

Committee: Development	Date: 14 August 2013	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. All Members of the Council receive a regular monthly email update of appeals received by the Council.
- 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/11/01495
Site:	4 Wilkes Street E1 6QF
Proposed Development:	Erection of a roof extension to provide additional office space along with the erection of a timber screen to perimeter of roof terrace
Decision:	REFUSE PLANNING PERMISSION(Development Committee decision – Officer Recommendation - GRANT)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector’s Decision	ALLOWED

- 3.2 As Members may be aware, this application generated a significant level of

local opposition on grounds of the impact of the extension and roof terrace on the character and appearance of the conservation area and the impact of the works on residential amenity nearby, in terms of loss of privacy daylight and sunlight. The Planning Inspector considered two main issues -

- The impact on the character and appearance of the conservation area
- The effect of the residential amenity of neighbouring occupiers

3.3 In the first issue, whilst the Inspector noted that the property was situated in a sensitive part of the Fournier Street/Brick Lane Conservation Area, sandwiched between two listed buildings, he noted that the appeal premises was a flat roofed three storey factory related building, probably built sometime in the 1960's. He felt that the proposed mansard roof would respect the proportions of the neighbouring listed buildings and the use of metal framed windows would respect the detailing of the existing building. He also noted that there were a number of roof terraces in the immediate vicinity enclosed by a variety of full height walls fences, metal railings, glazing and planting. He concluded that the proposed development would preserve the character and appearance of the conservation area and the setting of adjoining listed buildings.

3.4 In terms of residential amenity effects she concluded that the mansard roof and privacy screen would be consistent with the height of surrounding buildings and she concluded that outlook from neighbouring properties would not be materially affected. She also concluded that the proposed development would have a negligible impact on daylight and sunlight to Fournier Street properties. She noted some impact on properties fronting Princelet Street, but concluded that any further overshadowing would be restricted to a very short period of time during the year and overall, she felt that the effects would be negligible.

3.5 The Inspector noted that the terrace would be close to some windows of neighbouring properties and without the privacy screen, proposed she concluded that there would have been serious loss of privacy to neighbours. However she was satisfied that the proposed privacy screen would serve to mitigate the impact along with the hours. She decided to impose conditions limiting the use of the terrace between 9am and 6pm, limiting the capacity of the roof terrace to 20 people at any time and restricted the use of amplified music on the roof terrace. She limited any cooking taking place on the roof terrace (BBQs for example) as smoke would easily enter neighbouring property. The present use of the property is offices and she was satisfied that on this basis, the use of the terrace (with the conditions imposed) would be unlikely to materially affect residential in terms of noise and overlooking.

3.6 The remaining elements of this decision dealt with conditions to be imposed and interestingly, she chose to impose a condition to take away any opportunity to make use of existing flexibility arrangements between officers and A 3 uses (brought about by changes to the General Permitted Development Order. This is something that we will need to consider in relation to other cases where the GPDO provisions might apply.

3.7 The appeal was ALLOWED

Application No:

PA/12/00951

Site:

82-102 Hanbury Street, London E1

Proposed Development:

Erection of a 5 storey building to created 6 commercial units on ground

	and first floor and nine flats on the upper floors
Council Decision:	REFUSE PLANNING PERMISSION (delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	DISMISSED

- 3.8 The main issue in this case was the effect of the proposed development on the character and appearance of the Fournier Street/Brick Lane Conservation Area and lack of amenity space for the propose residential units.
- 3.9 The Council had previously granted planning permission for a more limited redevelopment of the site (less residential units and a lower building – excluding a mansard roof structure).
- 3.10 The Planning Inspector concluded that as a number of neighbouring properties were designed with flat roof detailing, the introduction of a mansard roof element to the proposed redevelopment would have appeared as a stark and incongruous element to the streetscene ad would have detracted from the other elements of the proposed building design.
- 3.11 The Inspector also agreed with the Council over the lack of amenity space provision for the proposed residential units. He noted that six of the units would have had no private amenity space and the remaining three units would have only had small terraces. Whilst the previously approved scheme did also had no private amenity space for the flats, the Inspector acknowledged that this previous application as determined prior to the adoption of the Council's Core Strategy. He recognised that the adoption of the Core Strategy and the Managing Development Document represented a change in circumstances.
- 3.12 The appeal was DISMISSED.

