

Committee: Development	Date: 6th April 2011	Classification: Unrestricted	Agenda Item Number: 8.1
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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/10/01488
Site:	477 The Highway E1W 3HY
Development:	Display of 1x96 sheet illuminated advertisement (lightbox)
Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

- 3.2 This 96 sheet advertisement was proposed to be displayed on a single monopole (designed to appear like a ship's mast and associated rigging to reflect the maritime heritage of this part of London). The proposed advertisement location was within the curtilage of a cement and aggregate depot approximately 100 metres from the junction of the Highway and Butchers

Row.

- 3.3 The Inspector felt that the proposed advertisement (with mounting rising to 7 metres in height) would have been overly prominent and intrusive in the street scene where there are few advertisement hoardings. She also concluded that it would have had an overbearing effect on the locally listed brick wall (enclosing the site at back edge of footway).
- 3.4 The appeal was DISMISSED and advertisement consent refused.

Application No:	PA/10/01383
Site:	295 Whitechapel Road, London, E1 1BY
Development:	Change of use of a restaurant with installation of rear kitchen ventilation.
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	ALLOWED

- 3.5 The main issue in this case was the impact of the proposed change of use on the amenities of neighbouring residential occupiers with reference to possible disturbance from cooking smells and odours.
- 3.6 As the property is located within the Whitechapel Market Core Area, the Inspector felt that in view of the nature of other existing uses nearby, it was unlikely that neighbouring occupiers would have suffered unacceptable increased noise levels or disturbance.
- 3.7 The Council's main concern was the proposed low ventilation system which the Council considered would have led to unacceptable odour nuisance to nearby residents (with the flue outlet being located at ground level with fans, filters and silencers being located within the building).
- 3.8 Notwithstanding the Council's moratorium on low level ducting, the Inspector concluded that there was no reason to doubt that a satisfactory specification could be identified which would meet the technical standards required by Environmental Health. He felt that the flue details could be satisfactorily resolved through use of a Grampian style condition (the use will not be able to take place unless a suitable agreed ventilation system can be agreed).
- 3.9 Whilst officers agreed that a condition might be an appropriate way forward, they raised concerns about this approach, as the property is located within the Whitechapel Conservation Area and high level ducting with concerns in terms of unacceptable conservation area and design impact. However, the Inspector was not persuaded that the rear elevation of the building occupied a particularly sensitive location (in terms of prominence).
- 3.10 Subject to the flue arrangement being submitted and approved (in order to minimise odour nuisance) the principle of the change of use was accepted.
- 3.11 The appeal was ALLOWED

Application No:	PA/10/02053
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Site: Petrol Service Station, 40 Cotton Street, E14 0EL
Development: Display of a Freestanding Poster Panel
Decision: REFUSE (delegated decision)
Appeal Method: WRITTEN REPRESENTATIONS
Inspector's Decision DISMISSED

3.12 The main issue in this case was the impact of the proposed internally illuminated advertisement display on the character and appearance of the All Saints Poplar Conservation Area.

3.13 The proposed advertisement was proposed to terminate at around 6 metres in height within a timber structure sited in front of the flank wall of the brick built shop within the forecourt of a petrol filling station.

3.14 In view of its size and illumination, the Inspector felt that the sign would dominate and relate poorly in size, design and positioning to the modest forecourt building and would have added to the proliferation of advert clutter in and around the forecourt. She also felt that the sign would be detrimental to the character of the conservation area and the setting of the nearby Grade II* listed All Saints with Frideswides Poplar Church.

3.15 The appeal was DISMISSED

Application No: PA/10/01305
Site: 1 Cambridge Heath Road, London E1 5SD
Development: Display of 5 internally illuminated wall signs, one internally illuminated totem sign and one internally illuminated sky sign.
Council Decision: REFUSE (delegated decision)
Appeal Method: WRITTEN REPRESENTATIONS
Inspector's Decision DISMISSED/ALLOWED (split decision)

3.16 The main issue in this case related to the impact of the various signs on the character and appearance of the Whitechapel Market Conservation Area.

