

Item No.	Classification	Decision Level	Date
4	OPEN	PLANNING COMMITTEE	07.09.04
From INTERIM DEVELOPMENT AND BUILDING CONTROL MANAGER		Title of Report DEVELOPMENT CONTROL	
Proposal The making of an Article 4 Direction that planning permission granted by Article 3 and Part 2 Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 shall not apply to the construction of a 2m high wall along the western boundary of the Tate Modern adjacent to 44 Holland Street, Bankside.		Address Tate Modern , 53 Bankside Cathedrals Ward	

This matter was previously considered by the Planning Committee at its meeting on 6th July 2004 when the recommendation listed below was agreed. However, legal advice sought concerning the preparation of the Article 4 Direction is that it could be inferred that too much weight might have been given previously to the £10,000 which was offered by Bankside Development to indemnify the Council against any compensation claim from the Tate Modern against any subsequent refusal of planning permission for the wall. This could leave the Council open to a claim for legal costs from the Tate significantly in excess of this amount.

The assessment of the planning merits of the case given in the previous report which is repeated below is considered to be sound but no weight should be given to the offer of £10,000. The Committee is therefore asked to approve the recommendation as before but to disregard the offer of £10,000.

PURPOSE

1. To consider the merits of making of an Article 4 Direction withdrawing permitted development rights for the construction of a wall on the western boundary of the Tate Modern adjacent to 44 Holland Street, Bankside.

RECOMMENDATION

2. That an Article 4 Direction should be made to require planning permission for a wall 5m either side of the shared boundary between the western forecourt of the Tate Modern and 44 Holland Street.

BACKGROUND

3. The Planning Committee previously considered this matter on 2nd February 2004 when the Committee endorsed the officer's recommendation that an Article 4 Direction should not be made. The previous report is attached below.
4. Since the Committee meeting in February, Bankside Developments the developers of the Holland/Hopton Street tower on the adjoining site, have made a claim for judicial review against the Council's issue of a Certificate of Lawfulness for the wall and the refusal to make an Article 4 Direction requiring planning permission for the wall. As part of the Council's preparation to defend its case and in line with current good practice, officers from the Council together with the barrister acting for the Council have met with Bankside Developments and their legal representatives to discuss whether the matter may be settled out of court.
5. As a result of the meeting it was agreed that Bankside Developments (BD) would submit a number of computer-generated images to illustrate the likely appearance of the wall and the impacts on the surrounding townscape and the proposed 15-20-storey building. The Council would then give consideration to this material and information contained in the witness statement on behalf of BD for the court proceedings.
6. These images include 4 views of the proposed Bankside Developments Building with and without the wall from:
 - The top of the ramp across the western forecourt to the Tate,
 - from Hopton Square,
 - from the Taxi Rank in Holland Street, and
 - from Bankside Gallery.

FACTORS FOR CONSIDERATION

Main Issues

7. As in the previous report, the main issue to be determined by the Council is whether or not they can be satisfied that it is expedient that the construction of the wall which is the subject of the certificate of lawfulness should not be carried out unless permission is granted for it on an application for planning permission. In determining this issue the Council should have regard to planning policy, the impact of the proposed wall on the surrounding townscape and on the amenities of surrounding occupiers and the effect of its construction on the development of the locality including the planning permissions for the outside restaurant seating area on the western forecourt and the proposed 15-20 storey building on the site

at 44 Holland Street.

Planning Policy

8. This is set out in paragraph 4.2 of the previous report

Consultations

9. Design Officer: If a wall is to be built its junction with both Hopton and Holland Streets is a cause for concern. At both ends of the line of the wall it has the potential to further obscure the approach to the Tate of anyone rounding the Hopton Street Tower from the west. In both instances the free-standing ends of a boundary wall would look disconnected and without immediate relevance. If the Tate wish to make an enclave of their garden the use of a boundary wall must be related to what exists on site. The base of the ramp on Hopton Street is an obvious point of entry. The termination of the wall end to Holland Street (if extended beyond its junction with the new building) is less easy to resolve.
10. The length of 'wall' separating the Tate from the Hopton Street Tower is of equal concern. It cannot and should not] be allowed to be constructed as an impenetrable barrier. A high wall dividing adjacent sites is not within the spirit of the Bankside Open Space. Hopton Street Tower developers were further encouraged to include a 'live' frontage of A1 and A3 uses deliberately for the purpose of animating the public realm of Bankside. A boundary definition may be seen by the Tate as being desirable and necessary but it is far preferable in townscape terms that this boundary should be porous/filtering/intermittent/ art led, but not a solid brick wall.