Application No:	PA/12/01764
Site:	Dennis House, 553 Roman Road, E3
Site:	Erection of telecommunications apparatus (GRP chimney stacks and equipment cabins).
Council Decision:	REFUSE PLANNING PERMISSION (Delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	ALLOWED

- 3.13 The main issues in this case was the impact of the proposed installation on the character and appearance of the Roman Road Market Conservation Area.
- 3.14 The Inspector took a balanced view in this particular case. Whilst he acknowledged that the proposed GRP chimneys would be visible and would represent a noticeable and unusual feature, he concluded that the chimneys would result in less than substantial harm and would have a neutral effect on the character and appearance of the conservation area. He recognised also that the proposed development would result in enhanced 2G and 3G coverage for the area and network.
- 3.15 With lack of any objective evidence to support local fears that the installation will have implications for the health of local school children and bearing in mind

that the application was accompanied by a valid ICNIRP Certificate, the Inspector concluded that local residents concerns would not have been sufficient to justify refusal planning permission.

- 3.16 The appeal was ALLOWED. Conditions were imposed requiring detailed consideration of the colouring of the GRP shrouds.

Application No:	PA/12/01614
Site:	132 Commercial Road E1
Site:	Retention of replacement shop front, replacement windows to first and second floor levels and rendering of exterior elevations.
Council Decision:	REFUSE PLANNING PERMISSION (Delegated decision)
Appeal Method:	WRITTEN REPRESENTATIONS
Inspector's Decision	PART DISMISSED/PART ALLOWED

- 3.17 The property is located within a mixed commercial area, opposite the Myrdle Street Conservation Area. The Inspector agreed with the Council that the previous brickwork (now rendered over) made a significant contribution to the character and appearance of the property by adding texture, form, colour and detailing around the windows. He also acknowledged that whilst the previous windows were not original, they respected the opening size and horizontal lines of the original sash windows

- 3.18 The Inspector concluded that the rendered walls were bland and characterless and the replacement windows failed to respect the proportions of the host building, both in terms of size and the introduction of strong vertical divisions. Similarly, he concluded that the replacement shopfront is featureless, lacking identity with the roller shutter box unduly bulky. He also referred to the neighbouring property (the other half of the semi-detached pair) which has also been modified in a similar vein without the benefit of planning permission

- 3.19 The Inspector was less concerned about the security gate which forms an appropriate visual link between the appeal property and 134 Commercial Road.

- 3.20 The appeal was DISMISSED apart from the installed security gate. The Council's refusal related to the replacement windows and the rendered elevation and there was little concern about the security gate in any case.

- 3.21 This is a very worthwhile decision and will clearly be a material consideration when the Planning Inspectorate considers a pending appeal in respect of the recently issued enforcement notice covering similar works to 130 Commercial Road.

Application No:	ENF/07/00222
Site:	land at 388 Hackney Road, London E2
Site:	Unauthorised installation of shop front, roller shutter and guard rails and the erection of a breeze block extension enclosing the rear yard area.
Council Decision:	INSTIGATE ENFORCMENT ACTION

Appeal Method: (Delegated decision)
Inspector's Decision WRITTEN REPRESENTATIONS
DISMISSED AND ENFORCEMENT
NOTICE UPHELD

3.22 The appeal was not made under Ground a) (that the proposal is acceptable in planning permission) as the required planning fee was not paid by the appellant within the prescribed period. The enforcement notice was issued back in October 2011.

3.23 The property is a part single, part four storey building and the single storey element projects out from the frontages onto Hackney Road. The property had previously been in use as a public house but in around 2006, the property had been converted to a restaurant. In terms of the changes to the shopfront and related works, the Inspector did not accept that they replaced previous features on a like for like basis and agreed with the Council that the works represented a breach of planning control. He took a similar view in respect of the rear extension works and alterations to boundary walls.

3.24 The appellant argued that the works required by the Notice were excessive with the costs of the works disproportionate to the benefit obtained. The Planning Inspector did not agree with this view and felt that the need to safeguard the environment and conservation area character was required. The Council has now served a separate enforcement notice in respect of the use of part of the property as a shisha lounge and further works to the rear of the property.

