# London Borough of Tower Hamlets

# Community Infrastructure Levy (CIL)
# Draft Charging Schedule

# Statement of Modifications

**May 2019**

## 1. Introduction

1.1 The Council has decided to amend a boundry of one of the proposed CIL charging zones and as such have prepared this Statement of Modifications.

1.2 Under the provisions of the CIL Regulations 2010 (as amended), the Council is able to modify the CIL Draft Charging Schedule (DCS) following publication and consultation. Where changes are proposed the Council is required to produce a Statement of Modifications, inform consultation bodies invited to make representations on the Draft Charging Schedule, and provide an opportunity to request a right to be heard by the Examiner in relation to the proposed changes.

## 2. Modifications to the Draft Charging Schedule

2.1 This Statement of Modifications sets out the modifications which have been made to Tower Hamlets' Draft Charging Schedule. As set out below, the modifications made are limited to a small bounday change. The boundary change was proposed subsequent to a planning appeal decision resulting in potential development coming forward which otherwise would have remained within a conservation area.

2.2 The DCS was published and subject to a supplementary consultation on 14th March 2019. The Council received representations from six representors to the Draft Charging Schedule within this consultation period, which ended on 25th April 2019.

## 3. Publication

3.1 As required under Regulation 19 of the Regulations, a copy of this Statement of Modifications has been sent to each of the persons that were invited to make representations under Regulation 17 and it has been published on the Council's website at: http://www.towerhamlets.gov.uk/cil.

3.2 This Statement of Modifications will also be made available at the Town Hall and in Idea Stores across the Borough for inspection during business hours.

## 4. Requests to be Heard

4.1 Any person may request to be heard by the Examiner in relation to the modifications set out in this document. The Council has already received requests with regard to the Draft Charging Schedule. There is no need to repeat those requests to be heard at this stage. It is only if any person wishes to exercise their right to be heard in relation to the modifications set out in this document that they need to inform the Council.

4.2 Any request to be heard by the Examiner in relation to these modifications must be:

- Submitted to Tower Hamlets Council in writing before the end of the period of four weeks beginning with the day on which the Revised Draft Charging Schedule is submitted to the Examiner in accordance with Regulation 19 (1).

- Include details of the modifications (by reference to this Statement of Modifications) on which the person wishes to be heard.

4.3 Persons requesting to be heard should indicate whether they support or oppose the modifications and explain why.

4.4 In accordance with the Regulations, a copy of each request to be heard in relation to these modifications will be forwarded to the Examiner.

