

# GLS Legitimate Expectation Webinar

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## CASE REFERENCE

### **Trillium (Prime) Property GP Ltd v Tower Hamlets LBC**

Queen's Bench Division (Administrative Court)

04 February 2011

Westlaw Case Analysis ..... 4 pages

Official Transcript ..... 46 pages

# Trillium (Prime) Property GP Ltd v Tower Hamlets LBC

Queen's Bench Division (Administrative Court)

04 February 2011

## Case Analysis

### Where Reported

[2011] EWHC 146 (Admin); [Official Transcript](#)

### Case Digest

**Subject:** Planning **Other related subjects:** Environment

**Keywords:** Conservation areas; Consultation; Legitimate expectation

**Summary:** A decision to designate an area of land as a conservation area was vitiated by a report which was misleading in a significant way.

**Abstract:** The claimant (T) applied to quash a decision of the defendant local authority to designate an area of land as a conservation area. T owned a former labour exchange building. In February 2009, it submitted a planning application for the demolition of the building and the redevelopment of the site. Officers recommended approval of the development, but on September 23 the strategic planning committee refused permission. The local authority had concluded in 2008 that the building, together with four adjacent Victorian warehouses, should not form a conservation area. There had, however, been continued pressure from local residents to prevent the demolition of the building because of its architectural and historic interest. The possibility of including it and the four warehouses in a conservation area was re-examined by officers; in July 2009, an initial case for designation was produced, which officers expected would be approved for public consultation on November 4. However, on September 29 T gave notice under the [Building Act 1984](#) of its intention to demolish the building after six weeks. The chairman of the local authority's oversight and scrutiny committee approved urgent consideration of the designation in view of what he was told was the imminent threat of demolition. The local authority decided not to consult T or any of the other building owners whose properties would be included in the area, and on October 7 what was known as the Limehouse Cut Conservation Area was designated. T argued that (1) the purpose of the designation was to prevent the demolition of the former labour exchange building, not the statutory purpose of protecting the special character and appearance of the area; (2) the report leading to the decision of October 7 ignored relevant considerations and took into account irrelevant considerations; (3) it had a legitimate expectation of being consulted before the decision to designate was made.

Application granted. (1) The officers who had re-examined the possible designation of the area had come to the view that it had a special interest which should be preserved, that T's building was part of that special interest and that its loss would harm the character and appearance of the area. That was a lawful approach. The merits of designation and the timing and manner of the decision were inextricably but not unlawfully linked in the officers' minds. That remained so in the mind of the cabinet when making the decision to designate. In that respect, the local authority's approach was not unlawful (see paras 127, 141 of judgment). (2) The report leading to the decision of October 7 was misleading in a significant way and it

ignored relevant considerations and took into account irrelevant considerations. For example, members were not told that the area had previously been rejected for designation or that T's building had been refused local listing because of its lack of architectural merit; they had been given the wrong impression that the proposal had the support of English Heritage; further, reliance had been placed on the protection of the natural environment and on the ecological value and biodiversity of the area, which was not a lawful consideration in the decision to designate. The report should have dealt with the case for designation in a balanced way, especially in the absence of any reference to or analysis of the possible case against it, which those not consulted might have put. The local authority's failures in this area justified the quashing of the decision (paras 146, 148, 150, 153, 157, 161, 163). (3) T did have a legitimate expectation that it would be consulted about a designation decision. Consultation was advised by English Heritage and was part of the local authority's normal policy. Further, T had been told that it would be consulted, and the mutual duty of "utmost fairness and good faith" in the handling of T's planning application, referred to in the planning performance agreement entered into by T and the local authority, required that T should be consulted. However, the local authority had been entitled to conclude that a consultation process would create a sufficient risk of harm to the potential conservation area through the demolition of T's building that the decision should be made without consultation (paras 170-171, 173, 183).

**Judge:** Ouseley, J.

**Counsel:** For the claimant: Martin Kingston QC, Richard Harwood.  
For the defendant: Meyric Lewis.

**Solicitor:** For the claimant: DLA Piper. For the defendant: In-house solicitor.

## Related Cases

### **R. (on the application of Ridge) v Tower Hamlets LBC**

[\[2011\] EWHC 560 \(Admin\)](#); [Official Transcript](#); QBD (Admin)

## All Cases Cited

### **Metro Construction Ltd v Barnet LBC**

[\[2009\] EWHC 2956 \(Admin\)](#); [\[2009\] N.P.C. 135](#); [Official Transcript](#); QBD (Admin); 2009-11-25

### **R. (on the application of Arndale Properties Ltd) v Worcester City Council**

[\[2008\] EWHC 678 \(Admin\)](#); [\[2008\] J.P.L. 1583](#); [Official Transcript](#); QBD (Admin); 2008-03-13

### **R. (on the application of Lowther) v Durham CC**

[\[2001\] EWCA Civ 781](#); [\[2002\] Env. L.R. 13](#); [\[2002\] 1 P. & C.R. 22](#); [\[2001\] 3 P.L.R. 83](#); [\[2002\] J.P.L. 197](#); [\[2001\] 22 E.G. 154 \(C.S.\)](#); [\(2001\) 98\(23\) L.S.G. 42](#); [Times, June 22, 2001](#); [Official Transcript](#); CA (Civ Div); 2001-05-24

## All Cases Citing

### **Mentioned by**

R. (on the application of Save our Surgery Ltd) v Joint Committee of Primary Care Trusts

[\[2013\] EWHC 439 \(Admin\)](#); [Official Transcript](#); QBD (Admin); 2013-03-07

## Significant Legislation Cited

[Building Act 1984 \(c.55\)](#)

## Legislation Cited

[Building Act 1984 \(c.55\)](#)

Building Act 2004

[Local Authorities \(Executive Arrangements\) \(Access to Information\) \(England\) Regulations 2000 \(SI 2000/3272\) reg.2](#)

[Local Authorities \(Executive Arrangements\) \(Access to Information\) \(England\) Regulations 2000 \(SI 2000/3272\) reg.6](#)

[Local Government Act 2000 \(c.22\) s.22](#)

[Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c.9\)](#)

[Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c.9\) Pt 18](#)

[Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c.9\) s.69](#)

[Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c.9\) s.69\(2\)](#)

[Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c.9\) s.74](#)

Planning Policy Guidance Note15

Planning Policy Guidance15

## Journal Articles

### Planning law case update

Case law; Planning.

[J.P.L. 2012, 4, 374-395](#)

### In this case, the tail was not wagging the dog

Conservation areas; Demolition; Designation; Local planning authorities; Motive.

[E.G. 2011, 1108, 116](#)

### Conservation area: wish to protect building

Conservation areas; Demolition; Designation; Motive; Planning authorities' powers and duties.

[Env. L.M. 2011, Feb, 5-6](#)

### Changing times: the importance of proper consultation

Consultation; Legitimate expectation; Notification; Planning authorities' powers and duties; Planning procedures; Statements of community involvement.

[J.P.L. 2011, 11, 1447-1454](#)

### Current topics (June)

Abuse of process; Access to information; Appointments; Breach of condition notices; Buildings; Charities; Conservation areas; Demolition; Designation; Disturbance; EU law; Environmental information; Environmental law; Exempt information; Habitats; Judicial review; Motive; Planning authorities' powers and duties;

Planning permission; Prince of Wales; Protected species; Ten year immunity rule; Tree preservation orders; Whistleblowers.

[J.P.L. 2011, 6, 655-663](#)

## Books

### **Encyclopedia of Local Government Law**

Chapter: Chapter 2 - The Administrative Machinery of Local Authorities

Documents: [1-24.14.14](#)

### **Encyclopedia of Planning Law and Practice**

Chapter: Chapter 1 - General Statement

Documents: [1.004.11](#)

### **Sweet and Maxwell's Planning Law: Practice and Precedents**

Chapter: Chapter 3 - Planning Permission: Practice and Procedure

Documents: [3.43B Consultations: consideration of responses](#)

### **Sweet and Maxwell's Planning Law: Practice and Precedents**

Chapter: Chapter 14 - The Built Heritage

Documents: [14.82A Challenges to the designation of a conservation area](#)

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Case No: CO/15185/2009

**Neutral Citation Number: [2011] EWHC 146 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 4 February 2011

**Before :**

**MR JUSTICE OUSELEY**

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**Between :**

<b>TRILLIUM (PRIME) PROPERTY GP LIMITED</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>LONDON BOROUGH OF TOWER HAMLETS</b>	<b><u>Defendant</u></b>

(Transcript of the Handed Down Judgment of  
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Tel No: 020 7404 1400, Fax No: 020 7404 1424  
Official Shorthand Writers to the Court)

**Mr Martin Kingston QC and Mr Richard Harwood** (instructed by **DLA Piper Solicitors**)  
for the **Claimant**

**Mr Meyric Lewis** (instructed by **Tower Hamlets LBC Solicitors**) for the **Defendant**

Hearing dates: 11<sup>th</sup>, 12<sup>th</sup> & 15<sup>th</sup> November 2010

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**Judgment**

**As Approved by the Court**

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**Mr Justice Ouseley:**

## **Introduction**

1. Trillium (Prime) Property GP Ltd, the Claimant, owns the 1930s neo- Georgian former Labour Exchange building at 307 Burdett Road, Poplar in the London Borough of Tower Hamlets. It is unlisted, and has been unoccupied for some years. Adjacent to the north east are four Victorian warehouses. The Limehouse Cut, inner London's oldest canal, runs north east from Limehouse Basin to the River Lea, passing alongside this small group of buildings.
2. In February 2009, Trillium submitted a revised planning application for the demolition of the former Labour Exchange and the redevelopment of its site for 56 residential units and for office purposes in a building varying between 5 and 10 storeys.
3. There was a local campaign to prevent the demolition of the building. English Heritage refused to list it. The Borough Council, through its officers, refused to put it on the Borough list of buildings of local interest. Local listing would not have hindered demolition but the refusal of listing reflected a view of the building's worth. Officers had previously concluded that this group of buildings should not form a Conservation Area, nor an extension to an existing Area nor part of a new and larger Area.
4. Officers recommended approval of the development in a report dated 4 August 2009, but on 23 September, the Strategic Planning Committee rejected that recommendation and refused permission on various grounds related to the impact of the proposed development. These reasons did not include the loss of the building itself.
5. There had however been continued pressure from local residents, in particular from a local historian, Mr Ridge, to prevent the demolition of the building because of its architectural and historic interest. The possibility of including it and the 4 Victorian warehouses in a Conservation Area was re-examined by officers; the idea evolved that there should be a Limehouse Cut Conservation Area. An initial case for its designation was produced in July 2009 which officers expected would be approved for public consultation on 4 November 2009. Further work was carried out by officers in anticipation of that timetable.
6. However, on 29 September 2009, Trillium gave notice under the Building Act 1984 of its intention to demolish the building after 6 weeks, that is after 9 November 2009. The Borough Council's Chairman of the Oversight and Scrutiny Committee approved the urgent consideration of the designation of a Conservation Area in view of what he was told was the imminent threat of demolition. The Borough Council decided not to consult with Trillium or any of the other commercial building owners elsewhere along the Cut whose property would be included in the Area. This would have alerted Trillium to the urgent advantage of demolition. On 7 October 2009, the Cabinet of the Borough Council designated the Limehouse Cut Conservation Area.

7. Trillium challenges that decision on the grounds that the purpose of the designation was to prevent the demolition of 307 Burdett Road and not the statutory purpose of protecting the special character and appearance of the area. Relevant considerations had been ignored: the previous refusals to include 307 Burdett Road in a Conservation Area and the refusal to include the building in the local list. The report to Cabinet misrepresented the true nature of English Heritage's views on what a Conservation Area should comprise, Planning Policy Guidance Note 15, the existence of relevant changes of circumstance now warranting designation, officers' views on whether an area known as Bartlett Park should be included, the existence of a designation statement, and the absence of interest in some of the buildings included elsewhere alongside the Cut. Irrelevant considerations were taken into account such as the protection of ecological and biodiversity, and the improvement of accessibility to the Cut. The report did not contain sufficient material to enable the Cabinet rationally to designate the Conservation Area on the boundaries it chose. The Borough Council had acted unfairly and in breach of Trillium's legitimate expectation that it would be consulted on the designation of a Conservation Area affecting its building and proposed development. The decision to deal with designation as urgent was made without regard to relevant considerations. Background papers were not listed in the report to Cabinet as they should have been.

#### **The statutory and policy framework**

8. Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes the duty to designate conservations areas in these terms:

“(1) Every local planning authority-

- (a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and
- (b) shall designate those areas as conservation areas.

“(2) It shall be the duty of a local planning authority from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as conservation areas; and, if they so determine, they shall designate those parts accordingly.”

9. The requirements for designation are not just that the area possess the special interest defined by s69; the area of special interest must be one the character or appearance of which it is desirable to preserve or enhance.
10. As Mr Kingston QC for Trillium pointed out, the duty is not fulfilled once and for all; rather it involves a process of review. That process can lead to areas which were not designated on an earlier occasion being designated later or areas being



extended beyond their original boundaries. There is neither a specific trigger for a review nor any requirement that it take place only at particular intervals.

