

<b>Strategic Development Committee</b>	<b>Date:</b> 11 January 2018	<b>Classification:</b> Unrestricted
<b>Report of:</b> Director of Development and Renewal		<b>Title:</b> <b>PLANNING APPEALS REPORT</b>
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## 1. INTRODUCTION

1.1 This report summarises appeal decisions in Tower Hamlets made by the Planning Inspectorate (on behalf of the Secretary of State) over a 14 month period since the last report - from 1 October 2016 to 30 November 2017.

### **Recommendation**

1.2 The Committee is invited to note the contents of this report.

## 2. WHY APPEAL DECISIONS ARE IMPORTANT

2.1 Appeals to the Secretary of State can be made following a refusal of planning permission, listed building consent, advertisement consent and other related planning decisions. Relevant legislation is set out in the footnote below.<sup>1</sup>

2.2 Appeals can also be made if the Council fails to make a decision within the specified time period (e.g. 13 weeks for major planning applications and 8 weeks for all other planning applications). In non-determination cases the Council will put forward reasons for refusal, either using delegated powers or with the agreement of the relevant Committee. The formal process for dealing with appeals is the same for refusal and non-determination cases and the Inspector will continue to deal with the proposals on their planning merits.

2.3 Most planning appeals are decided by independent Planning Inspectors appointed by the Secretary of State. On rare occasions, the Secretary of State may intervene to recover an appeal and determine it themselves. In these cases the Inspector's report acts as a recommendation rather than a decision.

2.4 Planning Inspectors have the same powers as local planning authorities to impose planning conditions and can also take into account proposed planning obligations (usually a Section 106 unilateral undertaking, rather than an agreement) in coming to a decision.

2.5 Appeal decisions are important for a number of reasons. There is a general presumption in the NPPF that planning permission should be granted for sustainable development, unless there is a clear conflict with the Development Plan or material considerations suggest otherwise.

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<sup>1</sup> Town and Country Planning Act 1990 (as amended) - Sections 78 and 195  
 Planning (Listed Buildings and Conservation Areas) Act 1990 – Section 20  
 Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)

- 2.6 Tower Hamlets (in common with most other planning authorities) tends to grant more planning permissions than refusals, aiming to work with applicants proactively by providing pre-application advice and negotiating to improve the quality of proposals, ensuring they are compliant with the development plan.
- 2.7 When planning permission (or other consent) is refused, the reasons need to be clear, evidence based and robust, otherwise there is a risk that the decision could be overturned on appeal. If the Council is deemed to have acted unreasonably, there is also a risk of an award of costs irrespective of the appeal decision itself.
- 2.8 Appeal decisions can be helpful in testing the wording of current policies and indicate where future changes could be made to improve policies or prevent unintended consequences, for example when preparing a new local plan or supplementary planning document.
- 2.9 Whilst all planning decisions are made on the merits of the proposal, appeal decisions can be helpful in understanding how to frame robust reasons for refusal taking into account the weight that Inspectors place on different planning policies and considerations.
- 2.10 When an appeal is dismissed and permission refused, it may be for all of the reasons in the Council's original decision, it may be for a selection of these or in rare cases for a different reason to that which the Council put forward.
- 2.11 Appeal decisions are part of the planning history of a site and hence are a material planning consideration when determining any subsequent applications on the same site. An appeal decision can also indicate how a development could be amended to make it acceptable. For example, the decisions on Corbridge Crescent highlighted the harm caused by a tall building in part of the scheme, but acknowledged that the other parts of the proposals had many merits.
- 2.12 Planning decisions always involve a careful balancing of the issues. Understanding where Inspectors place weight on different policies, material planning considerations and their interpretation of the NPPF can help to improve local decision making.

### **3. APPEAL PROCEDURES**

- 3.1 There are three types of appeal procedure: written representations, informal hearings and public inquiries.
- 3.2 Written representations are the most common procedure and suitable for most types of minor scale development. They are also usually the quickest route with the average time from start to decision currently 18 weeks (11 weeks for householder appeals).
- 3.3 Informal hearings are suitable for smaller scale major development where there is one or more planning issue. Public Inquiries are the most formal, with the parties having legal representation and cross examination of the planning and other expert witnesses. Inquiries tend to be reserved for the most complex cases or where there is substantial public interest.
- 3.4 Public Inquiries take longer with the current average time period being 51 weeks from start to decision. In all cases the Inspector will carry out a site visit before making a decision.