Application No: ENF//12/00054
Site: 80 Brick Lane, E1
Site: replacement shopfront and display of an internally illuminated projecting sign and fascia sign.
Council Decision: INSTIGATE ENFORCEMENT ACTION
Appeal Method: WRITTEN REPRESENTATIONS
Inspector's Decision APPEAL DISMISSED AND ENFORCEMENT NOTICE UPHELD

3.25 This property is situated in the Fournier Street/Brick Lane Conservation Area and the Inspector concluded that the height of the installed shopfront, the absence of traditional shopfront detailing and the use of a large expanse of clear plate glass all combine to result in a shopfront which is inappropriate to this 19th Century building located within a conservation area. The Council is now taking separate action against the unauthorised advertisements through the use of an advertisement removal notice.

Application No: ENF/12/00159
Site: 15-17 Leman Street E1
Site: Installation of a pay phone kiosk on the highway.
Council Decision: REFUSE PLANNING PERMISSION (Delegated decision)
Appeal Method: WRITTEN REPRESENTATIONS
Inspector's Decision APPEAL DISMISSED AND ENFORCEMENT NOTICE QUASHED

- 3.22 This case revolved around whether the Council refused prior approval within the prescribed period, the appellant's argument being that if the Council determined the case outside the prescribed prior approval period, the Council would be in no position to enforce against the installation. The issue was whether the appellant received the refusal of prior notification within the prescribed 56 day period.
- 3.26 The refusal of prior approval was received by hard copy post outside the 56 day period although it was agreed by the parties that the Council sent the letter electronically on the 23 December – prior to the expiration of the 56 days (sent at 16.32 hours) on that day. The appellant argued that the email was received outside business hours and the Inspector accepted the appellant's arguments that their business hours end 16.30 hours. With the closure of offices during the Christmas break, the Inspector acknowledged that the next working day would have been 28th December (outside the 56 day period).
- 3.27 The Inspector therefore reached a view that there was no breach of planning control, in view of the prior notification being received outside the 56 day period.
- 3.28 This is an unfortunate outcome, especially as it is somewhat debatable that working days are concluded at 16.30 hours.

Application No:	PA/12/02149
Site:	24-26 Bow Road, E3
Site:	Mixed use redevelopment comprising parking and storage at basement level, retail at ground floor, offices at first floor level and residential above within a 5 storey built envelop
Council Decision:	APPEAL AGAINST NON DETERMINATION
Appeal Method:	HEARING
Inspector's Decision	APPEAL DISMISSED

- 3.29 This appeal related to an application for outline planning permission with matters of scale and layout to be determined at outline stage). Whilst the Council was generally content with the planning merits of the proposed development, the appellant argued that he was in no position to enter into planning obligations required by the Council. The Council had previously submitted to the Hearing a draft legal agreement covering such matters as affordable housing, contributions towards various faculties and car free development.
- 3.30 The Inspector agreed with the Council that with the absence of any mechanism to ensure the delivery of affordable housing and any evidence of viability, the failure to provide affordable housing would have been contrary to policy.
- 3.31 Turning to issues associated with the financial contributions towards infrastructure, the Inspector highlighted a weakness in the Council's argument that it was unable to indicate how or where any payments would be spent – to ensure that the sums sought were directly related to the proposed development. He found the lack of detail around community facilities and public realm less clear cut, compared to educational and health related facilities,

especially as idea stores, libraries and public open space is likely to be more localised. He also considered that employment and training contributions paid on commencement of development would not assist during the construction of the construction phase as training would take time. He therefore concluded that the implications of the scheme in terms of job prospects would be insignificant. Therefore, whilst the Inspector was satisfied that whilst the appellants failure to deal adequately with issues of affordable housing and the infrastructure requirements dents associated with educational and health related facilities were critical, he was far from convinced that the harm arising from non-payment of other contributions were critical to securing sustainable development.

- 3.32 In terms of the other issues (heritage issues and the effect of the development on neighbours) the Planning Inspector concluded that the existing building, whilst locally listed, has been heavily compromised by alterations and as a consequence, makes a very limited contribution to the environment architecturally, historically and contextually. He therefore accepted that the demolition of the building would be acceptable. On the second issue, the Inspector concluded that the development would result in harm to residents of Langthorne House in terms of daylight and sunlight.
- 3.33 To conclude, the Inspector felt that the harm caused by the failure to provide affordable housing, the failure to deal with affordable housing requirements and the requirement to contribute towards secondary school places, health facilities and transportation objectives and the harm caused in terms of daylight and sunlight reaching Langthorne House represented sound reasons to dismiss the appeal and refuse planning permission.