3.17 The Inspector was more concerned about signs that were being displayed away from the main commercial frontage. One of the signs is being displayed to the rear of the site in Darling Row and the Inspector considered that the sign detracted from the visual amenities of the area. Similarly the Inspector was concerned about two of the three proposed high level signs (especially where they were being displayed in prominent locations). She felt that these two high level signs were detrimental to the character and appearance of the Whitechapel Market Conservation Area.

3.18 Consequently, the Inspector ALLOWED three of the advertisements and DISMISSED the others (split decision).

Application No: PA/10/00949

Site:	1 Kingfield Street, London, E14 3DD
Development:	Retrospective planning permission for conversion of existing housing into 7 self contained flats
Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

3.19 1 Kingfield Street has been the subject of extensive planning history and planning enforcement action and is an end of terrace property that has been previously extended through the erection of single storey flat roof extension and a two storey side extension. Over a fairly extensive period, the property has been used as self contained units without the benefit of planning permission and previous planning enforcement notices have been served on these unauthorised uses (house in multiple occupation and as seven self contained flats).

3.20 The application the subject of this planning appeal was to retain the seven flats the subject of the most recent enforcement notice (which remains in force following the owner's failure to appeal against the notice). Bearing in mind that the owner is in breach of a valid enforcement notice and that the owner appeared reluctant to comply with the notice, your officers (over recent months) have been keen to ensure the owner complies with the notice through the use of direct action (to return the property back to use as a single dwelling).

3.21 The issues associated with the recent planning appeal were as follows:

- Whether the conversion achieves a satisfactory mix of accommodation, including the retention of family homes;
- Whether the proposal provides acceptable living conditions for residents;
- The impact of the roof terrace on the amenities of neighbouring occupiers;
- Whether the conversion places a risk to occupiers in terms of flood risk;

3.22 In terms of the first issue, the Inspector fully accepted the Council's position in terms of the need to retain and provide family accommodation. Significantly, the Inspector concluded on this point by saying that "I am not convinced it would be possible or reasonable to expect a range of accommodation options, including family sized units, to be provided within the space offered by one modest-sized dwelling". Whilst the merits of the enforcement notice was not before the Planning Inspector, this comment provides a strong indication that the steps required to comply with the enforcement notice (to revert the property back into use as a single family house) are reasonable and robust in terms of town planning policy.

3.23 As regards living conditions, the Planning Inspector agreed that self contained units do not provide acceptable living conditions for residents in terms of the adequacy of living space.

3.24 He was similarly concerned about the impact of the roof terrace on the amenities of neighbours (bearing in mind that the roof terrace was reasonably extensive). The enforcement notice required the removal of the roof terrace and the blocking up of the doorway onto the flat roof.

3.25 Finally, the Inspector noted that the property was included in an areas of

serious flood risk and he was not satisfied that the flooding consequences arising out of intensification of use of the property had been fully investigated.

3.26 The appeal was DISMISSED.

3.27 This is a very satisfying appeal outcome, not only in terms of the decision but also in terms of the Council now being fully able to fully enforce against this long standing breach of planning control.

3.28 The appeal decision was issued on the 10 March 2011 and your officers carried out direct action on that same day and on the following Monday (following on-going dialogue with tenants to make sure that their future living arrangements were not materially affected by direct action). Whilst your officers are now in dialogue with the owner of the property to ensure that the enforcement notice is fully complied with, we are not ruling out the need for further direct action in the future.

Application No:	PA/10/01599
Site:	The Brick House, 152C Brick Lane London, E1 6RU
Development:	Display of an internally illuminated projecting sign
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

3.29 The appeal property is a range of listed buildings situated on Brick Lane which were formally operated by the Truman's Brewery. The Planning Inspector recognised that the substantial size of the building and its repetitive nature of the features (Grade II listed) which gives the relevant elevation a functional, warehouse-like appearance which dominates the character of this part of Brick Lane. The Inspector considered that the main issue was the impact of the projecting sign on the visual amenities of the area with particular reference to the special character of the Brick Lane Conservation Area.

