

Committee: Development	Date: 29 th June 2011	Classification: Unrestricted	Agenda Item Number:
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Report of: Director of Development and Renewal Case Officer: Pete Smith	Title: Planning Appeals
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1. PURPOSE

- 1.1 This report provides details of town planning appeal outcomes and the range of planning considerations that are being taken into account by the Planning Inspectors, appointed by the Secretary of State for Communities and Local Government. It also provides information of appeals recently received by the Council, including the methods by which the cases are likely to be determined by the Planning Inspectorate.
- 1.2 The report covers all planning appeals, irrespective of whether the related planning application was determined by Development Committee, Strategic Development Committee or by officers under delegated powers. It is also considered appropriate that Members are advised of any appeal outcomes following the service of enforcement notices.
- 1.3 A record of appeal outcomes will also be helpful when compiling future Annual Monitoring Reports.

2. RECOMMENDATION

- 2.1 That Committee notes the details and outcomes of the appeals as outlined below.

3. APPEAL DECISIONS

- 3.1 The following appeal decisions have been received by the Council during the reporting period.

Application No:	PA/10/02190
Site:	131a Tredegar Road, E3 2EU
Development:	Demolition of existing bungalow and the erection of a three storey mews house.
Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED. Cost Application (against the appellant) DISMISSED

- 3.2 The main issues in this case were whether the proposed development would have been a satisfactory form of development for the site and secondly,

whether the proposed development would have impacted detrimentally on the living conditions of nearby occupiers and the occupiers of the proposed development. This proposal sought to address the deficiencies of a previous proposal (albeit similar) which was dismissed on appeal in August 2010.

- 3.3 The Planning Inspector noted the restricted nature of the site and the constraints placed upon any development by surrounding buildings and spaces. He was satisfied that a building of the height proposed, which would have sat comfortably between and alongside neighbouring dwellings. He felt that in many respects, the proposed development would have been more in keeping with its surroundings than the somewhat bland bungalow and also concluded that it would have preserved the character and appearance of the Roman Road Conservation.
- 3.4 However, he was not convinced that the proposal would resolve the previous overlooking issues (especially views from a proposed second floor window over towards 129 Tredegar Road). Whilst the Council had raised concern about the use of roof lights (only) to light the second floor bedroom, he was satisfied with this form of natural lighting which was commonplace in roof extensions. However, he was less content with the quality of internal spaces to first floor bedrooms. The proposed "brise soleil", which was proposed in order to limit overlooking, would have resulted in a feeling of being artificially hemmed in. He concluded that these bedrooms would have been enclosed and uninviting.
- 3.5 The appeal was DISMISSED.
- 3.6 As regards the cost application (made by the Council against the appellant) which considered that the appellant had been unreasonable in proceeding with the appeal, when a similar proposal had been previously dismissed on appeal, the Inspector was satisfied that there were significant differences between the two schemes and that the scheme had been drawn up in response to the previous appeal decision and not in spite of it
- 3.7 The cost application was DISMISSED.

Application No:	PA/10/00549
Site:	469-475 The Highway, London E1W 3HN
Development:	Erection of an advertisement structure with internally illuminated poster signs facing east and west.
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	ALLOWED

- 3.8 This advertisement was proposed in respect of the Holiday Inn Express hotel, situated on The Highway. The Council was concerned about the height and scale of the proposed advert and the impact of the structure and its form of illumination on the visual amenities of the area.
- 3.9 The Planning Inspector felt that the existing sign (which was quite a bit smaller than the proposed sign) was too small for the site (when one considers the scale of development nearby). He concluded that the proposed sign would not be out of keeping with the adjacent commercial buildings or the large residential development opposite.

3.10 He noted the presence of the locally listed wall around the premises to the east. However, with the vertical emphasis of the proposed sign and the distance between the sign and the wall, he was satisfied that the structures would be seen as quite separate elements and would not impact materially upon each other.

3.11 The appeal was DISMISSED.

Application No:	PA/10/02450
Site:	Outside 32-38 Leman Street E1 8EW
Development:	Installation of a public payphone.
Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

3.12 This appeal was in respect of the Council not being satisfied as to the siting and appearance of a proposed payphone, submitted as an application for prior approval – under the Town and Country Planning (General Permitted Development) Order 1995.

3.13 The main issues in this case were the effect of the proposal on the visual amenities of the area and whether the proposed kiosk would have resulted in street clutter and the effect of the proposed kiosk on pedestrian and road user safety along this part of Leman Street.

