

<b>Committee:</b> Strategic Development	<b>Date:</b> 20 <sup>th</sup> October 2016	<b>Classification:</b> Unrestricted
<b>Report of:</b> Director of Development and Renewal		<b>Title: Planning Appeals Report</b>
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		<b>Wards: All</b>

## 1. INTRODUCTION

- 1.1 This report summarises appeal decisions in Tower Hamlets made by the Planning Inspectorate (on behalf of the Secretary of State) over an 18 month period from 1 April 2015 to 30 September 2016.
- 1.2 Appeals to the Secretary of State can be made following a refusal of planning permission, listed building consent, advertisement consent and other related planning decisions. Relevant legislation is set out in the footnote below.<sup>1</sup>
- 1.3 Appeals can also be made if the Council fails to make a decision within the specified time period (e.g. 13 weeks for major planning applications and 8 weeks for all other planning applications). In non-determination cases the Council will put forward reasons for refusal, either using delegated powers or with the agreement of the relevant Committee. The formal process for dealing with appeals is the same for refusal and non-determination cases and the Inspector will continue to deal with the proposals on their planning merits.
- 1.4 Appeals are decided by independent Planning Inspectors appointed by the Secretary of State. Inspectors are often experienced planning practitioners or may have a background in other built environment disciplines. On rare occasions, the Secretary of State may intervene to recover an appeal and determine it themselves. In these cases the Inspector's report acts as a recommendation rather than a decision.
- 1.5 Planning Inspectors have the same power to impose planning conditions, as Local Planning Authorities if an appeal is allowed and permission granted and can also take into account proposed planning obligations (usually a Section 106 unilateral undertaking, rather than an agreement) in coming to a decision.

## 2. WHY APPEAL DECISIONS ARE IMPORTANT

- 2.1 Appeal decisions are important for a number of reasons. There is a general presumption in the NPPF that planning permission should be granted for sustainable development, unless there is a clear conflict with the Development Plan or material considerations suggest otherwise. Hence Tower Hamlets (in common with most other planning authorities) tends to refuse fewer applications than are approved, aiming to work with applicants by providing pre-application advice and negotiating to improve the quality of proposals,

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<sup>1</sup> Town and Country Planning Act 1990 (as amended) - Sections 78, 106BB and 195  
 Planning (Listed Buildings and Conservation Areas) Act 1990 – Section 20  
 Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)

ensure they are compliant with the development plan and overcome potential reasons for refusal.

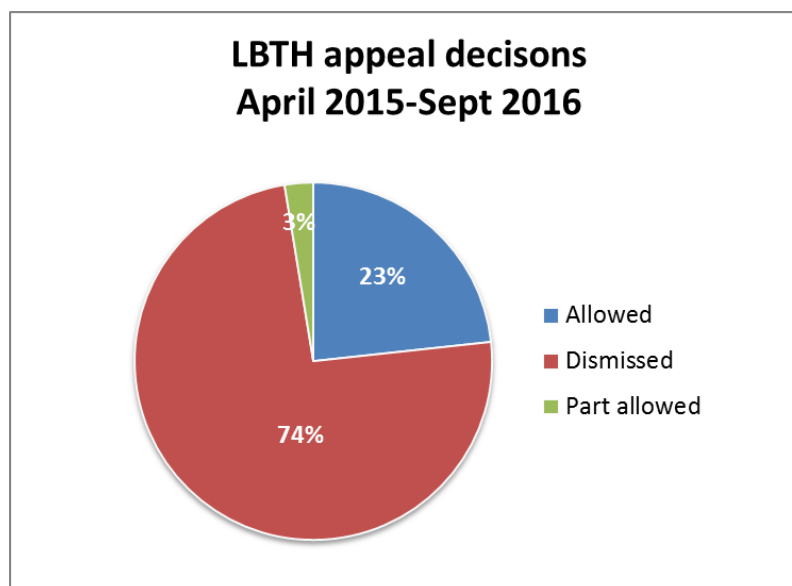
- 2.2 When planning permission (or other consent) is refused, the reasons need to be clear, evidence based and robust, otherwise there is a risk that the decision could be overturned on appeal. If the Council is deemed to have acted unreasonably, there is also a risk of an award of costs.
- 2.3 Whilst all planning decisions are made on the merits of the proposal, appeal decisions can be helpful in understanding how to frame robust reasons for refusal taking into account the weight that Inspectors place on different planning policies and considerations.
- 2.4 When an appeal is dismissed and permission refused, it may be for all of the reasons in the Council's original decision, it may be for a selection of these or in rare cases for a different reason to that which the Council put forward. An appeal at 113-115 Roman Road, listed below, is an example where the Inspector agreed with only one of the Council's three reasons for refusal, but gave this sufficient weight to dismiss the appeal and refuse permission.
- 2.5 Appeal decisions are part of the planning history of a site and hence are a material planning consideration when determining any subsequent applications on the same site. An appeal decision can also indicate how a development could be amended to make it acceptable. For example, the decisions on Corbridge Crescent highlighted the harm caused by a tall building in part of the scheme, but acknowledged that the other parts of the proposals had many merits.
- 2.6 Understanding where Inspectors place weight on policies or other material considerations can help to improve decision making.
- 2.7 Appeal decisions can be helpful in testing the wording of current policies and indicate where future changes could be made to improve policies or prevent unintended consequences.
- 2.8 Finally the Secretary of State takes into account the percentage of all major decisions that are subsequently overturned on appeal as an indicator of the quality of decisions made by planning authorities. This indicator is used alongside the speed of decisions making indicators in deciding whether to designate a poorly performing local planning authority.
- 2.9 The current criteria are 20% or more major decisions overturned at appeal over a two year period. The data published by Department for Communities and Local Government (DCLG) shows that Tower Hamlets had 3.5% of all major decisions overturned at appeal over the latest monitoring period, ranking 103 out of 336 local planning authorities in England.

