

<b>REPORT OF ASSISTANT DIRECTOR OF REGENERATION AND PLANNING</b>		
<b>PLANNING SUB-COMMITTEE</b>	<b>Classification INFORMATION</b>	<b>Enclosures</b>
	<b>Ward(s) Affected</b>	<b>APPEAL SUMMARY</b>
<b>October 2008</b>	<b>ALL</b>	<b>June 2008</b>

**1. SUMMARY**

Attached for Members' information is a report summarising all Planning Inspectorate appeal decisions received for the month of June 2008.

**2. RECOMMENDATION**

That the attached schedule be received for Members' information.

Signed..... Date.....

**FIONA FLETCHER-SMITH**  
**CORPORATE DIRECTOR, NEIGHBOURHOODS AND REGENERATION**

Report Originating Officer: Franziska Lang (ph: 0208 356 8291)

**Background Papers**

The following documents have been relied upon in the preparation of this report:

<b>Description of Document</b>	<b>Location</b>	<b>Date</b>
MVM Panorama Planning System and PINS on-line case search	263 Mare Street, E8	September 08

**MONTHLY APPEAL DECISION INFORMATION BULLETIN**

**SUMMARY INFORMATION FOR THE MONTH OF JUNE 2008**

**Statistics for all Planning and Enforcement Appeals**

Planning (Including Listed Building, Conservation Area Consents and Adverts)		Enforcement	
Number of appeals received:	7	Number of appeals received:	4
Number of appeals withdrawn:	0	Number of appeals withdrawn:	0
Number of appeals decided:	5	Number of appeals decided:	4
• Dismissed	5	• Dismissed	3
• Allowed	0	• Allowed	1
• Split	0	• Split	0
Number of cost applications made	0	Number of cost applications made	0

**Best Value Performance Indicator (BVPI) 204 Statistics**

Number of appeals forming BVPI statistic: 3 (Refer to note below for explanation)

	BVPI 204 June 2008 (S.78 Determined)	BVPI target 2008/2009	BVPI since 1 <sup>st</sup> April 2008
Number of Appeals Dismissed	3/3 (100%)	62.0%	9/15 (60%)
Number of Appeals Allowed	0/3 (0%)	38.0%	6/15 (40%)
Number of Appeals with Split Decision	0/3 (0%)	Forms part of the 'Allowed' statistic above	

**Note:**

Planning appeals for the purposes of the BVPI statistic includes appeals on planning applications where the Council has refused planning permission. It does not include planning appeals against conditions or non-determinations. The calculation also excludes all other application types of appeal, e.g. Advertisement Appeals, Enforcement Appeals and Lawful Development Certificate appeals. A partially allowed appeal must be counted as an allowed appeal (Extract from Best Value Performance Indicators by Audit Commission).

1. **Site Address: 31 East Bank, London N16 5QS**

**Application and Appeal Reference: 2005/0333/ENF & APP/U5360/C/07/2056424**

**Inspectors Ruling: DISMISSED**

**Development Description:** Without planning permission, the erection of a ground floor single storey rear extension.

**Type of Appeal:** Public inquiry appeal against an enforcement notice served by the Council on 15 August 2007. The appeal is made under Ground (a) – That planning permission should be granted for what is alleged in the notice, Ground (c) – That there has been no breach in planning control, Ground (f) – that the steps set out in the notice to rectify the breach are excessive, and Ground (g) – that the period of compliance is too short.

**Key Policies/ Material Considerations:** PPS1 and Planning and Access for Disabled People: A good practice guide.

**Inspector Considerations and Key Issues:** The effect of the proposal on the character and appearance of the premises and on the amenity of neighbours.

**Brief Assessment:** In terms of the Ground (a) appeal the Inspector considered that there was no harm to the character and appearance of the building but that the structure did seriously harm the amenities of neighbours. In terms of the Ground (c) appeal, the Inspector held that the erection of the appeal scheme resulted in the volume of the original dwelling being enlarged by more than 50 cubic metres and also by more than 10%. Accordingly the development was not permitted development and the appeal failed on this ground also.

