

<b>Committee:</b> Development	<b>Date:</b> 14 November 2014	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b> Director of Development and Renewal  <b>Case Officer:</b> Pete Smith	<b>Title:</b> 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.

<b><i>Application No:</i></b>	<b><i>PA/12/3286</i></b>
<b><i>Site:</i></b>	<b><i>183 Bethnal Green Road E2 6AB</i></b>
<b><i>Proposed Development:</i></b>	<b><i>Alterations and extensions to property (including a roof extension) in connection with the use of the property 2x1 bed flats.</i></b>
<b><i>Decision:</i></b>	<b><i>REFUSE PLANNING PERMISSION</i></b>
<b><i>Appeal Method:</i></b>	<b><i>WRITTEN REPRESENTATIONS</i></b>
<b><i>Inspector's Decision</i></b>	<b><i>DISMISSED</i></b>

- 3.2 The main issues in this case were

- The effect of the proposed development on the living conditions of the residents of the adjacent Alliston House

- The effect of the development on the character and appearance of the host building.
- 3.3 The Inspector was concerned about the effect on the extensions on the neighbouring property (the part of Alliston House to the west of the appeal site) in terms of loss of sunlight and there was also concern about the over-bearing nature of the proposed development close to existing easterly facing balconies leading to loss of outlook.
- 3.4 The Inspector was not convinced with the Council's position that the design and appearance of the alterations and extensions would have caused unacceptable harm to the character and appearance of the host building. However, the Inspector considered the harm caused to neighbouring occupiers would outweigh any benefits arising from the development in terms of improved standards of accommodation.
- 3.5 The appeal was DISMISSED

<b><i>Application No:</i></b>	<b><i>PA/12/02554</i></b>
<b><i>Site:</i></b>	<b><i>91 Fieldgate Street, London E1</i></b>
<b><i>Proposed Development:</i></b>	<b><i>Removal of existing roller shutter and retention of a replacement shop front</i></b>
<b><i>Council Decision:</i></b>	<b><i>REFUSE PLANNING PERMISSION (delegated decision)</i></b>
<b><i>Appeal Method:</i></b>	<b><i>WRITTEN REPRESENTATIONS</i></b>
<b><i>Inspector's Decision</i></b>	<b><i>DISMISSED</i></b>

- 3.6 The main issues in this case were the impact of the proposed works on the character and appearance of the Myrdle Street Conservation Area and issues around disabled access into the shop unit.
- 3.7 The previous shop front, as confirmed by photographic evidence, was considered to be an important asset to the character and appearance of the conservation area and the building itself. The Inspector was concerned that the more modern, replacement shop front has unacceptably replaced the more traditional facade and has replaced traditional, more modest scale and vertical emphasis. He concluded that the alterations are inconsistent with and detract from the traditional scale of development and the immediate streetscene. He also noted that the scheme failed to provide a level threshold to allow for inclusive access into the unit.
- 3.8 The appeal was DISMISSED on this basis

<b><i>Application No:</i></b>	<b><i>PA/13/01119</i></b>
<b><i>Site:</i></b>	<b><i>29 Lyal Road, E3</i></b>
<b><i>Proposed Development:</i></b>	<b><i>Replacement of existing windows with double glazed units</i></b>
<b><i>Council Decision:</i></b>	<b><i>REFUSE PLANNING PERMISSION (Delegated decision)</i></b>
<b><i>Appeal Method:</i></b>	<b><i>WRITTEN REPRESENTATIONS</i></b>
<b><i>Inspector's Decision</i></b>	<b><i>DISMISSED</i></b>

- 3.9 The main issue in this case was the effect of the proposed alterations on the character and appearance of the host building and the Medway Conservation Area.

3.10 The Planning Inspector referred to the unaltered appearance of the late Victorian terrace with many of the properties having traditional timber windows. He was concerned that some of the properties which had been altered did not share the characteristics of the more traditional timber window detailing and as such, he concluded that the proposed replacement would have significantly altered the character and appearance of the prominently located appeal property and the Medway Conservation Area.

3.11 The appeal was DISMISSED.

<b>Application No:</b>	<b>PA/11/03375</b>
<b>Site:</b>	<b>Poplar Business Park, Prestons Road E14</b>
<b>Proposed Development:</b>	<b>Demolition of existing buildings and redevelopment of the site to provide a mixed use scheme of between 3 and 22 storeys comprising 8,104 sq metres business accommodation (Use Class B1), 392 residential units (Use Class C3), associated parking and landscaping.</b>
<b>Council Decision:</b>	<b>REFUSE PLANNING PERMISSION (Strategic Development Committee)</b>
<b>Appeal Method:</b>	<b>PUBLIC INQUIRY (SoS decision)</b>
<b>Inspector's Decision</b>	<b>ALLOWED</b>

3.12 In view of the significance of the issues raised by this appeal, the Secretary of State for Communities and Local Government recovered the appeal for his own determination – with the Planning Inspector providing a recommended course of action.

3.13 The planning application was refused by the Strategic Development Committee (March 2012) for two related reasons; inadequate provision of affordable housing and lack of contributions towards education and healthcare.