11. The designation of a conservation area has a number of consequences; the most important here is that conservation area consent is required for the demolition of unlisted buildings within it; s74. Of course, if the building is already on the statutory list, listed building consent is required for its demolition. This contrasts with unlisted buildings which may be included on a local or non-statutory list; such lists are commonplace and may affect how neighbouring development is controlled for example, but they afford no protection against demolition. The Council's local list served the purpose of focussing attention on buildings and features worthy of preservation. Their demolition in Conservation Areas would be resisted. It covered buildings which it considered to be of "*particular local interest for historic, architectural or special environmental reasons.*"
12. In deciding planning applications, special attention must be paid to the desirability of preserving or enhancing the character or appearance of the area. There is no appeal against the designation. The justification for the designation is not, as Mr Lewis for the Borough Council accepted, re-visited by an Inspector hearing an appeal against the refusal of planning permission. It is taken as the basis for his consideration of an appeal.
13. There is policy guidance from the Secretary of State for Communities and Local Government and from English Heritage which it is material for a local planning authority to consider when deciding on the designation of a conservation area.
14. PPG 15 contrasts the protection of the individual building by listing with the conservation of an area in this way:

"4.1 ...Whilst listing procedures are focused on the protection of individual buildings, conservation area designation is the main instrument available to authorities to give effect to conservation policies for a particular neighbourhood or area. Designation introduces a general control over the demolition of unlisted buildings and provides the basis for policies designed to preserve or enhanced all the aspects of character or appearance that define an area's special interest.

"It is the quality and interest of areas, rather than that of individual buildings, which should be the prime consideration in identifying conservations areas." "

15. This same distinction is drawn in the English Heritage document "Guidance on the Management of Conservation Areas" in these terms:

"3.14 Whilst designation can be a legitimate response to an actual or perceived threat to the character of an area, the first consideration should always be whether the area is of

sufficient special interest to warrant designation, rather than whether designation would provide an additional control. Designation should never be undertaken solely in response to local pressure, or to bring the future of particular unlisted buildings under control.”

16. This is not just a statement of policy, but is an accurate statement of the law, as to how the power should and should not be exercised. The decision in *R (Arndale Properties Ltd) v Worcester City Council* [2008] EWHC 678 (Admin), Sullivan J, sets out the contrast in these terms:

“49. In deciding whether designation of a conservation was simply a pretext by which Mr Scott believed that demolition of the pavilion would be prevented or whether there was a genuine consideration of whether it was desirable to preserve or enhance the special character of the designated area, an important part of which consideration was the desirability of preserving a particular building within it, namely the pavilion, it is necessary to look at all of the evidence in the round. If that is done, the totality of the evidence points overwhelmingly to the former rather than the latter conclusion.”

17. He asked whether the tail was wagging the dog: *“the desire to prevent the demolition of a particular building led to the designation of the conservation area, as opposed to the former being simply one, albeit an important, consequence of the latter”*.
18. Sullivan J’s judgment was applied by Collins J in *R (Metro Construction Ltd) v London Borough of Barnet* [2009] EWHC 2956 (Admin). He said that the future of unlisted buildings may be relevant to the decision to designate an area, if they make a material contribution to an area worthy of designation and which would be harmed were they to be demolished. Of itself, the desire to protect an unlisted building or buildings would not be a proper purpose of designation.
19. Mr Kingston drew parallels between the evidence in this case and the evidence which persuaded Sullivan J in *Arndale* that *“it is plain that it was the impetus for designating the conservation area and that the designation of a conservation area was simply a pretext to prevent the demolition of a specific building, namely the pavilion.”* Mr Lewis relied upon distinguishing features. Parallels were drawn with *Metro Construction* and distinctions made; the strength of the evidence there is plain. This case must turn on a judgment of the evidence in this case, and not upon how closely it compares to the evidence in another case, although of course it is interesting to see the strength and nature of the evidence which led Sullivan J to his plain conclusion.
20. It is a question of fact, in my judgement, whether the Limehouse Cut Conservation Area was designated for the improper purpose of preventing the demolition of 307 Burdett Road, or whether the Council genuinely considered that the area designated met the statutory criteria. The decision would not be unlawful

merely because the wish to protect 307 Burdett Road from demolition was father to the thought that a Conservation Area should be designated; what matters is whether the Council then genuinely thought that the area met the criteria. The undesirability of the demolition of an unlisted building which makes a positive contribution to the character of an area cannot of itself make designation lawful. The existence of the building however may lawfully play a part in the decision that the area has a special character worth preserving and enhancing, especially given the contribution that such buildings can make to the character of conservation areas. But the desirability of preventing demolition is not itself what the Council must consider. It has to consider the simple one of whether the statutory criteria are met by the area it proposes to designate.

21. Mr Kingston seeks to show that the merits of designation were slim, the boundaries bizarre, and that the evolution of the Council officers' thinking, the slender basis for their recommendation, the way they recommended the Council proceed, and the way it in fact did proceed prove that the purpose of designation was the prevention of the demolition of 307 Burdett Road and not the preservation of the character of the area. Examining that argument requires a considerable trawl through the documents recording what the Council did and what its officers thought at various stages. Each advocate emphasised different parts and attributed differing significance to the same parts.

## **The facts**

### **The Council's previously considered views**

22. In 2007/8, the Council carried out a statutory review of its Conservation Areas under s 69 (2) of the 1990 Act, to see whether any should be extended or new ones declared. Of course, it follows from the existence of this duty that there is nothing intrinsically odd, let alone wrong, in a Council deciding that an area not thought worthy of designation on an earlier occasion should later be designated. This review was the first for ten years, and the Council intended that it should be thorough. To that end it devised criteria for the changes to meet. The criteria endorsed by the Council started with the statutory test but added that the area should form part of the "*cherished and familiar local scene*", the area had to be of interest as an area, for its buildings' group value, and to be of townscape interest in the wider sense, including spaces between buildings, mix of uses and so on.
23. The report to Cabinet of 7 May 2008 pointed out that the ability of designation to protect the quality of areas was of prime importance rather than the protection of individual buildings, but that designation afforded a means of protecting unlisted buildings from demolition.
24. The new areas proposed included the Regents Canal Conservation Area, a linear area, the designation of which was supported by British Waterways Board. So the designation of a linear canal based Conservation Area was at that time within the contemplation of the Council. It also proposed the extension of two areas related to the Limehouse Cut: the St Anne's Church Conservation Area near the southern end of the Cut and straddling it, and the Langdon Park Conservation Area, further north, for the protection of rare surviving high quality industrial buildings.

25. Although Mr Ridge had also made the case in late 2007 for a Limehouse Cut Conservation Area to include the group of buildings around 307 Burdett Road, and had called for their protection, the report did not propose such a Conservation Area. Its designation in that thorough review was considered and rejected by officers.

26. The May 2008 report emphasised the need for local community support for the successful designation of a Conservation Area in these terms:

“When considering designating an area as a Conservation Area it is important that the designation has wide community and stakeholder support. Much of the success of the designation will be dependant upon the residents and stakeholders within an area who will be required to support the new status. It is important therefore that the proposals are the subject of wide consultation and that the designations have the support of the local community.”

27. Stakeholders whose support was seen as important included the building owners within these new areas. This approach is entirely consistent with the advice in PPG 15 para 4.7 that, although there is no statutory duty to consult the public before designation, consultation with residents and businesses and other local interests would be “*highly desirable*” over both the identification of areas and the definition of the boundaries. This is echoed in English Heritage Guidance.

28. The contrast with what happened later over the Limehouse Cut Conservation Area was marked, although the Cabinet at this early stage was specifically alerted to the fact that designation would prevent demolition of unlisted buildings without consent. Public consultation followed on the designation statements and character appraisals, but there were no material changes when in October 2008 the decision was made to designate the new areas and extensions.

29. It had been open to consultees to seek the addition of other areas; they were not confined to commenting on the Council’s published proposals. British Waterways Board objected to the Langdon Park extension on the grounds that there should be a Limehouse Cut Conservation Area to reflect the special interest of the Cut and of some of the buildings alongside it. But still no such Area was put forward by officers who took the view that it was not merited.

30. The possibility was not actually put before members of the Council for their consideration at either meeting, but that would not have prevented any of them raising such a possibility, but they did not do so. It is not merely a forensic courtesy to recognise the familiarity of local members with their area.

### **The planning application**

31. On 5 February 2009, Trillium submitted its revised planning application for the redevelopment of 307 Burdett Road, including its demolition. Mr Kingston put some weight on the Planning Performance Agreement which Trillium and the

Council signed on the same day. This is now a commonplace feature at least of large developments, where it is unlikely that the statutory timetable will be met and so it is extended by agreement. It provides a bespoke timetable for the processing of the application, and governs the way the parties proceed. The timetable for decision-making was extended in June and July 2009, and its provisions remained in force until the formal decision refusing the application on 10 November 2009.

32. Under the heading “*Joint Working*”, the parties agreed as follows:

“ 3.1. All parties shall act with the utmost fairness and good faith towards each other in respect of all matters in respect of the handling of the Planning Application and to work jointly with each other in complying with their respective obligations under this Agreement.”

33. Mr Kingston suggested that that covered designating a Conservation Area which affected the proposal without consulting the developer about it. The same applied to this subparagraph in Schedule 4 to the Agreement, entitled “*LBTH’s Performance Standards*”:

“In addition to its statutory obligations, LBTH agrees to use its reasonable endeavour to achieve the following performance standards at all times:

b. Notify the Developer no later than 5 working days prior to any meeting of the Strategic Development or Development Committee at which any report or matter relevant to the Development will be discussed and or considered and to provide the Developer with a copy of any report to the Strategic Development or Development Committee at that time.”

### **The continuing campaign**

34. In December 2008, after the first application by Trillium for permission to develop 307 Burdett Road and around the time of its withdrawal, the Twentieth Century Society and Mr Ridge urged the inclusion of the building on the local list, with Mr Ridge continuing to urge its inclusion in a further extension to the St Anne’s Church Conservation Area. On 20 January 2009, Mr Ridge sent a detailed statement to the Council in support of his contention.

35. The merit of including 307 on the local list, or of including it with other buildings in some form of Conservation Area, was again considered by Council conservation officers. On 26 January 2009, Mr Hutton, its Head of the Conservation Team, who had written the May and October 2008 reports, rejected these contentions. His views were recorded in an email. He had visited the building twice to assess it: “*Whilst the building does have some merit both historically and architecturally, I have concluded that it should not be added to the Local List*” of some 700 buildings. “*Whilst architecturally it is of some interest, in a neo-Georgian style, popular at that time, I do not consider that the*

*composition is of such merit that I could recommend its inclusion on the Local List. Not do I consider the historic interest to be so overriding to warrant inclusion.*” Mr Hutton rejected the inclusion of 307 Burdett Road, and the adjoining buildings in a new Conservation Area or in an extension since the recent review had concluded that it did not merit such status.

36. Meanwhile Mr Ridge, disinclined to take no for an answer to his requests, organised petitions in February 2009. One called for the local listing of 307 Burdett Road and its inclusion in a Conservation Area, another opposed Trillium’s planning application because, among other reasons, it involved the demolition of 307. A third opposed the application but focussed on the local importance of 307. Mr Ridge’s support for the retention of 307, because of its local historic and architectural merits was echoed by the Twentieth Century Society, SAVE Britain’s Heritage, the Victorian Society, focusing on the nearby group of buildings, and the Greater London Industrial Archaeology Society. Some comments were linked to opposition to the application since it involved the demolition of 307. He complained at the inadequacy of the Council’s response to his requests.
37. On 10 and 11 February 2009, the Head of Planning was told in emails that Mr Hutton had investigated the matter in some detail already, the issues had been raised already by Mr Ridge in meetings and in conservation area character appraisals. There was no suggestion that a change of mind was called for, rather the previous replies would be *“rehashed”*. In mid-February 2009, a fuller answer was to be provided than the email sent to another officer by Mr Hutton, but neither he nor the Head of Planning nor the Director of Development suggested that there should be a change of heart or even further thought given to what Mr Hutton had concluded in the past.
38. But the local MP became involved and on 19 February, Mr Hutton wrote to him saying that the Council was investigating in detail Mr Ridge’s request for the inclusion of 307 Burdett Road, and other buildings and parts of the Limehouse Cut in an extension to an existing Conservation Area. On 11 March 2009, Mr Hutton wrote to the MP, saying that he had now completed an *“initial assessment”* of the sites, proposing a site visit with Mr Ridge and English Heritage *“to investigate the historic merits of the sites and agree a way forward”*. They would discuss the merits of each site, their inclusion in an extension to the St Anne’s Church Conservation Area, or a new Limehouse Cut Conservation Area.
39. I regard the suggestion of an *“initial assessment”*, as odd in view of the analyses already undertaken, and the search for an agreed *“way forward”* as suggesting a willingness to compromise so as to reach agreement with someone over an issue between them.
40. On 30 March 2009, Mr Hutton emailed the Greater London Industrial Archaeology Society about protecting 307 Burdett Road and the adjoining warehouses. He was awaiting the views of English Heritage on their possible inclusion in a Conservation Area. Mr Kingston instanced this in support of his contention that the Council had engaged in a one-sided process.