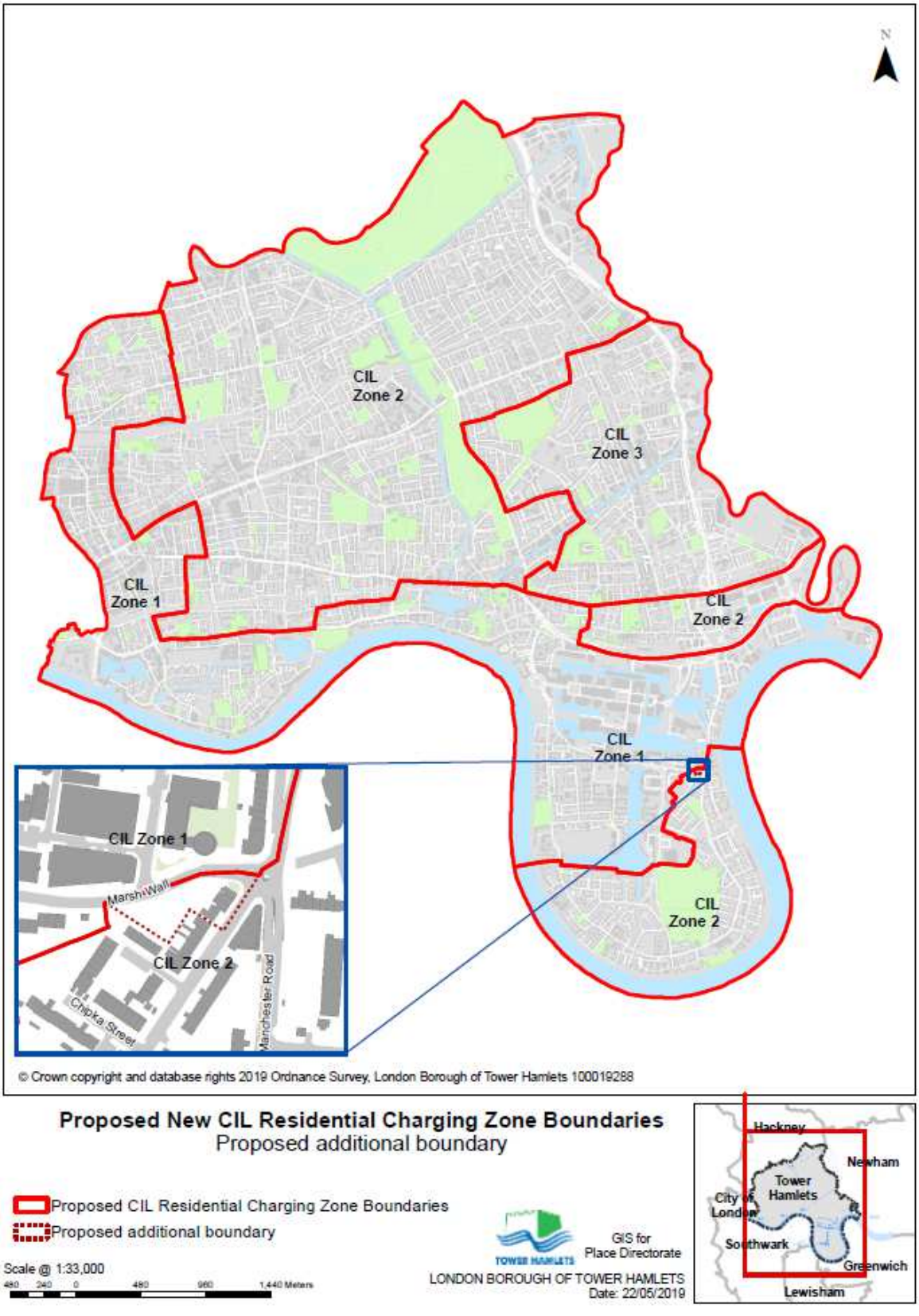
4.5 Requests to be heard may be withdrawn at any time before the opening of the Examination by giving notice in writing to Tower Hamlets Council.

4.6 A request to be heard by the Examiner in relation to these modifications must be made in writing by post or email to:

Infrastructure Planning
London Borough of Tower Hamlets
2nd Floor, Mulberry Place
5 Clove Crescent
E14 1BY
Email: viability@towerhamlets.gov.uk (Subject: Request to be heard by the Examiner – CIL 2019)

## 5. Proposed Modifications

5.1 The proposed modification relates to the charging area shown in Appendix 1 of the Revised Draft Charging Schedule. For ease of reference the proposed amendment is shown below:




5.3 The proposed modification to the boundary at zone 1 has been shown as the red dotted line. The existing proposed boundary is outlined in a bright red line.