3.14 The level of affordable housing reported to the Strategic Development Committee was 25% by habitable room which equated to 87 units (58 affordable rent and 24 intermediate). The total S106 contributions negotiated and secured at the time were £1,763,861. The negotiated educational and healthcare contributions were £652,520 and £136,000 respectively.

3.15 At an early stage of the appeal proceedings, the appellants offered to pay the full Planning Obligations SPD contributions for healthcare and education contributions which meant the second reason for refusal fell away.

3.16 The Council's main case was that the scheme was more viable than the appellants claimed it to be and was therefore able to afford additional affordable housing. The main items of contention were the sales values of the residential units and the method of construction procurement. The appellant argued that the method of procurement would be via a main contractor which would include allowances for the main contractor's Preliminaries and Overheads & Profit (OHP). The Council argued that it was more likely that a volume house builder or joint venture would procure the construction which would operate on a lower percentage for preliminaries and would not require an allowance for profit (other than the standard profit level agreed in the toolkit.)

- 3.17 There were two other points in contention which were the costs estimated in achieving Code for Sustainable Homes Level 4 and the cost of connecting services and drainage. However, these were smaller items compared to the two main points above.
- 3.18 The Secretary of State found favour with the Council's argument in regard to sales values but did not agree with the Council's judgement on the procurement route. He also concluded that there was insufficient evidence presented to prove the case as regards the costs to achieve Sustainable Code Level 4 and the drainage/services connection.
- 3.19 Two unilateral agreements were submitted by the appellant, which provided two different levels of affordable housing. One was at 12.5% on the assumption that the Inspector would agree with all of the appellant's viability evidence with the other at 20% assuming that the Inspector would feel that 12.5% was unreasonable and failed to maximise the affordable housing on-site.
- 3.20 The Secretary of State felt that the scheme could deliver in excess of 12.5% affordable housing and he did not feel that increasing the affordable housing level to 20% would inhibit delivery.
- 3.21 In his decision letter, the Secretary of State noted that the Council did not have evidence of a 5 year housing supply which therefore pointed towards a strong presumption in favour of the development. At the time of the public inquiry, the Council had not provided sufficient evidence, in the form required by the National planning Policy Framework, to confirm a 5 year deliverable housing supply. This evidence has now been published in accordance with National Planning Policy Framework which can now be used to counter claims that the Borough is not able to meet its 5 year housing supply targets
- 3.21 To conclude, the appeal was ALLOWED on the basis of a 20% affordable housing level by floor area (21% by habitable room) – a total of 71 units (47 affordable rent and 24 intermediate) and a S.106 package of £2,646,222; an additional £882,361 compared to the scheme reported to Strategic Development Committee.

<b>Application No:</b>	<b>PA/12/02637</b>
<b>Site:</b>	<b>37 Millharour, London E14</b>
<b>Proposed Development:</b>	<b>Extension of current building at upper floor levels to provide 7 duplex apartments with external private amenity space.</b>
<b>Council Decision:</b>	<b>REFUSE PLANNING PERMISSION (Delegated)</b>
<b>Appeal Method:</b>	<b>WRITTEN REPRESENTATIONS</b>
<b>Inspector's Decision</b>	<b>DISMISSED</b>

- 3.22 As Members may recall, this site was the subject of an earlier appeal (around March 2013) following the Development Committee's refusal of planning permission for a similar form of development. With this previous case, the appeal was dismissed by the Planning Inspectorate in view of the failure of the scheme to mitigate the loss of communal amenity, the impact of the construction of the proposed extension on the existing residents of the block and the impact of the development on daylight and sunlight reaching existing

flats within the block.

- 3.22 In order to deal with these issues, the developer elected to provide more detail in terms of the Construction Management Plan associated with the scheme, to provide a revised landscaping scheme to provide a more formal arrangement of walkway, planting enclosures, seating and other structures and to introduce living roofs on the remaining roof structures of the building to deal with biodiversity issues and to reduce rain water run-off.
- 3.23 The Inspector considered the main issue to be the effect of the proposal on the living conditions of neighbouring occupiers, having regard to the provision of outdoor amenity space.
- 3.24 Whilst the Planning Inspector acknowledged that the introduction of living roofs would have enhanced the biodiversity credentials of the development, he was concerned that the loss of communal amenity space would have been to the detriment to the existing residential occupiers of the building. He concluded that the replacement amenity space would have been both narrower and reduced in overall area which would have been exacerbated by the high number of nits which the existing open space serves. Furthermore, he concluded that the proposed extension would not have delivered and contributed to securing exemplary design, especially in relation to the effect of the development on the capacity to deliver appropriate levels of communal amenity space.
- 3.25 In terms of the reduction in daylight and sunlight, he was less concerned about detrimental effects, especially as the effect of the extension on the two flats sited would be within the No Sky Line (NSL) methodology. He was also satisfied that the submission of the detailed Construction Management Plan would deal with the previous Planning Inspectors concerns.
- 3.26 Whilst the Planning Inspector was of the view that the amended proposal dealt with a number of previous concerns, he remained concerned that the development would have unacceptably reduced amenity space for the occupiers of the building, failing to secure an exemplary design approaches. The appeal was therefore DISMISSED.