PLANNING CONSIDERATIONS

11. The effect of making an Article 4 Direction is to bring what are normally permitted developments within the scope of planning control. A planning application for such developments in this case a wall, would have to be submitted to the Council, although no fee would be payable. On the other hand, if such a planning application were refused, and if this resulted in a commercial loss to the applicant, then the Council would be liable to pay compensation. The applicants for judicial review have offered to indemnify the Council against any claim for compensation in this instance up to a maximum of £10,000.
12. The procedure for making an Article 4 Direction is that the Council would serve notice on the owner of the site and other interested parties, and advertise the direction locally. Interested parties would be given 21 days to comment. The direction would take effect immediately but only for a 6 month period and would expire if it is not confirmed by the Secretary of State. In practice the Council would send all responses received and a report explaining the reasons for the

making of the Direction to the Secretary of State who would then decide whether or not the order should be confirmed.

13. The images submitted by the applicant and it is this, above all which has prompted a reconsideration of the Article 4 proposal clearly illustrate the likely impacts of the wall on the western forecourt of the Tate and the relationship it will have with the Bankside developments Building. However, the images show a wall which extends up to the back edge of the boundary with the pavement in Holland and Hopton Street. The wall for which the Council has issued a Certificate of Lawfulness would not in fact start 2m in from the boundary with the back edge of the pavement in either street.
14. However, even taking this into account, if the Council were assessing the merits of this wall as part of a planning application there would be concerns about the impact that an unbroken wall along this boundary would have on the streetscene. This particularly the case as the wall would be in a prominent location close to the main entrance to the Tate Modern,, a busy location attracting many visitors. An unbroken solid wall along this boundary would be unlikely to make a positive contribution to the character of the area, diminishing the sense of open space within the area and unnecessarily disrupting likely pedestrian flows between Hopton Square the BD building and the Tate Modern. This it could be argued would make the wall contrary to UDP Policies on aesthetic considerations and urban design.
15. However, this is not say that an enclosure along this boundary would be unacceptable in principle. It is considered reasonable that the Tate should be able to delineate their boundary and provide some form of enclosure to their property. Also it would be difficult to argue that the physical bulk of a wall of 2m in height along the would be detrimental to the amenities of the future occupiers of 44 Holland Street to the extent that the Council could justify refusing planning permission. Indeed a more porous form of boundary enclosure could be acceptable in this location.
16. As a result of the prominence of the siting of the wall there are concerns about the likely impact on the urban design of the area and more specifically the flow of open spaces from Hopton Square through to the Tate Modern and beyond. Given that a Certificate of Lawfulness for a wall along this boundary has been applied for and issued by the Council, there is a real and specific threat of this development taking place.
17. Because of the prominence of the site and its location adjacent to a major tourist attraction with heavy pedestrian flows, a 2m wall in the position proposed could damage the urban design of the area and should be brought within planning control in the public interest. Therefore it is considered appropriate for the Council to make an Article 4 Direction to remove permitted development rights for any means of enclosure within 5m of the boundary between the western forecourt of

the Tate and 44 Holland Street. This does not mean that a means of enclosure would be unacceptable within this zone but it would mean that the Council would be able to consider the merits of any such means of enclosure.

18. In conclusion , the Council is faced with two possible courses. If it fails to make an Article 4 Direction, the decision is likely to be subject to judicial review proceedings with all the costs which this would entail. On the other hand the making of Article 4 Direction could also involve the Council in meeting certain costs if planning permission were subsequently to be refused. However, Bankside Developments have offered to indemnify the Council in this event up to a maximum of £10,000.
19. Notwithstanding the potential financial implications , on the basis of the additional information which has now been provided to the Council, in particular the photo-montage of a possible wall, there is a clear case to seek to bring this possible permitted development within planning control by the Council. It is therefore recommended that the Council should make an Article 4 Direction to require planning permission to be sought for any means of enclosure in this location. This will also have the effect of nullifying the Certificate of Lawfulness previously granted by the Council.

EFFECT OF PROPOSED CHANGES ON THOSE AFFECTED

20. There are no Equal opportunities implications.

**COPY OF REPORT PRESENTED TO THE PLANNING COMMITTEE ON 2ND
FEBRUARY 2004**

Item No.	Classification	Decision Level	Date
	OPEN	PLANNING COMMITTEE	02.02.04
From DEVELOPMENT AND BUILDING CONTROL MANAGER		Title of Report DEVELOPMENT CONTROL	
Proposal The making of an Article 4 Direction that planning permission granted by Article 3 and Part 2 Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 shall not apply to the construction of a 2m high wall along the western boundary of the Tate Modern adjacent to 44 Holland Street, Bankside.		Address Tate Modern , 53 Bankside Cathedrals Ward	

1. PURPOSE OF REPORT

- 1.1 To consider the merits of making of an Article 4 Direction withdrawing permitted development rights for the construction of a wall on the western boundary of the Tate Modern adjacent to 44 Holland Street, Bankside.