5.4 The appeal decision referred to has been appended to this document.

**Appendix 1 –** Appeal Decision (2 East Ferry Road, London, E14 3LA-APP/E5900/C/17/3184929)

The Planning Inspectorate

# Appeal Decisions

Inquiry Held on 13-14 November 2018

Site visit made on 12 November 2018

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 December 2018**

## Appeal A: APP/E5900/C/17/3184929
## 2 East Ferry Road, London, E14 3LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Angelic Interiors Limited (in administration) against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
- The enforcement notice was issued on 21 August 2017.
- The breach of planning control as alleged in the notice is the unauthorised demolition of an unlisted building in a conservation area without planning permission.
- The requirements of the notice are to rebuild the building so as to recreate in facsimile the building as it stood immediately prior to its demolition on 26 June 2016 with reference to the photographs and plans (LBTH file reference PA/84/00512 & PA/81/00497 originals of which are available at the Tower Hamlets Council's Town Hall) in appendix A.
- The period for compliance with the requirements is 18 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

## Decisions – 3184929, 3184938 & 3184939

1. All three appeals are allowed, the enforcement notices are quashed and planning permissions are granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the demolition of Nos 2, 4 and 6 East Ferry Road, London, E14 3LA referred to in the notices, subject in each case, to the following condition:

    1) Within 3 months of the date of this permission a scheme for the interim treatment of the site (either on its own or with other land) shall be submitted to the local planning authority for its approval. The scheme shall address:

    (a) the clearance of debris, building materials and hoardings from the site;

    (b) the proposed boundary treatment of the site, including any proposed new fencing or hoardings to be erected;

    (c) the proposed landscaping of the site and any future maintenance of such; and

    (d) a timetable for the implementation of the measures set out in the scheme.

The approved scheme shall be carried out and completed in accordance with the approved timetable.

## Other Appeals

2. Appeals B (3184938) and C (3184939) are identical to appeal A, but refer to 4 East Ferry Road and 6 East Ferry Road respectively. The enforcement notices for Nos 4 and 6 are also identical to that for No 2.

## Costs Applications

3. An application for costs against the Council has been made by the appellants, and this is the subject of a separate decision letter. An application for costs was also made by the Council against the appellants who were not represented at the Inquiry – see below. This is subject to a separate decision by the Secretary of State.

## Preliminary Matters

4. Originally these appeals were to be heard together with three other appeals for the same sites and enforcement notices APP/E5900/C/17/3185060, 3185062 and 3185063. These appeals were made by Kemwood Properties and Fitzjohn Limited, both companies owned by Ms Julia Davey. At the last minute the solicitors acting for Ms Davey were unable to get instructions from her, for reasons they were unable to divulge. They therefore pulled out of the Inquiry which went ahead to hear the appeals by Angelic Interiors. Angelic, themselves are in administration and the appeal was conducted by their administrators.

5. Angelic and Ms Davey have been in dispute over the ownership of the three buildings for some time, but it appears from the evidence of Mr Davey who is Ms Davey's brother, that he was responsible for the day to day maintenance of the buildings for some years and for their eventual demolition. At the Inquiry Angelic provided a note explaining they had, on 31 October, been successful in their dispute with Ms Davey and were now the legal owners of the three sites. But as noted above they had had nothing to do with the buildings for many years and nothing to do with their demolition.

6. The appellants have raised the issue that the enforcement notice is a nullity as it fails to adequately explain what the appellants are required to do in order to fulfil the requirements of the notice and that the officer who signed it did not have the requisite delegation to do so. I deal with both those issues below.

## Nullity Arguments

*Inadequate requirements*

7. The first argument is that the notice is defective as it does not clearly tell the appellants what they need to do. In my view the requirements of the notices are quite clear and the information given is adequate to enable that to happen. I was referred to Miller-Mead[1] and Oates v SSCLG[2] amongst others and the proposition that the notice should be clear within its four corners is well known. The Oates case is particularly useful as it confirms that there must be

[1] Miller-Mead v MHLG [1963] 2 QB 196
[2] Oates v SSCLG [2017] EWHC 2716 (Admin)

"reasonable certainty" as to what is required, but that the requirements must be considered in context and not with an overly formulaic or legalistic approach.

8. In my view the context of the notices is clear, they were, according to the Council, unlisted but characterful buildings which had an architectural and historic importance in the conservation area. The problem for the appellants is the use of the word "facsimile" which means 'an exact copy'. They argue that they have little information as to exactly what the rear and flank walls looked like and virtually no information as to the interior.