### **3. APPEAL DECISIONS OVERVIEW**

- 3.1 During the 18 month period, the 116 decisions were made on appeals in Tower Hamlets. 102 were following a refusal of planning permission (or related consent) and 14 were non-determination cases.

- 3.2 Over the same period a further 7 appeals were withdrawn and 1 was declared invalid by the Planning Inspectorate.
- 3.3 Of the 116 decisions, 27 were allowed, 86 dismissed and 3 were part allowed. This means that the Council's original decision was upheld in 74% of cases and partially upheld in 3% of cases. This has been a fairly consistent where the Council's success rate on appeals tends to be between 70 – 80% per annum.
- 3.4 This headline figure indicates that the where the Council did refuse an application (or would have been minded to); the decision was upheld on appeal in more than three quarters of cases demonstrating robust decision making.
- 3.5 Partial, or split appeal decisions are rare and tend to involve appeals against refusal to vary conditions (see 108 Mile End Road); householder development where there is more than one extension or alteration being proposed at the property and advert consent where there is more than one advertisement proposed.
- 3.6 Appendix 1 provides a full breakdown of all of the appeal decisions during this period. There are also 38 current live appeals where decisions have not yet been made. These are listed in appendix 2.

**Figure 1 – appeal decisions in Tower Hamlets**



#### **4. BENCHMARKING**

- 4.1 All appeal decisions are published on-line on the Planning Inspectorate website (<https://www.gov.uk/government/organisations/planning-inspectorate>) and the Council's on-line planning register ([www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)). DCLG publishes some comparative data showing the success rate by individual local authorities, mainly to be used for the designation process, outlined above. There is a time lag in producing this data and the latest period available is for planning decisions made in the two years up to end of December 2014, taking into account appeal decisions made in the subsequent nine month period.

- 4.2 During that period 10 of Tower Hamlets major decisions were subject to an appeal with 5 being allowed and 5 dismissed, giving a success rate of 50%. The Council ranked 9th out of thirteen comparable inner London boroughs. The table below shows that the percentage figure is skewed slightly by the number of appeals in Tower Hamlets compared with other London boroughs.
- 4.3 For minor and other appeal decisions, Tower Hamlets ranked top out of all London boroughs, including the 13 inner London authorities, with 17.9% of minor and other appeal decisions allowed. The two tables below provide further detail. Overall Tower Hamlets compares favourably in terms of the quality of decision making compared with other London boroughs.

**Table 1 - Inner London authorities, major appeals**

Borough	24 months to December 2014			
	Total major decisions & non determined cases	Total major appeal decisions	Major decisions overturned at appeal	% Major decisions overturned at appeal
Greenwich	118	2	0	0.0
Lambeth	144	3	0	0.0
Westminster	188	0	0	0.0
Islington	71	8	1	12.5
Southwark	149	5	1	20.0
Hackney	83	4	1	25.0
Lewisham	55	7	2	28.6
Kensington and Chelsea	95	3	1	33.3
Tower Hamlets	141	10	5	50.0
Wandsworth	133	2	1	50.0
Camden	122	14	8	57.1
Hammersmith and Fulham	66	5	3	60.0
City of London	87	1	1	100.0

**Table 2 – inner London authorities, minor and other appeals**

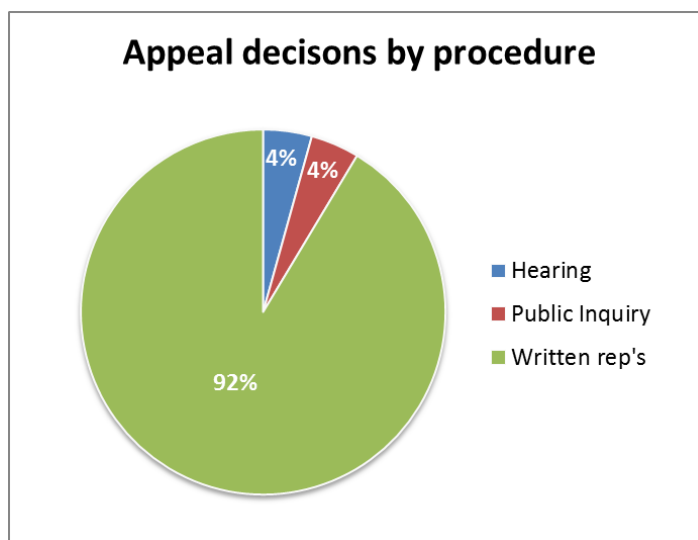
Borough	24 months to December 2014			
	Total minor and other decisions and non-decided cases	Total minor and other appeal decisions	Minor and other decisions overturned at appeal	% decisions overturned at appeal
Tower Hamlets	1,944	78	14	17.9
Wandsworth	6,303	110	23	20.9
Southwark	3,084	103	26	25.2
Westminster	8,084	273	75	27.5
Lewisham	2,966	142	42	29.6
Greenwich	2,470	151	51	33.8

