

Appeal Decisions

Hearing held on 26 November & 16 December 2013

Site visits made on 16 December 2013 & 6 January 2014

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 28 February 2014

Appeal 1: APP/V5570/A/13/2197967

Rear of 28 Amwell Street, London EC1

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Turnhold (Islington) Limited against the decision of the Council of the London Borough of Islington.
- The application Ref P2013/0370/FUL, dated 6 February 2013, was refused by notice dated 10 April 2013.
- The development proposed is the conversion of part of the existing buildings from storage to residential together with rebuilding the lean-to structure and minor external alterations to form 4 residential units and 2 B1/D1 units, together with the conversion of the former Windmill base to B1/D1 with new pedestrian access from Amwell Street and Myddleton Passage and hard/soft landscaping.

Summary of Decision: The appeal is dismissed.

Appeal 2: APP/V5570/E/13/2197978

Rear of 28 Amwell Street, London EC1

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Turnhold (Islington) Limited against the decision of the Council of the London Borough of Islington.
- The application Ref P2013/0415/LBC, dated 6 February 2013, was refused by notice dated 10 April 2013.
- The works proposed are the conversion of part of the existing buildings from storage to residential together with rebuilding the lean-to structure and minor external alterations to form 4 residential units and 2 B1/D1 units, together with the conversion of the former Windmill base to B1/D1 with new pedestrian access from Amwell Street and Myddleton Passage and hard/soft landscaping.

Summary of Decision: The appeal is dismissed.

Appeal 3: APP/V5570/A/13/2202001

Rear of 28 Amwell Street, London EC1

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Turnhold (Islington) Limited against the decision of the Council of the London Borough of Islington.
- The application Ref P2013/0368/FUL, dated 6 February 2013, was refused by notice dated 10 April 2013.
- The development proposed is the conversion of the first floor of the former Engine House and the Windmill base to B1/D1, together with the insertion of a toilet into the first floor void of the Engine House.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Appeal 4: APP/V5570/E/13/2202002

Rear of 28 Amwell Street, London EC1

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Turnhold (Islington) Limited against the decision of the Council of the London Borough of Islington.
- The application Ref P2013/0401/LBC, dated 6 February 2013, was refused by notice dated 10 April 2013.
- The works proposed are the conversion of the first floor of the former Engine House and the Windmill base to B1/D1, together with the insertion of a toilet into the first floor void of the Engine House.

Summary of Decision: The appeal is allowed, and listed building consent is granted subject to conditions set out below in the Formal Decision.

Procedural matters

1. In these decisions I shall refer to the scheme subject of Appeals 1 and 2 as Scheme A, and the scheme subject of Appeals 3 and 4 as Scheme B.
2. During the Hearing the Appellant deleted any intention under Scheme B to form an access to the garden to the east, and this was confirmed with amended drawings OS/000 Rev B and PP.001 Rev A. I have therefore determined the proposal on the basis of those drawings and, as agreed with the parties, I have omitted reference to the access from the description of the development and works.
3. The Appellant submitted a Unilateral Undertaking under section 106 of the Act (the Undertaking) in connection with Scheme A. Having regard to Regulation 122 of the *Community Infrastructure Levy Regulations 2010* the role that its contents have played in my decisions is discussed in the relevant sections below.
4. I appreciate the area covered by the appeal sites has other names and I have taken into account the lengthier descriptions of the proposals on the decision notices. However, subject to the alteration discussed above, I have used the address and descriptions that accord with those on the application forms.

Main Issues

5. The main issues in relation to these appeals are
 - i) whether the proposed uses would be acceptable in principle;
 - ii) whether the proposals would preserve the special architectural or historic interest of the Grade II listed buildings on the appeal sites and/or the character or appearance of the New River Conservation Area in which the sites are located;
 - ii) whether the access to the first floor of the Engine House would be satisfactory given the needs of inclusive access (Appeal 3 only¹);
 - iii) the effect on the provision of affordable housing (Appeal 1 only) and
 - iv) if any harm would be caused to the significance of any heritage assets whether there are public benefits that would outweigh that harm.

¹ Although this issue was also cited on the decision notice relating to Appeal 4 the Council accepted it did not affect the merits of that application for listed building consent.

Policy

6. The relevant elements of the development plan comprise *The London Plan* (adopted 2011), *Islington's Core Strategy* (ICS)(2011) and *Islington's Local Plan: Development Management Policies* (DMP)(2013). I have no reason to consider that any of the key policies cited from these documents are inconsistent with the *National Planning Policy Framework* (the Framework).
7. I was also referred to the *New River Head and Claremont Square Reservoir Planning Brief* (the Brief), adopted in 2013, *Islington's Conservation Area Design Guidelines* (2002) and a Supplementary Planning Document *Affordable Housing Small Sites Contributions* (the SPD). None of these has been subject to external scrutiny and the Brief confirms it is a guide, and so the weight afforded to them is limited. The Brief superseded a similar brief that had been prepared in 1999 for the area subject of these appeals, and in turn the 1999 brief replaced one from 1991.
8. The reasons for refusal also made reference to the *Islington Unitary Development Plan*. However that has now been superseded with the adoption of the DMP and so its policies have not had a bearing on my decision.

Reasons

Background

9. The area covered by the sites of these 4 appeals (which, hereafter I shall refer to simply as the site) has been used for over 400 years in connection with the supply of water to London, and in that regard it has played an important part in the continued growth and development of the city. The site was originally developed as it was the place where the New River, a man-made river that ran from Hertfordshire to bring a regular water supply, arrived in London. However, over the years the site's role and character have evolved and changed to respond to the varied technologies and demands placed upon it.
10. The complex of buildings across the site comprises the Engine House with the adjoining Boiler House, Pump House and Coal Store² (collectively Grade II listed as a single building), the base of a windmill (again Grade II listed) and an unlisted collection of stores along the northern boundary (referred to as the North Stores). Most of these buildings date from the 19th Century though parts of the Engine House are older and the Windmill is from 1708. The general evolution of the site has been outlined in the submissions and is not a matter of any material disagreement between those involved in the appeals. While the buildings have been altered externally over time they nonetheless maintain a robust utilitarian and industrial appearance befitting their historic origins. To my mind these changes, which the Council called 'the patina of age', have added to the interest of the buildings by alluding to how they have responded to the varying demands that have been placed on them. The site is now at the end of a walk along the route of the New River, with a viewing platform and information boards to the east.
11. In 2013 English Heritage revisited the listings of the listed buildings on the site but concluded not to change their grades. This in no way denigrates their value as, by being listed, they are still buildings of national importance. However, the revised listing altered the status of the Coal Store. As a result it

² Sometimes referred to as the South Stores

was no longer an attachment to the listed Engine House but rather was explicitly included in the listing of that building. Moreover, English Heritage acknowledged that the Engine House was 'at the high end of the Grade II scale', and while this did not affect its grading it is nonetheless a material consideration when I assess its significance.