9. The power to require a new building is contained in s173(6) of the 1990 Planning Act. This says "*Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a "replacement building") which, subject to subsection (7), is as similar as possible to the demolished building*". I agree it would have been better had the Council used the words "as similar as possible" rather than facsimile, but it seems they were guided by the well-known appeal decision which required the rebuilding of Carlton Tavern in facsimile. In that case the pub was about to be listed and had been subject to considerable scrutiny by the Council prior to its demolition, so that detailed plans and photographs were available. In this case the notices include photographs of the front, sides and rear (albeit the lowest parts of the sides and rear are not visible), as well as plans showing elevations, sections and floor plans of No 2, elevations of Nos 4 & 6 and floor plans of No 4. Although the plans and sections are from the 1980s, with these, along with the photographs, it should not be difficult for the appellants to create a reasonable facsimile of the exterior of the three buildings. There is some doubt as to what the interiors looked like, but these were modest Victorian cottages so they would have had a standard layout that could be inferred from the windows and what plans there are available.

10. I agree that to construct an exact copy down to every last detail would be very difficult, but I do not think that is what is required, given a sensible reading of the notices. I think the appellants have reasonable certainty that if they built something as similar as possible to what was there originally that would satisfy the Council and not leave them open to further prosecution.

11. A subsidiary issue was that the buildings were in state of disrepair immediately prior to their demolition. This included severe cracking and subsidence, especially of No 2 which was visibly moving away from No 4, and both flanks of the group were shored up. The appellants argue that an exact copy of the buildings would have to replicate these failings and produce buildings that were a danger to the public. In my view the appellants are taking an almost absurdly literal interpretation of the notices and have failed to consider the effect of S173(7). Following on from subsection (6) this describes the minimum requirements for a replacement building. It says "*A replacement building— (a) must comply with any requirement imposed by any enactment applicable to the construction of buildings; (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control; (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b))*". In essence this

means the replacement building should comply with building regulations and so should not be rebuilt containing the flaws inherent in the demolished buildings.

12. The appellants argued that they had not considered this because there was no need to go beyond the word "facsimile", which means an "exact copy". However, the use of this word does not stop the relevant sections of the Act from bearing on the replacement building, and indeed cannot do so. In my view this was a somewhat specious argument, but it did serve to clear up the issue as to exactly what the replacement buildings should look like. They would be reasonable copies of what was there before, and would be in a habitable state. In my view this nullity argument has no strength and I do not consider the notices to be nullities because of the use of the word "facsimile".

*The relevant delegation*

13. The second argument concerned the provision of the relevant delegation. I deal with this in more detail in the appellants' costs application, but in brief, I found the Council's argument that the relevant parts of the constitution had not been superseded by subsequent constitutions to be sufficiently compelling to mean that had I been considering this matter I would not have been able to find the notices were nullities.

14. However, I agree with the Council's main argument that this not an issue that can be considered on appeal, but must be dealt with by way of a judicial review. The starting point for such a consideration is s285(1) of the Act which states that the validity of a notice shall not be challenged other than by way of an appeal under Part VII of the Act. Part VII deals with enforcement matters and s174 sets out the grounds by which an appeal can be made. None of those grounds include questioning the Council's internal delegations or constitution. Indeed that would be a matter a planning Inspector was ill positioned to judge. Nevertheless, the courts, particularly in the case of Miller-Mead[3] have somewhat widened the scope of appeals to include issues where a notice is defective on its face, such as not containing an allegation, or where the requirements are hopelessly uncertain. Again, it is not possible to tell from within the four corners of the notice whether the correct delegations are in place or not so this is not a matter for a s174 appeal.