3.14 Whilst the Inspector was satisfied that the proposed installation would have not resulted in street clutter – with no bus shelters or other telephone kiosks in the immediate vicinity, he shared the views of Transport for London, that the proposed kiosk would have obscured the view of the traffic light at the corner of Allie Street. Her also shared TfL's view that moving the kiosk away from the kerb edge, would have obstructed pedestrian flows in a very busy part of the Borough.

3.15 The appeal was DISMISSED.

Application No:	ENF/10/00097
Site:	25 New Road London E1 1HE
Development:	Unauthorised works to listed building (internal and external works).
Council Decision:	INSTIGATE ENFORCEMENT ACTION (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED - but with variations to enforcement notice on time limits and required works as part of the enforcement notice

3.16 The Council's enforcement notice referred to various external and internal alterations requiring amongst other things, the removal of the fascia box sign and projecting box sign, roller shutter, satellite dishes, uPVC windows at ground and basement levels and false ceilings, the reinstatement of the round headed rusticated doorway and the former timber door and the repair of the railings.

3.17 25 New Road is a 19th Century terraced property (comprising three storeys and basement). The Inspector stated that the quality of the design can be gauged

with reference to the other properties in the terrace and similar terraces further away from New Road, few of which have been altered. The property lies within the Myrtle Street Conservation Area. The Inspector felt that the building is a fine example of the period and its details merit retention and maintenance.

- 3.18 Most of the debate centred on the suitability of external alterations. The appellant argued that the security shutters was vitally important and that other buildings in New Road had shutters. The Inspector disagreed with this view and found the shutter to be conspicuous and poorly designed, with no attempt to acknowledge the importance of its effect on the listed facade. Again, the Inspector found the installed doorway to be highly inappropriate along with the removal of the elegant doorway with its rusticated surround and traditional windows. He required the railings to be repaired and lessened the requirement associated to re-instate the original ceiling, bearing in mind that the false ceiling had already been partially removed.
- 3.19 The appeal was largely DISMISSED.
- 3.20 This is a very worthwhile decision. The Council will now be in a strong position to properly enforce and rectify the various breaches that have taken place.

Application No:	PA/09/00214 and PA/10/00510
Site:	307 Burdett Road, London E14 7DR
Development:	Applications for planning permission and conservation area consent for the demolition of the existing part2, part 3 storey vacant unemployment benefit office and the erection of a part 6, part 11 storey building to provide 56 residential units and ground floor /lower ground floor commercial floorspace (A1-A3 and A4).
Decision:	REFUSE (Strategic Development Committee and Delegated Decision)
Appeal Method:	PUBLIC INQUIRY
Inspector's Decision	ALLOWED (Costs application DISMISSED)

- 3.21 The application for planning permission was refused planning permission back in early 2010 and following the Council's decision to include the unemployment exchange within the Limehouse Cut Conservation Area (following the refusal of planning permission) the application for conservation area consent for demolition was refused by officers under delegated powers on 5th May 2010.
- 3.22 During the Inquiry, the unemployment exchange was treated as being included within the Limehouse Cut Conservation Area, but on 9th February 2011, a formal Court Order was made quashing the Council's decision to extend the conservation area (to include the appeal premises). The Inspector therefore noted that conservation area consent was not required for the demolition and therefore made no comment on the merits of demolition.
- 3.23 Prior to the inquiry, the Council (on Counsel's advice) withdrew its objection to four of the six reasons for refusal. The main issues debated at the Inquiry centred on the effect of the proposed development on the character and appearance of the area and whether the proposed development would be

detrimental to the living conditions of the future occupiers in terms of the provision of communal and child play space.

