

<b>Development Committee</b>	<b>Date:</b> 13 February 2019	<b>Classification:</b> Unrestricted
<b>Report of:</b> Director of Place		<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 13 month period since the last report - from 1 December 2017 to 31 December 2018.

## 2. RECOMMENDATION

- 2.1 The Committee note the contents of this report.

## 3. BACKGROUND

- 3.1 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>
- 3.2 Most planning appeals are decided by independent Planning Inspectors appointed by the Secretary of State. The Secretary of State may intervene to recover an appeal and determine it themselves, although this tends to be rare. In these cases the Inspector's report acts as a recommendation rather than a decision.
- 3.3 An appeal can be dismissed and permission refused for all, some or even different reasons used by the Council. If an appeal is allowed, planning permission, or a related consent is granted.
- 3.4 Planning Inspectors (or the Secretary of State) have the same powers as local planning authorities to impose planning conditions and can also take into account proposed planning obligations contained in a Section 106 unilateral undertaking or agreement in coming to a decision.
- 3.5 There are three types of appeal procedure: written representations, informal hearings and public inquiries.
- 3.6 Written representations are the most common procedure and suitable for most types of minor or small scale major development, where the planning issues are straightforward and there is limited public interest. They are also usually the quickest route with the average time from start to decision currently 18 weeks (11 weeks for householder appeals).
- 3.7 Informal hearings take the form of a structured discussion, led by the Inspector and are suitable for smaller scale major development where there are several planning or legal issues that need to be explored in more detail and there is wider public interest in the case.

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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)

- 3.8 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 and where there is substantial public interest.
- 3.9 Public Inquiries take longer with the current average time period being 51 weeks from start of the process to a decision. Inquiries are more adversarial in nature, with the appellant and the Council providing expert witnesses to give evidence for their cases. Witnesses are cross examined by barristers or other legal professionals at the inquiry.
- 3.10 The views of third parties, such as local residents are taken into account in appeals. The Council will send copies of correspondence received at the application stage to the Planning Inspectorate. Residents and statutory consultees who were notified at the application stage are notified of the appeal and have the chance to make further comments. Third parties can request to take part in hearings and public inquiries. In all cases the Inspector will carry out a site visit before making a decision.

#### **4. WHY APPEAL DECISIONS ARE IMPORTANT**

- 4.1 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.
- 4.2 Tower Hamlets (in common with most other planning authorities) grants more planning permissions than it refuses. The planning teams 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 and represent sustainable development.
- 4.3 When planning permission (or other consent) is refused, the reasons for refusal need to be clear, evidence based and linked to Development Plan policies, 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 against the Council irrespective of the appeal decision itself.
- 4.4 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.
- 4.5 Whilst all planning decisions are made on the merits of the proposal, appeal decisions can also be helpful in understanding how to frame robust reasons for refusal taking into account the weight that Inspectors place on different planning policies and other material considerations.
- 4.6 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.
- 4.7 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.

4.8 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.

## 5. APPEAL DECISIONS OVERVIEW

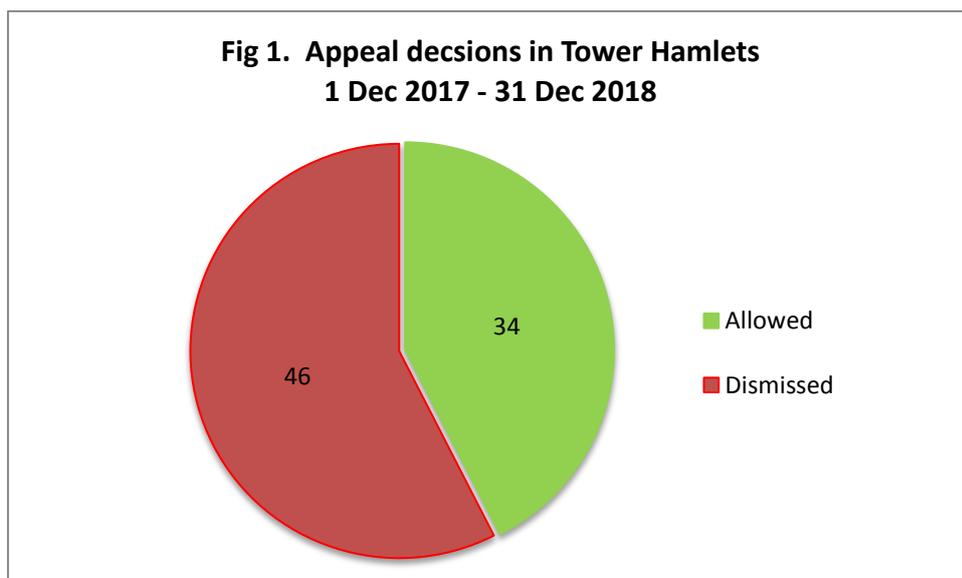
5.1 During the 13 month period (1 December 2017 – 31 December 2018) covered by this report, 80 appeal decisions have been received.