12. The buildings on the site are read very much together, and their complementary nature means their group value as a collection of industrial buildings is significant. Therefore the effect of any alterations has to be assessed in that context. Moreover, the complex does not stand in isolation but it was part of a wider cluster of structures and buildings, such as former offices, laboratories, water ponding features and so on, that also formed part of the water operations and are now mostly listed. In recent years these other buildings outside the site have been converted to different uses, but their original purposes can still be gleaned from their external appearances.
13. The New River Conservation Area is focussed on the buildings associated with the supply of water. In that regard, even though the buildings subject of these 4 appeals concern a relatively small part of the overall complex connected with those operations, their distinctive and dramatic industrial appearance mean they contribute positively to the significance of that conservation area as a heritage asset.
14. The Engine House and Pump House are together also identified as a Landmark in DMP Policy DM2.5. However, it was not shown that, in relation to the matters before me, such a designation gave rise to additional concerns above and beyond those relating to their listed status and their location in a conservation area.
15. In 2012 2 further appeals were dismissed in connection with this site (the 2012 decisions³). The proposal subject of those 2 decisions related to all the area covered by the 2 schemes before me, and sought to make alterations to the buildings and convert them to 7 residential units and uses in Classes B1/D1 of the *Town and Country Planning (Use Classes) Order 1987* (as amended). While there was some discussion at this current Hearing about the wording of the 2012 decisions and the way in which harm was identified and weighed, from paragraph 29 of those decisions it is clear that scheme was refused because of its effects on the southern elevations of the Boiler House and what I have termed the Coal Store (but which is called the South Stores in those decisions). Had other matters discussed in those decisions caused harm that was not outweighed by the public benefits it is reasonable to assume they too would have been cited in that concluding paragraph.
16. Finally, I am aware the Council stated a structural survey should have been submitted to support the removal of the lean-to on the Coal Store while Islington Building Preservation Trust (IBPT) expressed the need for a comprehensive study of the building. To my mind an element of proportionality needs to be brought to the required documents, and given the significance of the buildings the appeals can be determined in the absence of these various surveys and studies.

³ APP/V5570/A/12/2175158 & APP/V5570/E/12/2175185 dated 10 October 2012

Substantial harm v less than substantial harm

17. When assessing the effect of works on listed buildings under paragraphs 133 and 134 of the Framework it is necessary to identify whether any harm that may be found is substantial or less than substantial. However, these terms are not defined in that document.
18. The parties agreed that less than substantial harm would be caused by Scheme B, but in relation to Scheme A there were differing views, with the Council contending the harm would be substantial. To this end it referred me to a list of works in DMP paragraph 2.47, but to my mind that list does not define what is or is not substantial harm. I accept that the works in the list 'have the potential' to cause substantial harm to a listed building's significance. However, if taken in its simplest terms the list is an absolute while the assessment of harm involves a relative judgement concerning the extent and nature of the works assessed in the context of the significance of the building. It is also of note that the list includes works that are commonly found in many applications for listed building consent, while the Council accepted the creation of a new opening, which is one of the works identified on the list, caused less than substantial harm under Scheme B. Consequently, those listed works in themselves cannot be taken as necessarily resulting in substantial harm.
19. Rather, in the Framework the term is linked to 'total loss of significance', and so while total loss and substantial harm must be different there must also be some similarity with regard to impact. Therefore, relying on the ordinary and natural meaning of the words to my mind the definition of substantial harm must be comparable to the total loss of significance and so must concern works that, whilst not necessarily being extensive, have a very great impact on the significance of the building. Moreover, the flip-side of that approach requires an acceptance that less than substantial harm could relate to harm that, although notable, is not quite sufficient to result in the high level of impact I have identified for substantial harm. Finally, the cumulative effect of minor works is a valid consideration when assessing whether or not harm is substantial, as is the impact on the wider grouping. It is with those matters in mind that I have defined the levels of harm in relation to the works before me.

The proposed uses

20. Currently the site is used for commercial purposes. Scheme A would result in the Boiler House, the Coal Store and part of the North Stores becoming dwellings, with the Windmill and the eastern end of the North Stores being for B1/D1 uses. A pedestrian route from Amwell Street to Myddleton Passage is also to be secured under the Undertaking. Scheme B proposes both the Windmill and the upper floor of the Engine House to be used for B1 and/or D1 purposes. The Pump House and the ground floor of the Engine House (other than the staircase) fall outside all 4 appeals.
21. The Council's position on the uses at the site has varied over time. In these appeals no objections were raised in the decision notices to the uses in Scheme B but there was a concern about a residential element proposed under Scheme A. However, the 2012 decisions stated that the Council expressed no objections in the reasons for refusal to the residential use then proposed, while an application determined in November 2013 for similar works and uses to

those subject of Scheme B⁴ was dismissed in part because the proposal would fail to deliver a community/heritage facility.