2. RECOMMENDATION

- 2.1 That an Article 4 Direction should not be made.

3. BACKGROUND

- 3.1 The particular development to which the Article 4 Direction, if made, would apply is the construction of a wall 2 metres above ground level along the western boundary of the landscaped western forecourt to the Tate Modern Art Gallery (former Bankside power station). This boundary runs from its north point on the eastern spur of Hopton Street in a southerly direction for approximately 37 metres then turns to the west for approximately 18m metres where it meets Holland Street, an overall distance of approximately 55m running in a curve from north to west. To the west of this boundary is 44 Holland Street, a vacant part demolished two storey brick building formerly used as a paper warehouse. A 2m high solid wooden fence painted blue has been erected along its eastern boundary to enclose the site.

- 3.2 To the east of the former paper warehouse site is a part landscaped forecourt leading to the main entrance to the Tate which is down a ramp on the western flank of the building. This forecourt area, known as the western forecourt, is, at present, open with a tarmac surface and with a number of benches and some planting on its northern side. As part of the original planning permission for the conversion of the power station to an art gallery the Tate were granted consent for the installation of a café seating area under a pergola structure within this western forecourt close to its western boundary. To the south of the western forecourt boundary is a taxi rank in Holland Street and office and workshop buildings across this street.
- 3.3 To the west across Holland Street is Bankside Lofts a modern tapering cylindrical 10-15 storey block of flats. To the north west of the forecourt and the former paper warehouse across Hopton Street is Falcon Point a 5-8 storey block of flats fronting on to the Riverside Walk and the Thames. There is a vehicular access to an underground car park which runs from the east end of this section of Hopton Street. A blank wall ranging from 1-2m in height runs along the boundary of this street with the Tate. To the west of 44 Holland Street is a small landscaped area known as Hopton Square containing trees. It is surrounded by a mixture of commercial and residential properties with shops and offices at ground floor level and areas of blank wall on its west side.
- 3.4 In April 2003 the Council refused to issue a Certificate of Lawfulness for the proposed development of a 2m high wall which ran from the back edge of the pavement in Holland Street along the western forecourt's boundary with 44 Holland Street to a point at the back edge of Hopton Street. The reason for refusing to issue the Certificate was that the wall was greater than 1m in height adjacent to the public highway in both Holland Street and Hopton Street and therefore was 'development' within the meaning of section 55 of the Town and Country Planning Act 1990 not permitted by Schedule 2 Part 2 Class A.1 (a) of the Town and County Planning (General Permitted Development) Order 1995.
- 3.5 In June 2003 planning permission was granted on appeal to erect a 15-20 storey building on the former paper warehouse site at 44 Holland Street. The building would comprise 28 flats on the upper floors with class A shop and café/restaurant uses at ground and first floor level. As shown on the approved plans the building is proposed to be sited 5-7m to the west of the eastern boundary of the former paper works with the western forecourt except where, at its southern end, it is to be sited almost directly adjacent to the boundary when it turns to run west to Holland Street. The eastern and southern portions of the ground floor of the building would be used for class A shop/office café uses with a primarily glazed frontage towards the Tate site. There would be an entrance to this Class A uses with revolving doors 4m away from the boundary with the western forecourt. . The planning permission is at present subject to a challenge in the High Court (the Council is not party to the challenge).

- 3.6 In August 2003 the Council issued a Certificate of Lawfulness for a 2m high wall running along the boundary between the western forecourt and the former paper works at 44 Holland Street but set back 2m from the edge of the pavement in Holland Street and set back from the back edge of the roadway in Hopton Street (there is no pavement here). The wall is shown on the certificate application plans as being 2m in height with bench seating incorporated into its eastern side facing the Tate Modern. It will be inset approximately 1m from the edge of the existing blue fence. This distance varies because the wall changes direction along its length and lies at varying angles to the fence enclosing 44 Holland Street. In granting the Certificate of Lawfulness the Council determined that at the date of the application the wall was permitted development and therefore did not require planning permission.
- 3.7 In October 2003 the owners of 44 Holland Street, Bankside Developments Limited made a claim for judicial review of the Council's decision to issue the Certificate of Lawfulness for the wall described in the previous paragraph and of the failure of the Council to consider making an Article 4 Direction withdrawing permitted development rights for the construction of the wall. Permission to bring the claim was granted by a judge, Collins J., on the 3rd of December 2003. The Council have filed an acknowledgement of service in the judicial review proceedings which maintains that the application for the Certificate of Lawfulness was determined correctly and lawfully and that the Certificate was properly issued, and that no decision was made or was required to be made in respect of an Article 4 Direction at that time. The Council intend to defend the action for judicial review on these grounds.