- 46 (58%) were dismissed
- 34 (42%) were allowed

5.2 This compares with 74% dismissed and 26% allowed over the previous review period.

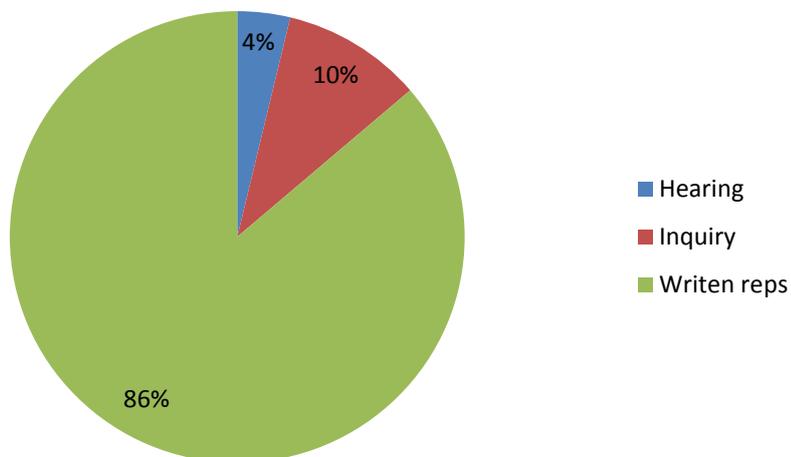
5.3 Whilst the number and proportion of appeals being allowed has increased Tower Hamlets tends to have less appeals than most London boroughs.

5.4 This headline figure indicates that the where the Council has refused permission, or would have been minded to, the decision was upheld on appeal in the majority of cases.



5.5 69 appeals were dealt with by written representations, 3 by informal hearing and 8 by public inquiry.

**Fig. 2 Appeal decisions in Tower Hamlets by procedure**



5.6 There have been an unusually high number of appeals dealt with by public inquiries during the last 12 months. The table below lists these appeals and the outcome where known.

Address	Inquiry Start Date	Recommendation	Decision	Appeal Decision
Site at 14 to 16 Clegg Street, 13 to 15 Cinnamon Street and 125 to 129 Wapping High Street, London E1W (PA/15/03561)	12/12/2017	Grant	Refuse	Dismissed
Site between Varden Street and Ashfield Street (Whitechapel Estate), London, E1 (PA/15/02959)	21/11/2017	Refuse	Refuse	Allowed
106 Commercial Street, London, E1 6LZ	15/05/2018	Grant	Refuse	Dismissed
225 Marsh Wall, E14 (PA/16/02808)	11 /09/2018	Grant	Refuse	Allowed
49-59 Millharbour, 2-4 Muirfield Crescent And 23-39 Pepper Street, London, E14 (PA/16/03518)	23/10/2018	Grant	Refuse	Allowed
Sainsbury Foodstore, 1 Cambridge Heath Road, London, E1 5SD (PA/15/00837)	09/10/2018	Refuse (non-determination)	Non-determination	Awaited

Enterprise House, 21 Buckle Street, London, E1 8NN PA/16/03552	06/11/2018	Grant	Refuse	Allowed
2, 4 & 6 East Ferry Road, London, E14 3LA (ENF/16/00303)	13/12/2018	Enforce	Enforcement Notice	Allowed Notice quashed Permission granted
Unit 1, Block D, 14 Hertsmere Road, London, E14 4AF (ENF/16/00596)	04/04/2018	Enforce	Enforcement Notice	Allowed Notice quashed Permission granted
82 West India Dock Road (PA/16/01920)	02/04/2019	Refuse	Refuse	Appeal withdrawn
562 Mile End Road (PA/16/00943)	15/01/2019	Grant	Refuse	Awaited

5.7 There are 89 current appeals against decisions that have not yet been decided. These are listed in full in Appendix 2. The majority of these will be dealt with through written representation and are relatively small in scale or complexity. 53 of these cases relate to appeals against the refusal of “prior approval” for the siting of new telephone call boxes with advertisements submitted by a telecom’s operator, Maximus Networks.

### **Impact on resources**

5.8 The Planning Service will always work hard to defend the Council’s planning decisions at appeal. Irrespective of how the decision was made or the original recommendation.

5.9 However, planning appeals can be resource intensive in terms of the draw on officer time in terms of preparing statements or proofs of evidence and coordinating the arrangements for hearings and inquiries.

5.10 Once an appeal has been accepted by the Planning Inspectorate, 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 planning case work.

5.11 However, given the recently high number of Public Inquiries we have carried out some local research into officer costs and time.

5.12 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.

- 5.13 Public Inquiries are especially time consuming and resource intensive for the Council. They involve formal examination and cross examination of the planning and other expert witnesses. On average, a planning officer may spend up to 40 FTE days (8 weeks) preparing for, coordinating and appearing at a public inquiry. Other resources are involved in supporting the inquiry process.
- 5.14 There has been an unusually high concentration of public inquiries in Tower Hamlets arising from recent decisions to refuse planning permission. There are eleven inquiries (nine planning and two enforcement appeals) that have either taken place or are scheduled to take place between April 2017 and January 2019.
- 5.15 The total estimated cost (including commitments and officer time) for these ten inquiries is anticipated to be in the region of £950,000. This does not take into account any costs that may be awarded to the appellant. A full breakdown is attached with this report.