22. The Council confirmed it was seeking what it described as an 'aspiration' to promote a heritage/community use across the site that reflected the historic significance of this complex and allowed a public appreciation and understanding of the buildings. Even the identified community element had to be related, in some way, to the site's heritage.
23. This aspiration is found in the Brief, where it is described as a 'preferred use'. However, as stated above that does not form part of the development plan and this inevitably affects the weight it can be afforded. There is no specific policy basis in the development plan itself for the site to be used for these purposes. While DMP Policy DM2.3C(iv) was cited that merely refers to the best use for a listed building usually being the use for which it was designed, but if that is demonstrably unviable other uses may be permitted provided they do not harm the significance of the building. It does not specifically identify this site for a use of the nature envisaged in the Brief.
24. It was accepted that the use of the site entirely in connection with the water industry is no longer feasible or necessary, and in the future such activity will be confined to the Pump House, the ground floor of the Engine House and a small section of the North Stores only. Alternative uses therefore need to be found for the rest of the complex to ensure its up-keep and maintenance.
25. Mindful of its history and its position at the end of the New River walk, I understand why the Local Planning Authority and others may wish the site to be used as a heritage centre educating people about the role it played in the growth of London. However, calling the heritage centre an 'aspiration' seems entirely correct as, given the weight afforded to the Brief, and having regard to DMP Policy DM2.3(C) I see no policy basis to support such a use at the expense of others. Moreover, for reasons I explain below I cannot be confident of the viability of the alternative proposals put forward for the site by the Heritage of London Trust (HoLT). As such I have no basis to consider that a viable scheme more in line with the aspirations in the Brief would be forthcoming if these appeals were dismissed.
26. Undoubtedly privacy and security would mean public access into the buildings and around the complex would be restricted if a residential use commenced. However, public access is not possible now and has not been available in the recent past. It is also of note that even under the HoLT scheme public access to the buildings would be limited and much of the floor space would be studios or offices for private tenants. Moreover, a pedestrian route through the site is proposed and the areas identified for D1 uses under Schemes A and B could be occupied in a manner sympathetic to the Council's aspiration for a heritage use. Therefore mindful of my findings in relation to the limited policy support for the principle of a heritage use, I consider the level of public access now proposed would not be unacceptable or harmful.
27. The Appellant has offered, in the Undertaking, to make the Windmill and either the upper floor of the Engine House⁵ or part of the North Stores available for a heritage organisation. This may go some way to addressing the Council's

⁴ Council reference P2013/2809/FUL issued on 8 November 2013

⁵ Termed the Pump House in the Undertaking but corresponding to what I have referred to as the Engine House

'aspiration' for the site, and it is open for the Appellant to offer the space in this manner if it so wishes. While no such organisation has yet been identified, given the length of the planning process that is not surprising and does not count against the scheme. However, the opportunity for occupation is limited and, in the light of my findings above, it is not a matter that is directly, fairly and reasonably related to the proposal and necessary to make it acceptable in planning terms. Therefore the inclusion of this element in the Undertaking has not been a reason to grant planning permission.

28. The pedestrian route through the site is a more significant offer as it would be open to all, promote travel by means other than the car, and assist in integrating the scheme into the community. Although the Council has raised concerns as to whether public access can be authorised in this manner, noting the Appellant's response I have no basis to consider such access is not possible. This element of the Undertaking is therefore directly, fairly and reasonably related to Scheme A, and necessary to make it acceptable in planning terms. Consequently it would be a reason to grant planning permission.
29. Alterations to allow a residential use in the buildings may have an effect on their special architectural or historic interest, but that does not necessarily undermine the principle of such a use at the site or support the view that the site should be used only for a community/heritage activity.
30. Finally, it was contended that for a heritage/community use to be viable it needed a larger single area or a greater proportion of the site than just the relatively small isolated elements now offered. However, as will be discussed below I have no evidence to show a viable heritage use would be possible here and so the weight attached to this has been limited.
31. Accordingly I conclude that while the uses comprising Scheme A would preclude the establishment of a heritage use across the site, to my mind the principle of such uses would not be contrary to DMP Policy DM2.3(C)(iv). Although the proposal would conflict with the Brief, in relation to this issue that is not a material consideration of sufficient weight to justify a decision that would otherwise accord with the development plan. I also conclude that the principle of the uses proposed under Scheme B would not preclude a heritage use across the site, and so again would not be contrary to Policy DM2.3(C)(iv) in the DMP.

The effect on the historic environment

32. In the Appellant's submissions there was reference to an 'overhauling' of the buildings. This appeared to relate to a general refurbishment, making good areas where there was damage. Such matters can be reasonably controlled by conditions and are to the benefit of the buildings by ensuring their long-term maintenance. Consequently, the following assessments of the works are made in the light of an appreciation that 'overhauling' is also to occur.

The Windmill

33. The Windmill base is the oldest building now on the site, and was one of the earliest attempts to pump water. It therefore has an evidential and historical value, but this is tempered by the fact that the upper floors have been removed and only the ground floor remains.

34. No alterations are proposed to the Windmill under either scheme, and so the significance of that building would not be harmed. Indeed, removing the concrete bollards round the building's outer wall would enhance its appearance.

The Engine House

35. The function of the Engine House means it has been a key element in the site's history. Externally it is still the most dramatic building on the site due to its height, its distinctive form and its limited openings, and it is a focus when looking from the surrounding buildings, gardens and roads. Internally, its upper floor comprises a tall space in the shape of a horse-shoe that curves around the enclosed former flue. The flue used to rise up to a substantial height, but it has now been removed above roof level. Although the upper floor is relatively plain inside, its layout, the evidence on the walls of previous features and its overall character mean its former industrial role is still perceived in a general manner, even if the specific activities cannot be discerned. To my mind it therefore displays an evidential, historical and communal value. Moreover, its curved external brickwork, its swept parapets and its delicate cast iron staircase all add an aesthetic value to the building.
36. Scheme A does not include the Engine House, but Scheme B would provide a new use for its upper floor. This is currently accessed by a decorative metal staircase. No changes to the access arrangements are intended, and there is no basis to conclude its increased usage would harm the staircase.
37. Rather, the only alterations proposed to that building comprise the creation of a toilet on the upper floor. This would be in the former flue and an opening in the flue wall would be created to allow access. These works were also in the scheme subject of the 2012 decisions, and in those decisions it was said they 'need not cause real harm' to this robust building and the evidence of the flue. Before me at the Hearing there was some debate as to what this phrase meant, but it is clear the 2012 decisions do not say such works would cause no harm. Rather that Inspector concluded that harm, albeit not 'real', would be caused. To my mind, the presence of the toilet in the flue and the its disruption to what I was told is an uninterrupted void would not have a harmful effect on an understanding of this feature, and from the upper floor of the building the flue could still be appreciated as readily as at present. However, a loss of fabric to form the opening would cause less than substantial harm.