- 3.24 The Inspector noted that the proposed development (at 11 storey fronting Burdett Road, 12 storey adjacent to Limehouse Cut and 6 storeys adjacent to Dod Street) would be significantly larger than the former unemployment exchange and the associated warehouse buildings. However, he was satisfied that they would be in keeping with the more recent, large scale canal side development and those found in Burdett Road (which helps define locations such as around bridges and at road junctions).
- 3.25 He also felt that the proposed development would not overwhelm the warehouses along Dod Street and will be seen as part of the complex mix of larger modern and lower scale older buildings that characterise much of the area. He felt that the 6 storey element would be in keeping with the flats on the opposite side of the road.
- 3.26 As regards design, the Inspector felt that the external treatment had been carefully considered and was imaginatively composed to fit within the appeal site. He made particular reference to the canal elevation, animated with windows/balconies and a food and drink unit opening out onto the tow path.
- 3.27 Referring to the apparent lack of communal open space and child play space, the Inspector was persuaded by the appellant's amenity space calculations and considered that the quantity of on site amenity space would be sufficient to provide adequate communal and child play space. The issue between the Council and the appellant was the suitability of roof top open space. The Inspector was satisfied that rooftop gardens would be acceptable and he was satisfied that appropriate boundary treatment to the roof top areas could be provided (controlled by condition).
- 3.28 The appellant submitted a unilateral, undertaking in relation to the appeal proposal, which covered a financial contribution to British Waterways Board to mitigate the additional use of the towpath and the canal related activities. Further contributions went to Transport for London, the provision of 30% affordable housing and a further obligation to restrict car parking permits for residents.
- 3.29 The appeals were ALLOWED
- 3.30 Turning to the application for costs (against the Council) the Inspector ruled that as the quashing of the conservation area designation took place after the Public Inquiry took place, the issue remained a valid consideration for the duration of the Inquiry. The Inspector therefore considered that the Council had not been unreasonable and put forward a professional conservation witness to support its case. He was also satisfied that the Council's evidence was realistic and specific about the consequences, having particular regard to its duty at the time to consider whether the proposals would have preserved or enhanced the character and appearance of the conservation area.
- 3.31 The Inspector concluded that The Council had been reasonable in its approach to the appeals and the cost application was DISMISSED.

Application No:
Site:

PA/10/02735
13 Artillery Passage, London E1 7TJ

Development:	Appeal against imposition of a condition restricting the availability of car parking permits to future occupiers of the development
Council Decision:	REFUSE (Delegated Decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

3.32 The main issues in this case Was whether the planning condition was reasonable and necessary in order to promote sustainable transport options.

3.33 The Inspector noted that the site was in one of the most accessible areas of the Borough – with a PTAL level of 6B. He referred to both the London Plan and the Core Strategy which both promote car free development. The appeal considered various car parking stress surveys (some produced by the appellant and some by the Council) and he was satisfied that existing car parking bays are heavily used. With the property being proposed as a 4 bed self contained flat (with no restrictions on occupation) the residential unit could well generate demand for several car parking spaces. He acknowledged that the removal of the condition would create pressure to allow other similar schemes in the area to come forward without control on the ability of occupants to apply for permits.

3.34 The appeal was DISMISSED.

Application No:	PA/10/02525
Site:	2-8 East India Dock Road, London E14 8JA
Development:	Appeal against imposition of conditions relating to hours of use of an existing hot food takeaway.
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED (Costs award – against the Council – DISMISSED)

3.35 The main issue in this case was whether the imposition of the condition (which restricted the use until 12 midnight on any day) was reasonable and necessary to protect the living conditions of nearby residents. The Council had previously allowed the opening of the premises to 0200 hours during the weekend (for a temporary period).

3.36 The Licence Committee had previously granted a licence up until 0500 hours. However, the Inspector noted that licensing was a different regime to planning and he accepted that planning can take a broader view as to amenity impacts and the wider environment. Whilst the Inspector noted that the premises are located on a busy road where a degree of noise can reasonably be expected, he recognised that noise levels within Beccles Street (to the rear) were significantly lower. He also noted that the noise environment reduced significantly after midnight – especially at the rear of the premises. Similarly, he was concerned about likely additional vehicular activity in Beccles Street detrimental to residential amenities. The appeal was DISMISSED.

3.37 In terms of the application for costs (against the Council), the Inspector was satisfied that the planning and licensing regimes were separate and decisions in one sphere do not bind decisions of the other. He was satisfied that the

Council had made an appropriate judgement. In the light that a trial period, he did not consider it unreasonable to wait for the results of that trial period before any further conditions on future applications might be considered. The costs application was DISMISSED.

Application No:	PA/10/02757
Site:	Unit 2, Eastway Business Centre, 111 Fairfield Road E3 2QR
Development:	Change of use from Business use to a hot food take-away use (Class A5).
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

3.38 The appeal related to an application for retrospective planning permission for use of the property for an A5 purposes. There had been a previous appeal decision in relation to a previous enforcement notice (with the Council's position having been supported). The main issues in this case were the impact of the use of living conditions of neighbouring occupiers, the impact of the development on highway safety and the location of bin storage and how the proposed arrangements affected the character and appearance of the area.