Hammersmith and Fulham	4,417	193	66	34.2
Kensington and Chelsea	5,601	328	116	35.4
Camden	3,925	237	86	36.3
Hackney	2,824	172	65	37.8
Islington	3,013	227	88	38.8
Lambeth	3,937	229	91	39.7
City of London	535	0	0	0

## 5. APPEAL PROCEDURES

- 5.1 There are three types of appeal procedure: written representations, informal hearings and public inquiries. Written representations are the most common procedure and suitable for most types of minor scale development. They are also usually the quickest route with the average time from start to decision currently 18 weeks (11 weeks for householder appeals).
- 5.2 Informal hearings are suitable for smaller scale major development where there is one or more planning issue. Inquiries are more formal, with the parties having legal representation and with cross examination of the planning and other expert witnesses. Inquiries tend to be reserved for the most complex cases or where there is substantial public interest. Public Inquiries take longer with the current average time period being 51 weeks from start to decision. In all cases the Inspector will carry out a site visit before making a decision.
- 5.3 In the 116 decisions in Tower Hamlets over the last 18 months, 106 were dealt with by written representations, 5 by hearings and 5 by public inquiries.

**Figure 2 – appeals by procedure**



### Impact on resources

- 5.4 Officers will always work hard to defend the Council's planning decisions. Appeals can be resource intensive and whilst the Directorate has not carried out any detailed analysis the main impacts are on officer time and the

associated costs in terms of preparing statements or proofs of evidence, coordinating any arrangements for hearings and inquiries.

- 5.5 Once an appeal has been accepted, it will run to a strict timetable in terms of the requirements for the Council and the appellant. Failure to adhere to the timetable can present a risk of a successful costs award in favour of the appellant. Hence where resources are finite, dealing with an appeal can impact on the capacity of officers to deal with live applications or other case work.
- 5.6 Other impacts on Council resources can arise from the need to appoint specialist expert witnesses, if the resource is not available in-house and the costs of appointing legal representation.
- 5.7 Public Inquiries are the most time consuming and resource intensive. For example the inquiry into two linked applications at Corbridge Crescent lasted a total of eight days, with the planning officer, a design witness and heritage witness giving evidence and the local authority represented by Counsel.
- 5.8 Costs can be awarded if a local authority has behaved unreasonably in terms of reaching a decision or in terms of not complying with the procedural requirements of the appeal process. Costs decisions are made separately to the appeal decision and only if the appellant submits a costs application - one does not have a bearing on the other. Over the 18 month period covered by this report, whilst there were a small number of costs applications, costs were awarded against the Council in only one case at 32 Brushfield Street, where the Inspector found that the Council had caused unnecessary costs by not taking into account technical information relating to a ventilation and extract system that had been submitted and may have altered the original decision and hence prevent an appeal.

## **6. SUMMARY OF KEY APPEAL DECISIONS**

- 6.1 This section provides a summary of key decisions which may be of interest to the Committee. These include a mix of appeals following delegated decisions and Committee decisions.

### **The Odyssey, Crews Street, London, E14 3ED**

#### Proposal

- 6.2 Proposed installation of freestanding electronically controlled vehicular and pedestrian entrances gates. (reference PA/14/01582),
- 6.3 Application refused by Development Committee for reasons relating to the effects of the proposal on public access, the effect of the proposal on the character and appearance of the area, and the effect of the proposal on road safety.

#### Summary of appeal decision

- 6.4 The Odyssey is a mainly residential development on the west side of Westferry Road, facing the River Thames. It is accessed by Crews Street and includes a building known as Orion Point that contains a restaurant at ground floor. There is an area of open space and walkways adjacent to the Thames. The proposal was to install a set of electronically controlled gates at the entrance to the

development at the ownership boundary and adjacent to the management office.

- 6.5 The Inspector noted that Crews Street provides a link from Westferry Road to the Thames and open space along part of its bank. In this area the Thames Path is diverted along Westferry Road because of a number of barriers to movement that exist between the Millwall Slipway and the southern end of Mercury Court. Crews Street and the area of embankment within the Odyssey Development provide an area where pedestrians can reconnect with the Thames.
- 6.6 The Inspector found that proposed gates would undermine this connection, would provide a barrier to movement and a visual barrier that would disrupt important sightlines within the area and prevent access. They would also present a visual, physical and perceptual barrier that would undermine the connectivity between places in the vicinity and would, in effect, create a gated, segregated community.
- 6.7 The Inspector also considered the impact of crime on quality of life and community cohesion – the appellant’s main justification for the gates. He concluded that despite the residents’ personal experience of crime, there was insufficient evidence of it to warrant the installation of the proposed gates or to outweigh the harm that would be caused.
- 6.8 The Inspector also found that because the gates would reduce the length of Crews Street from the junction with Westferry Road, there would be highway safety issues arising from congestion, queuing traffic and conflict between vehicles and pedestrian movement.
- 6.9 The appeal was dismissed with the Inspector supporting all three reasons for refusal.