4. FACTORS FOR CONSIDERATION

4.1 Main Issues

The issue to be determined by the Council is whether or not they can be satisfied that it is expedient that the construction of the wall which is the subject of the certificate of lawfulness should not be carried out unless permission is granted for it on an application for planning permission. In determining this issue the Council should have regard to planning policy, the impact of the proposed wall on the surrounding townscape and on the amenities of surrounding occupiers and the effect of its construction on the development of the locality including the planning permissions for the outside restaurant seating area on the western forecourt and the proposed 15-20 storey building on the site at 44 Holland Street.

4.2 Planning Policy

Southwark Unitary Development Plan 1995 [UDP]:

Policy E.2.3: Aesthetic Control: All new developments will be expected to display a high standard of design and have regard to the established vertical

and horizontal rhythms in the street, have quality materials appropriate to their location, provide visual interest at street level and not be detrimental to highway safety.

Policy E.3.1: Protection of Amenity: Permission will not be granted for a development where it would involve nuisance or loss of amenity to adjacent users, residents and occupiers or the surrounding area.

Supplementary Planning Guidance 1: comprises.

Draft Southwark Plan 2002:

Policy 3.15 Urban Design: proposals should be designed with regard to their local context making a positive contribution to the character of the area; a high quality of design and materials will be required for the street environment which should be coordinated to avoid unnecessary clutter and to ensure a safe informative and attractive environment.

Policy 3.2 Protection of Amenity: planning permission will not normally be granted for a development where it would involve substantial loss of amenity to adjacent users residents and occupiers of the surrounding area.

4.3 Consultations

No consultations have been carried out. In the documentation accompanying the claim by Bankside Developments Limited for judicial review observations are made as to the merits of making an Article 4 Direction in respect of the wall which is the subject of the Certificate under challenge. Regard has been had to this documentation in the preparation of this report.

5 PLANNING CONSIDERATIONS

The Council's powers under an Article 4 Direction

- 5.1 The construction of the wall is a 'development' which requires planning permission under the Town and Country Planning Act 1990. The Town and Country Planning General Permitted Development Order 1995 grants planning permission under Article 3 for "Minor Operations" within Schedule 2 Part 2 Class A namely:

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

- 5.2 Development is not permitted by Class A if:

a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;

b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;

- 5.3 Under Article 4 the Council may give a direction (an Article 4 Direction) withdrawing permitted development rights in Schedule 2 Part 2 where in any case it is satisfied that it is expedient to do so. Government guidance on the making of Article 4 Directions is contained in D.O.E. Circular 9/95. Appendix 4 of the Circular reminds local planning authorities that permitted development rights have been endorsed by Parliament and consequently should not be withdrawn locally without “**compelling reasons.**” The Appendix goes on to state that: ‘*permitted development rights should only be withdrawn in **exceptional circumstances.** Such action will rarely be justified unless there is a **real and specific threat, i.e. there is reliable evidence to suggest that permitted development is likely to take place which could damage an interest of acknowledged importance and which should therefore be brought within full planning control in the public interest***’.
- 5.4 The service of an Article 4(2) Direction can lead to claims for compensation under Section 108 of the Town and Country Planning Act 1990. The legislation permits a claim for compensation to be made by a person with an interest in land where he/she can show that there has been a depreciation in the value of his/her land as a result of an Article 4(2) Direction being made and a planning application being refused or granted conditionally different to those conditions contained in the Town and Country Planning (General Permitted Development) Order 1995. The claim period is restricted to twelve months from the date the direction was made.

5.3 The impact of the wall on the surrounding townscape

The plans submitted with the Certificate of Lawfulness application contain a plan view showing the siting of the wall and its relationship to Holland Street and Hopton Street and two sections through the wall showing its height (2 metres) and its profile with bench seating. In these respects the wall constitutes a simple boundary feature enclosing the forecourt and the proposed outside restaurant seating area and providing seating for visitors to the Tate Modern and the western forecourt.

