
Appeal Decisions

Hearing held on 1 March 2017

Site visit made on 1 March 2017

by Nigel Burrows BA MRTPI

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

Decision date: 07 April 2017

Appeal A: APP/U5360/C/16/3149327

Land at 53 Laburnum Street, Hackney, London, E2 8BD

- 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 Shiva Ltd against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice, ref: 2015/0444/ENF was issued on 17 March 2016.
- The breach of planning control as alleged in the notice is the erection of an unauthorised structure at roof level and the erection of fencing around the roof edge.
- The requirements of the notice are:
 1. Remove the unauthorised structure from the roof area of the building
 2. Remove the unauthorised fence installed around the roof edge
 3. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld

Appeal B: APP/U5360/W/16/3155988

Land at 53 Laburnum Street, Hackney, London, E2 8BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Shiva Ltd against the decision of the Council of the London Borough of Hackney.
- The application Ref 2016/1640, dated 4 May 2016, was refused by notice dated 11 July 2016.
- The development proposed is described as 'Retention of roof top prototype house and associated green lath parapet wall'.

Summary of Decision: The appeal is dismissed

Appeal C: APP/U5360/W/16/3160494

Land at 53 Laburnum Street, Hackney, London, E2 8BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Shiva Ltd against the decision of the Council of the London Borough of Hackney.
- The application Ref 2016/2537 dated 28 June 2016, was refused by notice dated 15 September 2016.
- The development proposed is described as 'Relocation of prototype house together with retention of green wall'.

Summary of Decision: The appeal is dismissed

Procedural Matters

1. As indicated in the headings above, Appeal A relates to an enforcement notice alleging the erection of an unauthorised structure at roof level and the erection of 'fencing' around the roof of the appeal premises. At the time the notice was issued, the 'fencing' around the roof of the premises apparently comprised reclaimed timber railway sleepers.¹ However, it appears that the original enclosure was later modified. A higher, lathe-type fence was subsequently attached to the original enclosure and, in effect, partly conceals it.
2. The scope of the enforcement notice was discussed at the hearing. The Council's stance was that the notice also bites upon the lathe fence. However, this was not present at the time the notice was issued. The higher lathe-type fence also appears materially different to the original 'fence'. As such, it appears to involve a subsequent breach of planning control which falls outside the scope of the notice. The appellant's representative also confirmed the original 'fence' can be removed as it is inset from the edge of the roof.
3. I therefore intend to deal with Appeal A on the basis that it relates to the unauthorised structure at roof level and the 'fencing' present at the time the notice was issued.
4. It is also pertinent to note that Appeal B arises from the Council's refusal of planning permission for what is described in the application documents as '*Retention of roof top prototype house and associated green lath parapet wall*'. In effect, this proposal involves a retrospective application for the retention of the roof-top building and for the modified enclosure erected around the roof of the premises, which could develop as a 'green wall'.
5. Appeal C arises from the refusal of permission for what is described in the application as '*Relocation of prototype house together with retention of green wall*'. This proposal involves the relocation of the roof-top building to another position within the building complex, albeit with the retention of the 'green wall' lathe fence in its present position.

Background

6. The appeals relate to a complex of buildings situated between Laburnum Street and Regent's Canal within Haggerston in Hackney. The complex is bounded to the west by Haggerston Road and to the east by Kent Wharf. According to the appellant, Columbia Wharf and Brunswick Wharf are part of the same premises known as 53-55 Laburnum Street. The buildings share a common vehicular access and forecourt area.
7. The plan attached to the Council's enforcement notice indicates that Columbia Wharf is on the western side of the complex and is linked to Brunswick Wharf to the east. The latter building is set back behind the forecourt and access onto Laburnum Street.
8. Confusingly, some of the appellant's drawings and Design and Access Statements (DAS)² label the complex of buildings differently - with Columbia Wharf shown upon the east side of the site and Brunswick Wharf upon the west side. However, for the purposes of the current appeals, I shall adopt the notations shown on the enforcement notice plan.
9. The Council confirms that the buildings within the complex are not listed. In the context of the proposals subject of Appeals B and C, the Planning Officers' reports also state: "*The site is not located within a conservation area but is immediately south of the boundary of the Regent's Canal Conservation Area.*" This is incorrect. At the hearing the main parties confirmed the site is within the Conservation Area (adopted in 2007).
10. The Council has drawn my attention to the presence of two Grade II listed buildings in the vicinity of the site. These are Haggerston Bridge (which lies just to the northwest of the site where Haggerston Road crosses the Regent's Canal) and Haggerston Baths (which is opposite the site on the south side of Laburnum Street).