3.39 The Inspector noted that the property was within a area characterised by residential uses and he was not satisfied that the hot food take-away use could take place form the premises without causing undue nuisance to residents (linked to the slamming of car doors and the manoeuvring of vehicles and disturbance outside the premises). He was less concerned about the impact of the development on highway safety but concluded that the location of the Eurobin in a prominent position outside the premises would restrict the over-riding residential character of the street.

3.40 The appeal was therefore DISMISSED

Application No:	PA/10/01370
Site:	157 Commercial Street E1 6BJ
Development:	Appeal against imposition of condition relating to hours of use of a restaurant
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

3.41 The planning permission imposed a condition on hours of use, limiting opening times to 10am – 11pm Monday to Thursday, 10am – 12 midnight Friday and Saturday and 10am – 10pm Sundays and Bank Holidays. The applicant requested longer opening hours, up until 1am Monday to Thursday and 2am Friday and Saturday. The main issue in this case was therefore the impact of extend hours on the living conditions of neighbours.

3.42 The Inspector reviewed opening hours of similar premises within Commercial Road – with a variation of between 2300 hours (Sunday to Thursday) and 1am (Friday and Saturday) and concluded that the extended hours applied for in this case would step significantly beyond the general pattern for the area. He referred to comments raised by local residents, especially noise generated when patrons leave local restaurants and other venues and it was his

judgement that even in situations such as Commercial Road, residents are entitled to some relief from external noise and disturbance later at night.

3.43 The appeal was DISMISSED.

Application No:	PA/10/01957
Site:	Unit 6, 525 Cambridge Heath Road London E2 9BU
Development:	Appeal against the refusal of a certificate of lawful use or development (relating the use of the property as a self contained flat)
Council Decision:	REFUSE – (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	ALLOWED

3.44 The issue in this case was whether there was sufficient evidence to prove that the property had been used as a self contained flat for at least 4 years. As part of the appeal, the appellant provided additional tenancy agreements to cover further periods – compared with those periods submitted as part of the initial application. The Inspector was satisfied on the balance of probability that the flat had been occupied continuously for a period in excess of 4 years and was therefore satisfied that the use was lawful.

3.45 The appeal was ALLOWED and the Certificate of lawful Development issued.

Application No:	PA/10/01317
Site:	Unit FG, 014, Block F, Old Truman Brewery, 91 Brick Lane. London E1 6QL
Development:	Change of use to a restaurant.
Council Decision:	REFUSE – (Delegated Decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	ALLOWED

3.46 This application sought to extend the time period attached to a previous planning permission granted by the Council back in June 2005. In refusing planning permission for the extension of time, the Council considered that circumstances had changed (especially with the influx of residential uses in and around Brick Lane) which suggested that a more restrictive approach to restaurant activity should be adopted.

3.47 The main issue in this case was therefore whether the use of the premises as a restaurant would impact detrimentally on the living conditions of nearby residents. Whilst the Inspector recognised that there were some residential properties nearby the proposed restaurant, he also noted that the proposal was relatively modest and he considered that it would be unlikely that patrons would necessarily use Wilkes Street when leaving the premises to access nearby public transport. He was not convinced that a further restaurant would add materially to the likelihood of noise and disturbance. Whilst he accepted that the Council was right to consider an appropriate balance between night-time activities and the peace and quiet of residents, he felt that in this case the balance would be preserved.

3.48 The appeal was ALLOWED.

Application No:	ENF/08/00254
Site:	11 Gibraltar Walk, London E2 7LH
Development:	Unauthorised use of B1 unit as a single dwelling house.
Council Decision:	INSTIGATE ENFORCEMENT ACTION (Delegated Decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	ALLOWED

3.49 The main issue in this case was whether the introduction of living accommodation into the building would compromise the Council's aim to encourage employment growth. An appeal against the refusal of planning permission for use of the property as a live work unit was reported to the 1 June Development Committee (which was ALLOWED). The Inspector's views in relation to this planning enforcement appeal were similar to those related to the appeal against refusal of planning permission. He therefore quashed the enforcement notice and granted planning permission for the continued use of the property for residential and business purposes.