**Implications:** No new implications

2. **Site Address: 332-334 Old Street, London EC1V 9DR**

**Application and Appeal Reference: 2006/0120/ENF & APP/U5360/C/07/2051318**

**Inspectors Ruling: DISMISSED**

**Development Description:** Without planning permission, the use of the premises for retail (A1) purposes.

**Type of Appeal:** Public inquiry appeal against an enforcement notice served by the Council on 15 June 2007. The appeal was made on Ground (a) – That planning permission should be granted for what is alleged in the notice, and Ground (d) – that the material change of use occurred more than 10 years before the notice was issued.

**Key Policies/ Material Considerations:** Council's emerging LDF, the Atkins Report, South Shoreditch Supplementary Planning Document, PPS1, PPG4, relevant London Plan Policies.

**Inspector Considerations and Key Issues:** Whether or not the change of use would result in harmful loss of suitable employment generating floor space within a Defined Employment Area.

**Brief Assessment:** In terms of Ground (a) the Inspector considered that the change of use to retail would be contrary to the aims of the Defined Employment Area, the supporting aims of the adopted South Shoreditch SPD and the relevant London Plan policies. In terms of Ground (d) there was insufficient evidence to convince the Inspector that the change of use to retail had occurred more than ten years ago.

**Implications:** The Council relied heavily on the evidence base in the Atkins Report which basically states that all existing employment areas should be retained and protected within the emerging LDF. In that regard this forms a useful decision to quote in future appeal cases concerning loss of employment floorspace.

3. **Site Address: 16 Leabourne Road, Stamford Hill, London N16 6TA**

**Application and Appeal Reference: 2007/0704 & APP/U5360/A/07/2059588**

**Inspectors Ruling: DISMISSED**

**Development Description:** Erection of front and rear dormers to form loft extension.

**Type of Appeal:** Hearing appeal against the Council's refusal of planning permission.

**Key Policies/ Material Considerations:** UDP Policy EQ1

**Inspector Considerations and Key Issues:** The effect of the development on the character and appearance of the existing dwelling and the street scene of the locality.

**Brief Assessment:** The Inspector acknowledged that there had been a substantial number of extensions within the street which were similar to that proposed. However, he considered these existing extensions to be unsightly, particularly where they cover the entire width of each side of the roof. Details of appeals allowing similar extensions were presented by the appellant. However, the Inspector agreed with the Council that the examples of similar loft extensions which fill the whole width of the roof are unacceptable in design terms. The Inspector held that due to the excessive bulk and scale of the proposal, it fails to respect the integrity of the existing roof and completely alters the character of the existing dwelling, contrary to UDP Policy EQ1. With regards to the personal circumstances of the appellant, the Inspector said that such circumstances were transitory whilst the proposal put forward would be permanent if approved. In this case the personal circumstances were not such as to outweigh the planning considerations.

**Implications:** The reference to the transitory nature of the personal circumstances of the appellant as quoted in this decision may be useful in future appeal cases.

**4. Site Address: 32 Lingwood Road, London E5 9BN**

**Application and Appeal Reference: 2006/0220/ENF & APP/U5360/C/07/2049227**

**Inspectors Ruling: DISMISSED**

**Development Description:** Without planning permission, the erection of a front dormer and a rear dormer across the full width of the roof of the existing building on the land, the erection of a basement, ground and first floor rear extension to the existing building on the land and the erection of a rear facing balcony at roof level of the building on the land.

**Type of Appeal:** Public inquiry appeal against the Council's enforcement notice issued on 5 June 2007. The appeal was made on Ground (b) – that the breach alleged in the notice has not occurred as a matter of fact, and Ground (c) – that there has not been a breach of planning control.