¹ As shown in the photographs at Appendix 1 attached to the Council's statement and observed at the site visit

² Lodged with the applications subject of Appeals B and C

11. In the context of Appeal A, the appellant describes the use of the site as 'artists' studios, two residential spaces, workshop/storage facilities and associated offices' .³
12. However, in the context of Appeal C, the appellant's grounds of appeal also state: "*The appeal site is being used as an experimental architecture showcase in collaboration with the artists' charity, Art House Foundation. Proposals for structures where art meets architecture, exploring themes of recycling, rapid-build and waterside/waterborne construction are invited and selected for construction and display on our otherwise unused roof spaces. Art House Foundation is promoting the opportunity for self- or assisted-build architecture projects meeting the design criteria in architecture schools for temporary construction and display in this central London waterside location.*"⁴
13. The 'roof top prototype house' has been erected on the roof of Columbia Wharf, the two storey building within the southwest part of the site. The structure is described by the appellant in various ways. One description is 'an experimental low-cost housing prototype which could be adapted for short to medium term use on City rooftops'.⁵ The structure is evidently used to test recycled composite cladding/roof sheeting (e.g. recycled Tetra-Pak).
14. The structure is also described as 'The Beach House'. The submissions on Appeal A state "... *the design of the prototype structure is derived from a traditional beach house or ranch structure (Stilts, verandah, corrugated sheet walls and double pitched roof). This effect is emphasised through the ground/roof-covering of beach pebbles.*"
15. The submissions also shed some light on the appellant's objective for the rooftop at Columbia Wharf, namely "*To design, develop and build a prefabricated lightweight structure that marries the ethos of art and architecture and at the same time proves the performance and versatility of a new recycled and recyclable material. A familiar, traditional architectural form was selected to showcase the material's obvious potential in temporary, fast build or relief housing projects, such as in conflict zones across the world. The parallel 'art installation' brief is intended to expose the material to a different category of users with more experimental and creative interests. The structure is thus conceived to attract as much attention as possible whilst stimulating designs for cheap and efficient housing solutions suitable for erection in a full range of climates.*"⁶
16. The submissions for the appellant also state: "*The concept of the Columbia Wharf roof top pavilions has been formally introduced to students at both the Inchbald School of Design and the Courtauld Institute. Both schools are widely recognised as leading educators in the worlds of design and architecture. Students of both schools have made site visits and are excited by the Beach House itself and the concept it has initiated. For the duration of the current incarnation of Columbia Wharf, the intention is to biannually commission, host and exhibit art/architectural installations conceived to explore and inform the same inquiries as the Beach House. The structures will stand on the flat roofs of the Wharf for two years before being removed or replaced.*"⁷
17. Notwithstanding the extensive planning history upon the appeal site, the lawfulness of the use of the site for such purposes is unclear. Be that as it may, the current appeals are concerned with operational development on the site. I have dealt with them on that basis.

The Section 174 ground (a) appeal and Section 78 appeals

Main Issues

18. There are three main issues in these appeals. The first is the effect of the development upon the character and appearance of the building complex. The second is the implications

³ Paragraph 11 of the appellant's statement of case (APP/U5360/C/16/3149327)

⁴ Paragraph 3 of the appellant's grounds of appeal (Appeal C)

⁵ Paragraph 52 of the appellant's initial statement of case on Appeal A

⁶ Page 3 of the appellant's further statement of case (Appeal A)

⁷ Pages 4 and 5 of the above statement

of the development for the character or appearance of the Regent's Canal Conservation Area. The third is its implications for the setting of the listed buildings in the vicinity.