The Boiler House

38. Internally, this building comprises a large double height room which has been reduced in volume by the creation of an enclosed area at the southern end. I understand that it played a key role in the functioning of the site. Although the precise nature of this role is not now readily apparent, the scale and utilitarian arrangement of its internal space reflects the building's past and the need to respond to the various industrial processes that might have been required there. This is complemented by the internal roof structure that is still visible. Externally, the few openings on the south elevation and the large functional openings on the north contribute to the significance by maintaining a robust industrial appearance.
39. Under Scheme A an upper floor would be introduced across much of the building. This would disrupt the appreciation of the internal height and, to some degree, mask views of the roof structure. However, it is not proposed to

extend the walls at first floor level up into the roof trusses. The trusses would therefore remain, uninterrupted, stretching across the building and they could be seen from both the ground floor and the new first floor. The sense of scale within the building is already reduced to some degree by the existing elements that are present, and so to my mind the harm caused by the intervention now proposed would be limited. The floor would also be lowered and the roof would be raised slightly to accommodate insulation, but with appropriate controls I see no reason why these alterations need be harmful.

40. Externally, the openings on the north elevation would be replaced with treatments that were more sympathetic, while the existing louvres on the southern wall would remain with windows inserted behind. A door would also be formed at ground floor level in the south elevation, and as this would result in some loss of fabric that would again lead to limited harm. There would also be a slight change to the proportion of solid walling but this would not be sufficient to affect the significance of the building.
41. Therefore the loss of fabric and the insertion of a first floor under Scheme A would cause less than substantial harm to the Boiler House.

The Coal Store

42. Attached to the Boiler House is the Coal Store, which is a relatively long single storey building with a hipped roof. Like the Boiler House this appears, both inside and out, as a functional building that unashamedly reflects its industrial past, and it played an essential ancillary function to the overall activity on the site. It comprises 2 rooms, one larger than the other, of a simple flexible layout that allows a general appreciation of its use, though the precise nature of the purposes to which it was put are difficult to establish. Again, the original roof structure is still visible and this contributes to its significance.
43. Externally, openings of an industrial style are on the north wall of the building. The southern elevation is one of the more prominent in the complex, being visible from the gardens and flats to the south, and from Rosebery Avenue beyond. Along this elevation is a series of regular and rhythmic recessed arches, 3 of which include relatively small arched windows but the remainder are blind. These add an aesthetic value to the building but their precise origins, purposes or form seem unclear. For many years in the early 20th Century these arches, whether they were then open, blind or glazed, would have been substantially hidden from wider view as a canopy, which has now been removed, ran the length of that side. Despite the decoration provided by the arches the relatively few openings in this elevation serve to emphasise the industrial function of the building.
44. A lean-to is on the east end of the Coal Store. This is of a later date as it is not 'toothed in' and its mono-pitch roof is at odds with the hip on the store building. When English Heritage revisited the listings in 2013 it excluded this extension from the listing, stating it did not consider the lean-to had special interest, and this was not inconsistent with the findings in the 2012 decisions.
45. The internal subdivision of the Coal Store into 2 units would remain under Scheme A, although the dividing wall would be positioned more centrally, and the floor would also be lowered. The upper portion of the east wall would be opened to allow a link to a bedroom, but the lower portion would remain thereby maintaining the sense of containment and defining the extent of the

- original internal space. Again the roof would also be slightly raised to allow for insulation. To my mind these works would not adversely affect the appreciation of the building when compared to the existing situation.
46. As with the Boiler House a partial first floor would be introduced that would reduce the sense of openness in the building but would allow views of the roof to be retained. Therefore, while some harm would be caused by this flooring to the spacious industrial character of the interior it would not be substantial.
47. The scheme subject of the 2012 decisions involved more subdivision than is found in Scheme A, and it relocated the east wall to form a unit that would have been partly at the end of the store and partly in the rebuilt lean-to. Despite this more extensive work, no harm was mentioned in those previous decisions in connection with the internal alterations to this building.
48. Externally, the treatment to the north elevation would respect the industrial character of the building.
49. On the southern elevation, all 7 of the arches would be fully opened and fitted with glazing that would fill the recessed area within the arch⁶. There has undoubtedly been some infilling within these arches. However, mindful of the varied depths of the arches it has not been shown that all 7 were fully open at the same time, or that an arrangement of 7 full-sized openings necessarily reflects the original or previous design of the building. In any event, even if these 7 arches were open before, their visual impact and their effect on the character of the building would be markedly different to that of the glazed domestic windows now proposed and for a significant period they would have been substantially concealed from view by the canopy. Given the prominence of this elevation, in my opinion the effect of these works would be to erode unacceptably the solid robust appearance of the building created by the extensive brickwork now present and replace it with a far more glazed treatment that would portray a clear residential character, thereby undermining its historic significance and adversely affecting the functional and industrial nature of the site. Consequently harm, albeit less than substantial, would be caused.
50. The Appellant contended the brick infills in the arches are in no sense historic fabric of any value. However, the date when the arches were filled has not been confidently given, and so the age of the infilling is still uncertain. Furthermore, many listed buildings have been subject to changes, and it is clearly not always desirable to restore them to their original state. Indeed, often such changes can make a significant contribution to the building's special architectural or historic interest, and so, while further works can still be acceptable, they have to be undertaken appropriately. In this case, mindful of the uncertainty over the histories of the infilled panels, I have found they now add positively to the significance of the building by contributing to its solid industrial appearance. Therefore I do not share the Appellant's view that they are 'in no sense historic fabric of any value'.
51. In assessing this matter I have had regard to the 2012 decisions. The concern of that Inspector was focused on the conservatories that were then proposed to every other window in this elevation and on the light wells that were to be

⁶ From the elevations it is unclear as to whether the window in the arch closest to the Boiler House would extend to the ground as its very bottom portion is concealed by a planter. However, even if it only extends as far as is shown on drawing 1267 PA/004 this has no material effect on my reasoning or conclusions

between the conservatories. In his opinion these would have been intrusive and disruptive elements that would have been too assertive. However, he expressly stated that 'alone, the works of opening the arches could be acceptable, being reversible and retaining an architectural rhythm with the lost fabric being of limited aesthetic value'.