**2-10 Bethnal Green Road, 1-5 Chance Street (Huntingdon Industrial Estate), 30-32 Redchurch Street and land at Fleet Street Hill**

Proposal

- 6.10 Huntingdon Industrial Estate (HIE) – Residential development up to 14 storeys and 78 residential units (69 market housing units and 9 affordable [intermediate] units). with ground floor retail/office uses (includes associated Conservation Area Consent)
- 6.11 Fleet Street Hill (FSH) – Residential development up to 8 storeys to provide 34 residential dwellings (7 market units and 27 affordable [3 intermediate and 24 social rented]) and ground floor, retail/office uses. Proposal represented 43.8% affordable housing by combined habitable rooms across the two sites.
- 6.12 Applications considered by Strategic Development Committee on 21st November 2013 and 9th January 2014, where members, contrary to officer recommendation, refused planning permission for the following reasons:

Huntingdon Industrial Estate	Fleet Street Hill
Excessive height and bulk, adverse impact on neighbouring	Proposal results in over-provision of affordable housing

conservation areas	
Detailed design out of sync with area	Site unsuitable for large amount of family accommodation
Loss of 30/32 Redchurch Street not outweighed by benefits of the scheme	Unsuitable location for a large amount of commercial floorspace
Loss of traditional street pattern (Whitby Street)	
Lack of on-site affordable housing	
Unable to agree s106 contributions	

Summary of appeal decision

- 6.13 The appeal was considered at a Public Inquiry. In relation to the first four reasons on HIE the Inspector noted that the development would clearly be recognisable as a substantial modern building within and adjacent to the Redchurch Conservation Area, and a considerable degree of prominence was a deliberate aspect of the design.
- 6.14 However, with the contextual approach by way of the varied massing of the building, the proposal would essentially avoid an encroachment of development of an inappropriate scale on the special character of the conservation area that the Appraisal guards against.
- 6.15 The Inspector took a similar approach to Council officers in considering the height to be challenging within the location. However, when considering the development plan that require residential and non-residential output and densities to be optimised, the Inspector considered the scale was justified in heritage and design terms and with the proposal in other respects complying with the development plan the linked proposals represented sustainable development.
- 6.16 The Inspector considered the proposal would be substantially harmful to the non-designated asset by way of the full loss of 30-32 Redchurch Street, and minor loss of significance with the loss part of Whitby Street. However, the Inspector concluded the public benefits of this overall impact, together with the gain in residential accommodation and specifically affordable housing through the link with the FSH development, on balance outweighed the loss of significance of the two specific non-designated heritage assets within the Area.
- 6.17 The issue of mix and balanced communities was considered in relation to both sites, given they were in the same 2011 Census ward. The Inspector noted the appellants' analysis which showed when considering different scenarios both of the GLA's benchmarks (an area not exceeding 75% market or over 50% social rented housing) would not be exceeded. The effect of the two developments with the tenure breakdowns as proposed would be a small but positive change in these indicators in terms of the subsequent mix.
- 6.18 The Inspector also concluded, with the design approach and the proximity of the site to open space at Allen Gardens and which could be reached without crossing a road, Fleet Street Hill was suitable for family accommodation.
- 6.19 With respect to the FSH scheme, in itself this would result in a significant enhancement of the Brick Lane and Fournier Street Conservation Area.



- 6.20 The appeal was allowed and planning permission was granted for the redevelopment of both sites. Conservation Area Consent (which was required at the time for the demolition of 30-32 Redchurch Street) was also granted.

### **113-115 Roman Road, London, E2 0QN**

#### Proposed development

- 6.21 Application for demolition of an existing three storey 13 bedroom hotel and construction of a new four storey building (including roof extension) and basement) building dropping down to three and one storey at the rear to create a 31 bedroom hotel. (Reference PA/14/00662).
- 6.22 Permission refused by Development Committee for reasons relating to the effect of the proposal upon living conditions at 111 Roman Road; the impact upon working conditions at the adjoining properties to the north-east and the visual effect of the proposal and whether this would preserve or enhance the character or appearance of the Globe Road Conservation Area.