### **Award of costs**

- 5.16 Either party in the appeal can apply for an award of costs and Inspectors now have the power to award costs even without receiving an application. 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 a way that has resulted in the appellant incurring costs that could have otherwise have been avoided. This could be failure to properly defend reasons for refusal or not complying with the procedural requirements of the appeal process.
- 5.17 During the review period for this report, there has been only one successful, partial award of costs against the Council in respect of the enforcement appeal at 14 Hertsmere Road. This was in relation to e-mail correspondence which suggested that the Council had changed its position from the current shisha lounge use being ancillary to being a material change of use, albeit with no negative impacts on amenity. The Inspector's view was that it was unreasonable for the enforcement notice to have referred to the use (in addition to operational development) and that the Council could have invited a retrospective planning application.

## **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 Ministry for Housing, Communities and Local Government (DCLG) covers appeal decisions on applications determined over a 24 month period to end of June 2017. Nine months are allowed after that for appeals to be made and decided.

- 6.5 This data shows that Tower Hamlets had only 2 of a total of 132 major decisions overturned at appeal. This is equivalent to 1.5%, ranking 7<sup>th</sup> out of 13 comparable inner London boroughs.
- 6.6 For the same period 34 out of a total of 2064 non-major decisions were overturned at appeal. This is equivalent to 1.6%, ranking fifth out of thirteen comparable inner London authorities.
- 6.7 In both cases Tower Hamlets is well below the designation criteria (10%), again demonstrating that the quality of decision making was generally good over this two year period.

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

Local Authority	Total major planning decisions 24 months to end of June 2017	Total major appeal decisions	Major decisions overturned at appeal	Quality of decisions (% overturned at appeal)
City of London	33	0	0	0.0
Hackney	75	2	0	0.0
Lewisham	76	5	0	0.0
Southwark	127	3	0	0.0
Wandsworth	129	4	0	0.0
Lambeth	101	5	1	1.0
Tower Hamlets	132	6	2	1.5
Newham	90	8	2	2.2
Greenwich	86	4	2	2.3
Kensington and Chelsea	73	3	2	2.7
Islington	87	10	3	3.4
Hammersmith and Fulham	64	5	4	6.3
Camden	96	10	7	7.3

Source: MHCLG Table P152a: District Matters Planning Performance Table for Quality of decisions: June 2015 to June 2017 P (Experimental Statistics)

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

Local Authority	Total non-major planning decisions 24 months to end of June 2017	Total non-major appeal decisions	Non-major decisions overturned at appeal	Quality of decisions (% overturned at appeal)
City of London	543	2	1	0.2
Southwark	3,596	120	30	0.8
Wandsworth	6,373	177	56	0.9
Camden	3,820	173	53	1.4
Tower Hamlets	2,064	115	34	1.6
Lewisham	3,695	260	64	1.7
Kensington and Chelsea	6,111	272	124	2.0
Hammersmith and Fulham	4,714	247	106	2.2
Hackney	2,965	178	68	2.3
Islington	3,018	218	70	2.3
Greenwich	2,844	220	71	2.5
Lambeth	4,623	296	116	2.5
Newham	2,424	216	66	2.7

Source: Table P154: District Matters Planning Performance Table for Quality of non-major decisions: July 2015 to June 2017 P (Experimental Statistics)

## 7. SUMMARY OF KEY APPEAL DECISIONS

7.1 This section provides a summary of some key Public Inquiry 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.

### 106 Commercial Street, London E1 6LZ (Time Out Markets Ltd.)

Proposed development: Conversion of building (class A1/B8) to fine dining food market (Class A3).
Public inquiry, commenced 15 May 2018 – 8 days
Appeal dismissed

7.2 For context, the site lies opposite Spitalfields Market and proposed a Time Out food market consisting of 17 'fine dining' restaurants set behind the entrance to 106 Commercial Street. The site was once a stable yards (now used for commercial/storage purposes) and is located in a landlocked position. The application was initially recommended for approval at officer level; however, this was overturned by committee and refused for the following three reasons:

- (a) Impact of the intensity of use (internally and externally), including the impact on the local street network;
- (b) Harm to heritage assets (Conservation Area and additional argument included during the course of the Inquiry in relation to setting of adjoining Listed Buildings) due to loss of slate roof and proposed acoustic roof using bituminous sheeting.