41. Mr Ridge produced a document in March 2009, subsequently amended on at least two occasions, which dealt with the historic buildings and major sites of interest as he saw them along the Limehouse Cut. It was entitled “Historic Buildings, Major Sites and Features of Special Interest along the Limehouse Cut...” It describes what was there and what had been done there in the past, as much as what continued to exist. After the site meeting in March 2009, and in its consultation response of 3 April 2009 to the Trillium application, English Heritage commented that the application should be determined in accordance with current local and national policy and in accordance with the Council’s specialist conservation advice. That rather non-committal response is clearly not an objection. It had recently received a request that 307 Burdett Road be added to the statutory list of buildings and it was going to examine that in detail. The letter continued:

“We further understand that the London Borough of Tower Hamlets has received a request to consider a small area which includes the site for Conservation Area status. Much of the stretch of Limehouse Cut between Burdett Road and Upper North Street is lined by very recent development of varying styles and qualities. The former Labour Exchange and the small cluster of former industrial buildings to the east of it, form a distinctive visual group. The former industrial buildings themselves are an evocative, attractive and increasingly valuable reminder of the East End’s industrial past. If the Borough were so minded, we would support designation as a Conservation Area.”

42. Mr Kingston submitted that English Heritage’s support for a Conservation Area did not extend to a Limehouse Cut conservation Area as designated, but was confined to a much smaller area. That smaller area did include 307 Burdett Road, and the nearby group of buildings. Such a small area was never supported by officers, and there would have been questions about the appropriateness of so small an area being a Conservation Area, and whether it was being designated for the protection of one unlisted building. Nor did English Heritage see it as an extension to the St Anne’s Church Conservation Area, perhaps because the buildings were of such different character. Certainly, officers did not see a small extension to the St Anne’s Church Conservation Area as wise because the character of that area was very different from that of the Cut and its industrial heritage.
43. An internal email of 9 April 2009 from Mr Hutton to his team, under the heading “307 Burdett Road”, said that he was “*taking forward the conservation aspects*” of the proposed development while the Principal Urban Designer, Mr Puranik, dealt with the design of the development about which he still had concerns. It continued:

“There has been widespread objection to the demolition of the former Poplar Employment Exchange on the site, both on architectural and historic interest grounds, as well as

suggestions that the local area could be protected by Conservation Area status. You will also have received this correspondence.

Clearly the site enjoys no current planning protection, however I understand that a Listing request has gone into DCMS for the Exchange.

Can you brief me what weight you are going to give these objections? There is a case for investigating Conservation Area status following English Heritage's consultation letter, however in the interim, I think we should await the DCMS Listing response. To put this in some context a 1930s building was recently Listed on the Bow Road.

In the meantime I will continue to look at how the requests for a Conservation Area might be taken forward."

44. Mr Kingston says that this focuses the purpose of the Conservation Area on the protection of the one building proposed for demolition in the development. The consideration of a Conservation Area was to come after the decision on statutory listing, and that was because protection by designation of a Conservation Area would no longer be necessary. It would only be a live issue were 307 not to be listed because it would be the means of its protection. Mr Lewis submits that the email shows support for a reconsideration of a Conservation Area, and the officer relating the timing to a listing decision.

#### **The evolution of the Council's thinking**

45. Mr Hutton asked Ms Lambert to visit the site to obtain her conservation views about a tentative Conservation Area boundary for this group of buildings. She replied on 16 April, under the heading "*Designation of a Conservation Area around 307 Burdett Road*":

"307 Burdett Road, Poplar Employment Exchange, built by the Office of Works in 1933/34 is an interesting neo Georgian building on the canal and lies with the buildings to its rear (The Spice Store, The Sail Loft, Towpath House and Printers Gate) in an area where there has been significant post war development. The buildings lie adjacent to the Canal and form a cohesive whole, they are particularly important as they offer a series of distinctive and locally important buildings within this context.

Tom Ridge documents a comprehensive history of each of the buildings, and the alterations which have taken place.

In terms of a Conservation Area designation, I think these buildings have sufficient special architectural and historic character, particularly in their specific location to support a designation. However, I do not feel that they would form



an extension to either the existing St Annes Conservation Area or the recent Brickfield Gardens designation, the built fabric between these CAs and the buildings in question being of no particular quality and offering a degree of separation which is not easily overcome.

However, in line with the Regents Canal designation we could perhaps consider designating the Limehouse Cut as a thread with those buildings adjoining it which support the canal/industrial/warehouse character. To do this comprehensively it would probably be worth amending the boundaries of St Annes and Langdon Park Conservation Areas to incorporate 777 Commercial Road and the former Spratts biscuit works within the new Conservation Area.

As discussed the setting of the canal would thus help to inform the scale and massing of development along its edge and development would need to preserve or enhance the special character.

With regard to possibly locally listing certain of the buildings, we can certainly locally list the Poplar Employment Exchange, and consider the Victorian Warehouses. We are hoping to review the local list in the short term and these buildings could be added to the proposals prepared.

However, locally listing buildings offers very little additional protection at the current time and to offer any real protection we would need to designate the Conservation Area.”

46. The last comment reflects the fact that local listing could not prevent demolition of 307, whereas the designation of a Conservation Area could do so.
47. Mr Hutton replied the same day: *“Let’s go with the Limehouse Cut option. Whole length? Can you produce a brief report with all the pro’s and cons in terms of impact of a CA? the response to the public on this matter should be at this time that we are “appraising the merits of the area.”*”. The Council did so respond to Mr Ridge, and the letter of 17 May 2009 shows a perfectly proper approach to the consideration of a Conservation Area.
48. On 1 June 2009, English Heritage advised against the statutory listing of 307 Burdett Road, and the Department for Culture, Media and Sport accepted that advice. The advice recognised the historic interest of the building but thought that it was of inadequate architectural quality:

“There is no doubt that the Poplar Employment Exchange has strong local value, and is an important East London landmark. If this were a conservation area, the dignified neo-Georgian elevations and historic interest of Poplar

Employment Exchange would make a positive contribution to its character.

Historic interest is an important factor to consider, but so is the building's design and craftsmanship; the importance of this building historically is of insufficient magnitude to override consideration of the building's architectural interest. On this criteria, the building falls short of the benchmark for listing. ...Notwithstanding the historic interest of the Poplar Employment Exchange, its architectural plainness precludes listing.

Conclusion: While a building of strong local interest, the former Poplar Employment Exchanges falls below the benchmark for national, statutory listing.

Labour exchanges were built in great numbers in the interwar period, with varying degrees of architectural ambition and success, and this is not one of the better examples of the type; the local historic interest is strong, and connection with George Lansbury adds to local significance, but the building lacks the special architectural quality required for listing."

49. Trillium, as the building owner, knew of the request to list, were consulted about it, opposed it and were told of its outcome. As Mr Kingston rightly points out, in the context of how the Council approached consultation over the Conservation Area, it did not threaten or take steps to demolish the building before, during or after this listing process.
50. Mr Hutton's immediate response was to ask Ms Lambert to factor that into her deliberations about a possible Conservation Area. In other words, the failure of that source of protection for 307 put consideration of a Conservation Area to the fore. But the refusal of statutory listing, notwithstanding that local interest was not relevant for that purpose, led Mr Hutton also to refuse to recommend local listing in view of what English Heritage had said about the quality of the building. Yet, as Mr Kingston submitted, this building was important to the decision to designate and to the manner and timing of the taking of the decision.
51. In that same email of 1 June 2009, Mr Hutton added that English Heritage had thought that the site might lie in a new or extended Conservation Area, and Ms Lambert was looking at that, but it was a time consuming process which required member approval. The time issue can only have related to the need to reach a decision on the Trillium application.
52. Mr Hutton replied on 5 June 2009 to an email from Ms Lambert, in which she hoped for a clear view soon from the Head of Planning and the Director of Development on whether they could "*support*" the designation of a Conservation Area. He said that "*the only protection which is durable is a CA. Please press on with this with a draft all speed. Please examine an option of a CA for the whole of the Limehouse Cut too as part of this process...*" These emails were all in a string

headed “*Former Employment Exchange, 307 Burdett Road.*” It is obvious to me that it was against the demolition of 307 that a Conservation Area was the only durable protection.

53. On 13 July 2009, Ms Lambert sent her prepared summary case for a new Limehouse Cut Conservation Area to other Council officers; Mr Hutton emailed to Mr Whalley his thought that a new Conservation Area could be sustained, “*but a steer was needed on taking this forward*”. Mr Kingston saw this language as supporting his case. The report in large measure formed the basis for the report which Cabinet considered on 7 October 2009, though with some omissions. The report proposed:

“a linear Conservation Area, extending along the length of the Cut, and would include those buildings of interest adjoining it, in particular the former Labour Exchange building at 307 Burdett Road and some warehouses on Dod Street. It could also include significant open space at Bartlett Park.”

## “2.0 Background

- 2.1 The idea of designating the Limehouse Cut a Conservation Area was considered when D+R reviewed the Borough’s Conservation Areas in 2007-8. We came to the view that the townscape was not of sufficient special architectural and historic interest, as strictly defined in the Government’s Panning Policy Guidance Note 15, to warrant designation. However, local residents have remained keen to see the canal and its associated historic buildings protected, and have asked us to review the designation, particularly in the light of the Department of Culture Media and Sports recent decision not to Statutorily List 207 Burdett Road, a former 1930’s Employment Exchange in an Art Deco style.
- 2.2 Arising from this DCMS refusal, a petition signed by 185 local residents has requested that these buildings be protected by ‘Local Listing’ and included within a Conservation Area. To afford statutory protection, Conservation Area designation could be the most appropriate course of action. Each building’s positive contribution to the character of a new Conservation Area could then be detailed.
- 2.3 Whilst the physical fabric of the canal has not significantly altered since the initial assessment, the particular LBTH policy context in which it is placed has, and our understanding of the historic waterspace and associated buildings involved has also

substantially advanced thanks to local research and work by the DCMS.”

54. The report said that since the Conservation Area Audit of 2007/8, the Council’s Core Strategy had been drafted and had been through a consultation process. The Conservation Area proposal aligned with that strategy, in particular the part entitled “Creating Distinct and Durable Places”, protecting the local and cherished scene, helping the community to appreciate the importance of the Borough’s townscape heritage, *“by reinventing the hamlets to enhance local distinctiveness, character and townscape.”* This had to be placed in the context of the destruction wrought during the Second World War and afterwards, so that historic survivors had greater importance. The Borough’s Core Strategy aimed at a high quality sustainable and well connected environment of *“green and blue spaces that are rich in biodiversity and promote active and healthy lifestyles.”*

“3.5 A Conservation Area would be a tool to deliver this objective. The creation of a Conservation Area along the Limehouse Cut would enable the Council to protect this waterway and increase policy safeguards around inappropriate development to help us to protect the aesthetic, ecological and biodiversity value of this important waterspace, as well as help to improve accessibility and ensure that the new development responds pro-actively and sensitively to the setting of the waterspace. Including Bartlett Park could also have significant benefits.

3.6 The creation of a linear Conservation Area along the waterway, encompassing some adjoining industrial buildings of interest, would protect both the sense of the identity of the adjoining hamlets and their historical connection by the blue and green grid.

3.7 In addition to having the support of the Borough’s emerging policy the designation would also have English Heritage support. Number 307 Burdett Road was put forward for Statutory Listing, by a local resident, anxious to safeguard the building’s future. The request was supported by the 20th Century Society and whilst the building was refused for Listing, the explanation of the decision not to List recognised the local importance of the building and was very supportive of a Conservation Area designation to assist in its protection.

The Victorian Society has also expressed their support for the creation of a Conservation Area, to encompass the four Victorian industrial buildings on Dod Street, together with 307 Burdett Road.

## **4.0 Summary**

4.1 In summary, the 11/4 mile long Limehouse Cut is inner London's oldest canal and the only canal in Tower Hamlets which was lined with factories and warehouses on both sides. Although some of the townscape along its length is considerably degraded, its significance remains. The former Poplar Employment Exchange is not an industrial building, it served industry and commerce in Poplar and retains the links to the industrial hinterland to its rear with a group of converted factories and warehouses remaining in Dod Street immediately behind it. It therefore forms a functionally related and visually important canalside group with the four adapted C19 industrial buildings in Dod Street on what was the most industrialised canal in London.

4.1 This is a new Conservation Area requested by local residents, and the information we now possess regarding the history of the buildings and canal has substantially increased, therefore we are therefore better qualified to determine its special interest; the policy background to determining whether it is of sufficient quality and character to warrant designation has altered to lend greater weight to the arguments of its importance to local heritage and distinctiveness. ...