3.30 The Planning Inspector concluded that the location of the projecting box sign, between the two bays and close to the centre of the Brick Lane elevation disrupted the regularity of architectural features and obscured views of windows. There was also a view that the location of the sign identified the presence of a separate unit in a rather conspicuous way which acted to break up the building, thereby eroding its special architectural and historic interest.

3.31 The appeal was DISMISSED.

Application No:	PA/10/01890/01887 ENF/09/00489
Site:	Platinum Court, 3, Cephass Avenue
Development:	Failure to comply with previous planning permission in terms of use and form of development (use as 18 flats) and refusal of planning permission for regularisation of the development in terms of the use as either 18 self contained units of student accommodation or as 9 flats

Decision:	(for general occupation) Council REFUSE/ENFORCEMENT PROCEEDINGS (Delegated decision)
Appeal Method:	HEARING
Inspector's Decision	Enforcement Notice (upheld – but varied in terms of steps to be taken to satisfy the enforcement notice) S.78 Appeals - ALLOWED

- 3.32 Before reviewing the details of these appeals, it is necessary to brief Members on the background of this case.
- 3.33 Back in 2007, the Council granted planning permission for the development of a 5 storey block comprising nine self contained flats (7x1 bed and 2x2 bed). The planning permission was not implemented in accordance with the planning permission; the building was not constructed in accordance with the approved drawings and the property is currently being used as 18 self contained flats, rather than the approved 9 flats.
- 3.34 The planning enforcement team duly investigated and found there to be substantial breaches of planning control and served an enforcement notice to secure the removal of the building and the cessation of the use. In response, the appellant appealed against the enforcement notice and applied for planning permission for use of the property (as completed) as either 18 student flats or as 9 self contained flats (for general needs). This Hearing considered the two S.78 appealed and the appeal against the enforcement notice.

Enforcement Appeal

- 3.35 In terms of the enforcement appeal, the Inspector accepted that the current use of the property as 18 self contained flats was unacceptable. He was concerned with the lack of family accommodation and that a number of the units were of a sub standard size. He also noted that the number of residential units provided exceeded the Council's affordable housing threshold (with no affordable housing being provided as a consequence).
- 3.36 He was less concerned about the changes to the scheme (in terms of operational development) from that previously approved by the Council. He did not consider that the alterations made during the construction of the building impacted detrimentally in terms of the amenities of neighbours (outlook and sense of enclosure).
- 3.37 Even so, whilst the Inspector found the principle of the use of the property as 18 self contained flats to be unacceptable, he decided to vary the enforcement notice (in terms of the notice requirements) to cease the existing residential occupation of the building and to refit the building internally to provide nine flats in place of the existing 18 flats. He also made some further amendments to the notice in terms of period of compliance.

S.78 Appeals

- 3.38 As the Planning Inspector considered the existing alterations to be acceptable (in respect of the enforcement appeal) the S.78 appeals focussed exclusively on the principles of the use of the retained building (9 self contained flats or 18 units of student accommodation)

- 3.39 As the principle of the 9 flats had previously been found to be acceptable by the Council, this appeal was ALLOWED.
- 3.40 The views of the Planning Inspector in respect of the 18 units of student accommodation proved more controversial. He acknowledged that there was demand for student accommodation and appeared to question the Council's stated position that the student housing use was sui-generis. He also strangely commented that "the accommodation would be in the existing self contained units and us akin to a C3 use".
- 3.41 He accepted that the units would be suitably sized for the needs to students and referred to a unilateral undertaking submitted by the appellant which advised that the flats would be remain as student accommodation in perpetuity. He confirmed that as the accommodation would be used exclusively by students, there was no need to take into account the Council's affordable housing policy.
- 3.42 The appeal was ALLOWED
- 3.43 This is a very unsatisfactory appeal decision. Whilst the Planning Inspector has taken a clear view on the merits of the building (as constructed), his position/comments in respect of the issues associated with the suitability of the use of the property as 18 flats (for general needs) and the 18 flats (to meet student accommodation needs) and how both uses might be defined in terms of the Use Classes Order appears to leave some room for interpretation, which might have implications in terms of lawfulness of future uses of the building and the proper future application of affordable housing policy.