(c) Amenity impact to adjoining neighbours specifically as customers enter and exit the site

- 7.3 The Inspector dismissed the appeal mainly due to the impact of the proposal on the conservation area and the failure to preserve the conservation area (reason 2).
- 7.4 In terms of the heritage considerations, the roof form for the L shaped element of the site (i.e. above the stable yard block) was proposed by the appellant as a grey bituminous roof cap sheeting (or similar) and they argued this would be part of the ongoing sequence of change in this part of the CA. The Inspectorate gave weight to the importance of the (non-original) slate roof form which was regarded as being a material typical of the conservation area and typical of the Victorian era.
- 7.5 The Inspector also notes that there were previous changes to part of the roof form to corrugated steel and plastic roofing but this is viewed as two separate entities albeit mainly from private views from surrounding residential and commercial properties.
- 7.6 The Inspector argues that the roof materials are an intrinsic part of the CA as it exists now and its loss would erode the identity and significance of this part of the CA. This would have a negative impact on the significance of the CA as a heritage asset (see para 10 and 11). However, the Inspector did not feel that there would be harm to the significance of adjoining Listed buildings and would have a neutral impact on the setting of nearby listed buildings.(the council's argument was primarily in relation to the Grade II listed buildings in Wilkes St which had clear views of the roof form from all upper floor windows).
- 7.7 The Inspectorate gave significant weight to the public benefits of the proposal (re-use of the building, job creation and apprenticeships, regen benefits); however, the Inspector still felt that the identified public benefits did not outweigh the harm caused to the CA (removal of the slate roof) forming the main reason the appeal was dismissed.
- 7.8 With regards to the management of anti-social behaviour and the general operation of the site, the Inspector has put a lot of emphasis on other regimes to manage the potential operation of the site such as those through licensing controls (and the CIZ designation) and also planning condition such as restrictions on the use (i.e. to ensure it wasn't a drinking establishment) to manage anti-social behaviour and other disturbances on the streets.
- 7.9 With regards to impact on the highway/local street network the Inspectorate felt that 400+ patrons would not cause material harm to the local street network, in terms of fire safety or in terms of movement internally. Pedestrians would be comfortably accommodated within the public highway network and this could also be controlled by appropriate management regimes at the site.
- 7.10 Smokers congregating at the entrance would also be moved along by similar controls. Whilst there were no objections from TfL or LBTH highways, the council's consultant advanced arguments regarding the safety of the Hanbury Street/Lamb Street and Commercial Street junction which has no pedestrian crossing phase and suffers from a higher accident ration than the LBTH average. The Inspector notes that many of the accidents and near misses revolved around pedestrians, motorists or cyclists not paying attention. This was not justification for dismissing the appeals on these grounds.
- 7.11 In addition, the Inspectorate also felt there was sufficient capacity within the street network to accommodate deliveries (and therefore not required to undertake this within the site itself) and a centralised ordering system to manage deliveries with 'emergency' deliveries was appropriate. Deliveries are likely to occur between 4-7am despite the concern of residents with regard to noise at the Spitalfields Market site on the opposite side of Commercial Street.

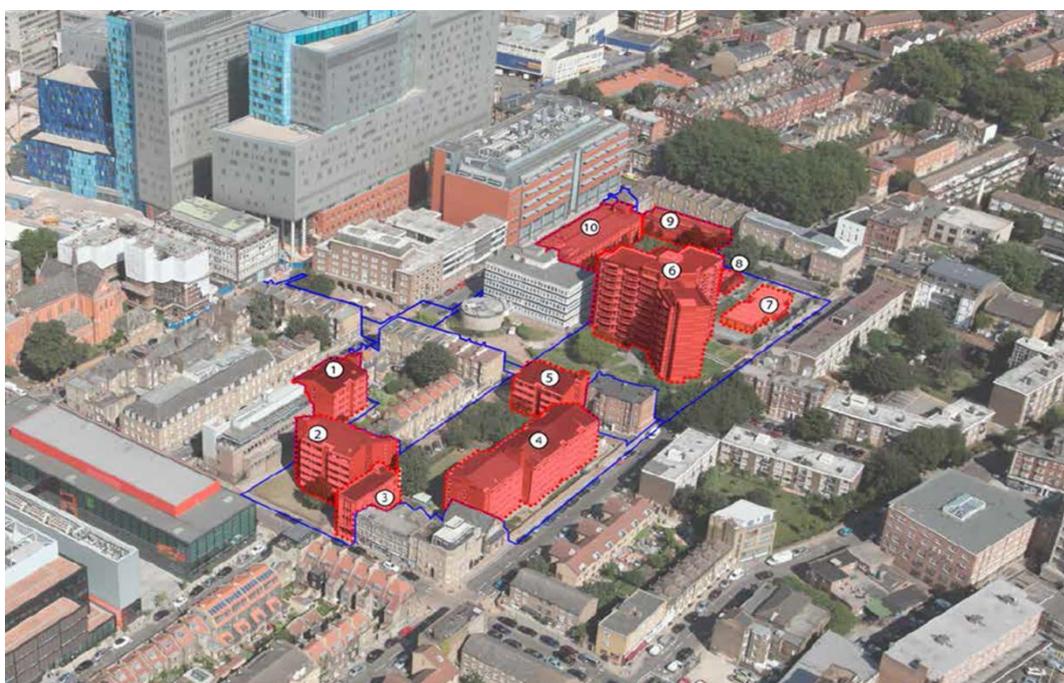
- 7.12 In terms of patrons arriving /leaving to the site the Inspector did not feel that all individuals would leave the site at closing time and this would be controlled by a form of dispersal/management strategy in place. The Inspector also notes the lack of control over the behaviour of patrons once they have left such establishments.
- 7.13 The Inspector also dismissed the proposal for a second reason (albeit to a lesser extent) regarding the location of the accessible toilet at second floor level with one lift on both design grounds (difficult those with buggies/small children) and has given due regard to the Public Sector Equality Duty in that its location is impractical and would result in significant adverse impact for those with mobility restrictions.