4.3 The area proposed can be seen to now satisfy the four criteria adopted by Cabinet in 2008 to assist in identifying areas suitable for designation as a Conservation Area. ...

4.5 307 Burdett Road which forms a focus and makes a positive contribution to the character of this potential Conservation Area at its west end, is currently under threat of demolition as part of a current Planning Application, its unconsidered loss would harm the special character of this cherished local area. However whilst the relevant planning legislation allows for designating a Conservation Area without consultation, and with the barest of statements justifying the designation, and whilst the petition indicates substantial community support for the designation, Conservation Officers consider the matter should be considered by Cabinet in the normal fashion. This is an approach that has been advised by the Councils legal department in the past.

4.6 Were this Conservation Area to be designated; a detailed Character Appraisal and Management Plan would be prioritised for a public meeting to discuss the designation. It must also be remembered that designation is a tool to manage the process of change so that the special character of the area is not detrimentally affected.

Conservation Area status does not mean that no change is allowed; simply that it should be carefully considered and should not harm the special interest of the area.”

55. Mr Hutton in his witness statement argued that Conservation Area status would protect the aesthetic qualities of the waterspace through design control, along with its ecology and biodiversity, which would preclude certain development without the need for a specific application. Designation would enhance accessibility. The objective of protecting the Borough’s history by reinventing the hamlets was new and relevant to designation. He also saw the objectives of creating high quality sustainable and well-connected green and blue spaces, biodiversity and healthy lifestyles as relevant. Mr Kingston contended that these were considerations immaterial to the designation of a Conservation Area.

56. Ms Lambert put it this way in her statement :

“Whilst essentially concerned with the character and appearance of an area, conservation area designation is one of many planning tools which may influence the future form of the built environment and can therefore assist in protecting the aesthetic, ecological and biodiversity value of the waterspace and improve accessibility to the Canal in this way.”

57. Emerging policy, she said, did not affect the assessment of the appropriateness of the townscape for designation, but was relevant and supportive, emphasising the importance of enhancing the two historic hamlets linked by the Cut. Designation could help the objectives of sustainable green and blue spaces by protecting waterspace, improving accessibility to the Cut, and ensuring that new development responded properly to its setting.

58. Paragraphs 2.1 (first sentence), 2.3, 3.5, 3.7 and 3.8 of this July report were omitted from the report in October 2009.

59. Paragraph 4.5 is noteworthy for its comment that the process of designation including public consultation should follow the normal course.

60. Mr Hutton said in his witness statement that the statutory duty to review Conservation Areas had acted as the catalyst for reconsideration of a Limehouse Cut conservation area, along with the new material put before him by Mr Ridge and English Heritage in particular, and planning policy had evolved with the draft Core Strategy. The report acknowledged that the physical fabric of the Cut had not changed, but his understanding of the historic water space and associated buildings had advanced.

61. The objective of designation had not been to prevent demolition of 307, or its sole reason. He agreed with the report and said that his genuine professional view was that designation accorded with the Act and relevant policy. His previous rejection of such a Conservation Area did not preclude him from reaching a different view,

in the light of the reaction of English Heritage when it refused listing, and in the light of Mr Ridge's material:

“Material had emerged which shed new light on the importance of the whole area, both its fabric and history. This caused me to reconsider. Now a cogent thread around the historic water space and the history of trade, commerce and social history began to emerge in my mind, which would form the basis for a large new Conservation Area, with a demonstrable special quality established by independent research, and supported in principle by English Heritage.”

62. The complexity of the townscape of Tower Hamlets meant that it was not always immediately easy to identify and assess what was special. The Cut lay between the Regents Canal, Limehouse Basin, both of great historic interest, and the dramatic locks of the River Lea junction at the other end. It was this report from Ms Lambert which ultimately persuaded him that the Council “*could sustain the case for a Conservation area for the whole of the Cut*”. That is rather odd language, since if it were worthy of designation by reference to the statutory test, he could simply say that it was worthy of designation in his view. It is however, not dissimilar to the language used by Ms Lambert in her witness statement; the buildings around 307 Burdett Road “*had enough interest to support designation*” but not as extensions to existing Areas, and so she turned to consider the whole Cut.
63. Mr Hutton denied that the residents' campaign, aiming to prevent the demolition of 307 Burdett Road, had overridden his consideration of the statutory test. The campaign had thrown light on wider matters. And it was only Mr Ridge's focus on 307 which led to the headings of the internal emails about the Conservation Area being 307 Burdett Road.
64. Ms Lambert too denied that designation was motivated by some improper purpose; 307 Burdett Road was one of a number of buildings which she felt contributed positively to the character of the Area, distinguished from the others only by the timing of the proposal for demolition and re-development. She too acknowledged that the decision to re-assess designation of the Cut had been prompted by residents' concerns about the demolition of 307, but the consequent review by the Council had been far wider. Further investigation had led her to recognise the special interest and character of the remaining historic areas adjoining the canal, and an increased appreciation of the townscape; and it was that which underpinned the eventual designation.
65. On 7 August 2009, Council officers proposed to add to the Council's Forward Plan a report to its Cabinet for 4 November “*seeking agreement to designate new Conservation Areas subject to public consultation*”. This expressly envisaged that the consultation process would include written consultation with “*key stakeholders*”, which must include building owners. This was a published document.

66. Ms Lambert raised emergency designation on 23 July 2009 to protect the Cut, and other buildings, including 307 Burdett Road as it was the subject of a planning application. She said:

“I have been asked to look at the designation of a conservation area as an emergency measure to protect the Limehouse Cut, a number of industrial buildings associated with the Cut on Dod Street and 307 Burdett Road, the subject of a current planning application.

We have assessed the situation carefully and determined that the character of the area would be appropriate to designate a conservation area, and the core strategy offers us supporting policies, but the future of 307 Burdett Road is threatened by the application and any conservation area designation would need to be done quickly without consultation, as the loss of this building would harm the special character that the designation is intended to protect.”

67. Mr Hutton rejected emergency designation, saying in an email of 28 August that it should follow normal procedures. English Heritage, he said, were supportive of the proposal in a meeting of 4 August 2009.
68. On 15 September 2009, Ms Lambert responded to a further inquiry from the local MP about 307 Burdett Road. She said that English Heritage had advised that this building “*would be best protected by being in a Conservation Area*”. (That was not altogether accurate). The Council took its responsibilities to the historic environment very seriously and so officers were recommending the designation of the Limehouse Cut Conservation Area to include 307, and other buildings of interest. The draft report would be considered on 7 October and by Cabinet on 4 November.
69. On 16 September 2009, according to Trillium, Mr Hutton told its planning consultants over the telephone that a further proposal to designate a Conservation Area would be dealt with in the normal way. There would be a report to Committee in early October to authorise the public consultation process, which would take place in October and the report on consultation and making the recommendation on the Area would be made to Cabinet on 4 November 2009. Mr Hutton says that he was just telling them what the normal process was, but added that it was overtaken by events.
70. The Leader’s Advisory Board, on 22 September, was presented with a detailed proposal from Ms Lambert for public consultation, which included a public meeting on 8 October, letters to residents and stakeholders, website material, and the documents to be available for that purpose including draft Area Character Appraisals.



71. The boundaries of the proposed new Area still had to be settled. On 23 September, Ms Lambert and another officer carried out a site visit to that end. The report includes the following:

“A walk along the canal was convened to consider the detail of the boundaries and consider carefully the quality of the buildings adjoining the Cut. Whilst the designation would protect the historic character of the Cut it was felt appropriate to include buildings that reflected this historic industrial character of the Limehouse Cut.

The first group of buildings it was felt appropriate to include were the former Poplar Labour Exchange and industrial buildings to the rear of this, at the junction with Burdett Road. The former Labour Exchange has a distinctive presence whilst sustaining the skyline alongside the Canalside. The low rise scale of the buildings flanking the canal at this point was notable and formed a comfortable relationship with the canal something which had obviously been the case historically since its construction.”

72. Mr Kingston was critical of the material taken by the officers which, according to the answer to a Part 18 request which affirmed its truth, were a map and Mr Ridge’s notes entitled “*The Special Architectural and Historic Interest of the Former Poplar Employment Exchange 307 Burdett Road.*” He also criticised the level of knowledge that the notes displayed of the area. There is some justification for that latter criticism but it does not show legal error.
73. The importance of the use of that particular set of Mr Ridge’s notes was said to be that it showed that the Council had not been concerned with any site adjoining the Cut than 307 Burdett Road, giving grist to Mr Kingston’s mill that its protection was the purpose of the designation. They had not taken one of Mr Ridge’s notes dealing with the Cut as a whole or even with smaller parts of it. However, during the hearing, Ms Lambert provided a further statement saying that she had in fact taken with her a different set of notes from Mr Ridge. She produced her email to the lawyer, from which the lawyer had answered the request, which had not been specific about which of Mr Ridge’s various sets of notes she had taken, and which the lawyer had wrongly taken to be the one she then referred to in the response. I am prepared to accept that that is what happened, although it is regrettable that the error was not brought to light until very late in the day, and through Mr Lewis’ work rather than through any checking by Ms Lambert.
74. The notes of the site visit were written up on 29 October in response to the objections of another landowner, Criterion Two, to the inclusion of its “*low grade industrial units*” in Gillender Street at the northern end of the Conservation Area. Criterion Two alleged that this could only have been a tactical move to fetter on-going discussion about its own scheme of development. Ms Lambert acknowledged that the Criterion buildings made no contribution to the Area but said that they formed a link with industrial buildings beyond them which did make

such a contribution. Mr Hutton told her that it was very important that she write up the notes, using choice words from PPG15, English Heritage and Mr Ridge.

75. (Criterion brought its own legal challenge to the designation but withdrew it, not because it saw a lack of merit in its case but because its concerns were resolved another way, as I accept. It is convenient to mention here the similar position of Iron Mountain Europe Ltd, the owners of 83 Barchester Street, comprising largely 1950s industrial buildings which were also proposed for development and newly included in the Limehouse Cut Conservation Area. It supported these proceedings by Trillium but no longer wished to take an active part because its objections were also resolved in other ways. I note in passing that the Council, explaining to Iron Mountain's planning advisers in a letter of 22 January 2010 why it had designated the Area in the manner it did, said that it was an emergency measure "*due to a threat to buildings on Burdett Road*". Of course the "threat" was only to 307. But it is a clue, submitted Mr Kingston, to the Council's real thinking.)

### **The resolution to refuse planning permission and its effect**

76. On the same day as the officers' visit to the area, 23 September 2009, the Council's Strategic Planning Committee rejected the officer recommendation of August 2009 that Trillium's planning application should be granted. It resolved that it was minded to refuse it for a variety of largely design related reasons. Many members did in fact express opposition to the development because of the loss of 307 Burdett Road, but there was no reference in the proposed reasons for refusal to the demolition of 307 Burdett Road. That would not have been relevant since refusal of the application could not of itself prevent demolition. English Heritage raised no objection to the proposed development. The proposed Conservation Area was mentioned at the meeting however; and members were told that designation was to be pursued at the Cabinet meeting on 4 November. The application was deferred for a further report which would contain the formal expression of the Members' views in reasons for refusal. Trillium was well aware, as the Council knew, of the tone of the debate and the attitudes expressed about the importance of protecting the building.
77. After the meeting, but on the same day, Mr Archer, a local councillor concerned about the building, emailed the Chief Executive of the Council and planning officers, about the planning application for 307 Burdett Road. He said:

"All those members who spoke against the application were concerned about losing an important part of our built environment and our heritage

However, Cabinet is due to consider expanding the local Conservation Zone to include this building at its next meeting, and the report before members tonight contained a number of objections to the building being destroyed by leading groups such as the 20<sup>th</sup> Century Society, Save Britain's Heritage, Greater London Industrial Archaeology Society and others.

Whilst the application was turned down tonight there is nothing stopping the developers demolishing the building immediately. This would be morally wrong.

I have discussed this issue with Owen and he informed me that you as Chief Executive do have emergency powers to be able to protect this building and I would ask you to explore what options are available to us. At the very least, I feel that the building needs to be protected in the short-term whilst wider issues are resolved. It would be a travesty if this building is pulled down weeks before a conservation zone is extended. ”

78. He did not suggest that the designation process itself should be curtailed so as to protect the building. Mr Kingston submitted that this began a further unlawful process whereby the designation of the Conservation Area became the emergency means to protect this building.

79. The Head of Planning, Mr Owen Whalley, asked officers to consider what routes were open to the Council to protect the building pending designation. He commented:

“Clearly, we don’t know the applicant’s intended course of action, but his agent will report back the mood of the meeting last night which not only emphasised the local historical significance of the existing building but also deficiencies within the proposed scheme. The next SDC meeting will occur after the Cabinet’s consideration of the conservation area designation, and I suspect the applicant understands that whatever the outcome of the conservation area debate, the Committee is not going to approve the scheme and that the only chance of success would be on appeal. He therefore has a choice of leaving the building as it is, assessing the chances of its inclusion within a conservation area and the protection that this will afford, or securing its prompt demolition.