### **Impact on resources**

- 3.5 Officers will always work hard to defend the Council's planning decisions. Appeals can be resource intensive and whilst the Directorate has not carried out any detailed analysis the main impacts are on officer time and the associated costs in terms of preparing statements or proofs of evidence, coordinating any arrangements for hearings and inquiries.
- 3.6 Once an appeal has been accepted, it will run to a strict timetable in terms of the requirements for the Council and the appellant. Failure to adhere to the timetable can present a risk of a successful costs award in favour of the appellant. Hence where resources are finite, dealing with an appeal can impact on the capacity of officers to deal with live applications or other case work.
- 3.7 Other impacts on Council resources can arise from the need to appoint specialist expert witnesses, if the resource is not available in-house and the costs of appointing legal representation.
- 3.8 Public Inquiries are time consuming and resource intensive for the Council. They involve formal examination and cross examination of the planning and other expert witnesses. The recent Inquiry at Whitechapel Estate, sat for 10 days and is estimated to cost in excess of £100,000 in terms of legal costs and professional witness cost. This does not include the impact on officer time, preparing for, administering and appearing at the inquiry.

### **Award of costs**

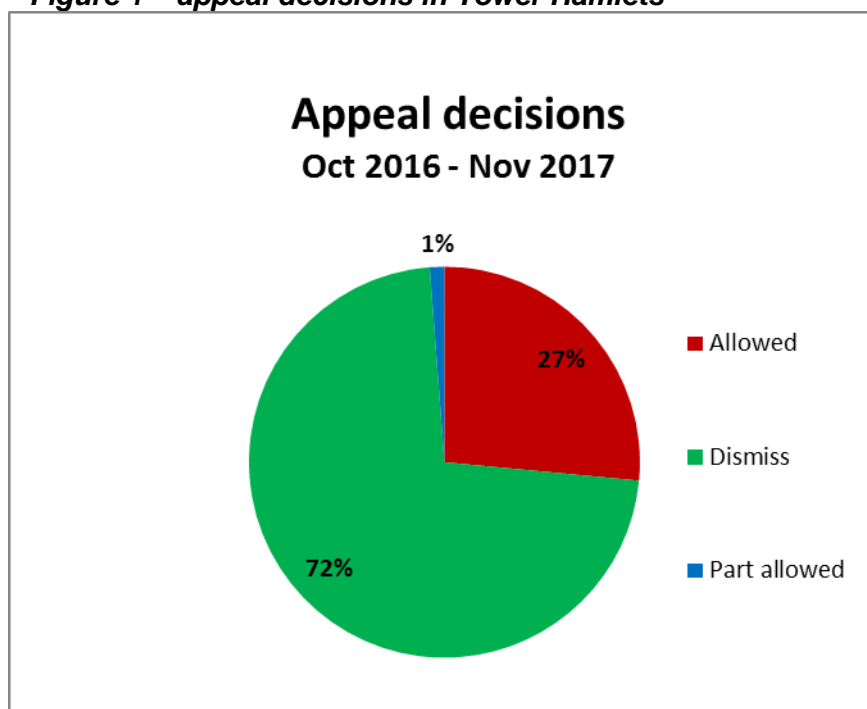
- 3.9 Either party in the appeal can apply for an award of costs. The Inspector will make the costs decisions separately to the planning decision. Costs can be awarded against the Council if it has behaved unreasonably in terms of reaching the original decision or in terms of not complying with the procedural requirements of the appeal process.