**The Whitechapel Estate - site between Varden Street and Ashfield Street, London E1 2JH**

Proposed development: 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 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.

Public inquiry commenced 21 November 2017 – 10 days

Appeal allowed.



- 7.14 The 1.27 hectare application site relates to a set of undistinguished post-war buildings designed to serve primarily as NHS staff accommodation and a hospital research laboratory located to the west and east of Philpot Street. The site was previously owned by London Hospital’s charitable trust until it was sold in 2013 to GreenOak Real Estate.

- 7.15 The residential led scheme would deliver 343 new homes to the site. 21% of the new homes (by habitable room) would be affordable, consisting of 57 affordable rented flats.
- 7.16** The scheme would also re-provide 168 short-term let specialist homes intended for staff, students and patients/visiting carers of Royal London Hospital and also for potential occupation by students and staff of Queen Mary University of London. A Section106 agreement to the Appeal Decision secures the specialist accommodation at rents set below comparable market rents. In addition the scheme would deliver a small quantum of B1 and D1 space (circa 3,000sqm) and some flexible use (A1-A3) retail space (648sq.m). Proposal involves demolition of all existing buildings and erection of 12 new buildings (55,000sqm) ranging from 3 storeys to 23 storeys.
- 7.17 Strategic Development Committee refused the scheme in September 2016, as per the officer recommendation for reasons of over-development in terms of:
- (a) Urban design, including 2 tall 80m plus towers where the Whitechapel Vision envisaged only potentially one;
  - (b) Impacts upon the setting of surrounding designated and undesignated heritage assets (site is bound by 3 conservation areas to north, west and east);
  - (c) Amenity impacts to neighbouring residential properties;
  - (d) Quality of amenity for future residential occupants of the development.
- 7.18 The Inspector fundamentally rejected all the Council's concerns considered both the two tallest buildings to *"represent accomplished solutions, in the abstract, to the design of a tall building"* and *"would not appear unduly dominant, with "Building E benefiting greatly from the height proposed"*.
- 7.19 Aside from some misgiving surrounding height of the 10 storey Building D 1 to the adjoining listed terrace the Inspector in effect considered there was no harm to the setting of listed buildings, to the townscape or to three conservation areas from the proposal. The design of the scheme as a whole would provide a considerable improvement over the site as it currently exists and would achieve the policy objective of transformational change while having sufficient regard to the character and appearance of the wider area.
- 7.20 With regard to adverse daylight and sunlight impacts to neighbours the Inspector rejected the Council's concerns citing commentary in the Mayor of London's Housing SPG, the site being an inner London location, an Opportunity Area and a site identified as a site suitable for transformational change in the Whitechapel Vision SPD and therefore a reliance on a comparison with existing daylight conditions was not appropriate.
- 7.21 The Inspector noted that whilst the proposal would result in some significant individual reductions in daylight and sunlight levels, but that this is almost unavoidable in achieving the policy requirement for high density development in a confined urban setting. The BRE guidance is a starting point for considering daylight and sunlight impacts but the numerical values should not be applied rigidly. Inner city development is one of the examples where a different approach might be justified.

**Site at 14 to 16 Clegg Street, 13 to 15 Cinnamon Street and 125 to 129 Wapping High Street, London E1W**

Proposed development: 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. Site A would contain the majority of the units, with 27 flats; Site B would contain 10 and Site C, the 4 town houses.

Public inquiry commenced 12 December 2017 – 6 days

Appeal dismissed.



7.21 The group of three sites straddle the boundary of Wapping Wall Conservation Area which had largely been regenerated and was now mainly in residential use, with converted warehouses the dominant feature.

7.22 Permission was refused by the Development Committee, against officer recommendation, for reasons relating to:

- (a) Detrimental impact upon the safety and free-flow of traffic in the surrounding street network due to the servicing requirements and vehicle movements generated by the proposal,
- (b) Design, scale, height, and profile, compared to the buildings to be demolished, would cause harm to the character and appearance of the Wapping Wall Conservation Area and would fail to preserve the character of this heritage asset.
- (c) Unacceptable adverse impact on the amenity of occupiers of nearby properties due to a detrimental reduction in daylight and sunlight.