Application No:	PA/10/01204
Site:	249 Brick Lane, London, E2
Development:	Erection of an end of terrace 3 storey 5 bed - 10 person house
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

- 3.44 249 Brick lane is an existing end of terrace 4 bedroom house comprising a side garden which adjoins Brick Lane. The proposal involves the erection of a three storey house on the side garden.
- 3.45 The main issues in this appeal were as follows:
- The effect of the development on the living conditions of the occupiers of 249 Brick lane and of the occupiers of the proposed house in terms of available amenity space
 - The effect of the development on the character and appearance of the streetscene
 - The effect of the development on the living conditions of future residents of the appeal site in terms of noise, disturbance and privacy;
- 3.46 The Inspector was concerned that the development would have seriously reduced the private garden area to 249 Brick lane (well below the 50 sq metres standard for family houses). He also commented that the amenity space for the

proposed house would only marginally exceed the minimum standard. He referred to PPS3 which states that it is important (especially in the case of family accommodation) that the needs of children are taken into account and that there is good provision of recreational areas including private gardens.

- 3.47 The Inspector considered that the bulk mass and form of the development. Similarly, the Inspector was not convinced that the presence of a ground floor window to the property (on the boundary with Brick Lane) would have resulted in loss of privacy and noise and disturbance for future residential occupiers. He was satisfied that their future amenity could have been controlled through the use of conditions on triple and obscured glazing.
- 3.48 Whilst the Inspector was satisfied with these latter elements, the loss of/inadequacy of garden space was considered critical. The appeal was DISMISSED as a consequence.
- 3.49 The appeal raised some interesting side issues (which were assessed in the balance). The appellant stressed that the proposed development was to accommodate his extended family and that there was a shortage of such accommodation in the Borough. Whilst the Inspector acknowledged this consideration and that the development would have made more efficient use of the site in terms of housing density in an accessible location, he also referred to the fact that the site was garden land – which now fell outside the definition of “brown-field land as set out in PPS3.

Application No:	PA/10/01342
Site:	47A Aberavon Road, London E3 3AR
Development:	Erection of a ground floor conservatory to flat
Council Decision:	REFUSE (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector’s Decision	DISMISSED

- 3.50 The two issues in this case related to the impact of the proposed conservatory on the character and appearance of the appeal property, the setting of an adjacent listed building and on the character and appearance of the Tredegar Square Conservation Area and whether the extension would have resulted in an unacceptable loss of outdoor amenity space.
- 3.51 The Inspector felt that the appeal property already intruded unsympathetically into environmentally important green spaces and concluded that the proposed conservatory extension would have added to this harm. He found no obvious design rationale for the proposed extension and considered that the extension would have appeared as an anomalous and intrusive addition, detrimental to the character, appearance and design integrity of the existing building.
- 3.52 However, the Inspector concluded that the conservatory would have constituted a more desirable amenity for existing occupiers compared to the existing patio area.
- 3.53 The appeal was DISMISSED.

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 Nos:	PA/10/02571 PA/10/02567 PA/10/02568 PA/10/02557 PA/10/02558 PA/10/02569 PA/10/02570 PA/10/02563 PA/10/02566 PA/10/02564 PA/10/02565 PA/10/02560 PA/10/02562 PA/10/02572
Sites:	Arnhem Wharf, Westferry Road; Outside Docklands Sailing Centre, 235A Westferry Road; Opposite Glengarnock Avenue, Manchester Road; Outside Beven House, Morpeth Street; Corner of Knottisford Street and Morpeth Street; Adjacent to Tarrant House, 9 Roman Road; Outside Moore House, Roman Road; Opposite Morpeth Street, Roman Road; Adjacent to 406 Bethnal Green Road; Outside 304 Bethnal Green Road; Adjacent to 264 Bethnal Green Road; Outside St James Court, Bethnal Green Road; South side of Bethnal Green Road opposite Sutton House; South east junction of The Highway and Wapping Lane
Start Dates	(various) March 2011
Appeal Method	HEARING (possibly WRITTEN REPRESENTATION)