## **4. APPEAL DECISIONS OVERVIEW**

- 4.1 During the 14 month period, **83** decisions were made on appeals in Tower Hamlets. **79** were following a refusal of permission and 3 were non-determination appeals.
- 4.2 All were dealt with by written representations except the two linked appeals at the George Tavern which were dealt with through a hearing.
- 4.3 Over the same period a number of appeals against refusal of prior approval for the installation of telephone boxes by a new operator "Maximus Communications" were turned away by the Planning Inspectorate for procedural reasons.
- 4.4 Of the 83 decisions, **22 were allowed, 60 dismissed and 1 was part allowed**. This means that the **Council's original decision was upheld in full in 72% of cases**. This is consistent where the Council's success rate over previous years, which tends to be between 70 – 80% per annum. The last report, which covered a longer 18 month period showed that 74% of decisions were dismissed.
- 4.5 This headline figure indicates that where the Council has refused permission, or would have been minded to, the decision was upheld on appeal in nearly three quarters of cases demonstrating robust decision making.

- 4.6 Split appeal decisions can be made on appeals against refusal to vary conditions, householder development and advertisement consent where there is more than one advertisement proposed. The single split decision in this report refers to a householder application at 36 Blondin Street.
- 4.7 Appendix 1 provides a full breakdown of all of the appeal decisions during this period.

**Figure 1 – appeal decisions in Tower Hamlets**



## 5. CURENT UNDECIDED APPEALS

- 5.1 There are 48 current appeals against decisions (or non-determination) that have not yet been decided. The majority of these will be dealt with through written representation and are relatively small in scale or complexity.
- 5.2 However there are 5 cases that will be deal with through a public Inquiry, two of which have taken place during December, the others have dates to be set in 2018. There are also two linked cases that will be dealt with at a hearing in March.

**Table 1 – Forthcoming appeal inquiries and hearings**

Reference & appeal procedure	Address	Proposed development	Decision type	Inquiry/ hearing start date
PA/15/02929 Inquiry	Site between Varden Street and Ashfield Street (Whitechapel Estate), London, E1	Demolition of all existing buildings and redevelopment to provide 12 buildings ranging from ground plus 2 - 23 storeys (a maximum 94m AOD height), comprising 343 residential dwellings (class C3), 168 specialist accommodation units (Class C2), office floorspace (class	SDC refused on officer recommendation	21 November 2017  10 days

		B1), flexible office and non-residential institution floorspace (Class B1/D1), retail floorspace (class A1 - A3), car parking, cycle parking, hard and soft landscaping and other associated works.		
PA/15/03561 Inquiry	Site at 14 to 16 Clegg Street, 13 to 15 Cinnamon Street and 125 to 129 Wapping High Street, London E1W	Partial demolition of the existing buildings and redevelopment of all three sites to create 41 residential units and a retail unit along Wapping High Street, together with associated hard and soft landscaping works and the provision of cycle parking across all three sites.	DC refused against officer recommendation	12 December 2017  7 days
PA/15/00837 Inquiry	Sainsbury Foodstore, 1 Cambridge Heath Road, London, E1 5SD	Demolition of the existing store and decked car park to allow for a replacement Sainsbury's store (Use Class A1) of 5,766 sqm. (net sales area), (11,208 sqm GIA to include a Use Class D1 'explore learning ' facility (118 sqm GIA), 871 sqm (GIA) of flexible retail/office/community floorspace (Use Class A1, A2, A3, B1 and D1) and 559 residential units (Use Class C3) arranged in 8 buildings, including a 28 storey tower (	SDC refused on officer recommendation	TBC  Likely at least 10 days
PA/17/01920 Inquiry	Sainsbury Foodstore, 1 Cambridge Heath Road, London, E1 5SD	Demolition of the existing store and decked car park to allow for a replacement Sainsbury's store of 5,766 sqm (net sales area), 11,414 sqm (GIA) to include a Use Class D1 'explore learning ' facility (118 sqm GIA); 871 sqm (GIA) of flexible retail/office/community floorspace (Use Class A1, A2, A3, B1 and D1); 471 residential units arranged in 8 blocks ranging from six to 14 storeys in height.	Non determination	TBC  Likely at least 10 days
PA/16/02808 Inquiry	225 Marsh Wall, London, E14 9FW	Full planning application for the demolition of all existing structures and the redevelopment of the site to provide a building of ground plus 48 storey (maximum AOD height 163.08m) comprising 332 residential units (Use Class C3); 810 square metres of community floorspace (use class D1); 79 square metres of flexible retail/restaurant/community (Use Class A1/A3/D1), basement cycle parking; resident amenities; public realm improvements; and other associated works.	SDC refused against officer recommendation	TBC  Likely at least 7 days
PA/16/03535 Inquiry	106 Commercial Street	Conversion of building (class A1/B8 ) to fine dining food market (Class A3).	DC refused against officer recommendation	TBC  Likely at least 5 days