Issue 1: Character and Appearance of the Building Complex

19. The buildings within the complex appear to have evolved over time and in a piecemeal manner following the cessation of the use of the site for coal gas production.⁸ According to the appellant's submissions, the canal and road-side buildings at the eastern end of the site are surviving remnants of the gas industry. The DAS lodged with the planning application subject of Appeal B appears to suggest that Columbia Wharf was built between 1951 and 1963 and Brunswick Wharf was built between 1895 and 1916.⁹
20. The appellant indicates these buildings were constructed for warehousing, light industrial and offices. I observed they still retain this commercial form and character.
21. The appellant's stance is the host building(s) have no consistent form or proportions, the form of their roof structures are disparate and there is no consistency in terms of building materials or colour. It is alleged the scale of the prototype dwelling is entirely consistent with the form and proportions of the building complex, the dual pitched roof is not out of character with the host building(s) or the wider townscape and, furthermore, the grey profiled cladding/roofing is consistent with the materials on the neighbouring buildings.
22. However, notwithstanding the justification put forward to support the design of the unauthorised roof-top structure, it is difficult to escape the impression that the structure is what it is – namely a cheaply-constructed, single-storey prototype dwelling with innovative cladding placed on the flat roof of a two storey building of commercial form and character.
23. I observed the character, architectural form and composition of the structure appears at odds with the host building. I appreciate that certain elements of its design and materials might be found elsewhere in the building complex and the wider townscape; however, this does not imply that the structure as a whole is appropriate to its particular context. The prototype dwelling does not successfully harmonise with the design, character or appearance of Columbia Wharf, nor does it stand alone as an example of high quality design. Instead, the outcome is an incongruous roof-top appendage to a commercial building prominently located at the junction of Haggerston Road and Laburnum Street.
24. I have borne in mind the appellant describes the structure as 'The Beach House'. It is suggested the form of the structure is that of a typical waterside summerhouse. The appellant considers that it evokes traditional leisure or holiday homes in a canal, river, or marine environment. The appellant also states: "*Placed on the rooftop, as it is, The Beach House references its canal-side setting with a sense of irony.*"¹⁰ I am rather less sanguine that it is likely to be perceived in this way, given its incongruous nature.
25. Appeal C involves the relocation of the prototype dwelling to the flat roof of the single storey range situated on the east side of Columbia Wharf. However, this would not enable the building to be successfully assimilated within the appeal site. The dwelling would be orientated towards Laburnum Street and would be located between the bulkiest buildings on the site, Columbia Wharf and Brunswick Wharf. The outcome would be an awkward juxtaposition of buildings of different scale, bulk, design and character. The structure would have little visual or physical affinity with the adjacent commercial buildings within the complex. I consider that it would also be incongruous in this location.
26. I acknowledge the prototype dwelling on the roof of Columbia Wharf is screened to some extent by the lathe fence, which could be adapted to provide a 'green wall'. However, to my mind, this form of enclosure should not be used to hide or conceal development that is generally inappropriate to its context. There is a clear risk that such an approach, if perpetuated, could place more reliance on screen fencing and planting rather than

⁸ As part of the coal gas production industry prevalent in the Regents Canal area in the C.19th and early C.20th

⁹ Allowing for the different labels given to the buildings

¹⁰ Page 5 of the of the appellant's further statement of case (Appeal A)

- intrinsically good design. In any event, the height, form and materials of the existing enclosure reinforce the overall incongruity of the roof-top development at Columbia Wharf.
27. I also share the Council's concern about the 'fencing' around the roof of the premises at the time the notice was issued. Whilst the use of reclaimed timber railway sleepers might provide some context to the showcase setting of 'The Beach House', in the overall context of Columbia Wharf it constitutes a crudely designed and inappropriate roof-top enclosure.
28. The appellant appears to have drawn inspiration for the timber enclosures from the extensive use of timber cladding on the elevations of the Bridge Academy and other buildings nearby. However, the use of such materials appears to have been an integral part of the individual design of these buildings, unlike the enclosures before me which appear to have evolved in an ad hoc manner. I note the appellant seeks to retain the prototype dwelling for a temporary period of two years. However, in my view this consideration does not justify inappropriate development that harms the character and appearance of the building complex.
29. The appellant derives support from a planning permission granted by the Council in 2016 for what is described as '*Increase in height of parapet wall at roof level by 3.2m and erection of single storey structure (enclosed pavilion) at roof level*'.¹¹ However, this appears to be a materially different proposal - not least because it involves a masonry parapet around the roof of Columbia Wharf and the erection of a pavilion-type structure with a copper roof.
30. I appreciate the 2016 permission is for permanent development. The appellant alleges it would have 'greater objective impacts' than the development enforced against. At the hearing it transpired that this proposal is not a fallback position. Even if it was, it is likely to harmonise more successfully with the character and appearance of the building complex.
31. I conclude the development subject of these appeals harms the character and appearance of the building complex contrary to the relevant development plan policies, including CS24 of the Council's Core Strategy¹² insofar as it requires all development to enrich and enhance Hackney's built environment, and DM1 of the Council's Local Plan¹³ which amongst other things requires all development to be of high quality design.
32. I do not consider the development is supported by paragraph 58 of the National Planning Policy Framework (NPPF), as claimed by the appellant. Whilst the appellant considers the various works have assisted in optimising the potential of the site to accommodate development, to my mind, they do not accord with the aim of ensuring that development is visually attractive as a result of good architecture and appropriate landscaping.