Given that the applicant clearly knows that he can demolish the building without any further planning intervention, this is a matter of extreme urgency. ”

80. A Building Preservation Notice was not an available option since English Heritage had refused listing, and it would be a costly failure.

81. One lawyer, Ms Crowe, did query whether there was any indication that demolition was actually going to occur, and wondered whether building control procedures would mean that nothing would happen before 4 November.

82. All of these exchanges were taking place on 24 September, and under the heading “*Urgent Planning application: 307 Burdett Road.*” The possibility of emergency designation emerged, whether through the Planning Committee, although Cabinet

was the body within this Council which designated Conservation Areas, or with the Chief Executive using his emergency powers. Either, it was said, would require real urgency and need to be demonstrated. Mr Hutton then suggested that it could be designated without consultation at the meeting of the Development Committee the next week. If something went wrong in that process, the decision could be ratified at Cabinet on 4 November. Mr Whalley wondered whether that could lead to judicial review, doubted whether the Development Committee could deal with it, and questioned whether notice needed to be given to affected landowners.

83. Ms Crowe entered a note of caution:

“the expediency of this may be a concern (see attached case), and yes, we are departing from usual procedures which may expose us to criticism at the very least. Our justification and urgency for this would need to be made very clear and transparent.”

84. Mr Hutton considered that the report and supporting material needed to be robust to avoid legal challenge. Papers needed to be available 3 days beforehand. He continued:

“The fact that we are acting differently is to protect a building under threat of redevelopment which makes a positive contribution to a proposed CA, (and the inclusion of the building and designation is supported by English Heritage), this would provide the justification for moving designation forward.

The notification to owners is 3 days as above.

Is it JR’able? We are acting within our powers on the advice of EH to designate a CA and protect a building, and going through the statutory procedures, I’d think not, although clearly caution is needed.”

85. The Head of Building Control pointed out that it would be an offence under the Building Act 2004 for Trillium to demolish 307 without giving 6 weeks’ notice of its intention to do so, but the maximum fine was only £2500. He agreed to write to Trillium, perhaps for the second time, so saying; the Council had to decide in that period whether or not to object to the proposed method of demolition. But added:

“On the face of it this gives us the time we need to get to Cabinet in December, but the only recourse we have under the Building Act if demolition does commence is a fine not exceeding £2,500. This may be a sufficient disincentive to prevent demolition.”

86. Trillium did not in fact serve notice under the Building Act until 29 September 2009, giving notice of a start date on 9 November 2009. The Council’s reply stated that starting before 10 November 2009 would be a criminal offence. As Mr

Kingston pointed out, the period of notice under the Building Act would not expire until 5 November 2009, one day after the Cabinet meeting to consider designation, even if notice had been given on 23 September. The Council did not consider the use of an injunction in support of the criminal law, were the Act imminently to be breached.

### **The decision on the emergency process**

87. On 29 September, Ms Crowe told Mr Whalley that he had to decide whether there was sufficient urgency to justify departing from the usual access to information rules for Cabinet. Consideration was again given to whether the Chief Executive himself could designate a Conservation Area. On 1 October, Mr Hutton asked for urgent consideration to be given by Cabinet on 7 October to the designation of the Limehouse Cut Conservation Area. His reasons were:

“307 Burdett Road, Poplar, which is a building that makes a positive contribution to a proposed new Conservation Area along the Limehouse Cut is considered by Officers to be at possible risk of demolition prior to the designation of the Conservation Area; a demolition notice has been served on the Council in this regard, and in order that this demolition can be properly considered within the context of the controls on demolition in the Planning (Listed Buildings and Conservation Areas) Act 1990, this FP3 brings forward the consideration of the Conservation Area designation by Cabinet as an urgent action.”

88. The request was placed before the Chairman of the Oversight and Scrutiny committee, and the accompanying email presented the case for urgency in rather starker and more pressing terms:

“In the circumstances, it is considered that there is an imminent risk of demolition prior to the designation of the new Conservation Area, which would have a significant adverse impact on the proposed designation.

The report explains the effect of designation on planning control. In order that appropriate planning controls may be exercised over the site within a timeframe that takes into account the imminent risk, it is considered necessary to bring forward designation of the new Conservation Area for urgent consideration by Cabinet.

This action will omit any public consultation on the matter which is the reason your agreement is required.”

89. The Chairman agreed to the case for urgency. A public consultation meeting for 8 October was cancelled. Emails were now headed “*Limehouse Cut Conservation Area*”. Mr Whalley pointed out to the lead member for Development that any request by members to call in the Cabinet decision would defeat “*the object of the exercise in seeking to introduce controls over the demolition of 307 Burdett*”

Road.” Trillium was not notified of what was proposed at the meeting, through a conscious decision by officers, although Mr Whalley was aware of no sign of demolition activity. No member of the public was notified of the recommendation in the report to Cabinet to avoid “*precipitate action*”, i.e. demolition.

### **The Cabinet decision**

90. This item was added to the agenda of the Cabinet meeting on 7 October, after the publication of the agenda 5 days before the meeting. The Cabinet had the advantage of a report dated 4 November in anticipation that the issue would be considered on that later date. I set this out in some detail because of the degree of criticism levelled at so much of it.

91. The report set out the reasons for urgency combining the request and email to the Chairman of the Oversight and Scrutiny Committee, as follows:

“The subject report proposes designation of a Conservation Area along the Limehouse Cut. The merits of designation are set out in the report. Situated at 307 Burdett Road, Poplar, is a building which makes a positive contribution to the proposed new Conservation Area. An application for planning permission has been made to the Council to demolish the existing building and re-build on the site. A demolition notice has been served on the Council’s Building Control section. In the circumstances, it is considered that there is an imminent risk of demolition prior to the designation of the new Conservation Area, which would have a significant adverse impact on the proposed designation. The report explains the effect of designation on planning control in paragraph 5.1. In order that appropriate planning controls may be exercised over the site within a timeframe that takes into account the imminent risk, it is considered necessary to bring forward designation of the new Conservation Area for urgent consideration by Cabinet.”

92. The report summary said:

“1.1 Following the review of the Borough’ Conservation Areas in 2007/08 officers in the Development Design and Conservation Team have been asked by local residents to now consider the possibility of the designation of a Conservation Area along the historic Limehouse Cut.

1.2 This would be a linear Conservation Area, extending along the length of the Cut, and would include those buildings of special interest adjoining it.

1.3 This report considers designation of the Limehouse Cut as a Conservation Area and includes a designation

statement, regarding the history of the buildings and canal, its significance and the policy back ground to support the designation

1.4 The report concludes that in light of these factors the Limehouse Cut does warrant designation and that it satisfied the four criteria for the selection of Conservation Areas adopted by Cabinet in 2008. It therefore recommends Conservation Area Designation.”

93. In fact, paragraph 1.3 is incorrect. No designation statement was included with the report, and although members may have realised that that was so, there is no evidence that the error was corrected. Mr Hutton said that the report did include a description of the significance of the Cut.

94. Under “Background”, members were told:

“3.5 The idea of designating the Limehouse Cut a Conservation Area has been put forward by local residents keen to see the canal and its associated historic buildings protected, and have asked Officers to investigate this, particularly in the light of the Department of Culture Media and Sports decision not to Statutorily List 307 Burdett Road, a former 1930’s Employment Exchange in an Art Deco style.

3.6 Arising from the DCMS refusal to list this building, a petition signed by 185 local residents has requested that these buildings be protected by ‘Local Listing’ and included within a Conservation Area. To afford statutory protection, Conversation Area designation would be the most appropriate course of action. Each building’s positive contribution to the character of a new Conservation Area could then be detailed.

3.7 Officers understanding of the historic canal and associated buildings involved has also substantially advanced thanks to research by local people and work by the DCMS. It is in this light that the recommendation that the Limehouse Cut be designated a conservation area is made.”

95. Under “Detailed Consideration”, the policy content was set out:

“4.1...Designation of the Limehouse Cut is intended to support local policy.”

4.3 The objective within this Core Strategy, which this conservation proposal helps achieve is SO22 “*Protect and celebrate our history and heritage by placing these at the heart of reinventing the hamlets to enhance local*

*distinctiveness, character and townscape*". Protection of those places and buildings which form part of the familiar and cherished local scene, which helps the local community to appreciate the importance of the Borough's townscape heritage, and its social history, is at the heart of achieving this overall policy objective.

4.5 Also of relevance, within the newly published Core Strategy, is objective SO12, which states that the Borough wants to create a high quality sustainable and well connected natural environment of green and blue spaces that are rich in biodiversity and promote active and healthy lifestyles.

4.6 A Conservation Area would be a tool to deliver this objective. The creation of a Conservation Area along the Limehouse Cut would enable the Council to protect this waterway and increase policy safeguards around inappropriate development to help us to protect the aesthetic, ecological and biodiversity value of this important waterspace."

96. This was justly criticised by Mr Kingston as a partial history in both senses; it was incomplete and biased.

97. The policy context repeats in large measure what Ms Lambert drafted in July 2009, but adds that "*Bartlett Park could also benefit significantly*." It was contemplated in Ms Lambert's initial case for designation in July 2009 that the Park should be included within the Conservation Area, but that was no longer the case. The language of benefit to Bartlett Park was essentially unchanged however. Mr Hutton said in his witness statement that designation would still protect the setting of the northern edge of the Park, and development outside the Area would have to protect the setting of the Area.

98. 4.7 ended by saying:

"The creation of a linear Conservation Area along the waterway, including the towpath, and encompassing some adjoining buildings of interest, would protect both the sense of the identity of the adjoining hamlets and their historical connection by the blue and green grid."

99. Mr Kingston criticised the next section, which covered external support:

"In addition to having the support of the Borough's emerging policy, the designation would also have English Heritage support. Number 307 Burdett Road was put forward for statutory Listing, by a local resident, anxious to safeguard the building's future. The request was supported by the 20<sup>th</sup> Century Society and whilst the building was



refused for Listing, the explanation of the decision not to List recognized the local importance of the building and was very supportive of a Conservation Area designation to assist in its protection.”

100. It made no mention of the refusal of officers to put 307 Burdett Road on the local list, or of the previous officer decisions on possible Conservation Areas affecting 307 Burdett Road. Mr Hutton explained that he saw no reason for those points to be made, since there had not been a decision that no such Conservation Area should be designated, and they were not Council decisions anyway. A decision not to add buildings to the local list was not a decision that it could make no contribution to a Conservation Area.

101. Mr Kingston submitted that the report was misleading in suggesting that English Heritage had supported the designation of this Conservation Area, as opposed to a rather smaller one, and did not really deal with the contingent and qualified nature of its comments. It said this:

“There is no doubt that the Poplar Employment Exchange has strong local value and is an important East London landmark. If this were a Conservation Area, the dignified neo-Georgian elevations and historic interest of Poplar Employment Exchange would make a positive contribution to its character. Hannah Parham, English Heritages Adviser’s Report 1/6/2009.

The former Labour exchange and the small cluster of former industrial buildings to the east of it, form a distinctive visual group. The former industrial buildings themselves are an evocative, attractive and increasingly valuable reminder of the East End’s industrial past. If the Borough were so minded, we would support designation as a conservation area. Andrew Hargreaves, English Heritage Historic Buildings and Areas Adviser 3.4.2009.

The Victorian Society has also expressed their support for the creation of a Conservation Area, to encompass the four Victorian industrial buildings on Dod Street, together with 307 Burdett Road.”

102. The section on the significance of the Cut and its associated buildings starts by referring to the fact that research had been done but the Character Appraisal and Management Plan were not yet ready but would be soon. Mr Kingston contended that the following paragraph was all there was which identified the special architectural or historic character of the Area and almost all related to 307. The significance of the remaining townscape is not described other than in terms of 307, and the group nearby in Dod Street:

“In summary, the 11/4 mile long Limehouse Cut is inner London’s oldest canal and the only canal in Tower Hamlets which was lined with factories and warehouses on both

sides. Although some of the townscape along its length is considerably degraded, its significance remains. The former Poplar Employment Exchange is not an industrial building, however it served industry and commerce in Poplar and retains the links to the industrial hinterland to its rear with a group of converted factories and warehouses remaining in Dod Street immediately behind it. It therefore forms a functionally related and visually important canalside group with the four adapted C19 industrial buildings in Dod Street on what was the most industrialised canal in London. ”

103. The section then dealt with what had changed:

“This is a new Conservation Area requested by local residents, and the information we now possess regarding the history of the buildings and canal has substantially increased, therefore we are better qualified to determine its special interest; the policy background to determining whether it is of sufficient quality and character to warrant designation has altered to lend greater weight to the arguments of its importance to local heritage and distinctiveness.”

