

Committee: Development	Date: 27 July 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/10/01465
Site:	Carradale House, 88 St Leonards Road, London E14 0SN
Development:	Appeal against Condition 3 of listed building consent in relation to the materials of replacement windows to the block.
Decision:	GRANT subject to conditions (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	ALLOWED

- 3.2 In September 2010, the Council granted listed building consent for internal and external alterations to Carradale House (which forms part of the Brownfield Estate. The condition in dispute related to materials to be used as part of the alterations and in particular, the condition referred explicitly to the use of replacement timber windows. The appellant considered that the specific requirement for timber replacement windows was unreasonable.
- 3.3 Whilst the Inspector explicitly highlighted the listing description which refers to timber windows, he noted that policies do not preclude the weighing of a less than substantial harm against the public benefits of the proposal. The agreed that the timber windows are a significant element of Carradale House and he concluded that the Council's intention to preclude consideration of any material other than timber to be inconsistent with the approach adopted in PPS5
- 3.4 The amended condition does allow the local planning authority to approve the details of the windows so that the installation of windows of materials or design that was harmful could be prevented.
- 3.5 The appeal was ALLOWED and the condition was varied by the Planning Inspector.

Application No:	ENF/06/10002
Site:	34 Cannon Street Road, London E1 0BH
Development:	Appeal against enforcement notice in respect of a rear extension, roof extension, upvc windows and doors, creation of an additional flat and formation of a roof terrace.
Council Decision:	ENFORCEMENT ACTION (delegated decision)
Appeal Method:	PUBLIC INQUIRY
Inspector's Decision	ALLOWED – ENFORCMENT NOTICE QUASHED

- 3.5 Planning permission for conversion of the property into 4 flats was granted on 16 March 2006 – but was in fact converted into 5 flats. The Council was of the view that the extensions failed to preserve or enhance the character and appearance of the conservation area, lead to amenity impacts for neighbours, the loss of amenity space and substandard accommodation.
- 3.6 The main issue in this case was whether the time when the notice was issued 15 October 2010 was too late to take enforcement action. The case also centred on whether the development had been substantially completed prior to the issuing of the enforcement notice.
- 3.7 During the Inquiry there were legal arguments as to the completion of development – especially whether the works undertaken were capable of providing viable facilities for living, rather than when works were completed. The Planning Inspector accepted that the appellant's evidence and that of the Council pulled in both directions and it was clear that Council officers were thwarted by lack of information being forthcoming from the Approved Inspector who dealt with on site building works. The Inspector was satisfied that the appellant had produced sufficient evidence in the form of diary notes and other related evidence to prove that the works were at a very advanced stage at the

end of September 2006. The Council produced other evidence (in relation to Council Tax records and the provision of an upgraded power supply (but the Inspector did not feel that this evidence was conclusive in itself.

- 3.8 On the balance of probability, the Inspector was satisfied that the conversion works had been substantially completed and the flats capable of occupation by the end of September 2006. The Inspector therefore determined that the works were immune from enforcement action. He ALLOWED the appeal and QUASHED the Enforcement Notice.
- 3.9 The outcome of this case is disappointing. Following the allocation of additional resources within the Planning Enforcement Team, officers have been prioritising historic planning enforcement cases – with a view to resolving outstanding breaches of planning control. Whilst it was recognised that the Enforcement Notice was always going to be issued close to the 4 year period (after which time the development would have been immune from enforcement action) officers considered that there was evidence to suggest that the development had not been substantially at the time of service. The evidence was finely balanced and it is unfortunate that evidence from the approved Inspector was not that forthcoming.
- 3.10 With additional resources in the Planning Enforcement Team, officers are more able to keep on top of alleged breaches of planning control, are able to satisfactorily prioritise cases and instigate enforcement action within the specified periods. The risk of development becoming immune from enforcement action in current circumstances is therefore much reduced.