15. Both parties quote from Beg[4] to support their case, which suggests to me that this is not a straightforward matter. In Beg the court differentiates between a nullity and invalidity and says the issues before it in that particular case were points that could have been pursued on appeal, had one been made. But this does not sit easily with the later quote from Koumis[5] in the Court of Appeal that maters of nullity should be restricted to issues that are apparent on the face of the notice, which refers back of course to Miller-Mead and would exclude considering an authorities' delegations. If a notice is not a nullity then the Inspector's jurisdiction is restricted to matters defined by the scope of s174, so again the issue of delegated authority is not relevant. All of this leads me to favour the Council's assertion that this issue can only be raised by way of judicial review.

[3] Miller-Mead v MHLG [1963] 2 WLR 225
[4] Beg v Luton [2017] EWHC 3434 (Admin)
[5] Koumis v Secretary of State for Communities and Local Government [2014] EWCA (Civ) 1723; [2015] J.P.L. 682

## The Appeal on Ground (a)

16. The appeal on ground (a) is that planning permission should be granted for the matters alleged in the notices, in this case the demolition of Nos 2, 4 and 6, East Ferry Road. There is no dispute that they were unlisted buildings in a conservation area and that planning permission should have been sought for their demolition, although as I noted above this was not the fault of the appellants. There is also no dispute the removal of the buildings causes less than substantial harm to the Coldharbour conservation area. The conservation area is a designated heritage asset and paragraph 193 of the NPPF makes it clear that **great weight** should be given to any less than substantial harm to the significance of a heritage asset. Paragraph 194 goes on to say that **any** loss of significance to a heritage asset should require clear and convincing justification (my emphases). Paragraph 196 explains that where there is less than substantial harm to a heritage asset is should be weighed against the likely public benefits arising from that harm.

17. The Council's argument is simple, in that there are no planning applications for any replacement buildings with the Council and they are not in discussion with any potential developers. There are, therefore, no public benefits to weigh in the balance and on a simple reading of paragraphs 193-196 the appeal must be dismissed. This is the case without even considering the policies of the local plan. However, I think this is too simplistic. There has been a history of potential and actual redevelopment in the area, and a scheme has been drawn up by the appellants to demonstrate what could happen. I shall deal with this in more detail below, but for now I note that there are possible public benefits and so for a proper consideration of this appeal I need first to consider what harm to its significance has the conservation area suffered and what, if any, public benefits are there to outweigh such harm.

18. The conservation area was designated in 1975 and consisted of the narrow strip of Coldharbour, lying between the large docks to the west and the river to the east with a small bulge to include Bridge House Quay. This area contains all the listed buildings in the conservation area. In 2008 it was extended to include a small dock leading into Blackwall Basin, the old entrance to the South Dock, and to the south, part of Manchester Road and the very end of East Ferry Road. The reason given for the extension in the conservation area appraisal document was to include Glen Terrace. This is a substantial terrace of Victorian houses standing to the west side of Manchester Road. No mention is made of the other extensions, an important point I shall consider below.

19. The East Ferry Road extension is essentially an add-on to Manchester Road and includes the modern buildings between Glen Terrace and East Ferry Road. It is drawn around Nos 2-6, which are the sole pre 20th century buildings in this section.

20. The Council's expert witness, Mr Froneman provided a detailed history and analysis of the conservation area and 2-6 East Ferry Road in particular. I have to agree with him that it would seem the extension around Nos 2-6 was deliberate; it is the reason for the extension that remains a mystery, thanks to the obvious shortcomings in the conservation area appraisal. Mr Froneman argued that Nos 2-6 were the last surviving remnant of the once large area of Victorian workers housing in Cubitt Town which occupied the whole of the south-eastern side of the Isle of Dogs. This has almost entirely been

redeveloped following bomb damage during the war, leaving just Nos 2-6 as a historic reminder of the type of dwellings that once were common here. None of this was disputed by the appellants and I shall discuss its significance below.