**Key Policies/ Material Considerations:** N/A

**Inspector Considerations and Key Issues:** Whether the grounds of appeal can be substantiated.

**Brief Assessment:** In terms of Ground (b), the Inspector noted on his site visit that the three elements of the breach of planning control alleged in the notice had occurred as a matter of fact. Accordingly the appeal on this ground failed. In terms of the Ground (c) appeal, the Inspector considered that the works allowed under planning permission 2003/1679 had not been implemented in accordance with the approved plans. Accordingly they were not allowed by that permission. No claim was made by the appellant that the development at the property constituted permitted development. Accordingly the appeal under this ground failed as well.

**Implications:** No new implications

**5&6 Site Address: 2 Kersley Road, London N16 0NP**

**Application and Appeal Reference: 2005/1698 & APP/U5360/X/07/2053261 (Appeal A)  
& APP/U5360/C/07/2053263 (Appeal B)**

**Inspectors Ruling: APPEAL A DISMISSED, APPEAL B DISMISSED IN PART**

**Development Description:** Appeal A: Certificate of Lawful Use was sought for use of the ground and first floor of the property as a house in multiple occupation; Appeal B: Without planning permission, the conversion of the property to form three flats.

**Type of Appeal:** Appeal A: Public inquiry appeal against the Council's refusal of a Certificate of Lawful Use. Appeal B: Public inquiry appeal against the Council's enforcement notice issued on 4 July 2007. The appeal was made on Ground (b) – that the breach alleged in the notice has not occurred as a matter of fact, and Ground (c) – that there has not been a breach of planning control, Ground (d) – that the breach identified in the notice is immune from enforcement action, Ground (e) – that the notice was not properly served on everyone with an interest in the land and Ground (f) – that the steps set out in the notice to rectify the breach are excessive.

**Key Policies/ Material Considerations:** N/A

**Inspector Considerations and Key Issues:** Whether the grounds of appeal can be substantiated.

**Brief Assessment:** The Inspector dismissed Appeal A on the basis that insufficient evidence was presented to convince the Inspector, on the balance of probability, that the property had been used as an HMO for at least 10 years. In terms of Appeal B, the Inspector considered that Ground (e) was incorrectly pleaded and Appeal B therefore failed in that regard. The Inspector considered Grounds (b), (c) and (d) together. The Inspector found, as a matter of fact and degree, that the property was not being used as an HMO but as three separate flats. In terms of the Ground (d) appeal then the Inspector noted that the relevant period to be considered for the use to be immune from enforcement action was four years. Insufficient evidence was provided by the appellant to convince the Inspector that the change of use took place at least four years prior to the serving of the notice. In terms of Grounds (f), the Inspector accepted that the steps in the notice were excessive as they required the removal of all kitchens and bathrooms, which would not enable the building to revert to its former use as a single family dwelling house. The Inspector allowed an extension in the period of compliance from 3 to 6 months and therefore the appeal under ground (g) was also successful.

**Implications:** No new implications

**7. Site Address: 293 Hoxton Street, London N1 5JX**

**Application and Appeal Reference: 2004/0443/ENF & APP/U5360/C/07/2051454**

<b>Inspectors Ruling: DISMISSED</b>
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**Development Description:** Without planning permission, the unauthorised construction of an extension, including 2 metal roller-shutters, to the front wall of the retail premises.

**Type of Appeal:** Public inquiry appeal against the Council's enforcement notice issued on 26 June 2007. The appeal was made on Ground (a) – that planning permission should be granted for what is alleged in the notice, and Ground (d) – that the breach identified in the notice is immune from enforcement action.

**Key Policies/ Material Considerations:** PPS1, UDP Policies EQ1, EQ12 and London Plan Policies 4B.1 and 4B.11.

**Inspector Considerations and Key Issues:** In terms of the Ground (a) appeal, this is the effect of the development on the character and appearance of the building and the surrounding area, including its effect on the setting of the Hoxton Street Conservation Area and the Parish Church of St Anne, Hoxton with St Columbia, which is a Grade II Listed Building.

