

Committee: Strategic Development Committee	Date: 16 th September 2010	Classification: Unrestricted	Agenda Item Number: 7.1
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Report of: Director of Development and Renewal	Title: Town Planning Application
Case Officer: Mary O'Shaughnessy / Stephen Irvine / Ila Robertson	Ref No: PA/07/03290
	Ward: Shadwell

1. APPLICATION DETAILS

Location:	375, Cable Street, London, E1
Existing Use:	Retail Shop (Class A1)
Proposal:	Change of use of the ground floor from retail (Class A1) to hot food take-away use (Class A5). Erection of an extract duct on the side elevation.
Drawing Nos/Documents:	Location Plan, DP/1068/RG/03A, DP/1068/RG/04A, Ventilation Ducting Specifications, Brick Samples
Applicant:	Mr T Miah
Ownership:	
Historic Building:	N/A
Conservation Area:	N/A

2. SUMMARY OF MATERIAL PLANNING CONSIDERATIONS

- 2.1 The proposed change of use would not result in an unacceptable loss of retail accommodation as there is still adequate retail provision in the area. As such, the proposal is in line with saved policy S5 of the adopted UDP (1998) which seeks to ensure that adequate provision of general convenience stores outside of district centres and designated shopping parades.
- 2.2 The proposed change of use is considered acceptable in amenity terms. Firstly, the proposed hours of operation ensure that the potential for adverse amenity impacts would not occur late at night. Secondly, it is not considered that the proposed A5 use would be likely to result in an increase in anti-social behaviour in the area. Thirdly, the proposed duct would not have a detrimental noise and smells impact on adjacent local residents because of its siting, subject to conditions. As such, the proposal is in line with saved policy DEV2, HSG15, S7 of the adopted UDP (1998), PPG24: Planning and Noise and DEV1 of the Interim Planning Guidance (2007). These policies seek to protect the amenity of Borough residents.
- 2.3 The proposed flue is considered acceptable in terms of design, bulk and scale. It would not have a detrimental impact on Fisher House in terms of design. This is in line with saved policy DEV1 of the adopted UDP (1998) and DEV2 of the Interim Planning Guidance (2007). These policies seek to ensure appropriate design within the Borough.
- 2.4 Suitable arrangements for the collection and storage of refuse have been secured by condition. The proposal would be in line with saved policy DEV55 of the adopted UDP (1998) and DEV15 of the Interim Planning Guidance (2007). These policies seek to ensure adequate facilities for the storage and collection of waste.

- 2.5 The proposal is acceptable in highways terms. The proposed change of use will not have an adverse impact on the surrounding highway network in terms of servicing as this will remain the same as the existing situation and the proposed development will not significantly intensify the servicing of the site. Furthermore, it is not considered that an A5 use in this location would have a detrimental impact on the safety of pedestrians, other road users or affect the free flow of traffic. As such, the proposal is in line with saved policies S7, T16 and T18 of the adopted UDP (1998) and CP40, CP42 and DEV16 of the Interim Planning Guidance (2007). These policies seek to ensure that development will not have an adverse impact on the surrounding highway network and promote sustainable modes of transport.
- 2.6 Tower Hamlets Core Strategy Policy SP03 (1d) seeks to reduce the over concentration of certain uses where it detracts from the ability to adopt healthy lifestyles. However, this location is not affected by an over concentration of 'unhealthy uses' and specifically hot food takeaways. Therefore, this policy does not apply to this application and is not relevant to the determination of this application.

Additionally:

- It is not possible to argue that a hot food takeaway, by definition, serves unhealthy food since not all 'hot food' is unhealthy and not all 'takeaways' are unhealthy and planning legislation does not allow such a distinction.
- Other uses may also sell 'unhealthy food'.
- Solely to blame hot food establishments for health problems would ignore the fact that other issues (e.g. poverty, lack of health education, lack of exercise, poor environment etc) are significant contributory factors in creating unhealthy lifestyles.
- A recent planning appeal decision in Waltham Forest has supported that the view that a direct link between food brought in a hot food takeaway and unhealthy diets in individuals is difficult to sustain and can be given little weight in the determination of applications.

Whilst the recent judicial review decision found that healthy eating was capable of being a material consideration in the determination of this application and the proximity of schools has been taken into account by Officers in assessing this application, it is considered that:

- the lack of specific planning policy guidance relevant to this application,
- the limited weight other guidance can be given in assessing this application,
- the lack of a direct link to food brought in a takeaway and unhealthy diets,

means that limited weight can be given to healthy eating considerations in the assessment of this application. As such, it is considered that a reason for refusal on healthy eating grounds is not likely to be successful on appeal (as evidenced in the Waltham Forest appeal) and an unsustainable argument when the facts of the matter are considered.