<b>Application No:</b>	<b>PA/12/01940/01941</b>
<b>Site:</b>	<b>1A Mornington Grove, London, E3</b>
<b>Proposed Development:</b>	<b>Demolition of the existing building and the erection of part two, part three, part 4 storey building to be used as a 13 bed house, a 1x2 bed house and 2x1 bed flats.</b>
<b>Council Decision:</b>	<b>REFUSE PLANNING PERMISSION (Delegated)</b>
<b>Appeal Method:</b>	<b>WRITTEN REPRESENTATIONS</b>
<b>Inspector's Decision</b>	<b>Application for Conservation Area Consent (ALLOWED) Application for Planning Permission (DISMISSED)</b>

- 3.27 The appeal site is located within the Tower Hamlets Cemetery Conservation Area and the Planning Inspector noted is characterised by large 19<sup>th</sup> Century residential buildings with a general spacious ambiance to the area with the

residential blocks having space between and around them. Whilst he noted some modern buildings in the area, he did not see these as determining the underlying character of the conservation area.

3.28 The main issues the Planning Inspector sited as being relevant to the appeal were as follows:

- The effect of the proposed development on the character and appearance of the conservation area
- Whether the proposed development would harm the living conditions of those living at 45-56 Bow Road and 1A Mornington Grove
- Whether the incoming residents would enjoy satisfactory living conditions
- § Whether the proposal would provide satisfactory cycle storage

3.29 On the first issue, whilst the Planning Inspector concluded that the proposed scheme would have been an example of modern urban architecture, he was concerned that it would have been seen as a distraction from the style, form and quality of the original built development and would not have served to preserve or enhance the character and appearance of the conservation area.

3.30 He also agreed with the Council's position that the proposed development would have unacceptably interfered with the living conditions of those residents neighbouring the site, with the development appearing over-bearing, effecting outlook and degrading the amenity value of external areas.

3.31 Planning Inspector sited some concerns around daylight levels into some of the proposed rooms along with the size of some areas of amenity space and felt that a future resident of one of the units would have experienced very poor standards of amenity. He was less concerned about the impact of railway noise. As part of the appeal, the appellant proposed areas for cycle storage which the Council found to be acceptable.

3.32 In conclusion, the Planning Inspector felt that the proposed development would have been harmful to the character and appearance of the conservation area, would have adversely affected the amenities of neighbouring residential occupiers and would have led to poor standards of amenities for future residents. He was less concerned about the loss of the existing building which he did not feel contributed positively to the character and appearance of the conservation area. He did not consider that retaining the building until such time as a planning permission had been secured was necessary in this case.

3.33 Whilst the planning appeal was DISMISSED, the appeal against the refusal of conservation area consent was ALLOWED.

<b>Application No:</b>	<b>PA/12/01130</b>
<b>Site:</b>	<b>Hellion Court, 253-257 Westferry Road, London, E14</b>
<b>Proposed Development:</b>	<b>Erection of a third and fourth floor extension to provide 9x1 bed and 1x2 bed dwellings</b>
<b>Council Decision:</b>	<b>REFUSE PLANNING PERMISSION (Delegated)</b>
<b>Appeal Method:</b>	<b>WRITTEN REPRESENTATIONS</b>
<b>Inspector's Decision</b>	<b>DISMISSED</b>

3.34 The main issues in this case included the following:

- The effect of the development on the character and appearance of the area;
- Whether the scheme would have represented an appropriate mix of housing alongside the availability of affordable housing
- Whether the proposed flats would have provided acceptable living standards for future occupiers
- The effect of the development on the living conditions of neighbouring occupiers;
- Whether the scheme would have provided and supported sustainable transport options

3.35 The Inspector noted that the existing block of flats are carefully designed and pay due respect to the height and scale of the terraced houses with the existing top storey set back from the main front elevation. He noted taller buildings in the vicinity but did not regard these as setting a precedent for increasing the height of the respective flats.

3.36 On the first issue therefore, he concluded that the addition of a further two storeys would have been visually dominant when viewed against the adjacent residential terrace and would have unacceptably enclosed the street and would have reduced the generally open character of the area.

3.37 In terms of housing mix he noted that the over-reliance on 1 bed units would have been in direct conflict with the housing mix required by the development plan. He noted however that there was very little amenity space to accommodate family sized units. He noted however that the proposal failed to provide affordable housing as required by policy. Whilst the appellant argued that it would not be viable to provide for affordable housing, no clear evidence was submitted in support of this contention. Overall, the Planning Inspector concluded that the scheme fundamentally conflicted with various policies around affordable housing, housing mix and the failure to provide wheelchair units as part of the mix.

3.38 He was less concerned about the quality of living standards for future occupiers of the flats but concluded that the additional bulk and height would have directly impacted on the outlook of neighbouring properties, with the development being uncomfortably close. The appellant provided details of cycle storage as part of their appeal submissions which satisfied the Council in terms of accommodating forms of sustainable transport.

3.39 The appeal was DISMISSED on a number of grounds – which represents a very satisfying outcome for the Council.