3.48 The appeal was ALLOWED and the Enforcement Notice quashed

4. NEW APPEALS

4.1 The following appeals have been lodged with the Secretary of State following a decision by the local planning authority:

Application No:	PA/10/02779
Sites:	25 St Pauls Way E3
Development	Re-development of The Albion (former Public House) vacant site by the erection of a 10 storey building plus basement to provide 18 self contained flats comprising 9 x one bedroom flats, 4 x two bedroom flats and 5 X 3 bedroom flats with rooftop garden.
Start Date	9 June 2011
Appeal Method	WRITTEN REPRESENTATION

4.2 Planning permission was refused on grounds of inappropriate scale, massing and overall density of development detracting from the open character of Metropolitan Open Land, the character of the area and general failure to deliver affordable housing.

Application No:	PA/11/00149
Sites:	145 Three Colts Street
Development:	Erection of a detached glazed smoking shelter within rear garden.
Council Decision:	Refuse (delegated decision)
Start Date	8 June 2011
Appeal Method	WRITTEN REPRESENTATIONS

4.3 This application was refused on grounds of additional noise and disturbance to

neighbouring residential occupiers through more intensive use of the rear garden.

Application No: PA/11/00246
Site: 152-156 Brick lane E1 6RH
Development: Erection of a 1st and 2nd floor extension to provide additional storage accommodation
Council Decision: Refuse (delegated decision)
Start Date: 7 June 2011
Appeal Method: WRITTEN REPRESENTATIONS

- 4.4 The Council refused planning permission for this development on grounds of excessive scale and bulk of development failing to preserve the character of the Narrow Street Conservation Area and the impact of the development on neighbouring residential occupiers in terms of increased enclosure and potential loss of sunlight and daylight.

Application No: PA/10/02840
Site: 482-484 Brick Lane
Development: Display of an internally illuminated fascia sign.
Council Decision: Refuse (delegated decision)
Start Date: 9 June 2011
Appeal Method: WRITTEN REPRESENTATIONS

- 4.5 The issue in this case was the impact of the advertisement on the visual amenities of the area, in view of its obtrusive impact, failing to preserve the character and appearance of the Brick Lane/Fournier Street Conservation Area.

Application No: PA/11/00432
Site: Unit 6, Bow Exchange, 5 Yeo Street
Development: Appeal against a refusal of Certificate of Lawful Use in respect of the use of the property for educational training purposes
Council Decision: Refuse (delegated decision)
Start Date: 24th May 2011
Appeal Method: WRITTEN REPRESENTATIONS

- 4.6 The Council was not satisfied that sufficient evidence had been submitted to prove, on the balance of probability, that the use of the property for educational related purposes had been in place continuously for in excess of 10 years.

Application No: PA/10/02167
Site: 202-208 Commercial Road
Development: Demolition and erection of a 5 storey building (2 retail units and basement and ground floor with 3x1 bed, 3x2 bed and 1x3 bed flats)
Council Decision: Refuse (delegated decision)
Start Date: 23 May 2011
Appeal Method: WRITTEN REPRESENTATIONS

- 4.7 This application was refused on the grounds of inappropriate massing and scale of development, substandard accommodation (particularly in relation to external amenity space for the residential accommodation and inadequate arrangements for the storage and collection of refuse.

Application No: PA/11/00148
Site: 127-129 Roman Road
Development: Retention of a single storey out building
Council Decision: Refuse (delegated decision)
Start Date 20 May 2011
Appeal Method WRITTEN REPRESENTATIONS

- 4.8 This application was refused on grounds of inappropriate design, failing to preserve the character and appearance of the Globe Town Conservation Area.

Application No: PA/11/00478
Site: 51 Grove Road
Development: Alterations and extensions of a Georgian Villa to provide additional hotel accommodation
Council Decision: Refuse (delegated decision)
Start Date 17 May 2011
Appeal Method WRITTEN REPRESENTATIONS

- 4.9 The reason for refusal in this case focussed on inappropriate design (scale and massing) failing to preserve character of the Clinton Road Conservation Area.

Application No: ENF/07/366
Site: 497-499 Roman Road
Development: External Alterations (new shop front and shutter box housing)
Council Decision Enforcement Action (delegated decision)
Start Date 23 May 2011
Appeal Method WRITTEN REPRESENTATIONS

- 4.10 This enforcement notice relates to authorised alterations including the installation of a replacement shop front, fascia/shutter box and details above installed windows. It was considered that the elevations are of an unacceptable design and fail to preserve or enhance the character and appearance of the Driffield Road Conservation Area.

Application No: ENF/10/30
Site: 79 Commercial Road
Development: Unauthorised advert at first floor level –
Appeal Against Discontinuance Notice
Council Decision Enforcement Action (delegated decision)
Start Date 24 May 2011
Appeal Method WRITTEN REPRESENTATIONS