52. However, the previous Inspector did not have before him an elevation showing the conservatories omitted, and on that scheme the windows that were to be between the conservatories on this wall did not extend down to ground level. I also reached my findings having regard to the Council's comments on the arches, the Appellant's note and the various comments and responses these stimulated, and these were not in front of the Inspector when writing the 2012 decisions. Finally, the listed status of the Coal Store has also changed since the 2012 decisions were issued. Therefore the previous Inspector came to his view having regard to different information to that before me, and so it is not unreasonable for me to arrive at different findings on this matter.
53. Noting the specific comments of the previous Inspector, I have no grounds to consider there is any reasonable prospect of these works being reversed in the foreseeable future if I allowed the appeals. Moreover, while a rhythm would remain that would not allay my concerns and although the loss of fabric would cause some harm that is not at the heart of my findings.
54. The lean-to would be demolished, but noting the views of English Heritage, its loss would not harm the significance of the asset. The scale and form of the replacement would be subservient to the main building, but its large arched window, designed to match the other 7, would emphasise still further the residential nature of the elevation, thereby compounding the less than substantial harm to its industrial character. Again I am aware that the Inspector in the 2012 decision considered that element of the scheme would be acceptable, but, as stated above, he did not have before him the elevational treatment shown on drawing 1267 PA/004.
55. Accordingly I conclude the proposal would cause less than substantial harm to the significance of the Coal Store.

North Stores

56. This curtilage building makes a positive contribution to the overall significance of the site due to its age, form and scale, though this has been reduced by the extensive alterations to which it has been subject. The works proposed under both schemes would have relatively little impact on the historic significance of this building and would maintain its character in a sympathetic manner. There would therefore be no harm caused.

The external areas

57. The retention of the hardsurfacing to the north of the Coal Store and to the west of the Engine House would be sympathetic to the industrial nature of the site. There is no basis to come to the view that the works would compromise the well-being of the trees around the site edge.
58. Gardens would be formed between the southern boundary and the south elevations of the Boiler House and the Coal Store and this area would be visible from the adjacent viewing platform and, to a lesser extent, from the gardens and flats to the south. The formation of these gardens would involve soft

planting and no doubt result in the domestic paraphernalia associated with such areas. They would also be divided by 4 fences and so any appearance this space might now have as a service area for these buildings would be diminished. Such works would therefore further compound the non-industrial nature of the proposals for the Coal Store. While it was contended there had been landscaping on this part of the site in the past, there is no basis to consider it would have appeared as domestic or as extensive as is now proposed. These gardens would therefore cause less than substantial harm to the setting of this listed building.

The conservation area

59. As stated above, the conservation area is focussed on the buildings and structures associated with water supply, and the current areas of public access together with the various information boards allow an appreciation of this activity over time. These 4 appeals concern the main industrial buildings associated with this activity, and so play an important role in reflecting and illustrating that history. Although views of the appeal buildings are limited from Amwell Street, the site is apparent from the public viewing platform as well as from the gardens to the south to which the public are allowed access. They can also be seen from Rosebery Avenue and are no doubt visible from in the flats around.
60. Therefore, given the positive contribution these buildings make to the conservation area, and mindful of their prominence, the harm caused by the alterations to the southern elevation of the Coal Store and the open area to the south of that building would fail to preserve the character or appearance of the conservation area and would cause less than substantial harm its significance as a heritage asset.

Conclusions on this issue

61. Accordingly I conclude the proposals would fail to preserve the special architectural or historic interest of the Engine House, the Boiler House and the Coal Store. Moreover, Scheme A would also fail to preserve the setting of that single listed building and would fail to preserve the character or appearance of the New River Conservation Area. As such, even when their cumulative impact is taken together I am of the opinion the schemes would cause less than substantial harm to the significance of these designated heritage assets.

Inclusive access

62. Access to the upper floor of the Engine House is solely by means of a decorative cast iron staircase and, given the ceiling heights, this is a long ascent. I was shown no scope for an alternative means of access that would not have significantly compromised the historic integrity of the building, and so those who could not use stairs would be unable to access this area.
63. It was agreed that reliance on the limited access provided by the stairs would not conflict with the Building Regulations, as a relaxation would be permissible because of the historic nature of the Engine House. However, a conflict with the Equalities Act was also identified. That states that service providers need to make a 'reasonable adjustment' to any physical features that would put a disabled person at a disadvantage. Such a 'reasonable adjustment' does not

necessarily mean alterations to the building but could equate to delivering a service by alternative means.

64. Clearly any use on the first floor would be subject to the same access problems and so would conflict with DMP Policies DM2.1 and DM2.2 and Policy 7.2 in *The London Plan*. However, the Council said that if that space were to be used in connection with other space elsewhere on the site then the impediment offered by the access would be proportionately less significant and opportunity would arise in those other areas to meet the needs of anyone who could not use the stairs. There is no certainty that would happen though or that a joint use with other areas could be secured into the future. In any event such an approach would still conflict with the cited policies in the development plan.
65. It has not been contended that the staircase is unsuited for the ambulant, and, although it is obviously desirable for areas to be accessible to all that unfortunately is not always possible in listed buildings. Any future business or organisation occupying the upper floor, whether in isolation or in connection with another space elsewhere on the site, would do so in the knowledge of the Equalities Act, the need to make 'reasonable provision' and an appreciation of the significant limitations available for altering the fabric. As accepted by the Council 'reasonable provision' can be adequately addressed through alternative service delivery.
66. Taking these factors together the scheme would provide limited access to the upper floor of the Engine House and so would conflict with DMP Policies DM2.1 and DM2.2 and Policy 7.2 in *The London Plan*. However, I conclude that the constraints resulting from the historic nature of the building are a material consideration that is sufficient to outweigh this harm.