- 5.4 There is a wide variety of buildings and a range of sizes visible in the local street scene constructed from different materials both modern and traditional. The former part-demolished paper warehouse has a 19th century industrial appearance. The Tate modern itself is the former 20 century Bankside power station and largely retains its monumental industrial appearance as such. Falcon Point is a 1970’s development of linked blocks of flats varying in height from 4 to 9 storeys. Bankside Lofts comprises a recent conversion of a former building and its extension, providing apartments with floor to ceiling fenestration above ground floor commercial properties. In this varied street scene it is difficult to conclude that a concrete wall of 2m in height enclosing

the Tate Modern western forecourt would be harmful with respect to its impact on townscape. Indeed to the north of the site there is in existence a section of wall enclosing the forecourt along the southern side of Hopton Street which has a blank utilitarian appearance and rises to a height of 2m.

- 5.5 The western boundary of the western forecourt has for many years been enclosed by 44 Holland Street so that when viewed from the east the proposed wall would not noticeably increase the existing degree of enclosure. The fact that the wall will be set 2m back from the pavement in Holland Street will limit its impact in this location. In the light of this the proposed wall is not considered to be in conflict with relevant UDP policy concerning townscape and appearance nor will it involve a substantial loss of amenity to adjacent users, residents and occupiers.
- 5.6 If the wall were constructed at the present time it would largely replicate the existing boundary with 44 Holland Street. In this existing built context there are no compelling reasons or exceptional grounds for withdrawal of permitted development rights. It is noteworthy in this regard that Inspector Bingham when determining the appeal for the adjacent London Town building found that “in its present condition Tate Square does not make a significant visual contribution to the surrounding area.”
- 5.7 The existence of planning permissions for the creation of the Herzog de Meuron ‘Arboured Café’ on the western forecourt and for a twenty storey building on 44 Hopton Street are material considerations for the Committee to take into account in deciding whether or not an Article 4 Direction should be made with respect to the wall. The former paper warehouse is in part demolished and it is reasonable to conclude that the site will be subject to some form of redevelopment in the foreseeable future. Similarly, the implementation of the permission for the outdoor restaurant seating area is in contemplation by the Tate. In these circumstances it is reasonable and necessary to have regard to the impact of constructing the wall on the proper planning of the locality in the context of these developments coming forward.
- 5.8 The importance of the western forecourt of the Tate Modern as an open space used by visitors to the art gallery and by the general public was acknowledged by the Council in evidence to the public inquiry given by Bridin O’Connor.
- 5.9 Dr. Jan Ghel of Ghel Architects Aps, Urban Quality Consultants of Copenhagen gave evidence to the inquiry that, in his view, the urban spaces in the vicinity of the gallery were of national and potential international importance. (para.2.6). He identified a problem with Tate Square (including the western forecourt) namely that it lacked activity in the surrounding area and at night it is deserted (para. 3.15). He considered that “*Hopton Street 44 has the potential to provide active frontages on all its facades.*” He acknowledged the importance of the Bankside Study by Richard Rogers and its key

recommendations including the need for an integrated approach to the development of the open spaces in the area. In his study of the Bankside area produced to the inquiry Dr. Ghel identified the “*Important Pedestrian Links*” to the square as being via the Millennium Bridge and the Riverside Walk and via the taxi drop-off point on Holland Street to the south of the former paper works (“Public Space Plan – Tate Modern” page 23). In the same study (page 25) he promoted the creation of an active and transparent frontage in the ground floor façade on the eastern elevation of the former paper warehouse site at 44 Holland Street in the interests of generating more life in the square.

- 5.10 Dr Ghel considered that it was a positive feature of the 20 storey block permitted on appeal that it proposed new active street frontages (study page 39) and that it was important that a future building on the site strengthened the character of both the national (Tate Square) and local square (Hopton Square) activities (ibid page 37). In the witness statement of Harry Wolton Q.C. filed in the judicial review proceedings it is stated that:

“I crossed examined Dr Ghel and put to him that his view of the importance of the area known as “Tate Square” related, in particular, to its relationship with the buildings on both sides of the Square, namely, the Tate Modern and the subject site (44 Hopton Street) and proposed building (15–20 storey tower). He agreed. I put to him that the proposal of the Tate Modern to construct a wall across this otherwise open space was totally contrary to his views as to the urban design merits and importance of the open space consisting of the square. He agreed with me.”