104. It concluded that the area proposed could “*now*” be seen to satisfy the adopted criteria. Mr Kingston submitted that no local residents had called for this particular Conservation Area. There was no explanation of how what was said to be new had helped change officers’ minds, and in particular what it was about the history of the buildings and the Cut, apart from a lot of detail about what had once been there or what had once happened there, which did not advance the issue of what was special about its character. There had been no change to PPG15 or to the criteria adopted by the Council in 2008. There was no mention of some of the more obviously controversial inclusions at Barchester Street and Gillender Street. (After inspecting the exterior of the buildings in December 2009, an officer concluded that the former at least did make a positive contribution to the character of the area).

105. The report pointed out that there had been no public consultation in view of the urgency. It did not assess the risk of demolition.

106. The general role of Conservation Areas was mentioned: demolition of unlisted buildings required consent, and enabled policies for their preservation or enhancement to be developed, but no specific policy was envisaged.

107. The Council was required to include in the report a list of “background papers”, which do not include published works. The report listed as background papers only published works: PPG15, and English Heritage guidance documents on the appraisal and management of Conservation Areas.

108. The Minutes of the meeting record that the Cabinet agreed and adopted the special circumstances and the reasons for urgency in the report, and the report's proposal of the Limehouse Cut Conservation Area, and continued:

“An application for planning permission had been made to the Council to demolish the No. 307 Burdett Road, Poplar, and re-build on the site. It was considered that the building made a positive contribution to the proposed new Conservation Area. A demolition notice had been served on the Council's Building Control section. In the circumstances, it was considered that there was an imminent risk of demolition prior to the designation of the new Conservation Area, which would have had a significant adverse impact on the proposed designation. In order to exercise appropriate planning controls over the site within a timeframe that takes into account the imminent risk, it was considered necessary to bring forward designation of the new Conservation Area for urgent consideration by Cabinet. ”

109. The Minutes then simply record that the Conservation Area was designated. Four of the nine members had been at the meeting in May 2008, see paragraphs 23-31 above.

110. Public notice then followed. But, in the way of things, a press release was required by the lead member for housing and development. The draft was approved by Mr Hutton. Mr Kingston drew attention to its language; it should be taken as deliberate and considered, and not as the mere puffing of an untutored politician. The lead member was quoted as saying, along with unobjectionable titbits from the report :

“The borough was at risk of losing an important historical landmark because of a planning application, which is why the Cabinet stepped into declare Limehouse Cut as a conservation area.”

111. I accept that the press release quote went on to deal with the significance of the Cut, but that language of the lead member is quite deliberate.

112. The Council, as part of its Forward Plan, produced a report on the designation of new Conservation Areas in November 2009, which made clear its intentions that proposed new Areas should be subject to public consultation with designation statements publicly available. This did not apply to the Limehouse Cut Conservation Area.

113. A Character Appraisal was produced in December 2009 for the purpose of the Council's after the event consultation process on the character and management of this Area. It adopted much of what had been in an earlier draft in September 2009, but which had not been a background document to the October report, nor

mentioned in the report itself. The September version said that the character of the area was that of a canal and adjacent towpath, continuing:

“Essentially the character is one of a canal and adjacent towpath. Its industrial heritage offers it a strong industrial character with warehouse buildings located at the back edge of towpath, unusual for their proximity to the water, but otherwise the character is that of a linear open space valued for its leisure and amenity value. A walk along the canal shows the towpaths use by walkers, runners and cyclists. The scale of development adjacent to the canal is three to four storeys and this seems a comfortable height when the width of the canal is considered.”

114. Buildings were mentioned without further comment on their significance or contribution, including 307 Burdett Road. Mr Ridge’s notes appeared to have been relied on very extensively for historic detail without comment on its relevance.
115. The December appraisal is likewise long on historic detail, but is undoubtedly more considered and better related to the statutory regime. The character of the Area is additionally described:

“The character of the conservation area is that of a broad Canal and towpath, formerly an important industrial link between the River Lea and the Regents Canal Dock, and the adjoining industrial sites which located close to it to take advantage of the accessible location it offered.

Today the use of the Canal is more about leisure and the amenity and wildlife value of the water are really important, but it is the strong industrial heritage and the maritime feel which define the Canal and the Conservation Areas special character, reminding us of the social history of Poplar and the part played by manufacturing in that history much of which is now lost, partly as a result of the blitz partly as a result of the changing face of employment.

The character of the Conservation Area is comprised of those elements which are special to a canal environment and key buildings adjoining the canal which because of their important history, architectural value or robust industrial aesthetic are felt to make a positive contribution to the special character of the Limehouse Cut Conservation Area.”

116. The Appraisal then dealt with four clusters of buildings, one of which was the Dod Street area which included 307 Burdett Road. This building’s “*handsome Neo-Georgian*” architecture was described:

“Whilst not a commercial or industrial building this employment exchange is inextricably linked with the industrial hinterland having played a critical local role when unemployment soared as jobs in local manufacturing industries declined in the thirties. Together these buildings form a functionally related and visually important canalside group on what was the most industrialised canal in London.”

### **Conclusions on the purpose of designation**

117. The submissions of Mr Kingston deal with the events as a series of thoughts, decisions and acts by officers and the Council, which taken together show that the real or primary purpose of designation was the protection of a single unlisted building, and not the only permissible one of designating an area of special architectural or historic interest, the character or appearance of which it was desirable to preserve or enhance. The manner and timing of the decision by the Cabinet were all of a piece with the actions of officers, or if not, showed that the Cabinet itself designated the Conservation Area so as to protect 307 Burdett Road.
118. Mr Lewis’ submissions deal with the events in two different phases: the consideration of the merits of designation by officers and then Cabinet, and the manner and timing of the decision, made urgently to stop demolition harming the proposed Area. The decision to designate was rational and the timing and manner justified by urgency.
119. In reality, it seems to me, the Cabinet decision on the merits was inextricably linked with the manner and timing of its being taken. The urgency of a decision on designation was driven solely by the perceived need to protect 307. The Cabinet decided that it would designate at that meeting as a matter of urgency and without further consultation so as to protect 307. Had that not been the purpose of making the designation at that time, there would have been no need for the normal procedures to be truncated. The Cabinet’s consideration of the merits was also affected by the perceived urgency: the officer report to it has undeniable limitations which would have affected the quality of thought given by members; the normal consultation processes which the Council and others would accept as important were omitted.
120. I start, however with the evolution of the officers’ thinking. I do not accept the submission of Mr Kingston that their recommendation to Cabinet was primarily based on a desire to find a way to protect 307. In considering the evolution of the officers’ thinking, I have had regard to but do not mention all the documents to which my attention was drawn.
121. I accept that officers had rejected a Limehouse Cut Conservation Area in 2008, and later the local listing of 307, because it lacked the necessary qualities. There was a time in February 2009, when they were minded to brush off Mr Ridge’s repeated interest in both, in view of their previous assessments. The intervention of the local MP required them to explain their views more fully.

122. I accept that the evidence shows that the primary reason why officers re-examined the question of a Conservation Area including 307 Burdett Road was the desire of local residents to see it protected, even though for Mr Ridge at least, his interest in the area was more widely focused. So the initial driving force behind consideration of a Conservation Area was to find a way of preventing the demolition of 307. That is not unlawful as the starting point.
123. The comments of English Heritage in April 2009 however provided further reason to look at a Conservation Area. So views of some respectability, beyond mere local pressure to prevent demolition, justified looking more carefully at possible designation. Mr Hutton's email of 9 April 2009 is clearly concerned with protecting 307, but does also treat English Heritage's response as making it worth examining a Conservation Area. It is not the case that that was only to be considered in the event of statutory listing being refused, although that was then the main hope for protection.
124. In any event, the area was in fact examined. I read the 16 April 2009 email report from Ms Lambert as containing her genuine professional view that there was merit in a Conservation Area along the Cut. It marks a very important point in the evolution of the officers' thinking, since it showed that there was a case which had hitherto not been fully appreciated.
125. The June 2009 comments of English Heritage confirmed its general view. I accept that that continued to justify the changing views of officers. At times the language of officers is curious, referring to proposals which "could" be supported, as for example Ms Lambert in her witness statement, but this tentativeness did not last through the process. It cannot fairly be seen as merely recognising that a case "could" be made i.e, one which might survive scrutiny, but which did not represent her views.
126. Her report of 13 July 2009 is positive about designation, gives a rational justification for it, and does so in terms which show no sign that her recommendation is made for an unlawful purpose or as a pretext. The way in which designation and the demolition of 307 Burdett Road are considered is lawful.
127. The language of Ms Lambert's email of 23 July 2009 requires discussion, for she says that she has been asked to look at designation "*as an emergency measure to protect the Limehouse Cut, a number of industrial buildings associated with the Cut on Dod Street and 307 Burdett Road...*". In reality, the only threat which could be seen as an emergency was to 307 Burdett Road, the subject of a planning application. But the next paragraph makes it clear that whatever may have been the reason why a Conservation Area was examined in the first place, the view has been formed that a Conservation Area should be designated because of the qualities of the area. And it is a speedy designation which is required to prevent the harm to the character of the area which the demolition of 307 would cause. Taken as a whole, that email does not support a contention that by this stage, the justification for designation was to prevent the demolition of 307. In my judgment, by this stage, officers had instead come to the view that the area had a special interest which should be preserved, that 307 Burdett Road was part of that

special interest, and its loss would harm the character and appearance of that area. That is a lawful approach.

128. I accept that it was the rejection of the recommendation that planning permission be granted, which Mr Lewis said injected the real urgency into the Officers' deliberations, followed by the Building Act notice. The officers' subsequent emails do not show that there was any change in their view on the merits of designation, nor do they reveal that officers in fact thought that no Conservation Area should be designated, but still promoted it so that members could stop demolition of 307. Their report to Cabinet whatever its other defects, does not show an unlawful approach to designation.

129. The urgency, as they saw it, lay in preventing the demolition of a building which was thought to make an important contribution to the area which they recommended should be designated; it should receive as a matter of urgency the protection which it was now thought to deserve as part of the proposed Conservation Area. An urgent decision on designation, so as to prevent demolition harming the area which officers thought ought to be designated, does not show that designation was undertaken for an improper purpose. The manner and timing of the decision to designate the Limehouse Cut Conservation Area had a purpose, in officers' minds, inextricably linked to the merits of designation: to protect 307 from demolition, and to protect the character of the Area from the harm which it would suffer were 307 to be demolished. The officers' approach was lawful.

130. I do not deal here with whether the specific manner in which the decision was taken, and its timing, are lawful for other reasons, about which Mr Kingston made separate submissions.

131. There are a number of other factors which support my appraisal of the documentary evidence. It was not disputed but that a Limehouse Cut Conservation Area, including 307 Burdett Road and the adjoining group of warehouses at Dod Street, could lawfully be designated. It is an area, and not a single building. It is not irrational to see an area comprising the Cut and adjoining buildings as having the characteristics required by statute. The contrary was not contended, nor could it be in the light of the views in the April and July 2009 reports, and expressed more clearly in the post designation character appraisals in December 2009. I regard that as a very important factor in judging the motives or thought processes of officers. If the Area in general can rationally be thought to have the necessary special qualities, it is more difficult to show that those were not the factors which dominated the officers' thinking.

132. The contention as to irrationality was confined to the boundaries, as designated, by reference to the inclusion of the properties in Gillender Road and 83 Barchester Street. I reject that argument. Obviously this does not affect the inclusion of 307 or its group. As to the former, it was not contended by the Council that they made a positive contribution to the area; rather it was their link to others which were properly included, that led to their inclusion. I deal later with what the report said. I am not prepared to hold that to be unlawful since Conservation Areas often have to include buildings of no interest or indeed ones which harm them, in order for sensible boundaries to be set. Their role as a

connection to those other buildings shows their inclusion to be lawful. As to the latter, while I accept that largely 1950s industrial glass and brick buildings, with occasional 1930s survivors of 1940s Luftwaffe and 1960s planner, will not commend themselves to many as buildings to be included in a Conservation Area, experience urges caution over what is a rationally lawful view of architectural or historic merit: one man's brutalism is another's Bauhaus.