Affordable Housing

67. Given the size of the scheme affordable housing was not sought on the site. Rather, the affordable housing requirement in ICS Policy CS12(G) was to be met through a financial contribution for off-site provision. However, no legal agreement had been submitted when Scheme A was determined and so the absence of a contribution formed a reason for refusal.
68. After the Hearing the signed and dated Undertaking was submitted offering a contribution to off-site affordable housing provision that the Council did not say was inadequate. It was not disputed that a payment of this nature was justified and the Appellant accepted the amount sought was a robust and viable figure. Based on the evidence presented to me I consider such a contribution is directly, fairly and reasonably related to the development and necessary to make it acceptable in planning terms. Therefore it accords with Regulation 122 of the *Community Infrastructure Levy Regulations 2010* and I afford it significant weight.
69. Accordingly I conclude that the proposal makes appropriate provision for affordable housing, and so complies with ICS Policy CS12(G) and the SPD.

Public benefits weighed against harm

70. Sections 16 and 66 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* state the need to have special regard to the desirability of preserving listed buildings and their settings and any features of special architectural or historic interest they possess. In section 72 of that same Act there is a need to

pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. I have considered the schemes in the light of these onerous statutory requirements. Paragraph 134 of the Framework says that where a proposal would cause less than substantial harm to the significance of a heritage asset that harm should be weighed against the public benefits of the proposal, including securing its optimum use. It is of note that this is a lesser test than if substantial harm had been identified (Framework paragraph 133), but it should still be a matter to which significant weight is attached.

71. The proposals would have the benefit of providing a use for the buildings, and it is reasonable to assume this would bring further public benefit in relation to on-going maintenance. However, these buildings appear to be relatively sound and water-tight and so the weight attached to that is not significant. Moreover, that benefit cannot be taken to justify any use, as the necessary interventions associated with some activity could be so great as to mean the benefit does not outweigh the harm.
72. However, when considering the weight that should be attached to the proposed uses reference was made to the securing of the optimum viable use mentioned in paragraph 134 of the Framework and the guidance on this in *PPS5: Planning for the Historic Environment Practice Guide* (the Guide). I accept that the concept of a viable use goes beyond merely whether the principle of the use is acceptable in the building, but rather can also involve balancing the merits of the use against the harm caused.
73. In this regard the Council contended a heritage/community use rather than the combination proposed by the Appellant comprised the optimum use for the site. I am aware that the Council has promoted such a use at the site through various briefs since 1991, but despite the passage of such a long period of time a scheme of that nature has not yet materialised. However, my attention was drawn to the outline business case from HoLT to use the all the buildings as a public heritage/education/ community use and restaurant, including several studios for rent and offices for HoLT itself. Although that scheme involved alterations to the buildings that would be similar to what is now proposed, it was contended that the benefits arising from greater public access to and understanding of this heritage site meant it constituted the optimum viable use and this justified that level of harm and the loss of significance caused. In contrast, the more restricted public benefits offered by the Appellant's schemes resulted in them not being the optimum viable use and so the harm they caused, although comparable to the HoLT scheme, was not justified.
74. When compared to the Appellant's proposals, the HoLT scheme would allow greater access for the public throughout the site and would be more in line with the Brief. Despite this the creation of 7 studios would mean access would still only be possible to a limited proportion of the internal area. Furthermore, the HoLT proposal does not yet have planning permission or listed building consent and its timeframes are still vague. It also showed a marginal viability, but many of its funding sources were not secured, there was uncertainty over what would be the acquisition price, some of the risks involved were identified as 'high' or 'medium-high' and it became clear that the planned alterations and floor space shown on the drawings, which inevitably informed the financial assessment, were not definitive and had not been based on an inspection of the site. The Guide says it is important that any uses are viable so as to fund

future maintenance and avoid the difficulties arising from a project failing. However, unexpected funding problems, increases in the acquisition costs, alterations to the plan that involved reducing the extent of floor space or adding increased expense to the conversions, and/or additional difficulties in lettings could all erode the slender viability of the HoLT scheme and, in all probability, render it unviable. Therefore on the evidence in front of me I cannot conclude that the HoLT scheme is in fact the optimum viable use for the site that would come forward if I dismissed these appeals. I also have no grounds to consider a similar alternative package would be forthcoming.

75. In this regard I appreciate that some use by heritage organisations is offered through the Undertaking, but for the reasons given above I have not afforded that significant weight.
76. The Council considered a 5 year marketing exercise was needed before these current schemes could be accepted to ensure the possibility of use by appropriate charitable or public bodies had been explored. Such a requirement is found in DMP paragraph 2.38, and applies when 'wholly exceptional circumstances' are being claimed. I am aware that the Framework states substantial harm to assets of the highest significance should be 'wholly exceptional', but as these works relate to less than substantial harm to Grade II listed buildings I consider such a test should not be applied in this instance. Therefore the 5 year marketing exercise is not required.
77. It does not follow though that the Appellant's schemes should be accepted as the optimum viable uses instead, as their impacts still have to be weighed.
78. In my opinion the harm caused by the new opening in the Engine House, the only harm I have found under Scheme B, is sufficiently limited to be outweighed by the securing of a new use for that area. I accept that the HoLT scheme proposed toilets on that floor in an alcove rather than in the flue, while the subsequent proposals subject of application P2013/2876/LBC proposed a separate toilet pod next to the flue, neither of which would have involved the opening now proposed. However that in itself is not a reason to mean the harm caused by this current scheme is unacceptable and cannot be outweighed. Indeed, the siting of the toilet in a separate unit to the side of the flue would have the disadvantage of reducing the useable floor area of this area, thereby diminishing its attractiveness to possible users.
79. With regard to Scheme A, again I consider the public benefits arising from the securing of a new use in the Boiler House are sufficient to outweigh that harm caused by the introduction of a first floor and the forming of a rear door.
80. Turning to the effect on the Coal Store, the harm arising from the introduction of a first floor and the creation of gardens is outweighed by the benefits of a use. However, I am not satisfied that the proposed residential use necessitates the introduction of 7 windows filling the arches, and given the scale and impact of the harm these cause to the building and the conservation area it is not outweighed by the benefit of securing a use for the building.
81. Therefore, even when taking all the public benefits of Scheme A together, including the benefits arising from the new uses, the maintenance of the buildings, the affordable housing and the footpath route, I conclude these would not be sufficient to outweigh the harm to the Coal Store and the conservation area identified above.