- 5.11 In the witness statement of Matthew Gibbs, Partner of Montague Evans, filed in the judicial review proceedings it is stated that, in the context of the design of the proposed 15-20 storey building on the former paper warehouse site at 44 Hopton Street:

“In discussions at the time of the preparation of the application proposals, the LPA’s urban design officer, Ms. Julie Greer, acknowledged the importance of opening up views into the western forecourt area through the narrowing of the built footprint on the ground. Of importance was the ability to provide lines of sight for the pedestrian through the adjoining Hopton Square to the Tate Modern western/ramped entrance.”

- 5.12 In his evidence to the inquiry Philip Gumuchdjian RIBA FRSA described 44 Hopton Street as “*a lynch-pin site between two public spaces one ‘Metropolitan’ in character namely the Tate Forecourt and the other ‘Local’ in character namely Hopton Square.*” By reason of its design and footprint set back from the former paper warehouse boundary on its north and eastern side, he contended that the podium of the 15-20 storey building would open up views out of the western forecourt presenting the visitor leaving the Tate Modern ramped entrance “*with a wealth of possibilities and the sight of diverse activities and possible shelter.*”

- 5.13 By contrast he concluded that *“if the Tate’s proposals for the ‘Arbour Café’ and the dividing wall are constructed the proposed podium will be obscured and barred from entry, the Bankside Gallery will be obscured and the view of Embankment Gardens and St Paul’s blocked. As a consequence the Tate Forecourt will seem smaller, and appear more exclusive. This is in sharp contrast to the effect of our own proposals which make the Tate Forecourt appear more animated larger and more inclusive than at present.”*
- 5.14 With regard to pedestrian links from Hopton Square to the western forecourt Mr. Gumuchdjan contended that the 15-20 storey building would allow pedestrians to *“walk through the 44 Hopton Street site on the proposed enlarged pavement (the building having been set back) before walking beneath the protective ‘Piano Nobile’ cantilever which focuses their view at ground level activities and the existing Tate café beyond.”* In his view *“with the implementation of the Herzog de Meuron ‘Arboured Café’ and proposed ‘exclusive’ dividing Tate Wall, the effect of this potentially enhancing urban sequence would be reduced to the detriment of all.”*
- 5.15 After consideration of the evidence submitted to the inquiry Inspector Bingham concluded *“in its present condition Tate Square does not make a significant visual contribution to the surrounding area.”* In evaluating the merit of the nearby buildings he concluded that Falcon Point was *“mediocre architecture”* and that Bankside Lofts was *“lacklustre”* and possessed an industrial appearance. Its Millennium Tower element was not a development of particular architectural quality. Overall he found the area to constitute a *“rather nondescript setting.”*
- 5.16 In considering the Tate Modern’s objections to the 15-20 storey tower the Inspector observed that: *“It is suggested that Tate Square has the potential to become a world class space, but notwithstanding the international standing of the Tate Modern, I find its potential severely limited in this respect. It is a relatively small area, and apart from the grandeur and overwhelming presence of the former power station I find its surroundings less than prestigious. Moreover the proposal to use all the space other than the ramped entrance to the building as an open air restaurant dispels the notion of Tate Square achieving acclaim as an open space of world class.”*
- 5.17 The inspector recorded the evidence that the 15-20 storey building would be set back from the site boundaries and the Appellants’ contention that this would draw the building further back from the surrounding developments while opening ground level views in all directions. He considered that the 15-20 storey building was a *“building of considerable architectural quality.”* In addition he found that it had an advantage in townscape terms in that it would *“define the open spaces at Hopton Square and the Tate Square while permitting views and movement between them.”* With respect to the Tate’s proposal to construct a wall on the western boundary of the western forecourt

he concluded that while it was not a matter for him, he was of the opinion that it “*would result in a negative feature in townscape terms.*”

Response to case put forward by Bankside Developments Ltd

- 5.18 At paragraph 18 of his witness statement Mr. Gibbs, on behalf of Bankside Developments Limited, states that the construction of the wall would result in:
- The imposition of an enclosure to the national space;
 - The removal of desire lines of sight linking the Tate Square to that of Hopton Square;
 - The failure to achieve the integration of the Hopton Square site with that of the western forecourt of the Tate, which the Council has sought in all discussions associated with the proposals for the site;
 - In the event the 44-47 Hopton Street scheme is built out (or any other scheme on that site) the erection of a 2 metre wall is contrary to good urban design and the thoughts of the inspector to the inquiry in respect of the proposals for 44-47 Hopton Street (see paragraph 53 of the inspector’s decision letter at tab 10 page 48) who considered that construction of a wall would result in a negative feature in townscape terms;
 - The removal of views at ground level from the south and west of the River Thames;
 - The reduction in area of the Tate Square;
 - Failure to achieve an integrated ground level landscape treatment for the space.