Issue 2: The Regent's Canal Conservation Area

33. The Regent's Canal forms part of an extensive green corridor that runs for almost 4km through the southern part of the Borough of Hackney. It is apparently well used by the local community, boat-users and by commuters who use it for cycling and walking to work.
34. According to the Council's Conservation Area Appraisal (CAC) the historic areas in the Borough fall into four groups. The Regent's Canal Conservation Area is considered to fall within the third and fourth groups, as it is a well-used public space with an important environmental landscape and it also has a unique industrial heritage, both along the canal (including the locks, bridges and moorings) and in the industrial buildings beside the canal.
35. The appellant is highly critical of the inclusion of the appeal site within the Conservation Area. The designation of the site as part of the Conservation Area is considered to be untypical as the designation did not generally include other land and premises adjoining the Canal. The appeal submissions refer to the designation being 'under challenge' and also to the Council's Conservation Areas Review Study, due to complete in June 2017.

¹¹ Ref: 2016/1551

¹² Adopted in 2010

¹³ Development Management Local Plan adopted in 2015

36. Nevertheless, as a matter of fact, the appeal site lies within a statutorily designated conservation area. Consequently, section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a general duty upon decision makers with respect to any buildings or other land within a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
37. The appellant's stance is the special character of the Conservation Area appears to be wholly focused on the Regent's Canal, its towpath and bridges and, to a limited extent, buildings or structures such as wharves that have a functional relationship with it. The appellant considers the buildings on the site are devoid of any aesthetic interest and they do not exhibit the special character that is the basis for conservation area designation. It is suggested that the significance of these buildings to the Conservation Area is 'non-existent or negligible'.
38. However, paragraph 1.1 of the Council's CAC indicates it is the conservation area as a whole rather than specific buildings that is of special interest. The paragraph also states: "Conservation Areas give broader protection than listed individual buildings: all the features listed or otherwise (my underlining) within the area are recognised as part of its character."
39. I appreciate the buildings within the appeal site appear to have evolved over time and in a piecemeal manner following the cessation of the use of the site for coal gas production. Having said that, as previously noted, the canal and road-side buildings at the eastern end of the site appear to be surviving remnants of the gas industry. I observed the site frontage to the canal also contains buildings that appear to have a functional relationship with it and, furthermore, that Columbia Wharf and Brunswick Wharf provide a backcloth to this canal frontage. A photograph of Brunswick Wharf appears at Figure 20 of the CAC, where it describes the section of the canal between Queensbridge Road and Kingsland Road.
40. The appellant emphasises the CAC describes this section of the canal as 'fairly bleak'. However, almost 10 years have elapsed since its publication. The indications are that changes have occurred since this time, including the completion of the Bridge Academy.
41. In any event incremental changes to individual buildings, such as inappropriate alterations or additions, can have a detrimental effect not only on the character and appearance of the building itself, but also upon the conservation area as a whole. I find this to be the case with respect to the works subject of Appeals A and B. These works are noticeable from both within and outside the Conservation Area.¹⁴ The works are also likely to be visible from the upper floors of a number of the surrounding buildings. I consider the adverse effect of the incongruous roof-top structure and enclosures diminishes the contribution that Columbia Wharf makes to its historic surroundings.
42. I have similar concerns about the development subject of Appeal C, particularly as the re-positioned prototype dwelling would have little visual or physical affinity with the adjacent commercial buildings within the complex. Whilst the structure might not be readily visible from the canal, its intrusive presence within the Conservation Area would be noticeable from Laburnum Street and from the upper floors of the buildings nearby.
43. Overall, I conclude the development subject of these appeals would fail to preserve or enhance the character or appearance of the Regent's Canal Conservation Area. The development also conflicts with the relevant development plan policies cited by the main parties, including policy CS25 of the Core Strategy and policy DM28 (A) of the Local Plan, insofar as they seek to protect conservation areas within the Borough.

Issue 3: Setting of Listed Buildings

44. The approach to listed buildings is also underpinned by the statutory requirements placed upon decision makers by the Planning (Listed Buildings and Conservation Areas) Act 1990. In this respect, section 66(1) of the Act indicates that in considering whether or not to grant planning permission for any proposals, the local planning authority (or the

¹⁴ Notwithstanding the rooftop Artwork and 'Cardboard' building subsequently erected nearer to the Canal – the lawfulness of which is unclear