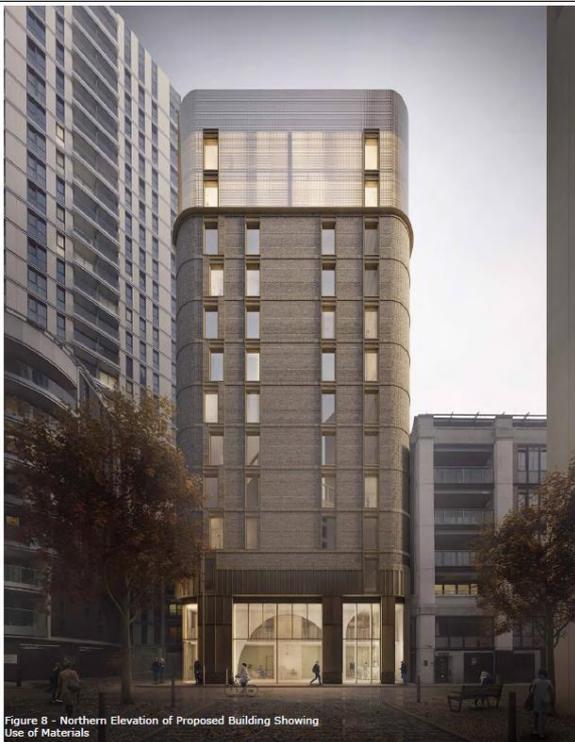
- 7.23 The inspector found elements of the scheme would enhance the conservation area, including retaining and restoring the high street frontage facade, but decided the out of keeping five storey height and design of other parts would detract.
- 7.24 He did not agree that the gateway effect claimed by the appellant to be an enhancement and demolition of the existing buildings had not been justified. Concluding less than substantial harm to the significance of the conservation area, the inspector went on to balance this harm against the public benefits of the proposal.
- 7.25 The proposal would deliver 41 new homes, of which fourteen would be affordable, in an area of pressing need but the inspector found the weight to this limited by the fact the three sites individually could also contribute housing, albeit fewer than through comprehensive development. He also considered the other benefits claimed by the appellant, such as improving a derelict appearance and removing the potential for non-conforming uses, could also be achieved through separate developments.
- 7.26 In addition, he identified harm to the living conditions of neighbours from loss of light, which added weight to his decision that the public benefits of the proposals were not enough to outweigh heritage harm and satisfy the test of NPPF paragraph 134, and he dismissed the appeal.

**Enterprise House, 21 Buckle Street, Aldgate**

Proposed development: Demolition of existing office building and erection of a 13 storey building (plus enclosed roof top level plant storey) rising to 56.32m (AOD) containing 103 unit aparthotel (C1 Use) with B1 Use Class office workspace at ground and mezzanine level with an ancillary café (A3 Use Class) and hotel reception space at ground floor, together with ancillary facilities, waste storage and associated cycle parking store.

Public inquiry commenced 6 November 2017 - 6 days

Appeal allowed.



7.27 Planning permission was refused by the Strategic Development Committee (against officer recommendation) for reasons relating to:

- (a) Harm to the amenities and living conditions of occupiers of neighbouring residential properties through loss of daylight and sunlight, excessive loss of outlook resulting from the overbearing nature of the development including an undue sense of enclosure.
- (b) The need for additional short stay accommodation to serve visitors and the borough's economy has not been adequately demonstrated given the strong pipeline supply of short stay accommodation,
- (c) Detrimental townscape impacts resulting from the proposed height, scale and mass of the and harm to the setting of the Grade II\* listed St George's German Church and to the Grade II listed Dispensary Building, the former St George's German and English Schools, the former St George's German and English Infants' School.

7.28 The inspector predominantly focused his attention on the impact of the height and mass of the building proposed on the living conditions of adjoining occupiers in surrounding flatted developments, compared to the existing five storey office block to be demolished. He also took note of the detailed pre-application discussions, following dismissal of an earlier scheme, which led to the officers' original recommendation of approval.

7.29 The site is within a mixed-use area of the City Fringe Opportunity Area and London's Central Activities Zone, an area designated for substantial growth and directly adjacent to an identified tall buildings cluster in the Local Plan.

7.30 A nearby group of three-storey listed buildings provide something of a contrast in scale, the site is set within a recently established context characterised by tall buildings of up to 28 storeys, high density and close proximity to each other. In this context the inspector felt the reduction in daylight and sunlight and loss of outlook that would be experienced by existing occupiers in surrounding flatted developments was unavoidable and whilst there would be an impact, this was acceptable.

7.31 Essentially, the inspector felt that residents living in such a "*thriving, accessible and rapidly changing hub*" couldn't expect to continue to benefit from wide outlooks and high levels of sunlight and daylight by virtue of the fact that their building had been erected, right up to a boundary, before others were developed.