PA/16/03771	1-3 Corbridge Crescent And 1-4 The Oval, London	Demolition of existing single storey commercial buildings, with the retention, restoration, external alteration and residential conversion of the existing Regency and Victorian Cottages, together with the erection of three linked blocks of 4, 5 and 10 storeys to provide 57 residential dwellings (Use Class C3), with associated private and communal amenity space, cycle parking and refuse storage, and 461sqm of dual use office/community floorspace (Use Class B1/D1).	SDC refused against officer recommendation	1 March 2018  Likely 4 days
PA/16/03773	1-3 Corbridge Crescent And 1-4 The Oval, London	Demolition of existing single storey commercial buildings, with the retention, restoration, external alteration and residential conversion of the existing Regency and Victorian Cottages, together with the erection of three linked blocks of 4, 5 and 8 storeys to provide 51 residential dwellings (Use Class C3), with associated private and communal amenity space, cycle parking and refuse storage, and 461sqm of dual use office/community floorspace (Use Class B1/D1).	SDC refused against officer recommendation	1 March 2018  Likely 4 days

## 6. BENCHMARKING AND PERFORMANCE

- 6.1 All appeal decisions are published on-line on the Planning Inspectorate website (<https://www.gov.uk/government/organisations/planning-inspectorate>) and the Council's on-line planning register ([www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)).
- 6.2 The Secretary of State takes into account the percentage of major decisions and non-major decisions that are subsequently overturned on appeal as an indicator of the quality of decisions made by planning authorities. This indicator is used alongside the speed of decisions making indicators in deciding whether to designate a poorly performing local planning authority.
- 6.3 The current criteria are 10% or more of all major decisions made by the authority subsequently overturned at appeal over a two year period and 10% or non-major decisions overturned at appeal over a two year period.
- 6.4 The latest data published by Department for Communities and Local Government (DCLG) covers appeal decisions on applications determined over a 24 months period to end of December 2016. Nine months are allowed after that for appeals to be made and decided.

- 6.5 This data shows that Tower Hamlets had only 1 of a total of 132 major decisions overturned at appeal. This is equivalent to 0.7%, ranking fifth out of 13 comparable inner London boroughs and 110 out of 336 local planning authorities in England.
- 6.6 For the same period 2,058 non-major decisions were made and 28 were overturned at appeal, equivalent to 1.4%. Tower Hamlets ranks 5th out of 13 comparable inner London authorities and 270 out of 336 local planning authorities in England.
- 6.7 In both cases Tower Hamlets is well below the designation criteria, again demonstrating that the quality of decision making was generally good over this two year period. The final data sets used for the designation process will cover a slightly different period from April 2015 to end of March 2017 and are due to be published shortly. Whilst there may be some adjustment to Tower Hamlets scores, it is likely to remain well below 10%.

**Table 2 – Inner London authorities, major appeals**

Local Authority	Total major planning decisions	Total major appeal decisions	Major decisions overturned at appeal	Quality of decisions (% overturned at appeal)
Hackney	81	3	0	0.0
Wandsworth	120	5	0	0.0
Southwark	118	1	0	0.0
Lewisham	85	3	0	0.0
Tower Hamlets	132	4	1	0.7
Lambeth	107	3	1	0.9
Islington	92	9	1	1.1
Newham	77	6	1	1.3
Greenwich	103	4	2	1.9
City of London	40	1	1	2.4
Kensington and Chelsea	78	7	5	6.4
Hammersmith and Fulham	58	5	4	6.8
Camden	109	11	8	7.1

**Table 3 - Inner London authorities, non-major appeals**

Local Authority	Total non-major planning decisions	Total non-major appeal decisions	Non-major decisions overturned at appeal	Quality of decisions (% overturned at appeal)
City of London	550	2	0	0.0
Wandsworth	6,463	163	47	0.7
Southwark	3,611	128	32	0.9
Westminster	8,063	289	103	1.3
Tower Hamlets	2,058	106	28	1.4
Camden	3,887	162	57	1.5
Lewisham	3,539	249	64	1.8
Hackney	3,003	169	59	2.0