21. The houses themselves, it has to be said, were not prime examples of Victorian workers cottages. Disregarding the recent dilapidation, they had very little left that was identifiably historic. It seems that Nos 4 and 6 were built in 1858-60 and then No 2 was added in 1886 on land that was formerly occupied by a tollhouse. They were originally simple two storey dwellings with a door and window on the ground floor and 2 windows upstairs facing the road. They had butterfly roofs, as was apparently common for dwellings of this type in Cubitt Town. However, prior to their demolition there was little of this original fabric left. No 6 was shown as a ruin on the 1949 map, presumably due to bomb damage, and was rebuilt some time afterwards. From the photographic evidence it seems it had modern windows inserted into what look like modern openings. No 4 is likely to have retained its original brickwork and first floor windows, but the ground floor window seems to have been a modern insertion. However, the main change to No 4 was the addition of second floor in a new gable end facing the street in 1981. This included a mock Serliano window in the centre of the gable. The façade of No 2 was entirely reconstructed in 1984 with a rusticated ground floor added with an arched window.

22. In my view they still retained the potential to be an attractive trio of buildings, but I am not convinced they can lay much of a claim to historic significance. Their attractiveness is also exaggerated as they stand next to some shabby single storey modern buildings and then a terrace of post-war, determinedly utilitarian houses. The effect of the accidental survival of the three dwellings gives the central gable an unwonted prominence that appears to be part of a planned design for the three dwellings, which is a 1980s illusion. If they were to be rebuilt then they would undoubtedly be very nice, but the issue is what role do they play in the significance of the conservation area and the answer would seem to me to be very little.

23. The significance of the conservation area itself seems to rest almost entirely on the section around Coldharbour and the historic remains of the docks. The southern extension to include Glen Terrace makes sense in order to protect this Victorian Terrace, but the further extension to East Ferry Road makes less sense. Mr Froneman made a strong effort to convince the Inquiry that this was in order to protect this last fragment of Cubitt Town but I remain unconvinced. Had the demolished buildings been of historic interest in their own right they would have been worth preserving simply for that reason, but they would still have told us little or nothing about Cubitt Town, its development, or its morphology. The development of Cubitt Town does not seem to have been unusual in any way, nor any of its buildings particularly special, it is not until this Inquiry that anyone at the Council has made any mention of it at all. To my mind the dwellings were not the last fragment of a historically significant but now lost development. They were simply three remnant buildings in a sea of modern development. To suggest that this makes it all the more important to preserve them is to adopt a collector's mentality, particularly as they seemed to have no great historic significance themselves due to the substantial modern changes they had undergone.

24. Mr Froneman made a valiant effort to suggest the demolished buildings should have been considered as non-designated heritage assets in their own right and

they could have been locally listed, had the Council sought to do so. However, the very detailed analysis in his proof, comparing them to various Historic England check lists, does tend to show the weakness of this sort of approach, a matter made clear by Dr Dogget for the appellants. Many of the positive responses depend on their importance as survivals of Cubitt Town but as I explain above I do not consider that to be of any great historic significance. Nor do I consider that the buildings are particularly historic in themselves as they have been so greatly altered.

25. Both parties accepted the loss of the buildings had caused less than substantial harm to the significance of the conservation area, and I would not like to suggest their loss causes no harm at all, but I consider that the harm is very much at the lowest end of that scale. It was argued that if the site is left vacant or redeveloped there would be no reason to retain it in the conservation area and this would seem to be true, but it does call into question the motivation for extending the conservation area in the first place. Had it been deliberately to protect this remnant of Cubitt Town, then I would have expected somewhere for this to have been explained. I accept the conservation area appraisal is lacking in detail, but if Cubitt Town was of such importance as Mr Froneman argued, then I find it hard to believe the reason for the extension to this allegedly key part of the Isle of Dogs is deliberately not mentioned as the appraisal explains only that the extension was in order to protect Glen Terrace. It seems to me more likely the Council just saw these Victorian looking buildings and took the opportunity to include them, as there was nothing else of any historic interest in the area. Whatever the truth of the matter whether or not the vacant site remains worthy of conservation area status is of little importance in this case.