- Secretary of State) shall have special regard to the desirability of preserving a building or its setting or any features of special architectural or historic interest which it possesses.
45. The glossary to the NPPF defines the setting of a heritage asset as *"The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."*
46. Haggerston Bridge is just to the northwest of the site and is one of two bridges along this section of the canal to be statutorily listed. The structure dates from 1816-1820, having apparently been constructed by James Morgan and supervised by John Nash.
47. The appellant's stance is the setting of the bridge is focussed almost entirely upon the canal and towpath, with its parapets reflecting the narrowing of the road as it crosses the bridge. I agree these are the surroundings in which the heritage asset is most likely to be experienced. Views of the architectural form of the bridge are best appreciated from the canal and towpath and, to a lesser extent, when approaching along Haggerston Road. The development subject of Appeals A and B can be seen from the vicinity of the bridge, but to my mind it does not intrude upon its immediate setting. Similarly, I consider the development subject of Appeal C is unlikely to intrude on the setting of Haggerston Bridge.
48. The implications for the setting of Haggerston Baths are more finally balanced, especially having regard to the prominent location of Columbia Wharf within Laburnum Street and bearing in mind that much of the complex lies opposite the heritage asset.
49. Haggerston Baths date from 1904. The building was constructed by A.W.S. Cross for Shoreditch Borough Council in Edwardian Baroque style. A notable feature of the south façade of the building is the central pedimented section. The north elevation to Laburnum Street is plainer. A later laundry addition exists on the west side of the building. At the hearing the appellant's representative argued that Haggerston Baths appears hemmed in by the neighbouring buildings when viewed within Laburnum Street, which limits its wider setting within this locality. There is merit in this argument.
50. Only oblique views of the north elevation of Haggerston Baths are available when approaching along Laburnum Street. Despite the prominence of the development on the roof-top of Columbia Wharf, on balance, I consider that it does not impinge upon an appreciation of the north elevation of Haggerston Baths or harm its setting. I take a similar view on the development subject of Appeal C. In other respects, as the submissions for the appellant point out, whilst parts of Haggerston Baths have considerable significance as a heritage asset, the influence of its setting on that significance varies considerably in locational terms. There is no firm evidence to demonstrate the overall and somewhat varied setting of this building would be harmed.
51. For the reasons given above, I conclude the setting of the listed buildings in the vicinity of the site would be preserved. In this respect, I further conclude the development does not conflict with the relevant development plan policies cited by the main parties.

Summary

52. I have found in the appellant's favour on the third issue. However, I find this consideration is outweighed by the harm the development would have on the character and appearance of the building complex and by its harmful impact on the Regent's Canal Conservation Area. It is not obvious to me that the objections to the development could be overcome by planning conditions, including those discussed at the hearing.

Overall Conclusions: Appeals A, B and C

53. The Council's concern to protect the environmental quality of the Borough is broadly consistent with the Government's objectives for the planning system, including the need

to protect the built environment and to seek positive improvements in its quality. I consider the development before me is inconsistent with these particular objectives.

54. The relevant development plan policies which seek to protect the heritage assets of the Borough are also broadly consistent with the objectives of the NPPF. Paragraph 132 of the NPPF gives 'great weight' to the conservation of a designated heritage asset. The more important the heritage asset, the greater the weight that should be given.
55. I acknowledge that for the purposes of paragraph 134 of the NPPF, the development would lead to less than substantial harm to the significance of a designated heritage asset. However, I conclude that this harm would not be outweighed by any public benefits. In reaching this conclusion I have weighed all the relevant considerations in the planning balance, including the appellant's aspirations for the appeal site summarised earlier. The appellant considers there are important public benefits by way of art, experimental micro-housing recycling and sustainability workshop(s). Nonetheless, on the evidence before me, I find the benefits advanced in favour of the development would be clearly outweighed by the harm caused to the character and appearance of the building complex and by its harmful impact on the Conservation Area.
56. I have concluded that these appeals should not succeed. I have taken into account all the other matters raised in the representations and at the hearing, however, I find that they do not alter or outweigh the main considerations that have led to my decisions.

Formal Decisions

Appeal A: APP/U5360/C/16/3149327

57. The appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/U5360/W/16/3155988

58. The appeal is dismissed.

Appeal C: APP/U5360/W/16/3160494

59. The appeal is dismissed.

Nigel Burrows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Gray	Shiva Ltd
Mr M Robeson	Town Planning Director, MRPP

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Omodara	London Borough of Hackney
Mr G Callam	As above
Mr M Manikowski	As above

DOCUMENTS SUBMITTED AT THE HEARING:

Document	1	Drawing 2016LA-RF-4, supplied by Mr Robeson
Document	2	Regent's Canal Conservation Area Appraisal, supplied by the Council
Document	3	Plan showing extent of the Conservation Area, supplied by the Council
Document	4	List Entries: Haggerston Bridge; Haggerston Baths, supplied by the Council
Document	5	Council's notification letters of the Appeals
Document	6	Planning Officer's report on application 2016/1551, supplied by the Council
Document	7	List of Matters for Planning Conditions, supplied by the Council