#### Summary of appeal decision

- 6.23 The appeal property is a hotel with coffee shop on the ground floor within a busy mixed use urban area. The Inspector noted that the buildings are densely packed and high rear extensions are commonplace. The adjoining property to the south-west at 111 includes a hot food restaurant at ground floor and residential premises above and to the rear.
- 6.24 The decision refers to disparities in the daylight and sunlight reports submitted but notes that the kitchen of No 111 has a single window facing approximately north and that the room was gloomy at the time of the appeal visit. As well as being a kitchen, there is also space to sit and eat meals in this habitable room.
- 6.25 The Inspector's report goes into some detail on the relationship and impact on the adjoining property concluding that there would be an unacceptable degree of enclosure, loss of light and potential for overlooking from a proposed glazed stair well and upper floor roof terrace.
- 6.26 However, the Inspector did not agree that there would be similar harmful effects on the working conditions at Four Corners (an educational charity) occupying development at the rear of 115a-117 Roman Road (who had objected) or that there would be a threat to the sedum roof of the building.
- 6.27 The Inspector noted that Roman Road forms the southern boundary of the Conservation Area and that the building at the appeal site form part of a terrace that includes two other buildings of similar original simple form. The Inspector comments on the variation of height along this part of Roman Road and the variation in ground floor appearance.
- 6.28 He noted that the simple form of the first and second floors does give the building some charm and that the proposal would involve the creation of a grander building with arched windows at first floor level similar to the adjoining traditional terrace, the front of the building would be more unified and symmetrical and would include a mansard roof. Overall he concluded that the front elevation would not harm the street scene and the proposals from the rear would not be out of character with the eclectic mix of rear extensions that already exist along the terrace. Hence the proposal would preserve the character and appearance of the Conservation Area.

- 6.29 Whilst the Inspector disagreed with the Council on two of the three reasons for refusal, his findings on the first reason relating to the impact at no 111 outweighed these and the appeal was dismissed for this reason alone.

### **120 Bethnal Green Road, London, E2 6DG**

#### Proposal

- 6.30 Variation of Condition 5 (opening hours) of Planning Permission ref. BG/94/237 dated 9th February 1995 to allow premises to operate between 13.00 - 01.00 the following day on Sunday, Monday, Tuesday, Wednesday and Thursday and 13.00 - 03.00 the following day on Fridays and Saturdays.
- 6.31 Permission refused under delegated powers, for reasons relating to the effect of the proposed opening hours on the living conditions of nearby residents from increased noise and disturbance
- 6.32 The appeal premises comprise the ground floor and basement of a four-storey building on the corner of Brick Lane and Bethnal Green Road, in use as a restaurant.
- 6.33 The Inspector noted that ground floors in Brick Lane and Bethnal Green Road are occupied by a wide range of businesses including office, retail and uses within Use Classes A3 to A5 (food and drink). The upper floors of nearby buildings were mainly in residential use. Whilst the visit took place at about mid-day the Inspector judged that there would be a significant level of activity late into the night. However the evidence indicates that there is a cut-off in activity within most local businesses premises at about midnight to 01:00.
- 6.34 The Inspector noted that the hours proposed were essentially the same as those considered by an Inspector in 2009. He took into account the appellant's case that the proposed hours had already been considered acceptable by the Council's licensing committee in granting a temporary events license although no evidence of this was provided.
- 6.35 The Inspector comments on the overlap between the planning and licensing regime, and ultimately turns to the tests set out in the NPPF for the use of planning conditions and says that "*planning conditions are necessary to set a base line for opening hours within which the licensing system may operate. In the case of the appeal property the absence of such a condition would be likely to result in unacceptable harm being caused to living conditions and a condition is therefore necessary.*"
- 6.36 In conclusion the Inspector found that the proposal would fail to safeguard the reasonable living conditions of nearby residents as regards noise and disturbance and that the proposal would conflict with the policies of the London Plan, the Local Plan and one of the objectives of the NPPF that seek to safeguard living conditions. The appeal was dismissed for this reason.

### **Silwex House, Quaker Street, London, E1 6NS**

#### Proposal

- 6.37 Demolition of the roof and part side elevations, the retention and restoration of the southern and northern elevations and the construction of a 3 storey roof extension to provide a new hotel (Class C1) development comprising approx. 250 bedrooms over basement, ground and 5 upper floors with ancillary café space and servicing on the ground floor, associated plant in the basement and roof, improvements to the front pavement and associated works.
- 6.38 Appeal was against non-determination and the Development Committee resolved that had they been able to determine the application it would have been refused for reasons relating to failure to preserve or enhance the character or appearance of the Brick Lane and Fournier Street Conservation Area including the existing non-designated heritage asset at Silwex House and the effect on the setting of adjoining listed buildings at Braithwaite Viaduct and Bedford House.