26. To sum up, I do not consider the role of the demolished buildings as remnants of Cubitt Town to be any great significance and do not consider they retain any strong historic significance themselves. Their loss has thus caused less than substantial harm to the significance of the conservation area, and very much at the bottom end of that scale.

*Redevelopment Potential of the Site*

27. I turn now to the public benefits that might flow from the demolition. There is no dispute that East Ferry Road lies in an area that has been the subject of major redevelopment for many years and a number of large tower blocks have been granted planning permission or are being built in the immediate area. Following the court case the appellants have now assembled a substantial triangle of land on the corner of East Ferry Rd and Marsh Wall and suggest a 6 storey flatted development would be suitable, providing affordable and open market housing. The immediate context of the site is of similar types of development. On Marsh Wall, just up from the site is a 6 storey block and a much larger 48 storey tower recently granted planning permission. Directly opposite, between the site and Glen Terrace is a 3.5 storey block of flats, across from them is the large 13 storey Pierhead Lock development. There are modern housing and low rise blocks of flats on the east side of Manchester Road as it runs south, then on the corner next to the appeal site another new 6 storey block of flats. The area is thus characterised by modern flatted developments and a similar scheme on the appeal site would not be out of place.

28. The appellants showed that the Council had been in discussion with the previous owners about possible redevelopment of the site as far back as 2005 and the Council had its own Marsh Wall/East Ferry Road development proposal for a 24 storey block of flats. None of these proposals came to fruition, and this was before the conservation area was extended, but the three buildings existed on the site then, and the Council were happy at that time to see them demolished. There was a suggestion the conservation area was extended as a response to these development pressures, but there is no evidence this was the case and it seems unlikely as the Council were, at the time, in favour of complete redevelopment.

29. Although the policy framework has changed since then, Tower Hamlets remains under pressure to find 3931[6] houses a year between 2015 and 2025. It was pointed out this is the largest annual figure for any London Borough. The Council said it had identified a 5 year supply of housing land, but could provide no more information than that, and I note its local plan is still in the "emerging" phase. The site lies in the GLA Isle of Dogs and South Poplar Draft Opportunity Area, and the subsection where it is located should provide for 8500 homes. I also note that Cubitt Town is in a "very high growth" area as defined in the Core Strategy from 2010, a notation carried forward in the emerging local plan. All of this points to this part of the Borough being suitable for high density housing projects in an area already earmarked for major housing growth in the Borough with the largest housing demand in London and I think this background is important when considering the likelihood of redevelopment proposals coming forward.

30. The site does not benefit from a site allocation in the emerging local plan and the appellants have not engaged with the local plan process. However, I cannot criticise them for this as there have obviously been ongoing concerns about the future of Angelic Interiors itself and its ownership of the land. Without wishing to prejudge any future schemes and based solely on the evidence I heard, the site would seem to be a prime location for housing development and the owners have assembled a coherent development plot, of which the site of Nos 2-6 is a part. To that end the appellants have produced the Turner scheme, which is a suggested possible redevelopment of a six storey block of flats with 22 dwellings of which 35% would be affordable. This clearly is merely indicative and has no particular standing, but does show what could be achieved on the site. The point is not whether this scheme or even one like it will definitely come forward, but whether a scheme is possible. What this demonstrates to me is that there would appear to be no constraints that would prevent a housing scheme of significantly greater density than 3 units from being successful on the site.

31. As noted above, there are no planning applications for development of the site, which is not allocated for development in the emerging local plan and the Turner scheme is only illustrative. As the appellants explained they are not developers, but would sell on the site. Any public benefits are therefore speculative and the weight to be given to them is reduced accordingly. But given the development background described above, it would seem highly likely that a suitable development proposal could be found and there are no obvious reasons why the landowner would not want to realise the development potential of the site.