Conditions

82. In relation to Scheme B having regard to the special architectural and historic interest of the buildings details of brick cleaning, re-pointing and new windows and doors should be agreed while there should also be a general requirement for other works to be in a manner that matches the existing. For this reason too the water supply and drainage details for the toilet should be agreed under Appeal 4. The cycle store (in the case of Appeal 3) and refuse store should also be provided before first occupation having regard to the need to promote alternative transport and protect the appearance of the area. As there could well be historical evidence within the hardsurfacing archaeological mitigation measures are justified (Appeal 3), while the internal historic fabric should be recorded and analysed (Appeal 4). The development subject of Appeal 3 should be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.
83. Given the size and configuration of the B1/D1 areas though, and mindful of the existing industrial nature of the site, I see no reason why their hours of operation or servicing should be restricted or controlled through the planning system, or why certain uses that would fall in Class D1 should be prohibited. I am also not satisfied that noise attenuation need be introduced between the commercial or community uses on the upper floor of the Engine House and the pumping equipment below. It was said that the routes of underground services should be agreed to protect trees, but the nearest trees are somewhat distant from the area subject of Scheme B and so such a condition is unnecessary. Mindful that the methods of water supply and drainage for the toilet are to be specifically agreed there is no reason to consider the scheme would give rise to further external piping and so a condition relating to that matter is not needed. Finally, I have no reason to consider grilles, lights and so on would be applied to the buildings. Clearly if they were installed on either the Windmill or the Engine House and affected their character as buildings of special architectural or historic interest then they would require listed building consent.

Conclusions

Scheme A – Appeals 1 & 2

84. I conclude the scheme would make adequate provision for affordable housing and harm would not result from the principle of the uses involved. However, the alterations to the south elevation of the Coal Store would fail to preserve the special architectural or historic interest of that listed building and would fail to preserve the character and appearance of the New River Conservation Area. As such they would cause less than substantial harm to those designated heritage assets, and that harm is not outweighed by public benefits. Consequently, Appeals 1 and 2 would conflict with Policy 7.8 in *The London Plan*, ICS Policy CS9, Policy DM2.3(C) in the DMP and the Framework.

Scheme B – Appeals 3 & 4

85. I conclude that the access provision to the first floor of the Engine House would be acceptable. I also conclude that although the scheme would fail to preserve the special architectural and historic interest of the Engine House and would cause less than substantial harm to the significance of that designated heritage asset, this harm would be outweighed by public benefits. Consequently

Appeals 3 and 4 would not conflict with Policies 7.2 and 7.8 in *The London Plan*, ICS Policy CS9, DMP Policies DM2.1, DM2.2 and DM2.3(C) or the Framework.

Decisions

Appeal 1: APP/V5570/A/13/2197967

86. The appeal is dismissed.

Appeal 2: APP/V5570/E/13/2197978

87. The appeal is dismissed.

Appeal 3: APP/V5570/A/13/2202001

88. The appeal is allowed and planning permission is granted for the conversion of the first floor of the former Engine House and the Windmill base to B1/D1, together with the insertion of a toilet into the first floor void of the Engine House at the rear of 28 Amwell Street, London EC1 in accordance with the terms of the application, Ref P2013/0368/FUL, dated 6 February 2013, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise modified under the conditions below, the development hereby permitted shall be carried out in accordance with drawings 1267-B OS/000 Rev B, EX.001-EX.011, PP.001 Rev A, PP.002, PP.003, PP.004, PP.005, PP.006, PP.007, PP.008, PP.009, PP.010 & PP.011.
- 3) Before the first occupation of the premises for the use(s) hereby permitted the refuse storage area and cycle storage area shown on drawing 1267-B PP.001 Rev A shall be provided and thereafter retained.
- 4) No disruption of the external hardsurfacing shall take place until the implementation of a programme of archaeological mitigation has been secured in accordance with a written scheme of investigation (including a timetable for the completion and dissemination of the site assessment and post investigation assessment) that has been submitted to and approved in writing by the Local Planning Authority. No disruption of the external hardsurfacing shall take place other than in accordance with the approved written scheme of investigation and the site assessment and post investigation assessment shall be completed and disseminated in accordance with the approved written scheme of investigation.
- 5) Unless otherwise agreed under the other conditions imposed on this decision, all external works to the retained fabric shall match the existing adjacent work with regard to matters such as the methods used, materials, colour, texture and profile, and all external rainwater goods shall be of cast iron and painted black at all times.
- 6) No masonry shall be cleaned until the details of the method of cleaning have been submitted to and approved in writing by the Local Planning Authority, and then the works shall be carried out in accordance with the approved details only.
- 7) Before the installation of any new or replacement windows, roof lights and doors, their details (including materials, profile, reveal depth, materials, detailing and glazing) shall be submitted to and approved in

writing by the Local Planning Authority. The new or replacement windows, roof lights and doors shall then be installed in accordance with the approved details only.