Application No:	PA/10/00684
Site:	1 Sly Street London E1 2LS
Development:	Change of offices to live-work.
Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

- 3.11 The main issues in this case were the effects of the proposal on the provision of employment floorspace and the suitability of the residential accommodation proposed as part of the live work unit. .
- 3.12 The appeal premises is the ground floor and basement of a commercial property, located in the Myrdle Street Conservation Area. The commercial accommodation was occupied at the time of the Planning Inspectors site inspection and was therefore not vacant or surplus to requirements. The Planning Inspector was concerned about the reduction in commercial floorspace and he was concerned that the appellant did not elaborate on his assertion that employment numbers would not be reduced. The Planning Inspector was concerned about the potential loss of employment opportunities for future occupiers and he referred to the Council's evidence that live-work units in the Borough have not made a valuable contribution to employment floorspace
- 3.13 As regards the suitability of the proposed residential element, he was concerned with the lack of natural outlook and daylight within the basement, where the predominant residential element would have been situated. He was also concerned about the absence of any external amenity space.

3.14 The appeal was DISMISSED.

Application No:	PA/10/01197
Site:	Land at the rear of Chariot Close and Forum Close London E3 2FD
Development:	Display of 2 internally illuminated advertisements.
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

3.15 These proposed advertisements were to be displayed within a strip of land which runs to the rear of an adjacent housing development and the A12. The issue in this case was the impact of the advertisement on the amenity of the area.

3.16 Whilst the Inspector accepted that the elevation onto the A12 is relatively plain, he felt that the site did not possess an overt commercial appearance such as that found on the other side of the A12. He also felt that the vegetation within the strip of land in question offers some softening of this long elevation

3.17 He concluded that the advertisements would be prominent within the street scene, being placed forward of the building, disrupting the continuous strip of vegetation. The appeal was DISMISSED.

Application No:	ENF/08/00141
Site:	The Canopy, 145 Three Colt Street, London E14 8AP
Development:	Appeal against enforcement notice in respect of the authorised use of the property for mixed use purposes (restaurant and shisha lounge) along with authorised structures within the rear garden (including timber decking, large umbrellas and a light box).
Decision:	INSTIGATE ENFORCEMENT ACTION (delegated powers)
Appeal Method:	PUBLIC INQUIRY
Inspector's Decision	DISMISSED and ENFORCEMENT NOTICE UPHeld (Costs application – particle costs awarded against the appellant for unreasonable behaviour)

3.18 On 30 June 2010 an enforcement notice was issued in respect of the unauthorised use of the appeal premises as a restaurant and shisha lounge with various unauthorised structures having been erected in the rear garden – including umbrellas and timber decking. The rear garden was being used as an external shisha smoking area and was causing nuisance to neighbouring residential occupiers.

3.19 The operator of the use appealed against the service of the enforcement notice on a number of grounds including the following:

- that as a matter of fact, the matters alleged in the notice had not taken place;
 - that what is alleged in the notice, does not amount to a breach of planning control;
 - that the Council was outside the period to instigate enforcement action;
 - that deemed planning permission should be granted;
 - that the requirements of the enforcement notice are excessive;
 - that the period for compliance specified in the notice is too short (in this case 1 month).
- 3.20 The Council successfully defended its position that the works had in fact taken place (it was clear from site inspections and photographs taken throughout the enforcement investigation). The Council also successfully defended its position that the works and the current use of the property as a mixed use (restaurant/shisha lounge) along with the operational works in the rear garden represented breaches of planning control. Furthermore, the Council satisfied the Planning Inspector that the enforcement notice was served in time – linked to the relevant date (30 June 2006).
- 3.21 As regards the planning merits of the unauthorised development, the Planning Inspector considered that the main issues to be the impact of the use and the external alterations on the character and appearance of the conservation area and whether the use impacted detrimentally on the amenities of neighbouring occupiers in terms of noise, disturbance, odour and smoke.
- 3.22 She felt that the umbrellas (due to their size, colour, shape and use of materials) as well as the timber decking and light box appeared out of character with the conservation area and the surrounding buildings. Furthermore, she found that as the properties in Milligan Street are situated in close proximity to the appeal premises, she found that the use of the covered garden area (smoking flavoured tobacco) linked to associated noise results in significant harm to the living conditions of neighbouring occupiers.
- 3.23 The appellant tried to argue lesser enforcement notice requirements, including removing umbrellas at the end of each day – but the Inspector considered that it was unlikely (in view of the scale, time taken and effort to remove the umbrellas) that it would be practicable to do on a regular basis. She also felt that regular removal would not overcome the negative impact on the character and appearance of the conservation area.
- 3.24 Finally, the Planning Inspector was not prepared to accept a longer period for the operator to comply with the requirements of the notice.
- 3.25 The appeal was DISMISSED and the enforcement notice UPHELD (albeit amended slightly).