Summary of appeal decision

- 6.39 Silwex House was built in 1888 as a stable for the Great Eastern Railway. It is a non-designated heritage asset and has been empty since early 2014. Prior to that it was used for a variety of low-key commercial and other uses. The Inspector noted that the building is attractive with a number of important and distinctive architectural details. Its significance lies in its aesthetic value and also as a reminder of the historical transportation improvements undertaken in the vicinity. The Inspector agreed that the building makes a positive contribution to the significance of this part of the designated heritage asset and to the Conservation Area as a whole and forms part of the setting of both of the Grade II listed buildings- Bedford House and Braithwaite Viaduct.
- 6.40 The main part of the proposed development was a 3-storey extension above the existing building, designed in a contemporary style but with architectural references to the host building. The Inspector's report goes into some detail on the merits of the design and that planning decisions should not stifle innovation. However he concludes that:
- 6.41 *"Overall a combination of the siting, size and design of the proposal would detract from the visual significance of Silwex House. Its value would be obscured rather than reinforced or revealed..... In turn, the proposal would detract from the aesthetic and historic value of both this part of the designated heritage asset and of the Conservation Area as a whole."*
- 6.42 The Inspector agreed there would be a harmful impact on the Conservation Area but did not agree that the proposals would harm the appreciation of the listed buildings to the extent that their settings would be harmed.
- 6.43 The appeal decision goes into some detail about the balancing of the (less than substantial) harm caused to the conservation area with potential public benefits arising from the development. The Inspector took into account public benefits arising from greater street level activity, natural surveillance of the public realm, biodiversity (new brown roof), the contribution towards the provision of hotel bedrooms in London and increasing the choice in the area, the positive impact on the local economy and planning obligations relating to employment and training.
- 6.44 The Inspector attached significant weight to the fact that it is not possible to say that the proposed development would secure the optimum viable use of the building (i.e. there could be other viable uses that would cause less harm) and

concluded that the harm to the significance of the conservation area would not be outweighed by the public benefits of the proposal.

6.45 The appeal was dismissed for these reasons.

**Central Foundation Girls School, College Terrace, London, E3 5AN**

6.46 Application for revised affordable housing provision following a section 106 agreement dated 26/11/2013, relating to application PA/12/2577 dated 26/11/2013. (Ref PA/15/01320)

6.47 The appeal was made under Section 106BB of the Town and Country Planning Act 1990 against a failure to determine an application to modify a planning obligation (S106BA). The development to which the planning obligation relates is the change of use of the existing sixth form girls' school to provide 36 residential dwellings, granted in November 2013. The application sought to have the planning obligation modified by a reduction in the affordable housing element from 12 units to 4 units.

6.48 The only issue in this type of appeal is defined with reference to Section 106BA of the Act - whether the affordable housing requirement means that the development is not economically viable and, if so, how the appeal should be dealt with so that the development becomes economically viable.

6.49 The approach to applications under S106B is set out in the DCLG document 'Section 106 affordable housing requirements. Review and appeal.' The approach in the Guidance is to review agreements which relate to 'stalled' schemes, where economically unviable affordable housing requirements result in no development, no regeneration and no community benefit.

6.50 The Council's case was that the planning obligation would not render the scheme unviable.

6.51 In this case the development was well underway and at the hearing into the appeal, the appellant advised that completion of the development was due in 12 weeks.

6.52 Viability discussions at the application stage had progressed on the basis that the development had not started. However once this became apparent, the Council questioned a number of the appellants viability assumptions. The Inspector agreed that given that work had started on site and actual figures were therefore potentially available, it was reasonable of the Council to take this approach.

6.53 In conclusion the Inspector noted that the development had not "stalled" and that the affordable housing requirement did not mean that the development is not economically viable. Accordingly the Planning Obligation did not need to be modified and the appeal was dismissed.

**6.54** The Government announced that the provisions to apply to modify a Section 106 agreement in this way, that were introduced through the Growth and Infrastructure Act 2013 will not be extended beyond their original time scale of 30 April 2016 and have now been repealed.

## **The Forge, 397 & 411 Westferry Road, London, E14 3AE**

### Proposal

- 6.55 Linked planning and listed building consent applications for change of use of part of The Forge from office (Class B1) to convenience retail food store (Use Class A1) and change of use of the remainder of The Forge to flexible uses for either or financial and professional services, restaurants and cafes, drinking establishments, business, non-residential institutions (nursery, clinic, art gallery, or museum), or assembly and leisure use (gym). New floor space created at 1st floor level for business, internal and external changes to The Forge to facilitate the development, including new customer access to the north elevation, internal partitions, works to the roof, making good to walls (internal and external), maintenance to internal cranes and general building maintenance, demolition of external walls to facilitate access to The Forge and rebuilding of one wall, repositioning of lighting column, and provision of cycle parking.
- 6.56 Linked planning and listed building consent applications (Ref PA/14/02754 and PA/14/02753)

### Summary of appeal decision

- 6.57 Planning permission and listed building consent refused by Development Committee due to the effect the proposal would have on the character and special interest of the listed building and that the identified harm is not outweighed by benefits
- 6.58 The appeals relate to a Grade II listed building. This was constructed in 1860 as an iron shipbuilders' forge, and was originally part of a wider complex of buildings. It is a brick structure with a double pitched roof running perpendicular to Westferry Road and double gable features at the front and rear. Internally it comprises one large open space that is divided into two by the pitched roof and a central colonnade of metal columns, with further supporting metal work within the roof areas and timber in side walls. There are remnants of former furnace chimney breasts, crane gantries running the length of both halves of the building, and some remaining crane equipment.
- 6.59 The Inspector did not object to any of the proposed external works, noting that the proposed entrances and alterations, and the removal of existing side boundary structures, would not intrude on the main front elevation of the building or detract from its original industrial aesthetic qualities. The proposed roof top plant would be relatively well concealed in views of the building. These works would preserve the character of the building and any external signage would be subject to separate control.
- 6.60 However the Inspector commented in detail on the effect and detailed execution of the internal subdivision of the listed building:

*“The proposed internal works, developed in conjunction with Council officers, seek to provide a sensitive way of subdividing the space while maintaining its features and allowing an appreciation of these.” .....“the sense of volume, and the ability to appreciate the building’s qualities as a whole as an industrial space and structure, are part of its significance”.*

- 6.61 The Inspector said that the success of the scheme would to a large extent depend on the detailed execution of the proposals and had concerns relating to

the limited degree of information available as shown in the plans and how the proposed works would relate to the to the building's important historic features.