Greenwich	2,734	186	54	2.0
Islington	3,024	215	63	2.1
Kensington and Chelsea	6,366	307	137	2.2
Hammersmith and Fulham	4,835	247	106	2.2
Lambeth	4,567	291	113	2.5

## 7. SUMMARY OF KEY APPEAL DECISIONS

7.1 This section provides a summary of key decisions and Inspector's comments which may be of interest to the Committee. These include a mix of appeals following delegated decisions and Committee decisions.

### **Former Stepney's Nightclub, 373 Commercial Road, Stepney**

7.2 Planning permission was refused by the Council for the erection of a 3 storey mixed use building to provide new commercial floorspace within Use Class A1, A2 and/ or B1, together with 6 new homes on the upper floors including cycle parking, refuse/ recycling facilities and amenity provision. This was subsequently allowed on appeal on 28 October 2014.

7.3 The owner of the adjoining public house, the George Tavern, challenged the decision in the Court of appeal, initially on the grounds that the development would be adversely impacted by noise from the public house, which has hosted live music events over many years and that potential complaints from new residents would threaten the viability of the pub. The challenge also contended that the Inspector had not properly considered the effect of loss of light to the east windows of the adjoining George Tavern public house, which provide light to upper areas of the pub that are hired out and used for photography and film shoots.

7.4 The legal challenge was successful on the issue of consideration of loss of light and the appeal decision was quashed by order of the Court.

7.5 The appeal was re-run and a new hearing arranged with a different Inspector to consider all of the planning issues again. The Court's judgement did not criticise the Inspector's reasoning on the noise issue and the appellant continued to rely on its 2014 Acoustic Assessment Review. Further noise evidence was submitted by the owner of the George Tavern and the council.

7.6 The Inspector concluded that whilst the development would have some impact on daylight to the east facing windows this would not be noticeable on the basis of the BRE guidance. There would be reduction in direct sunlight in the winter months but in any event the actual availability of winter sunlight is unpredictable. Other habitable rooms would not be affected.

7.7 On the issue of noise from the operation of the public house as a live music venue, the Inspector's decision goes into much detail about the noise level assessments, the impact of noise and especially the low frequency bass beats, the attenuation and mitigation measures proposed in the new housing development and the likely impact on living conditions.

7.8 The Inspector was unable to conclude that a satisfactory living environment would be provided for future occupiers of the proposed flats. This in turn led her to conclude that the likelihood of complaints about noise nuisance would be relatively high and that



this would have a material bearing on any request to review the music licence at the George Tavern. There would be a high probability that the future of the music venue would be put at risk if the appeal proposal were to go ahead.

- 7.9 The Inspector ultimately came to a different conclusion to the previous appeal decision that was quashed by the Court. The appeal was dismissed and planning permission refused based on the impact of noise on the future occupiers and the risk to the future viability of the public house.

### **Duke of Wellington Public House, 12 Toynbee Street, Spitalfields**

- 7.10 This appeal concerned the change of use from a public house (Class A4) to a mixed public house and hotel (sui generis) with the public house being retained at basement & ground level, together with a two storey extension with mansard roof at second floor level and the installation of dormer windows to allow the conversion of the loft space into hotel accommodation.

- 7.11 The application was recommended for approval by officers, but planning permission was refused by Development Committee for reasons relating to

- The effect of the proposal on the viability and retention of the public house, an Asset of Community Value;
- The effect of the proposal on the safety and capacity of the road network in the vicinity of the appeal site;
- Whether the proposal should make provision for wheelchair accessible bedrooms.

- 7.12 The site had been the subject of a previous application for alterations and change of use of the upper floors to residential accommodation, also refused by the Council but not appealed.

- 7.13 The Council considered that the noise and disturbance generated by ordinary use of the bar and yard area would lead to tensions with the hotel users requirements for a reasonable degree of peace and quiet. This could lead to pressure to reduce or curtail public house activity.