Application for Costs

- 3.26 The Council applied for costs against the appellant on grounds of unreasonable behaviour. There had been a previous successful appeal on the site in respect of the previous extension of marquees and the Council argued that the present umbrellas represented a similar form of development which had been previously dismissed on appeal. The Council also argued that the appellant had not presented evidence in support of the stated grounds of

appeal.

- 3.27 Whilst the Inspector felt that the current umbrellas represent a different form of development to the previous marquee structure and did not award costs on that basis, she did consider that the appellant had acted unreasonably in failing to submit evidence that the use/structures had been in place for more than 4 years and for failing to submit evidence that the works had not been undertaken. The Inspector concluded that the appellant's failure to defend these grounds resulted in unnecessary expense. She therefore awarded a partial award of costs against the appellant.
- 3.28 This represents a very worthwhile appeal outcome. Not only was the Council's position supported by the Planning Inspector and as a consequence, the amenity and conservation area impacts resolved, but the appellant's unreasonable behaviour was recognised through a partial award of costs.

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/11/00703
Site: Land to r/o Heckford House, Grundy Street E14
Development: Erection of a two storey building in rear amenity area and partial demolition existing building to provide space for cycle storage and landscaping.
Council Decision: Refuse (delegated decision)
Start Date: 6 July 2011
Appeal Method: WRITTEN REPRESENTATION

- 4.2 The Council refused planning permission on the grounds of loss of amenity space, poor design failing to preserve or enhance the setting of the Landsbury Conservation Area and loss of an existing family sized residential unit.

Application No: PA/11/00517
Site: 91 Hartford Street, London E11 4RL
Development: Erection of a roof extension with front and rear dormers.
Council Decision: Refuse (delegated decision)
Start Date: 6 July 2011
Appeal Method: WRITTEN REPRESENTATIONS

- 4.3 The planning application was refused on grounds of inappropriate design, scale, bulk and prominence of extension failing to respect the existing uniform roof line detrimental to the appearance of the existing terrace and the general streetscene.

Application No: PA/10/02229
Site: 254 Hackney Road, London E2 7SJ
Development: Erection of first floor front conservatory to public house and the installation of an awning to the Horatio Street frontage
Council Decision: Refuse (delegated decision)

Start Date 27 June 2011
Appeal Method WRITTEN REPRESENTATIONS

- 4.4 The planning permission was refused on grounds of inappropriate design, failing to preserve or enhance the character and appearance of the Hackney Road Conservation Area.

Application No: PA/10/02753
Site: 29 Norman Road, London E3 5EG
Development: Erection of a second floor mansard roof extension with pitched roof dormers
Council Decision: Refuse (delegated decision)
Start Date 20 June 2011
Appeal Method WRITTEN REPRESENTATIONS

- 4.5 The reason for refusal related to inappropriate height, design, relationship and massing, out of keeping with the uniform roof line and failing to preserve or enhance the character and appearance of the Medway Conservation Area.

Application No: PA/11/00282
Site: 218, Old Ford Road, London E2 9PT
Development: Erection of a second floor extension (including extension to existing roof space) and its use as a 2 bed flat
Council Decision: Refuse (delegated decision)
Start Date 21 June 2011
Appeal Method WRITTEN REPRESENTATIONS

- 4.6 This application was refused on grounds of inappropriate design (in terms of bulk and relationship with host building and the general street scene, failing to preserve or enhance the character and appearance of the Victoria Park Conservation Area and detrimental impact on neighbouring outlook.