133. Whatever may have been the position in other cases, the relevant Council officers have given evidence by witness statement that the Conservation Area was worthy of designation in their professional view, and that the building in question was properly included. They have explained the evolution of their views, and what had caused them to change their minds. Mr Kingston did not seek to cross-examine them, nor to say that I should regard them as untruthful. His approach was that I should look at the documentary evidence overall and reach a view as to what had been the Council's approach. But I do not think that I can regard this as the evidence of forgetful or simply unreliable witnesses; unless the challenge is made that these are untruthful witnesses, which would in my view have required an application to cross-examine them, I am not prepared to say that they are deceiving me. So there is a clear professional view that the Conservation Area was worthy of designation on proper principles. Of course, contemporaneous language could show that what Mr Hutton and Ms Lambert say in their statements is untrue, but it has to be read in the light of their unchallenged statements that their views are as they say they are.
134. It was not only the Council which regarded the Limehouse Cut as worthy of conservation. Respectable individuals and groups saw it as worth protecting, with some of the buildings alongside it. Whatever maybe said about the lack of quality of the building for local listing, the belief of those groups and individuals that 307 had local historic and architectural interest, and contributed to an area worthy of protection seems to me to be completely genuine. That adds weight to my conclusion that the Council officers were also honest in their stated view that there was an area worthy of designation to which 307 contributed.
135. Whatever may be said about the way in which the view of English Heritage was presented in the Cabinet report, it did not regard the inclusion of the group around 307 in a Conservation Area as unsupportable. Both when responding to the Trillium application and when refusing to add 307 to the statutory list, English Heritage mooted the inclusion of 307 in a Conservation Area, because it was part of a group of buildings which might well have the necessary qualities. The decision on that was of course not for English Heritage. I do not regard its comments as excluding a Limehouse Cut Conservation Area, or as being prescriptive about the only sort of area in which they could be included. It focused on 307 itself, but the group had been drawn to its attention since the group might affect its listing decision because of the relationship of those other buildings to the historic interest of the Labour Exchange.
136. The Conservation Area was also not devised in order to defeat objectionable development by a side wind. There is no suggestion that the development itself was so disliked but so unstoppable that the retention of an unworthy building was



prayed in aid to stop it. That deals with the officers' position. Their approach was lawful. A designation decision which adopted it would also be lawful.

137. I have considered whether a different conclusion should be drawn about how the Cabinet itself approached designation, particularly in the light of the discussion by members when rejecting the recommendation that planning permission be granted, which showed that the protection of 307 was strongly desired, by the attitude shown by Councillor Archer afterwards when he was seeking some interim designation which could protect 307, the subsequent press release by the lead member for housing, and the comment in the letter of 22 January 2010 to Iron Mountain.
138. In the end, I have concluded that the evidence is not strong enough to show that Councillors were adopting an approach to the justification for designation other than that recommended by officers or for reasons other than those which officers presented to them. In general, where a recommendation is accepted, it would require strong evidence to show that the reasoning had not been adopted, especially where it has to be contended that lawful reasoning had been rejected in favour of the unlawful. There are no more than those few points. The reasons for refusal did not include the demolition of 307. There is no evidence that the design and other points were obviously spurious. Design had been identified earlier as an officer concern. Members were concerned to protect 307, but I cannot say that permission was refused wholly or essentially to protect an unprotected building, so as to give time for a Conservation Area to be proposed.
139. As to the second, although Councillor Archer focused on the protection of 307 as the important part of the built heritage, and that approach might have shown that the lawful merits of the Area's designation were beside the point if designation would protect 307, I cannot accept that he disagreed with the appraisal of the Area and its value, only voting for designation predominantly to protect 307. Concern for the building could very easily extend more widely. Third, taken by itself, what I have quoted from the lead member's press release, and the further legally inaccurate reference to the Council's obligation in respect of "*buildings of special architectural and historic importance*", which is what Mr Kingston relied on, could show that he, at least, had approached the issue on an unlawful basis, concerned with the protection of a building rather than of areas. But the press release as a whole does show that the legitimate and inextricably linked purposes of designation were in his mind, rather than the illegitimate purpose of protecting 307 alone.
140. Finally, the letter to Iron Mountain explained why the decision had been taken in the manner it was: the urgency was driven by the fear that 307 would be demolished if the designation process followed the normal route. It does not show an unlawful approach to the purpose of designation.
141. I concluded that the merits of designation and the timing and manner of the decision were inextricably but not unlawfully linked in the officers' minds. In my judgment, they remained so in the Cabinet's mind, adopting what officers recommended for the reasons officers had given. Designation had merit; designation was needed now to protect the Area from the effect of demolishing a

building which the Cabinet thought had merit and should itself be protected. That is not unlawful.

142. Accordingly, I reject Mr Kingston's primary contention.

**Misleading and material omissions in the officer report**

143. An officer report to members can contain errors of such a nature that a decision which adopts them is unlawful, since it will have ignored relevant factors or relied on mistaken ones. I have already concluded that members did accept and rely on what was in the report. There is no evidence that they were aware of any factors in the history of the consideration of a Conservation Area beyond those to which their attention was drawn. They would, I accept, have had some knowledge of the buildings and area.

144. An officer report, read with the informed eye of a Councillor rather than construed as a legal document, can lead to an unlawful decision if it is significantly misleading, or if members are not provided with sufficient information and guidance to enable them to reach a decision applying the relevant statutory criteria. See *Oxton Farms v Selby District Council* 18 April 1997, per Judge LJ, and *R(Lowther) v Durham County council and Lafarge Redland Aggregates Ltd* [2001] EWCA Civ 781, per Pill LJ at paragraphs 52 -3.

145. Mr Kingston drew attention to a number of omissions and failings in the report. I start with three observations, however. The Council, first, was adopting what it knew was not the normal and preferable route, one which its own policies showed was in principle undesirable since it meant that public consultation, which it regarded as important, could not take place, and its decision might lack the general support which it needed. The proposal could be less well-founded than it should be.

146. Second, it knew, indeed this was the purpose of the procedure, that Trillium and other building owners had not had their say, but it was aware from the report that members of the public had been instrumental in persuading officers, and councillors at the Planning Committee in September 2009 to their point of view. There had been in reality a form of one-sided public participation which conveyed what one side would have said in response to public consultation. Indeed, Trillium had been specifically told on 16 September 2009 that it would be consulted, in effect lulling it into a false sense of security about when it should make its views known. The report therefore needed to deal with the case for designation in a balanced way, especially in the absence of any reference to or analysis of the possible case against it which those not consulted might have put. If it did not, factors which might be influential with Councillors might be unknown to them.

147. Third, the report needed to be careful, fair and balanced about the merits of designation, given that the inspiration for the consideration of designation, and some of the arguments in its favour could not lawfully justify it. Officers knew that; indeed it was accepted that the inspiration for renewed consideration of designation was the protection of 307 Burdett Road. They would have known that

members were very concerned about protecting 307 Burdett Road, from the meeting in September and their desire to consider designation urgently. I have in mind the problems which could be created by the reference to designation being the most appropriate course of action to achieve statutory protection for 307 Burdett Road, and its adjacent small group, though I do not go so far as Mr Kingston though as to hold that PPG15 was simply ignored. Separately and together, these three points created a risk that members would be inadequately informed and advised in the absence of a full, fair, careful and balanced report.

148. I turn now to Mr Kingston's specific submissions. First, the report did not mention that officers had considered and rejected designation as recently as 2007/8, and had not been persuaded until early 2009 that there was an issue worth re-examining. Of course, the primary question was whether officers took the view now that the Area was worthy of designation. But in presenting the issue to members for their consideration, and bearing in mind that Trillium had not been able to have its say on the merits, members ought to have been alerted to the fact that a respectable body of professional opinion, i.e. its own officers, had examined the issue closely and, but a few months ago, had held the opposite view, and had only re-examined it under local pressure in large part to save an unlisted building, i.e. for an illegitimate purpose. They were misled to a degree by this deliberate omission in consequence of which the report gives an impression of an unopposed consensus of professional view about a point, previously unconsidered and now brought to light. In reality, there was a very significant change of view to which members should have been alerted. It was a material factor for their consideration.
149. Although it is not for the Court to rule on what should be made of Mr Ridge's reports, it is clear that a number of valid points could be made about their value as a basis for a change of mind. The same applies to the new Core Strategy. Where the previous position of officers is not stated, there is no indication to members that there might be something for them to consider for themselves about the worth of Mr Ridge's reports as the basis for so swift a change of mind.
150. Second, the report did not refer to the refusal of local listing of 307 because of its lack of architectural merit. Given the importance attached to this building by external and member proponents of designation in the case for designation, and in the timing and manner of the taking of the decision, that refusal was material to the decision and its manner and timing. It should have been pointed out. The report also lost some balance through its omission. It is not enough to say that one building was not central to the case for designation. Indeed that rather undermines the justification for the way designation was handled.
151. Third, I do not regard the report as significantly misleading in saying that it was local residents who first urged this Conservation Area. Mr Ridge did urge it, and had the support of one of the petitions. Members could have been told that they had also wanted a smaller Conservation Area protecting the group around 307 Burdett Road, which officers thought too small on its own, or inappropriate as an extension to the St Anne's Church Conservation Area.
152. What is more important however is that in making clear to members what local residents thought, it rather highlights the problem with the consultation

process or rather with its omission so far as building owners were concerned, and that the report itself needed to be careful and balanced about the merits of the arguments if it was not to mislead or ignore material considerations.

153. Fourth, Mr Kingston criticised what the report said about English Heritage. English Heritage had never supported the Limehouse Cut Conservation Area. It may not have opposed it, but the report gives a clear and wrong impression that this particular proposal had the support not just of officers but of a body as important as English Heritage. The latter did support a Conservation Area covering the 307 Burdett Road group, without being more specific about its boundaries. It considered a small area or an extension but without having considered any more other area. This point might have been deduced from the reference to a "*small cluster*" of buildings in the quotes from English Heritage responses, but would scarcely draw to the reader's attention that it had expressed no view supportive of the Conservation Area proposed, nor against it. If its views had been put accurately, the Council view that such a small area was inappropriate and that it should not be an extension to St Anne's would have had to be explained. It would have watered down inevitably the support attributable to English Heritage. If members had then wanted to focus on what English Heritage had at least explicitly been prepared to support, they would have faced contrary officer views.
154. In certain circumstances, such an error may not matter very much. But in my view it did here since the officers were clearly seeking as much support as they could for their recommendation. The matter was urgent, the route unusual, consultation had been omitted and in particular with the building owners. The history of how the proposal came into being and who actually supported what was actually being proposed required balanced handling. Instead, this was all of a piece with the omissions to which I have referred. The report became misleading in that it gave the false impression of weighty and specific support, with no worthwhile reasoned contrary view to be considered. This is of importance also since one of the bases for the officers' new views was "*further work done by DCMS*". This is in reality no more than a different way of referring to English Heritage's responses; a wrong impression could easily be gained of high level Governmental research.
155. Fifth, the report is quite wrong to say that it included a designation statement. Members could see that no such statement was included. It might have been only a short statement, and much of what it would have said was in the report anyway. However, this comment could give the impression that officers were more advanced in their thinking and analysis than they were and that what they had to say was weightier than in fact it was. It might not lead to a quashing by itself, but it does not stand alone as an error.
156. Sixth, the report is misleading over Bartlett Park. The original July report recommended its inclusion in the Conservation Area. The October report, which was based on it, was poorly edited: the Park was not included in the Proposed Area, but the related assertion of benefit was. There was no evidence that any officer, at the time, had considered there to be any benefit to the Park from the designation of a Conservation Area on its borders. There may be a benefit as

described by Mr Hutton, but what Mr Hutton says does not purport to be other than a response after the event to the claim. He does not say why the Park was omitted while the comment remained in. I am sure that there was no intent to mislead, and that this was the result of the hurry to put the new report together. But it does misrepresent the officer's then view. It would not have been misleading to point out that there might be benefit to the Park from the designation of an area from which it was excluded. Again, by itself, it might not lead to a quashing, but it does not stand alone.

157. Taking all of the failures together however, and against the background of the three observations I made at the start of this section which go to the significance of the omissions, I have concluded that the report was misleading in a significant way, and that members ignored relevant considerations. They did not know of the history of consideration, the true position of English Heritage and would have gained the impression, with the lesser points, that the particular designation was far less contentious and more generally thought appropriate on its proper merits than it was. These omissions were not made good by debate, oral information, or by the sort of knowledge which members would have had. I quash the decision for those reasons.

158. I now turn to the issues raised over how specific aspects of the planning merits of designation were dealt with. Mr Kingston submitted that the report initially erred in paragraph 4.1 in saying that designation "*is intended to support local policy*". The introductory words had referred to the Act and to English Heritage guidance, by name but not by substance. The report then went on to consider, as I do later, the draft Core Strategy. He submitted that the statutory test did not include the support which designation could provide to other local policies, even though designation might in fact provide some such support. Mr Kingston is right, but had the report's analysis stopped there, I would not have regarded that comment as making the report significantly misleading. The thrust of the policy analysis however is concerned with the importance of local policy, and supports designation by reference to other local policy objectives. The truly relevant policy is merely considered as background. I conclude that members were directed to treat the ability of designation to support local policy objectives, (and merely those in a draft strategy), as important to their decision. That was not a lawful approach.

159. Mr Kingston next criticised the reliance in the report on the new draft Core Strategy as a justification for a change of view or as support for designation. As I said earlier, if members had been told that officers had recently rejected local listing and inclusion in a Conservation Area, they might have focused on just what had changed. The report gives the impression in paragraph 4.2 that the draft Core Strategy published in September 2009 contains new support since the proposal "*aligns with the emerging direction of the Core Strategy.*"

160. Objective SO22 was cited in the report. If alerted to the issue, members would have struggled to see what had changed in that objective, so far as material to designation, from what was in paragraphs 4.6 and 4.7 of the report to members on the new criteria for Conservation Areas. They might have taken the view that something had changed; they might not. Whilst I would not have regarded the fact

that this issue was not raised for consideration as making the report significantly misleading, it emphasises my concern that the absence of a discussion of previous views, meant that members were not alerted to the scope for debate about what really had changed.