- 7.14 However, the Inspector noted that the proposed hotel would be a small scale operation and the nature of the combined hotel and the pub use would reflect the long established tradition of let rooms above pubs. Prospective hotel users would be aware of the nature of this establishment when booking accommodation with its location above a traditional drinking establishment being an attractive feature. In this respect it would be highly unlikely that the activities of the public house would be so disruptive that the presence of the hotel would inevitably lead to pressure to reduce them and so diminish the social value of the pub.

- 7.15 There could be some potential for noise transference between the pub and hotel rooms, but the reconstruction associated with the proposal would provide an opportunity to introduce an appropriate standard of noise insulation and that this could be controlled through the use of a planning condition.

- 7.16 In terms of future viability of the pub, objectors were concerned that this mixed use proposal would ultimately lead to the loss of the public house. The Inspector discussed the use of a condition requiring the Class A4 use to be retained as shown on the plans at ground floor and basement levels. Whilst noting that such a condition would not be able to secure the retention of the existing character of the pub or to

ensure it would fulfil the same community role, it would protect an existing community use in line with relevant policies. It would mean that the hotel use could not expand and occupy that area without further assessment by the Council through a planning application.

- 7.17 In terms of the safety and capacity of the road network, the Council's objections related to the use of private cars and taxis by hotel guests and the servicing requirements of the proposed hotel accommodation.
- 7.18 The Inspector concluded that the hotel guests are likely to be short-stay and could also bring some additional traffic in terms of private cars and taxis, though my view is that in this location most hotel users would use public transport to access the building. As this is already a busy commercial area, additional delivery and servicing vehicles to a hotel of this size would not in themselves add noticeably to congestion or road safety issues in this area. Nevertheless, there would be some increase in vehicle movements in this area which could impact on the free flow of traffic. Therefore further information about delivery and servicing arrangements should be required in order that they are suitably controlled, taking into consideration existing restrictions on movement in surrounding streets.
- 7.19 The London Plan Policy 4.5 states that where new hotel accommodation is created at least 10% should be wheelchair accessible. This would amount to a single room in this case. No such provision was made as part of the proposal. The Inspector comments that this is an existing building of modest size and meeting the terms of the policy would require internal alterations, including the installation of a lift, which would themselves reduce the floor area on the ground floor and so impact on the community facility that other policies seek to protect. The Inspector notes that whilst giving access to all is a priority, the effect on the achievement of this objective would be very limited given the London Plan's aim of achieving 40,000 net additional hotel bedrooms by 2036. In these circumstances, whilst the proposal is strictly contrary to Policy 4.5 a departure from it is justified by other material considerations.
- 7.20 The appeal was allowed and conditions included for details of sound-proofing, provision of a servicing and delivery plan and control over the 78 sq.m. of ground floor and basement floor space to be used as a public house (use class A4).

#### **Flat 39A, Northesk House, Tent Street, Whitechapel**

- 7.21 The appeal concerned the temporary change of use (for five years) of the flat from residential (class C3) to a short-term let (Class C1).
- 7.22 Permission was refused under delegated powers. The main issue was whether the proposed change of use would result in an unacceptable loss of a residential dwelling.
- 7.23 Policy 3.3 of the London Plan 2016 seeks to ensure the provision of an adequate housing supply in London. The Policy sets benchmark targets for the provision of additional homes in each London Borough over a ten-year period from 2015 to 2025. The Council's target over ten years is 39,314 new homes, which roughly equates to 3,931 new homes per year.
- 7.24 To help reach this target, Policy DM3 of the Tower Hamlets Managing Development Document 2013 (the Local Plan) seeks to ensure the retention of units in the existing housing supply. Policy DM7 of the Local Plan seeks to ensure that any development creating visitor accommodation does not compromise the Council's ability to meet housing supply targets.

- 7.25 The appellant contended that the change of use would not result in the loss of a housing unit because once any temporary planning permission expired the flat would revert to Class C3 use. The appellant suggested this is similar to a property being taken out of the available housing supply for renovation. The Inspector noted that unlike renovation, the change of use would result in the flat no longer being residential accommodation and therefore would result in a loss of a residential unit.
- 7.26 The Inspector also considered whether the detrimental effect of the change of use would be reduced by a shorter temporary permission. However he concluded that given Tower Hamlets very high target for new housing units, even the modest reduction of one unit for a short period of time would have a substantial detrimental effect on the Council's ability to meet its housing supply target. Therefore the proposed change of use would not be in accordance with Policies DM3 and DM7 of the Local Plan.
- 7.27 This decision is significant and helpful in terms of how the Council moves forward to tackle the growing issue of unlawful changes of use of residential properties to short term let properties advertised on internet platforms such as "Air BnB".