- 6.62 At the hearing, the parties discussed the use of planning conditions to deal with these matters; however the Inspector felt that this approach would still leave too much uncertainty and wouldn't be an appropriate use of conditions.
- 6.63 The Inspector took into account the public benefits of the proposals, including economic benefits, bringing the heritage asset back into beneficial use, the public access and appreciation of the historic fabric that would occur, but overall considered that the harm to the listed building outweighed any potential public benefits.
- 6.64 Although not a reason for refusal, the Inspector took into account the retail justification and impact assessment, concluding that there was a planning justification for the proposed retail use outside of the nearest town centre.
- 6.65 The appeal was dismissed, planning permission and listed building consent refused due to the impact on the listed building.

## **12 Cable Street, London, E1 8JG**

### Proposals

- 6.66 Retrospective planning application for the museum shop front and installation of roller-shutters and retrospective advertisement application for the retention of museum signage. Linked planning and advertisement applications and appeals (PA/15/02127 PA/15/02200)

### Summary of appeal decision

- 6.67 The appeal relates to a traditional 4-storey terrace property located on the edge of, but within the Wilton's Music Hall Conservation Area. The Inspector noted that the traditional appearance of the appeal property is therefore part of the conservation area's significance as a designated heritage asset.
- 6.68 The shop front, roller shutter and proposed signage were already in place. The Inspector noted that the choice of materials and glazing panels used give the host property a Victorian appearance and are representative of the mid-nineteenth century character of the area. However, the shop front extends a considerable distance above the main entrance up to a point broadly level with the first floor window cill. This results in a fascia measuring almost 2m high and taking up a significant proportion of the frontage. This creates a "top-heavy" appearance which is at odds with the traditional style, form and proportions of the host property.
- 6.69 The size and siting the black roller shutter box above the shop front is clearly visible and partially obstructs views of the first floor window. The Inspector concluded that the unsympathetic appearance exacerbates the incongruous design of the front elevation, which dominates the building at street level and fails to preserve the traditional mid-nineteenth century character of the area.
- 6.70 Given the size of the shop front the Inspector agreed with the Council that when not in use the shutter would also create a large, blank, dead frontage on Cable Street. The appearance of the shop front and roller shutter would

undermine the significance of the conservation area and this harm is would not be outweighed by any public benefits arising.

- 6.71 In terms of the advertisement consent appeal for the signage, the Inspector concluded that by reason of its size and proportions the fascia sign detracts from the visual amenity of the area. Accordingly, it conflicts with the Regulations which require decisions for advertisement consent to be made in the interests of visual amenity and/or public safety.
- 6.72 However, he concluded that the small hanging sign only has a very limited visual impact and preserves the character and appearance of the Wilton's Music Hall Conservation Area.
- 6.73 The planning appeal for the shop front and roller shutter was dismissed. The advert appeal for the signage was part allowed for the hanging sign only. The Council is pursuing the removal and replacement of the shop front, roller shutter and signage through the enforcement process.

### **1-3 Corbridge Crescent and 1-4 The Oval, London**

#### Proposed development

- 6.74 Linked appeals dealing with two applications for different development schemes on the same site.
- 6.75 Scheme 1 was for the demolition of existing buildings and erection of three linked blocks of 3 to 18 storeys comprising 91 dwellings, communal and private amenity space and 332 sqm of commercial floorspace (class B1/D1); and formation of basement plant room, refuse store, secure cycle parking area and car park (9 disabled spaces only) accessed via ramp off Hare Row.
- 6.76 Scheme 2 was for the demolition of existing single storey commercial buildings; retention, repair and/or reinstatement and alterations of external facades of existing Regency and Victorian cottages and conversion to residential use involving internal alterations; erection of three linked blocks of 4, 5 and 16 storeys comprising 78 dwellings, provision of communal and private amenity space and 185m<sup>2</sup> of commercial floorspace (B1/D1); and formation of three basement plant rooms, provision of refuse storage area, secure cycle parking area and surface car park (7 disabled spaces only) accessed off Hare Row.

#### Summary of appeal decisions

- 6.77 Both appeals were dealt with at the same Inquiry. The key differences between the two proposals were the retention of the cottages as part of scheme 2, the lower height of the proposed tall building and the lower number of residential properties overall.
- 6.78 The main issues common to both appeals were:
- The appropriateness of a tall building in this location, in policy terms.
  - The effect the schemes would have on the character and appearance of the Regent's Canal Conservation Areas and on the setting of the Hackney Road Conservation Area
  - Whether the schemes would prejudice the planning and design principles of the Marian Place Gas Works and The Oval Site Allocation in the Council's adopted Managing Development Document (MDD).