The concerns raised by London Town and their consultants regarding the impact of the proposed 2m wall on the evolving surrounding townscape are addressed in the following paragraphs:

- 5.19 *Enclosure to the national space:* The wall would provide partial enclosure to the western forecourt. While this space is plainly an important pedestrian open space providing access to the Tate Modern and casual recreation space for visitors to the area, for the reasons given by Inspector Bingham it does not have the quality of an open space of national importance.
- 5.20 *Removal of desire lines:* There are at present no desire lines of sight that can be followed by the pedestrian between the Tate Modern and Hopton Square. As observed by Mr. Gumuchdjian the pedestrian in Hopton Square “*sees the Stack of the Tate Modern.*” This is the “*urban signal*” that today and in future will draw the pedestrian to the Tate Modern. It is correct that if the pedestrian should walk directly towards the chimney stack he would walk through the 44 Hopton Street site. To this extent the 15-20 storey building would facilitate more direct access from Hopton Square than can be had at present (via Hopton Street.). With the implementation of the ‘Arboured Café’ sited on the western forecourt however, this potential route under the proposed ‘Piano

Nobile' would be obstructed and diminished. The proposed route beneath the cantilever would focus the pedestrian's view at ground level activities and the existing café beyond (Gumuchdjian proof 8.3.02). In this context however, the proposed 'Arboured Café' would constitute a significant obstruction as is recognized by Mr. Gumuchdjian. In these circumstances it is not considered that the wall would materially detract further from the limited accessibility that might be had through the 44 Hopton Street site in the context of these proposed developments taking place.

- 5.21 *Failure to achieve integration:* In the inspector's judgment the proposed 15-20 storey building would define the open spaces at Hopton Square and the Tate Square. It is considered that the tower like dimensions of the structure mainly provides this definition. The wall in this respect would not materially detract from this function of the building. The inspector also recorded as an advantage of the building that it would permit views and movement between the two squares. While this is true to an extent on the plan form of the building, the structure would still present an obstacle to views and movement so that they would be achieved only by moving around the building at ground level. Passing to the north of the proposed building the pedestrian would, in the proposed development scenario, encounter the Herzog de Meuron 'Arboured Café' which would adversely affect the potential sequence of views and movement. The wall in this location would not materially add to that interruption. To the south of the proposed building the building line kisses the boundary of the 44 Hopton Street site so that the wall here would not materially affect the potential visual and pedestrian accessibility that would otherwise be available in this location. It is acknowledged that the wall would have the effect of closing off the ground floor retail units in the 15-20 storey building from views from the western forecourt. This was a particular concern of Dr Ghel. As recognized by inspector Bingham however, the proposal to use all the space of the western forecourt other than the ramped entrance to the Tate Modern as an open-air restaurant dispels the notion of Tate Square achieving acclaim as an open space of world class. In this context the construction of the wall is unlikely to amount to an additional impediment to integration of material significance. Moreover, the wall would provide a seating area and potential meeting point for visitors to the Tate Modern providing integration between the taxi rank and the 'Arboured Café' on the western side of the western forecourt and the ramped entrance to the Tate Modern.
- 5.22 *Contrary to good urban design / a negative feature in townscape terms:* The inspector's comment is not explained by him in any detail. While it is relevant to consider the impact of the wall on the urban design of the area in the context of the 15-20 building being erected in accordance with the planning permission it is also relevant to take into account the permission for the Herzog de Meuron 'Arboured Café' (which predates the planned redevelopment of the 44 Hopton Street site) and its impact on the townscape of the western forecourt and its environs. In the light of the Tate's proposals to develop the 'Arboured Café'

and the proposed siting of the 15-20 storey building at ground level it is considered that the impact of the construction of the wall would not materially add to the enclosure of the western forecourt that would be achieved in that development scenario.