[6] Figures from London Plan (March 2016) Table 3.1 page 96

## The Balancing Exercise

32. The London Plan, necessarily, is a high level document, but its policies in Chapter 7 are concerned to protect the significance of heritage assets and if possible adapt and re-use historic buildings. Policy SP10 of the Core Strategy seeks to protect the historic environment and preserve locally distinctive character. DM24 seeks to support good design and DM27 seeks to protect heritage assets and states that development within a heritage asset will only be allowed where there is no adverse impact on the heritage asset itself. The Council's case is that the less than substantial harm to the significance of the conservation area identified means the demolition was clearly contrary to the development plan, there are no countervailing benefits to weigh in the balance and so should be refused, in accordance with paragraph 11 of the NPPF. That is how I intend to approach the balancing exercise.

33. I agree with the parties that the demolition has caused less than substantial harm to the significance of the conservation area. But I do not agree the three dwellings should have the status of non-designated heritage assets, and I consider they had very little historic significance in themselves and they played only a very minor role in the significance of the conservation area. Therefore the less than substantial harm is very much at lowest possible end of the scale. Great weight should be given to any harm to the significance of a conservation area.

34. Paragraph 196 of the NPPF requires that the harm should be weighed against any public benefits. In this case those benefits are the redevelopment of the site with a much larger number of dwellings than would be the case if the demolished houses were rebuilt, including much needed affordable housing, all of which would be in accord with the prevailing policy ethos for the area. I accept these benefits are speculative, but in my view there is a good chance they would be realised. It seems likely to me that even had the buildings still been in place, given their poor condition and lack of any historic significance, they would have been demolished to make way for a comprehensive redevelopment scheme. Consequently, I consider these benefits outweigh the harm identified. The demolition of the three dwellings is thus in accord with the NPPF and the development plan for the area and so I shall grant planning permission accordingly.

35. Had my decision been more finely balanced, I would have had to consider the proportionality of the requirement to rebuild the dwellings. As is well known the enforcement system is intended to be remedial and not punitive. The only possible remedy for unlawful demolition is a complete rebuild. While I agree that it is important that the loss of historic buildings should not be seen to be condoned, in this case one has to question the need to rebuild the dwellings when they were of such low historic significance and I do not think that such a requirement would have been proportionate.

## Conditions

36. Two conditions were suggested, one requiring the tidying up of the site and its landscaping. This is entirely sensible as it could be several years before a redevelopment scheme is agreed and begun and could also open up the public open space at the tip of the site which is currently hidden behind hoardings.

37. A second was that a scheme for redevelopment should be brought forward within 12 months and if not implemented in full within a further 12 to 24 months the requirements should bite and the dwellings be rebuilt. I agree with the Council that such a condition is fraught with uncertainty and potential problems if a redevelopment scheme should stall for whatever reason. However, I do not think it is necessary. As long as the site is treated as per the first suggested condition, the impact on the conservation area will be marginal at best and redevelopment can be left to the market.

*Simon Hand*

Inspector

## APPEARANCES

FOR THE APPELLANTS:

Ned Westaway – of counsel
He called
Dr Nicholas Dogget - Heritage
David Churchill – Planning

FOR THE LOCAL PLANNING AUTHORITY:

Reuben Taylor
He called
Ignus Froneman - Heritage
Desmond Adumekwe – London Borough of Tower Hamlets

## DOCUMENTS

1 Council's opening
2 Appellants' opening and background documents
3 Marsh Wall appeal decision letter
4 Conservation area appraisal guidelines
5 Relevant policy extracts
6 Appellants' arguments over the issue of delegated authority
7 Appellants' suggested conditions
8 Council's suggested conditions
9 Council's compliance policy
10 Council's closings
11 Appellants' closings
12 Council's statement concerning authorisation
13 Appeal decisions dealing with issue of authorisation by the Council