents within the building and nearby, and therefore the proposal would fail to safeguard existing residential amenity, contrary to Policy DM25 of the Managing Development Document 2013.

Planning Application Site Map  
PA/16/01081





 Planning Application Site Boundary

 Locally Listed Buildings

 Land Parcel Address



 Consultation Area

 Statutory Listed Buildings

0 40 m