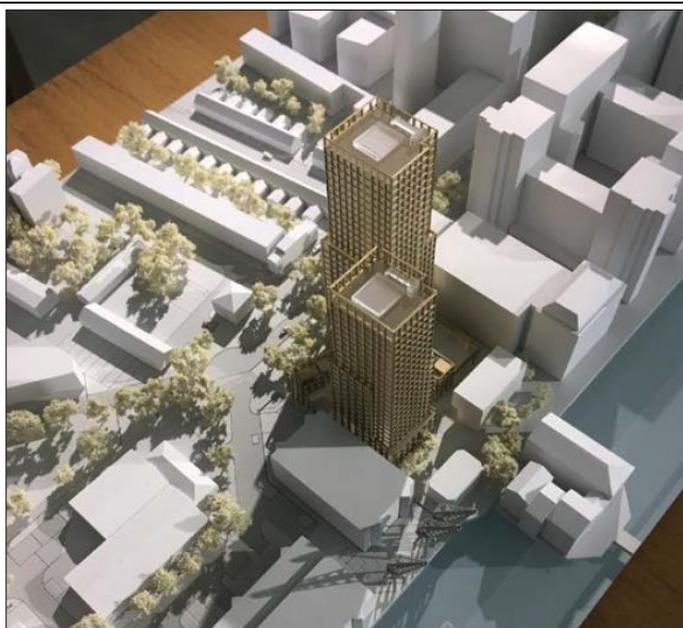
7.32 The Inspector also concluded that whilst there would be some impact on the surrounding heritage assets, the level of harm would be less than substantial and would be offset by the public benefits of the proposed development.

### 49-59 Millharbour, 2-4 Muirfield Crescent and 23-29 Pepper Street

Proposed development: Demolition of existing buildings and mixed use development comprising 319 apartments and 1,708 square metres of flexible non-residential floorspace in two towers 26 and 30 storeys high, replacing three and four-storey late 1980s buildings.

Public Inquiry 23 – 31 October 2018 (six days).

Appeal allowed.



7.33 Permission refused by SDC (against officer recommendation) for reasons relating to:

- (a) The excessive scale and height of the proposed development within its local context would not be proportionate to the site's position outside of the Canary Wharf major centre and would not maintain the transition in height between Canary Wharf and the lower rise buildings to the south.
- (b) The proposed scale, height and massing would result in a development that is overbearing, is unduly prominent in local views and detracts from the low-rise character of the area to the south. The proposed development therefore fails to respect the features that contribute to the area's character and local distinctiveness and demonstrates clear symptoms of over development and excessive density.

7.34 The site lies within the Isle of Dogs opportunity Area. Much of the area is already characterised by tall buildings, with more proposed. The main reason for refusal concerns the towers' height in the context of the policy requiring "stepping down" from those at Canary Wharf to existing three and four-storey residential development 400 metres from the appeal site.

7.35 The inspector felt that the stepping down effect would be achieved and that the proposal complied with existing and emerging policy guidance because the towers would still be less than half the height of the Canada Square development at Canary Wharf. He did not feel that the towers would loom over surrounding development, significantly detract from nearby occupiers' living conditions or cause unacceptable visual harm. Given the site location in the

Isle of Dogs Opportunity Area and the need for housing locally, he favoured the scheme overall.

- 7.36 The developer had offered 35% and then 40% affordable housing in the hope of securing a swifter permission and avoiding an appeal. This was despite the Council's independent review showing that 16% affordable housing was the maximum that could be sustained.
- 7.37 The Inspector did not agree with the council's arguments for a late-stage review of the scheme's affordable housing. This was not required by NPPG and was unlikely to be needed given the high-rise nature of the build and the probability that once started it would be unlikely that the scheme would be left unfinished for any length of time or take many years to complete. On the other side of the coin, he discounted the developers' concerns about the housing market in the context of Brexit, finding a lack of evidence on this issue.
- 7.38 The appeal was allowed with 16% affordable housing and no "late-stage" review mechanism.

### **225 Marsh Wall, E14**

Proposed development: Demolition of existing building and erection of 49 storey building comprising 332 residential units, including 71 affordable homes, plus retail, restaurant and community facilities.
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Public inquiry commenced 11 September 2018 - 5 days
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Appeal allowed.
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- 7.39 Permission was refused by SDC, against officer recommendation, for reasons relating to:

- (a) The excessive scale and height of the proposed development within its local context would not be proportionate to the site location outside of the Canary Wharf major centre and would not maintain the transition in height between Canary Wharf to the north and the lower rise buildings to the south and east.
- (b) The proposed scale, height and massing would result in a development that fails to present a human scale of development at street level, would be overbearing, unduly prominent in local views and would detract from the low-rise character of the area to the south and east.

7.40 The main issues were the tall building's impact on the local townscape and whether it would represent overdevelopment of the site. The council was particularly concerned about its impact on local views and views from Greenwich Park protected through the London View Management Framework.

7.41 Apart from the local and national policy context, the inspector referred to Historic England's Advice Note 4 on tall buildings and various supplementary planning documents. He found that the area was changing rapidly with many tall buildings under construction, including a 52-storey building immediately adjoining the site.

7.42 He noted that the site was included in an emerging opportunity area planning framework promoting comprehensive high-density residential-led mixed developments, as long as they respect existing character, but also lay in an area where development should provide a transition between higher-rise commercial areas and a lower-rise residential townscape.

7.43 In considering the scheme's impact on lower-rise development in Cubit Town, some 100 metres away, the inspector felt that the existing juxtaposition between traditional domestic-scale buildings and tall tower blocks was already a dramatic and distinctive characteristic of the area. In his view, the proposal would play a part in an irregular but progressive stepping down in height from the centre of Canary Wharf to the surrounding residential areas. It would not appear unduly prominent in local views and would be consistent with the area's character.