- Should harm arise from the proposed schemes, whether they would be outweighed by the benefits?
- Whether the proposals amount to sustainable development and comply with the Development Plan.

6.79 Notwithstanding the location of the site adjacent to a neighbourhood centre and the thrust of policy DM26 to link building heights to the town centre hierarchy, the Inspector concluded that the site was appropriate in principle for a tall building attaching weight to the site's location within the growth area identified in the London Plan City Fringe OAPF in coming to this conclusion.

6.80 The Inspector's report goes into detail about the impact of both schemes on the character and appearance of the Conservation Area. She concludes that aside from the tall building in block A, the layout, scale, massing, composition, and architecture of both proposals are well considered and overall could make a positive contribution to the Regent's Canal Conservation Area. The retained and refurbished cottages in scheme 2 would be successfully integrated into the proposals.

6.81 The Inspector carefully considered the impact of the tall buildings proposed in block A on the character and appearance of the conservation areas, considering key views, the relationship to the tall gas holders and the varied height of local townscape. The report discusses the height and the architectural appearance of the proposed tall buildings. The Inspector concluded that the 18 and 16 storey building in each scheme, would be disproportionately tall in their local context and that the appearance of the Regent's Canal Conservation Area would be harmed by the visual intrusion of Block A. Its character would be undermined by the presence of a structure markedly out of keeping with the prevailing pattern of development. The Inspector also considered that there would be some limited harm to the nearby Hackney Road Conservation Area and the setting of the Oval as a historic London Square.

6.82 The Inspector agreed that the loss of the Victorian cottage as proposed in scheme 1 would also cause harm to the significance of the Conservation Area, albeit localised and less than substantial.

6.83 The Inspector noted the desire for a comprehensive form of development to deliver the wider site allocation objectives in the Local Plan, but concluded that the proposals would not prejudice this.

6.84 The Inspector took into account a number of factors including the contribution that both schemes could make towards meeting LBTH housing targets, the social, economic and environmental gains, the improvements to the conservation area, the improvements to public realm, new open space and connectivity and the potential to kick start regeneration. However she concluded that none of these would outweigh the harm caused to the character and appearance of the conservation area and local townscape, noting that the appellant had tested whether the site could be developed without a tall building on block A. Both appeals were dismissed.



## Extensions in conservation areas

- 6.85 There have been a number of recent appeal decisions involving roof and other extensions to properties in conservation areas and properties outside but close to conservation areas.
- 6.86 A single storey mansard roof extension to a house at **30 Old Ford Road in Globe Road Conservation Area** was allowed on appeal with the Inspector concluding that the high quality design, scale, form and use of appropriate materials would not harm the character or appearance of the Conservation Area.
- 6.87 However in the case of **399a Roman Road**, the Inspector dismissed an appeal for a mansard roof extension to a two storey mid terraced property in **Driffield Conservation Area**, noting that it would be an incongruous feature which would fail to preserve or enhance the character and appearance of the conservation area. Whilst there may be some benefits from the proposal in terms of improving the living conditions of the residents of the property, the public benefits would be minimal, and insufficient to outweigh the harm identified.
- 6.88 A large roof extension at **108C Teesdale Street** was dismissed at appeal due to the impact on the character and appearance of **Old Bethnal Green Conservation Area**. The extension would have enlarged a second floor, 2 bedroom flat, to create a family sized unit, split over two levels with four bedrooms. The extension would have been set back behind a front parapet wall. Whilst the harm to the significance of the conservation area was deemed to be would be less than substantial, the Inspector did not find that the provision of a family sized property would outweigh this harm.
- 6.89 An appeal following refusal of a rear roof extension at **16a Turners Road**, not in a conservation area was dismissed. The Inspector noted that whilst the property was not in a conservation area the group of six, 3-storey Victorian terraced properties shared common characteristics including a clearly delineated front parapet. Although not a heritage asset, the Inspector said that the terrace within which the appeal property is located makes a positive contribution to the character and appearance of the surrounding area. Although set back, the extension would be visible from a number of surrounding public views. The scale, height, mass and materials would result in the creation of an incongruous feature.
- 6.90 Officers will be taking these decisions into account when formulating amendments to Conservation Area Character Appraisals.

## 7. CONCLUSIONS

- 7.1 This report has highlighted that whilst Tower Hamlets has comparatively fewer appeals than similar inner London Boroughs, the Council has a good track record winning 74% of appeals over the last 18 months.
- 7.2 As each case is determined on its own merits and some are complex involving multiple reasons for refusal, it is not possible to identify any key trends. However the weight given by Inspectors to heritage considerations is notable

and where harm is identified Inspectors have applied considerable rigour to the public benefits test.

- 7.3 There is a mixed picture with regards to decisions on extensions to houses in conservation areas.
- 7.4 Development Viability has not been a significant factor in the appeal decisions reported here, other than one at the former Central Foundation where the Inspector agreed that the Council was right to question the majority of the appellant's viability assumptions.

## **8. RECOMMENDATION**

- 8.1 The Committee is recommended to note the contents of this report.