#### **Harley House and Campion House, Frances Wharf**

- 7.28 The appeal concerned roof extensions at 7th floor and 9th floor levels of the existing block of flats to provide 6 new residential units along with reconfiguration of 1 existing unit.
- 7.29 Officers had recommended that planning permission be granted and subject to a Section 106 agreement to provide three additional intermediate (shared ownership) residential units.
- 7.30 Development Committee refused permission for reasons relating to
- The effect of the proposal on the character and appearance of the area and the adjacent Limehouse Cut Conservation Area;
  - The effect of the proposal on the living conditions of existing occupiers with specific reference to sunlight, daylight and noise, disturbance, vibration and dust;
  - The proposal would represent over-development of the site; and
  - The proposal would be incremental development and should make provision for affordable housing.
- 7.31 The Inspector noted that area is characterised by a mix of building heights and designs. There are a number of taller buildings which exist or are approved to both the site's north and south sides including an 11 storey building, Argyll Point which sits to the north of the site. Permission also exists for an 11 storey building to the south side of Limehouse Cut which is under construction.
- 7.32 The additional storey would raise the building by only 2.75m at ninth floor level on a building which is over 30m high and would be set back from the main south elevation. Due to the small increase in height and set back of the proposal it would not interfere with long views of the canal from the surrounding area or result in a material increase

in enclosure or reduce openness. The Inspector concluded that the proposal would preserve the character and appearance of the Conservation Area.

- 7.33 The Inspector considers the impact on daylight and sunlight within the development in some detail. He concluded that there would be no materially harmful effect on daylight and sunlight. The short term impacts arising from constructing the extension (noise and disturbance) could be controlled through the use of a robust construction management plan, imposed by condition.
- 7.34 In terms of density, whilst the resultant proposal would exceed the densities set out in the London Plan and Housing SPG, there would only be a marginal increase in density when compared to the existing development. The Inspector considered there is no evidence to suggest that the proposal would put undue pressure on social infrastructure, amenities or services and disagreed with the Council's view that the qualitative concerns in the Housing SPG had not been met. . He concluded that an increase in density can be supported in the specific circumstances of this case.
- 7.35 Policy SP02 of the Core Strategy seeks to ensure that new housing assists in the creation of sustainable places by optimising the use of land and delivers the maximum reasonable amount of affordable housing. Policy DM3 of the MDD seeks to ensure that development maximises affordable housing and provides a balance of housing types. Criterion 4b of Policy DM3 states that affordable housing will be calculated based on the total housing existing or permitted as part of a development, where a scheme proposed additional housing.
- 7.36 In terms of incremental development, the supporting text at paragraph 3.8 goes on to state that "where a housing development has been permitted and the permission is subsequently amended (e.g. by means of a variation of the extant planning permission or a new planning application) to the extent that the development would provide 10 new units or more, affordable housing policies will be applied to the whole development and not restricted to the additional number of dwellings in the amended or new proposal".
- 7.37 The original planning permission<sup>3</sup> provided 35% affordable housing by way of a section 106 agreement. The Council argued that as the proposed development involves the creation of additional residential units which would be both physically and functionally linked to an existing development which consists of more than 10 residential units, the appeal proposal would be incremental development and should provide a policy compliant level of affordable housing.
- 7.38 The Inspector commented that the wording of Policy DM3 and the supporting text is not entirely clear and thus open to interpretation and noted that the proposal does not seek to amend an extant planning permission. Whilst the proposal would result in the creation of new floor space the existing development is complete and occupied and has been for some time. The Inspector concluded that the proposal cannot, therefore, be considered to be incremental development and should be treated as a standalone application. Consequently, as the proposal is below the 10 unit threshold, the affordable housing requirement does not apply.
- 7.39 The Inspector went on to consider the unilateral undertaking suggested by the appellant to provide three intermediate units and recommended by officers. However he concluded that because the development would not be considered as incremental, the proposal would not be required to make any provision for affordable housing.