7.44 He was not concerned about overdevelopment, given that the building would still leave space on the site for significant public realm improvements. He held that it would not cause overshadowing, loss of privacy or sunlight, and would provide high-quality accommodation. He was satisfied that the scheme would have no impact on appreciation of the view from Greenwich Park and would make a positive contribution to the panorama by infilling a small gap and adding variety and interest to the skyline.

## Enforcement Notice - 2, 4 and 6 East Ferry Road

Enforcement notice appeal: Unauthorised demolition of 3 Unlisted Victorian cottages within a conservation area with requirement to recreate with facsimile (replica).
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Inquiry commenced 13 November 2018 – two days.
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Appeal allowed – notice quashed.
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- 7.45 An enforcement notice was served following the unlawful demolition of a small terrace of three Victorian houses.
- 7.46 The first argument at the inquiry was that the Notice is defective because it does not clearly tell the appellants what to do. The Inspector dismissed that argument and concluded that the notices were clear but that the Council could have used the words “as similar as possible” rather than a facsimile (which means exact copy) of the original buildings.
- 7.47 The Council argued that as there are no planning applications for replacement buildings, there are no public benefits to weigh in the balance against the harm caused by the demolition of the Conservation Area Buildings, which represented the only surviving remnant of a large area of Victorian workers’ housing in Cubitt Town.
- 7.48 As no public benefits to weigh in the balance, the Inspector agreed that on a simple reading of NPPF paragraphs 193 to 196 decided appeal must be dismissed. However he decided that view to be simplistic with weight given to appellant’s argument that a proposed modern flatted scheme could sit comfortably on the site and would not be out of character with the surroundings. The poor structural condition of the former cottages and the fact that little of historic interest remained with the houses appearing as a remnant in a sea of modern housing was also given weight. The Inspector found that the significance of the conservation area seems to rest almost entirely on the section around Coldharbour.
- 7.49 The Inspector went on to place significant weight on the redevelopment potential of the site, noticing it’s location in an opportunity area and high growth area as identified in the Core Strategy. The indicative six storey scheme of 22 flats of which 35% would be affordable was cited as being demonstrative of what could come forward on the site.
- 7.50 He concluded that the potential future redevelopment of the site for a larger number of dwellings, including much needed affordable housing, would accord with the policy “ethos” for the area – even though no such plans have been submitted. These benefits would outweigh the harm to the conservation area arising from the demolition.

7.51 This is an unusual decision, as the Inspector has placed significant weight on the public benefits arising from the development potential of the site, without there being any firm plans to redevelop it. It is not normally appropriate to allow any demolition within a conservation area without being able to assess the impact of replacement development and link the demolition and re-building together. The policy framework for the area seems to have been paramount in his considerations, but this could set an unhelpful precedent and the Council is taking legal advice.

## **8. CONCLUSIONS**

8.1 The Council's overall position on defending decisions to refuse planning permission at appeal remains good and there is no risk of hitting the government threshold for quality of decision making, based on decisions overturned at appeal.

8.2 However performance for the last 13 months has been affected by a number of high profile decisions arising from an unusually high number of public inquiries.

8.3 There are some themes that arise from decisions which should be considered in terms of future decision making and policy development.

8.4 The appeal decisions on 225 Marsh Wall and Glengall Quay demonstrate how the Council's long standing policy for managing building heights in the Isle of Dogs (i.e. the stepping down from 1 Canada Square, moving southwards) can be open to interpretation. The height of the tallest proposed tower at Glengall quay was still held to respect this principle, notwithstanding that it would be substantially taller than neighbouring buildings as it would be around one third of the height of 1 Canada Square. The Council is now looking at whether a Supplementary Planning Document to provide more guidance on the practical application of this policy (and its equivalent in the emerging Local Plan) would provide an additional tool for managing building heights.

8.5 Related to this is the importance of ensuring that the Council not only identifies conflict with policies but links this to identifiable planning harm. This was apparent in the Inspector's decision on Glengall Quay, where he says "It has not been shown why the jump up from 8 to 24 and 34 storeys, would lead to unacceptable harm." (Para. 21). Given the MPPF presumption in favour of sustainable development, whilst the starting point for decision-making is the Development Plan, it does not follow that non-compliance with certain policies should lead to a refusal in itself, unless unacceptable planning harm can be demonstrated.

8.6 Finally, two decisions highlight the flexibility that should be applied to the BRE daylight and sunlight guidance. The Inspectors dealing with the Whitechapel Estate and the Enterprise House appeals noted that the guidance should not be applied rigidly (as per the document itself). They set the level of daylight failures to surrounding properties within the overarching policy context for the schemes. Both were identified in adopted spatial planning documents as being in areas where substantial growth, transformation and consequently high densities were expected. Hence the consequence of balancing this with the amenity impacts lead to an acceptance of a greater level of impact on daylight than would have been in the case in areas not subject to the same expectations for growth – for example, the decision on Cinnamon Street and Clegg Street in Wapping.

8.7 The above is a summary of the key points only. Committee members are invited to read in full any appeal decisions that are of interest and officers will be pleased to provide further information, if necessary.