- 4.2 The Council has refused advertisement consent for various poster signs to be displayed on telecommunications equipment cabins on grounds that the advertisements will add to the visual clutter of advertisements in the local area, detrimental to the visual amenity. In a number of cases, the advertisements were considered harmful to the relevant conservation area character and/or the setting of nearby listed buildings.
- 4.3 The appellants have requested that these applications be considered by way of a Hearing but it appears likely that the Planning Inspectorate will require these cases to be determined by way of written representations.

Application No:	PA/10/02525
Sites:	2-8 West India Dock Road E14
Development:	variation of Condition 3 of planning

permission granted on 18 October 1999 in respect of hours of use (seeking permission to extend hours to between 0900 hours and 0500 the following morning on a daily basis).

Council Decision:

Refuse (delegated decision)

Start Date

24 December 2010

Appeal Method

WRITTEN REPRESENTATIONS

- 4.4 The Council has previously granted temporary planning permission (1 year) to vary the hours of use of the pizza take-away until 0200 (counter services and delivery orders) Friday and Saturday. The current application seeks to extend these hours 7 days a week (to 0500 hours) irrespective of whether food is collected from the premises by customers or home delivered.

Application No:

PA/10/011465

Site:

Carradale House, 88 St Leonards Road, E14

Development:

Grant planning permission for external alterations to Carradale House without complying with Condition 3 of listed building consent (requiring drawings and details of proposed timber windows).

Council Decision:

Grant (subject to conditions) (delegated decision)

Start Date

9 March 2011

Appeal Method

WRITTEN REPRESENTATIONS

- 4.5 The Council has previously granted planning permission and listed building consent for external alterations to Carradale House (which is a Grade II listed building). A number of the original timber windows had previously been removed and replaced with upvc windows and this application sought consent to replace all windows in a similar form. However, the drawings were unclear as to the proposed window materials and a planning condition sought to approve the detail of the windows proposed. The appeal relates to this imposed condition. In effect, this appeal focuses on the most appropriate form of window replacement (whether timber or aluminium) in terms of listed building appearance.

Application No:

PA/10/02602

Site:

2 Hesperus Crescent E14

Development:

Erection of a two storey side extension to existing two storey dwelling house.

Council Decision:

Refuse

Start Date

8 March 2011

Appeal Method

WRITTEN REPRESENTATIONS

- 4.6 This property is located within the Borough and Chapel House Conservation Area. Planning permission was refused on grounds of unacceptable impact on the character and appearance of the conservation area, representing an incongruous form of development in terms of bulk, scale, mass and architectural design and would fail to relate satisfactorily to adjoining buildings and prevailing street patterns.

Application No:

PA/10/02757

Site: *Unit 2 111-121 Fairfield Road E3 2QR*
Development: *Retention of use of former light industrial units as a hot food take-away with external flue, shop front and roller shutters.*

Council Decision: *Refuse (delegated decision)*
Start Date *16 March 2011*
Appeal Method *WRITTEN REPRESENTATIONS*

- 4.7 This application for retrospective planning permission was refused on grounds of impact of increases in late night noise, detrimental to the amenities of neighbouring residential occupiers. Planning permission as also refused on grounds of inappropriate location and form of refuse storage.

Application No: *PA/10/02735*
Site: *13 Artillery Passage E1*
Development: *Appeal against imposition of car free condition in respect of planning permission for the change of use of first, second and third floors of former office to provide converted residential accommodation.*

Council Decision: *Grant permission (subject to conditions) (delegated decision)*
Start Date *March 2011*
Appeal Method *WRITTEN REPRESENTATIONS*

- 4.8 This appeal is purely on consideration of the Council imposed planning condition which restricts the scheme to car free. The appellant is seeking to argue that the condition does not comply with Circular advice.