161. Objective SO12 was said to be relevant to the statutory test and, worse, was relied on as new as well. Mr Kingston is right that the natural environment of blue and green spaces, the ecological interest and biodiversity value of the Cut were prayed in aid of designation in the report; the report was not merely describing an irrelevant policy background. And it was treated as new, which it was. The justification for designating the Cut was not confined to the special architectural or historic quality of an area which it was desirable to preserve or enhance. Part of its justification was to support the full objective of SO12. Much of SO12 is legally irrelevant; I heard no satisfactory argument as to how the protection of the natural environment, and the ecological value and biodiversity of the Cut could form part of the lawful test for and purpose of designation. It may be a beneficial consequence of designation but it is not a lawful consideration for the decision to designate. The statutory test is clear and simple. This part of the report impelled members to consider an immaterial factor as important, as justifying a changed view and diverted their attention from the specific statutory test and guidance. Improvement of accessibility may not be irrelevant to deciding whether the area has a special character it is desirable to enhance.
162. I have rejected earlier Mr Kingston's submission that the boundaries of the Conservation Area were irrational. He submitted in this context that members should have been told that the Area included buildings of no merit, rather than simply that it included buildings of special merit alongside the Cut. Of course, to some extent that requires a judgment as to whether the buildings in Gillender Street or at 83 Barchester Street were of no merit. The officers saw some merit in the latter and explained why the former were included. It is reasonable to assume that Cabinet members were aware of the general surrounds to the Cut, and would have realised that at the northern end, it covered non-descript, even unattractive modern buildings. I do not regard the absence of comment about the reason for the inclusion of the non-descript part of Gillender Street as showing that a material factor was ignored.
163. Nonetheless, the report was significantly based on irrelevant considerations which were taken into account by members, and the report failed to give them the clear advice as to the proper basis for considering designation which they needed; they were misled as to the significance of local policy. I quash it on that basis as well.

### **The report and background papers**

164. Regulation 6 of the Local Authorities (Executive Arrangements) (Access to Information)(England)Regulations 2000, made under section 22 Local Government Act 2000, requires background documents to be identified in the report to Cabinet and made available for public inspection. "Background papers", by regulation 2, means unpublished works relating to the subject matter of the report which in the opinion of the officer "*(i)disclose any facts or matters on*

*which the report or an important part of the report is based; and (ii) were relied onto a material extent in preparing the report.”*

165. The report referred to two background documents, which could not come within the scope of that word as defined in the Regulation, since they were published documents, readily available. The report referred to no other documents. Mr Lewis submitted that the background documents were in reality identified in the report so the Cabinet would have been aware of them, and the undeniable breach of the Regulations was not a serious one, and in effect was legally insignificant. The Claimants now had them anyway.
166. The documents which should have been listed as background documents are the March 2009 Ridge report, English Heritage’s comments on the application and listing, and, as a group, those of the bodies and local residents which supported Mr Ridge. The site visit report was not written up until after the Cabinet meeting. The “Initial Case for Designation” was in effect a draft of the actual report, apart from important omissions. It does not come within subparagraph (i) of the statutory definition because, although it does disclose important facts about the previous views of officers and the benefit to Bartlett Park from inclusion in the Area, the former was not a fact on which an important part of the report was actually based; and although the latter was the basis of the report’s reference to the benefit to Bartlett Park, which may be a fact for these purposes, it was not a fact upon which an important part of the report was based. It does not come within subparagraph (ii) since it was no more relied on than the report itself, and drafts are not usually background papers.
167. Although the documents which should have been listed as background papers were to some degree public, and Trillium certainly knew of some of them, they were not in my view published documents within the statutory definition. They were not the sort of documents deliberately made available to the general public, or to the informed but relevant public. They are not such that it can be assumed that the public or would-be participants would know of them or have ready access to them. Listing should alert members to them, and the public is entitled to see them.
168. However, this omission does not invalidate the decision in this case. The existence of the documents was notified to members. The topic they covered and what officers derived from them, was described in the report. Members could have asked for them. Members of the public were not able to make representations in the short period in which the proper list of background papers should have been available before the meeting. Trillium certainly was not. If this omission could invalidate the decision, I would not quash it in the exercise of my discretion. Trillium suffered no prejudice at all. I cannot see any chance that members might have decided differently if they had had a list of documents which included those which should have been on it, or that Trillium could have made any representations at all. I have already dealt with the significance of the inaccurate representation of English Heritage’s views. If that be right, their omission from the listing of the documents as background papers is a lesser version of the same point.

### **Legitimate expectation of consultation**

169. There is no statutory duty to consult. But that cannot be an answer to the claimed existence of a legitimate expectation of consultation. A legitimate expectation of consultation arises where there is no statutory duty to consult. It is meaningless to talk of a legitimate expectation that a statutory duty will be fulfilled.
170. In my view, Trillium had a legitimate expectation that it would be consulted properly about a designation decision affecting 307 Burdett Road. First, consultation is advised by English Heritage and is part of the Council's normal policy, and was employed during 2007/8. So the normal expectation of a building owner would that it would be consulted about the designation of a Conservation Area before the decision was taken.
171. Second, I regard Mr Hutton as doing rather more on 16 September 2009 in conversation with Trillium's planning consultants than informing them of what the normal procedure would be. They would have known that already. Mr Hutton did not qualify it by reference to urgency. He did not suggest that it might not apply to the only Conservation Area designation which the conversation could have been about. The conversation would have been understood by both sides as dealing with how the known proposal to consider a Conservation Area covering 307 Burdett Road would be handled. It was a clear and unqualified representation about the process to a "*key stakeholder*". That is why Mr Hutton says that what he then said was overtaken by events. Unintentionally, what he said would also have lulled Trillium into believing that it did not need to take steps now to put its case before members or officers, since it would be asked what it thought.
172. The telephone discussion between Mr Hutton and Trillium's planning advisers did not expressly cover the position which might arise after a decision on the planning application, especially if it were rejected. I accept that it may well be illegitimate to treat a representation as covering specific circumstances which were not to the minds of the parties, even if the words used were general enough to cover it. But that is not the case here. Both knew on 16 September that the application was due for consideration on 23 September. The fact that a decision was imminent was in the minds of each when they spoke. Both knew that a decision would be reached on the application, even if the formal grant or refusal would probably not be issued, before the decision on designation. A resolution to grant permission, as recommended, would not prevent the later designation of a Conservation Area preventing demolition without a further consent, putting the advancing proposal at risk. On 22 September 2009, Ms Lambert was still contemplating full public consultation.
173. Third, the mutual duty of "utmost fairness and good faith" in the handling of the application, contained in the Planning Performance Agreement paragraph 3.1, means that so important and deliberate a step as designating a Conservation Area, affecting how the application would be considered, could not be taken without consultation. It also means that Trillium could not demolish the building without



notification in order to advance its case. I appreciate that the decision not to consult was taken after the Committee had reached a view adverse to the proposal, but the agreement still bit. Had the decision gone against designation, perhaps as a result of consultation, an important point of opposition could not have been sustained, albeit that it did not feature in the decision to refuse permission.

174. I do not think that paragraph (b) of Schedule 4 to the Agreement assists Trillium though. It concerns what happens at Committees other than the Cabinet, which is the normal body in the Council which takes Conservation Area decisions.
175. The Council's contention is that this legitimate expectation cannot apply or is not breached where the Council for good reason decides that consultation could lead to damage to the proposed Conservation Area before it had been able to decide on designation. Mr Lewis did not say that demolition would have made designation pointless.
176. In my judgment, if the Council properly concluded, on reasonable grounds, that consultation with Trillium or others would put at a real risk of material harm the very proposal being consulted about, the expectation of consultation would not be breached, nor even legitimate or expected. That specific problem was not covered by anything said to Trillium or the public and could not reasonably have been regarded as impliably covered.
177. The same point applies to the Agreement paragraph 3.1. The duty is unqualified and general. But the words could not be interpreted as covering the situation where the Council concluded, on reasonable grounds, that there was a real risk that, if consulted, Trillium would demolish the building to pre-empt the effect of a lawful designation. That would be a breach of its obligations by Trillium, which the Council would be entitled to forestall.
178. So the question is whether the Council, considering the material factors, did have reasonable grounds for believing that pre-emptive demolition was a risk of such a degree that it warranted this particular route to designation, with the matter going to Cabinet a month earlier than intended, and without consultation. This arises first at the stage when officers advised the Chairman of the Oversight Committee on the urgency of the situation, and then in the report to Cabinet where urgency was for the members to decide.
179. There was no suggestion that building owners and others could not be consulted by 4 November. The Council already had a good idea of what local residents thought. There was no evidence at all that Trillium intended to demolish 307 before the Cabinet could decide the designation issue on the intended date of 4 November. The Building Act notice of 29 September 2009 showed that it intended to demolish 307 even though it did not have planning permission for a new building, but not before the 4 November meeting. It did not know at that time what the intended decision-making timetable actually was.
180. The Council had seen how Trillium had behaved through several months when the future of the building at 307 Burdett Road was being discussed. The evidence of its behaviour was clear. Neither before nor while English Heritage

considered listing did it demolish or seek to demolish the building, though a Building Preservation Notice would have been a realistic option until that decision. It took no steps between the refusal of listing and the 23 September, knowing that there was local opposition to the proposal because of the loss of 307, and that a Conservation Area was being considered. Trillium may have calculated that the better prospect of permission lay first with obtaining the officer's favourable recommendation, and then maintaining it through to formal decision, rather than aggravating the officer, or risking members rejecting a favourable recommendation in annoyance at pre-emptive demolition.

181. The Council knew that consultation would lead to Trillium inevitably knowing that a designation decision was imminent even if it did not know the exact date. The balance clearly did change after the 23 September meeting. It knew that Trillium realised after 23 September, if not before, that there was a strong feeling among members in favour of preventing the demolition of 307. It knew, very significantly, by 29 September 2009 that Trillium did intend to demolish 307 without any further planning decision, which was a major change in its approach hitherto. It had no reason not to demolish the building other than the risk of a maximum £2500 fine, which could only reflect the criminality in proceeding without method approval, the obligation in the now near redundant Planning Performance Agreement and whatever damage to its reputation that might lead to. The Council could properly conclude that to many a fine of £2500, compared with what was at stake, would act as no deterrent; some developers would take their chances and demolish a building in these circumstances without much scruple. The Council did not consider whether if demolition appeared imminent, an injunction could be sought at short notice.
182. The Council did not have to decide whether Trillium would demolish the building. It merely had to consider properly whether there were reasonable grounds for concluding that there was such a degree of risk that Trillium would demolish 307 were it consulted, that the Council was justified in reaching a designation decision without consulting Trillium or the other building owners. It also had to conclude that there would be material harm to the potential Conservation Area from demolition. If that was so, then there was no breach of the legitimate expectations which Trillium otherwise was entitled to see fulfilled.
183. I conclude that, notwithstanding what Trillium had done or, more aptly, not done in the period up to 23 September 2009, officers could properly conclude that a consultation process would create a sufficient risk of harm to the potential Conservation Area through the demolition of 307, even though it could still be designated, that the decision should be made without consultation. Although imperfectly expressed, that is the conclusion to which I accept officers came. Trillium's legitimate expectation was not breached.
184. That is not the end of the matter, however. Mr Kingston submits that the Chairman of the Oversight Committee was not told that Trillium were not seeking to demolish the building before 4 November, and that it had acted perfectly responsibly beforehand at times when an incentive to demolish the building existed. Mr Hutton's email of 2 October 2009 focuses on the imminence of demolition as a result of the Building Act notice of 29 September 2009, and it is

that imminence which to him warrants urgency. The expiry date of the Building Act notice is not mentioned. The approach of Trillium thus far is not mentioned. The question of whether consultation with Trillium or building owners risked the pre-emptive demolition of 307 was not raised. The same failings are apparent from the report for 7 October 2009.

185. As Mr Kingston accepted, it is not surprising that members reacted the way they did to that advice. But the full picture and the correct question were not raised. The report was misleading and material factors for the judgment of members were never put before them.

186. In my judgment, if officers had analysed the issue for members as they should have done, and which is reflected in what I believe the officers actually thought, they would still have recommended that the public should not be consulted lest that create a real risk of pre-emptive demolition, and that recommendation would have been accepted. The feared imminent risk of demolition which did lead to the decision being treated as urgent and to the absence of consultation would have simply arisen in a different way. So there would still not have been any consultation. It is of no consequence whether the decision was taken on 7 October or 4 November if there was to be no consultation either way.

187. I refuse to quash the Council's decisions as to urgency, consultation and designation on this ground, in the exercise of my discretion.

#### **Overall decision**

188. However, for the reasons which I have given, the designation of the Limehouse Cut Conservation Area is quashed.