7.40 The appeal was allowed and permission granted, subject to planning conditions but without any requirement for affordable housing.

#### **Vic Johnson House, Armagh Road, Bow**

7.41 The appeal concerned the part demolition, part refurbishment, part new build extension to provide a total of 60 age-restricted apartments (over 55s) sheltered housing scheme, including new communal areas and managers' office) and associated landscaped gardens.

7.42 Officers had recommended that planning permission be granted. The Development Committee refused permission for reasons relating to;

- The effect of the proposed development on the character and appearance of the area, including the setting of the nearby conservation area;
- Provision of satisfactory living conditions for residents, with regard to indoor communal lounge space and communal outdoor space;
- The effect of proposed development's construction phase on the living conditions, health, and welfare of residents
- Inadequate provision for any additional need for affordable and wheelchair housing, employment and skills training, and parking demand arising from the development.

7.43 The appeal site accommodates 32 self-contained flats with accommodation restricted to people over 60 years of age. The majority of the flats are contained within a single three-storey building, set perpendicularly with Armagh Road. The accommodation also contains managed internal communal areas, with outdoor communal space to the south of the main building, and parking and vehicular circulation areas to the north, adjacent to the building's main entrance.

7.44 The appeal proposal included the retention of the existing flats and the creation of 28 new flats. The existing three-storey building would be extended to the rear of the site, occupying the present location of a separate flat. Most of the new accommodation would be in the space presently occupied by the single-storey element. There would be some renewal of the existing elevations, with the new-build elements integrated to the main building and incorporating a contemporary appearance.

7.45 The Inspector considered the proposed height and massing of the development, the proposed set back from the street and the proposed materials in the context of a varied street scene and the varying heights of surrounding buildings. The Inspector also took into account the view northwards from Roman Road Market Conservation Area.

7.46 The Inspector concluded that the wide variation in the appearance, age and ornamentation of buildings within the immediately surrounding area meant there was an absence of unifying or predominant character elements, and as such, the proposed building would not be out of character. He also noted that the distance retained between the proposed building and the conservation area boundary along the site's southern edge would ensure it would not appear overbearing or dominant.

- 7.47 The Council had raised concerns about the effect of the development on reducing the amount of indoor communal space (lounge) and outdoor communal space within the grounds of the development.
- 7.48 The Inspector noted that neither the Council's Local Plan nor the London Plan incorporates standards for the provision of communal or amenity space in sheltered housing developments. However the small reduction in the amount of indoor and outdoor communal space must be balanced against the proposed increase in the occupation of the site, as well as any loss of amenity for existing residents.
- 7.49 The Inspector noted that the present facilities remain usable and are clearly valued by residents. However, on balance, considered that the provision of improved facilities (despite the small reduction in size), would not lead to a loss of their value. The investment and modernisation of these facilities is likely to ensure that they remain fit for purpose and satisfactorily serve the development's existing and future residents. He concluded that the proposed development would provide satisfactory living conditions the residents, with regard to indoor communal lounge space, and communal outdoor space.
- 7.50 The Council and existing residents of the development expressed concerns about the impacts of the proposed development on their living conditions, particularly in respect of the effects of construction and any stress that could result from 'decanting' of residents or moving between flats or locations. The Inspector agreed this is a particularly sensitive issue, bearing in mind the ages of residents, their periods of residency, and "the importance attached to their homes as places of sanctuary and shelter".
- 7.51 The appellant provided a proposed mitigation framework for existing residents, to apply during the construction phase, which included measures such as provision of a respite area, transport to and attendance at partner facilities within the area, and appointment of a resident liaison officer, one-to-one communication meetings, and noticeboard and website updates.
- 7.52 The Inspector acknowledged that the proposed measures would not ameliorate all impacts of construction, but considered that combined with detailed construction management plan, that the appellant is committed to residents' welfare and minimising these impacts as much as possible. The use of conditions to control these matters would be sufficient to allow permission to be granted.
- 7.53 The appeal was allowed and permission granted subject to conditions.