**Brief Assessment:** The Inspector considered the Ground (d) appeal first and found that the evidence presented by the appellant was not sufficiently precise or unambiguous to establish on the balance of probability that the extension was substantially completed before 26 June 2003. In terms of the Ground (a) appeal the Inspector found that the roller shutters and front extension did not affect the setting of the nearby listed building but that they were incongruous and visually harmful.

**Implications:** No new implications

**8. Site Address: 2-16 Phipp Street, London EC2A 4NU**

**Application and Appeal Reference: 2007/2099 & APP/U5360/A/08/2067539**

**Inspectors Ruling: DISMISSED**

**Development Description:** Erection of a new four-storey plus basement building to provide 1,536sqm of Class B1 accommodation and 11 residential units.

**Type of Appeal:** Hearing appeal against the Council's refusal of planning permission.

**Key Policies/ Material Considerations:** PPS3, London Plan Policies 3A.9 and 3A.11, SPD 'Affordable Housing',

**Inspector Considerations and Key Issues:** Whether the proposal would accord with national and local policies relating to affordable housing and whether there are any material considerations that would outweigh any conflict with affordable housing policies.

**Brief Assessment:** The appellants set out that a previously approved scheme (ref.2004.2539) should be regarded as a fall-back position. It is noted that no affordable housing was required to be provided by the Council in the 2004 scheme. On site, the Inspector found that what had been built was more consistent with the appeal scheme than the scheme permitted in 2004. Accordingly he considered that the 2004 scheme did not represent a realistic fall-back position. The Inspector concluded that the proposal would fail to comply with adviCe in PPS3 and with London Plan policies relating to the provision of affordable housing.

**Implications:** No new implications.

**9&10 Site Address: 42 Lower Clapton Road, London E5 0PD (The Lord Cecil Public House)**

**Application and Appeal Reference: 2007/1866 & APP/U5360/A/08/2070410 (Appeal A)**

**& 2007/1868& APP/U5360/E/08/2070412 (Appeal B)**

**Inspectors Ruling: BOTH APPEALS DISMISSED**

**Development Description:** Appeal A: Demolition of existing public house and erection of part 3-storey part 5-storey building plus basement to provide three 4-bed houses, one 3-bed maisonette, one 2-bed maisonette and 11 flats comprising six 1-bed flats, four 2-bed flats and one 3-bed flat and 143sqm of commercial retail A1/A2. Appeal B: Demolition of entire building.

**Type of Appeal:** Appeal A: Written representations appeal against the Council's refusal of planning permission. Appeal B: Written representations appeal against the Council's refusal of Conservation Area Consent.

**Key Policies/ Material Considerations:** Clapton Square Conservation Area Appraisal, PPG15, London Plan Policy 4B.1, UDP Policies EQ1, EQ12 and EQ13.

**Inspector Considerations and Key Issues:** In both appeals, the main issues were the effect of the proposals on the character and appearance of the Clapton Square Conservation Area, having regard to the duty under Section 72(1) of the Planning (listed buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

**Brief Assessment:** Whilst the Inspector acknowledged that several alterations and modifications had been made to the building over time, in his view they did not undermine the quality of the building to the extent that it no longer has an important role in the Conservation Area. The Inspector considered that the building is an important component of the street scape and therefore makes a positive contribution to the character and appearance of the Conservation Area. The Inspector considered that, despite evidence of vandalism, squatters, fire damage, missing roof tiles and general decay no sound case had been made to demonstrate that restoration is unviable. Furthermore, no clear evidence was provided to demonstrate the extent of marketing of the property for alternative uses. Whilst the Inspector was satisfied with the design solution offered by the proposed re-build, he did heed advice in PPG15 which states that the architectural merits of

proposed replacement buildings should not in themselves justify demolition other than in exceptional cases. The Inspector did not consider that the provision of affordable housing in the replacement scheme provided exceptional circumstances in this case. Accordingly both appeals were dismissed.

**Implications:** No new implications.