Appeal 4: APP/V5570/E/13/2202002

89. The appeal is allowed and listed building consent is granted for the conversion of the first floor of the former Engine House and the Windmill base to B1/D1, together with the insertion of a toilet into the first floor void of the Engine House at the rear of 28 Amwell Street, London EC1 in accordance with the terms of the application Ref P2013/0401/LBC, dated 6 February 2013, and the plans submitted with it (as amended by drawings 1267-B OS/000 Rev B and 1267-B PP.001 Rev A), subject to the following conditions:
- 1) The works hereby authorised shall begin not later than 3 from the date of this consent.
 - 2) The works hereby authorised shall not begin until details have been submitted to and approved in writing by the Local Planning Authority of the means of water supply to and drainage from the toilet and sink in the upper floor of the Engine House, and thereafter the water supply and drainage shall be in accordance with the approved details.
 - 3) The works hereby authorised shall not begin until a written scheme of investigation relating to a programme of building recording and historic building analysis (including a timetable for the undertaking of the programme) has been submitted to and approved in writing by the Local Planning Authority, and that programme shall then be undertaken in accordance with the approved timetable.
 - 4) Before the first occupation of the premises for the use(s) subject of this decision the refuse storage area shown on drawing 1267-B PP.001 Rev A shall be provided and thereafter retained.
 - 5) Unless otherwise agreed under the other conditions imposed on this decision, all external and internal works to the retained fabric shall match the existing adjacent work with regards to matters such as the methods used, materials, colour, texture and profile, and all external rainwater goods shall be of cast iron and painted black at all times.
 - 6) No masonry shall be cleaned until the details of the method of cleaning have been submitted to and approved in writing by the Local Planning Authority, and the works shall be carried out in accordance with the approved details only.
 - 7) No re-pointing shall occur until the details have been submitted to and approved in writing by the Local Planning Authority, and the works shall be carried out in accordance with the approved details only.
 - 8) Before the installation of any new or replacement windows, roof lights and doors, their details (including materials, profile, reveal depth, materials, detailing and glazing) shall be submitted to and approved in writing by the Local planning Authority. The new or replacement windows, roof lights and doors shall then be installed in accordance with the approved details only.

J P Sargent
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|---------------|------------------------------|
| Mr C Bowen | Architect |
| Mr C Evans | Turnhold (Islington) Limited |
| Mr J Fielder | Advisor to the Appellant |
| Mr K Goodwin | Agent |
| Mr L Handcock | Heritage advisor |
| Dr C Mynors | Counsel |
| Mr T Tasou | Architect |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---------------|--|
| Mr B Dixon | Principal Planning Officer |
| Mr K Kaminski | Deputy Manager (Design & Conservation) |
| Mr S Pickles | Counsel |

INTERESTED PERSONS:

| | |
|--------------------|--|
| Cllr G Allen | Councillor for Clerkenwell Ward and Member of Planning Committee |
| Mr P Andrews | Local resident |
| Mrs D Beattie | HoLT |
| Cllr M Clews | Member of Planning Committee |
| Mr A Forshaw | HoLT |
| Mr D Gibson | Islington Society and IBPT |
| Ms D Mitchell | Amwell Society |
| Mr J Murray-Browne | Local resident |
| Mr H Myddleton | Descendent of Sir Hugh Myddleton |
| Mr R Richardson | Local resident |
| Mrs M Richardson | Local resident |
| Mr A Smith | IBPT |
| Mr D Sulkin | Chairman of Governors of Clerkenwell Parochial C of E Primary School |

DOCUMENTS

A) *Submitted by the Appellant*

- A1 *Statement on behalf of appellant dated 25 November 2013*
- A2 Undated and unsigned Planning Obligation concerning Appeals 1 & 2
- A3 Undated and unsigned Planning Obligation concerning Appeals 3 & 4
- A4 Plan of building and area names in and around the appeal site
- A5 Undated and unsigned Planning Obligation [ref 61033-CgMs-106(non-TW)2] associated with all 4 appeals
- A6 Undated and unsigned Planning Obligation [ref 61033-CgMs-106(TW)2] associated with all 4 appeals
- A7 Undated and unsigned Planning Obligation associated with all 4 appeals submitted to the Planning Inspectorate on 20 December 2013
- A8 *Revised summary of case on behalf of appellant dated 11 December 2013*
- A9 Letter from Wilson Barca LLP to Land Registry dated 11 December 2013
- A10 *Additional Evidence relating to South Stores South Elevation*
- A11 Amended drawing 1267 OS/002 Rev A concerning Scheme A

- A12 Amended drawings 1267-B OS/000 Rev B & 1267-B PP.001 Rev A concerning Scheme B
- A13 Plans accompanying Appeals APP/V5570/A/12/2175158 & APP/V5570/E/12/2175185 (the 2012 decisions)
- A14 E-mail to the Planning Inspectorate dated 7 January 2014 with details of insulation treatment
- A15 E-mail to the Planning Inspectorate dated 10 January 2014
- A16 Letter to the Planning Inspectorate dated 10 January 2014
- A17 Letter to the Planning Inspectorate dated 13 January 2014
- A18 Letter to the Planning Inspectorate dated 14 January 2014
- A19 Letter to the Planning Inspectorate dated 15 January 2014
- A20 Letter to the Planning Inspectorate dated 16 January 2014
- A21 Letter to the Planning Inspectorate dated 23 January 2014
- A22 Letter to the Planning Inspectorate dated 3 February 2014
- A23 Letter to the Planning Inspectorate dated 5 February 2014 with signed and dated legal agreement attached

B) *Submitted by the Local Planning Authority*

- B1 *Summary presentation on behalf of LB Islington* dated 26 November 2013
- B2 *Addendum to LBI Summary of Case* dated 26 November 2013 with details of *Tesco Stores Ltd v Dundee City Council* [2012] PTSR and *Bedford Borough Council v SSCLG & Nuon UK Ltd* [2013] EWHC 2847 (Admin)
- B3 Updated listings
- B4 Reports and decisions for applications P2013/2809/FUL & P2013/2876/LBC
- B5 *Revised Summary on Behalf of LB Islington* dated 11 December 2013
- B6 E-mail to the Planning Inspectorate dated 8 January 2014 with details of lease agreement
- B6 Letter to the Planning Inspectorate dated 15 January 2014
- B7 E-mail to the Planning Inspectorate dated 7 February 2014

C) *Submitted by Interested Parties*

- C1 Bundle of 13 letters from interested parties submitted by Mrs Beattie
- C2 Extract from proposals map for the Unitary Development Plan submitted by Mr Forshaw
- C3 Email and response to the Planning Inspectorate dated 20 December 2013 submitted by IBPT

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