- 5.23 *The removal of views at ground level from the south and west of the River Thames:* The wall would be placed on the western boundary of the western forecourt largely enclosing the eastern boundary of 44 Hopton Street. That site at present obstructs views of the Thames from the south and west. Beyond it to the north Falcon Point also constitutes a visual barrier to views of the Thames and development on its north bank. The 15-20 storey building would itself obstruct views albeit to a lesser extent than the former paper warehouse. In addition the 'Arboured Café' would also obstruct views of the river from the south and west. In this context it is not considered that the wall would add materially to any removal of views of the Thames.
- 5.24 *Reduction in area of the Tate Square:* The wall would be built on the western boundary of the Tate Square/western forecourt. In itself it would amount only to a small and immaterial reduction of the open space of the square. As noted by the inspector the proposal to use the open space as an open air restaurant would itself take up open space in the western forecourt. In this development context the construction of the wall would not amount to a material loss of the area of the Tate Square/western forecourt.
- 5.25 *Failure to achieve a ground level landscape treatment for the space:* The western forecourt at present is, in part, landscaped. The construction of the boundary wall would not inhibit the extension of that landscaping as part of an integrated landscape plan for the open space of the western forecourt. The 'Arboured Café' would itself involve planting and landscaping. The presence of the wall on the western boundary of the western forecourt would not prevent that development taking place or its integration with the wall and other features on the forecourt in a landscaping scheme given the space available.

Conclusions

- 6.1 In conclusion if the 15-20 storey building were erected in accordance with the planning permission much of the proposed wall would be screened in approaches from the west from Hopton Square by the new building itself apart from a small section of the wall to the south of this building and part to the north. The southern section would run generally east to west so it is not felt that there would be an unacceptable sense of enclosure when viewed across Hopton Square from the west. If the proposed café area on the western forecourt of the Tate is provided then the degree of openness of this area would be reduced in any event further diminishing the impact of the wall on the wider street scene.

It is considered that Inspector Bingham was justified in coming to the

6.2 conclusion that whilst the surroundings to the Tate Modern are an important location attracting many visitors they are less than prestigious. The square itself is an important open space providing an entrance to the Tate Modern but it does not make a significant contribution to the surrounding area. A 2m high wall in the location proposed is not a substantial enough structure to be materially harmful to the townscape character of the area for the reasons stated above. The area is not within a conservation area and there are no listed buildings close enough to the site to be materially affected by this proposal. The wall is not a development that could damage an interest of acknowledged importance in all the circumstances of this case as discussed above. The proposed wall is not considered to be in conflict with relevant UDP policies and there are accordingly no compelling reasons or exceptional circumstances for making an Article 4 Direction.

6.3 With respect to any impact on the amenities of existing surrounding occupiers the height and location of the proposed wall are such that it is unlikely that it could have any material adverse impact on existing surrounding occupiers particularly the vacant 44 Hopton Street site, given its location, size and physical structure.

6.4 With regard to its impact on the Bankside development's planning permission for a 15-20 storey building the proposed wall will be close to the eastern side of the new residential building proposed by Bankside developments. There is an exit from the eastern side of this building and it has been designed on the basis that people will be able to pass through the ground floor of the building which contains a lobby and shopping uses, and be able to move onto the Tate Modern site. The construction of the proposed wall would prevent this from happening and screen views of the ground floor of the new building from the Tate modern.

6.5 For the reasons stated above it is not considered that the proposed wall will have a significant impact on the public realm in terms of a sense of enclosure from views from the west as much of the wall would be screened by the new building and that section which is not will either be set back from the street or adjacent to a new outdoor café area to the Tate itself a visual barrier.

6.6 The inhibited pedestrian movements though the new building are similarly not felt to be sufficient reason for making an Article 4 Direction by reason of the obstruction to movement that would be presented by the 'Arboured Café' in any event.

6.7 While the wall would obscure the ground floor retail premises in the 15-20 storey building from views from the western forecourt the loss of integration between the square and the ground floor of the new building in the development context that includes the 'Arboured Café' would not be material for the reasons stated above. The seating include in the wall structure would

enhance the quality of the open space as a recreational and meeting space integrated with the ramped entrance to the Tate Modern.

- 6.8 Having regard to the size and position of the wall and the nature of the surrounding townscape and its potential future development it is not considered that the Council can be satisfied that it is expedient to make an Article 4 Direction withdrawing permitted development rights for the construction of the wall on the western boundary of the western forecourt as shown on the plans accompanying the certificate application. It is not felt that the wall described in this report would damage an interest of acknowledged importance which should be brought within planning control in the public interest.

7. EQUAL OPPORTUNITY IMPLICATIONS

- 7.1 None.

8. LOCAL AGENDA 21 [Sustainable Development] IMPLICATIONS

- 8.1 None.

LEAD OFFICER	Andrew Cook	Development and Building Control Manager
REPORT AUTHOR	Jeremy Howell	[tel. 020 7525 5906]
CASE FILE	TP/2561-212	
Papers held at:	Council Offices, Chiltern, Portland Street SE17 2ES [tel. 020 7525 5402]	