3. RECOMMENDATION

3.1 That the Committee resolve to Grant planning permission subject to:

- Time limit – the development allowed by the permission must begin with three years from the date of the decision
- Hours of operation – the permitted hours of development will be restricted from 9am –

9pm Sunday to Thursday and 9am – 10pm Fridays and Saturdays.

- Hours of Servicing (9am-6pm, Monday-Friday).
- Flue hours of operation - 9am – 9pm Sunday to Thursday and 9am – 10pm Fridays and Saturdays.
- Compliance with the noise and vibration report ensuring that the duct operates at less than 10 dBA below the minimum background noise levels.
- Refuse storage to be implemented as per plan.

4. PROPOSAL AND LOCATION DETAILS

Proposal

- 4.1 This application involves the change of use from a grocery shop (Use Class A1) to a hot food takeaway (Use Class A5). The applicant is proposing the use between the hours of 9am-9pm Sunday – Thursday and between the hours of 9am – 10pm on Fridays and Saturdays.

Site and Surroundings

- 4.2 The application site is an existing (A1) retail shop on the ground floor at Fisher House, 375 Cable Street, with 3 storeys of residential use on the upper levels. The existing A1 unit is vacant, and is adjacent to one other A1 retail unit. The surrounding Shadwell area is predominantly residential in use. The application site is not a listed building nor located within a Conservation Area.
- 4.3 Bishop Challenor Secondary School is approximately 115m away to the north of this site. Blue Gate Fields Infant and Junior School is approximately 170m away to the south-west of the site.

Background

- 4.4 This application was previously heard at the Development Planning Committee on March 12th 2008. Officers originally recommended the application for refusal. However, the Committee overturned this decision and resolved that the Head of Development Decisions be delegated authority to grant planning permission subject to:
- The opening hours of the premises being restricted to close no later than 9pm (Sunday to Thursday) and 10pm (Friday and Saturday);
 - Negotiation with the applicant to secure an appropriate and sympathetic design for the proposed ventilation duct.
- 4.5 Amended drawings relocating the proposed ducting from the rear elevation of the property to the eastern (side) elevation of the property were received by the Planning Department. The revised duct was considered acceptable by Officers. Subsequently, a decision was issued dated 30th May 2008, granting planning permission.
- 4.6 A claim for judicial review was lodged on 3rd July 2008. The Administrative Court, by consent, ordered that the decision of the Council was quashed because the reasons given for the grant of planning permission were inconsistent with the reasons given by the Committee at their meeting. The matter was put back before the Development Committee with revised reasons for approval to address this error. This time the proposal went forward with a recommendation for approval. It was approved on the by Members on 1st April 2009.
- 4.7 Following the above decision, a further claim for judicial review was lodged on 6th July 2009.

The Court ruled on 22nd June 2010 that the planning permission should be quashed because the Council should not have said in its planning report to the Committee that a school's healthy eating policy was not capable of being a material consideration in the determination of this application.

- 4.8 The Court found that healthy eating and proximity was capable of being a material but did not express a view as to whether it was a material consideration in the present case or on the merits of this application.

Planning History

- 4.9 The following planning decision is relevant to the application:

- 4.10 **PA/07/01104** - *Change of use of ground floor unit from retail (Use Class A1) to hot food takeaway (Use Class A5).*

3rd September 2007

The application was refused because it was considered that:

1. The proposed A5 use would have a detrimental impact on resident's amenity because of the noise and increased activity created by the proposal and noise and fumes from the proposed duct.
2. The design, location and appearance of the proposed full height extract duct at the rear of the property would have been detrimental to the appearance of the existing building.
3. The submitted information was insufficiently detailed with respect to the proposed means of storage and collection of refuse generated from the proposed A5 use. In the absence of such information, its full impact upon resident's amenity could not be fully assessed and it was considered that the proposed refuse store could result in a loss of residential amenity.

- 4.11 Appeal

11th April 2008

The applicant appealed the above decision to the Planning Inspectorate. They dismissed the appeal (thereby supporting Officers views) and advised that the proposal was unacceptable in terms of:

- Late night noise that would be detrimental to adjacent resident's amenity.
- The proposed duct would have an adverse impact on the appearance of Fisher House.

(PA/07/1104 differs from the current application in that the hours of operation have been reduced and the location of the duct has been altered).

- 4.12 **PA/09/0967** - *Approval of details pursuant to Condition 6 (Bicycle Parking Provision), Condition 7 (Refuse), Condition 8a (Detailed Drawings of Extract Flue), Condition 8b (sample of proposed brick) and Condition 9 (Noise and Vibration Report) of Planning Permission ref. PA/07/3290 dated 9th April 2009.*

This application was approved by the Development Committee on 6th January 2010. The reasons for grant stated:

- In respect of condition 6, the removal of cycle parking is considered acceptable in this

instance. On balance it is considered that in this constrained urban environment the need for the provision of adequate refuse storage carries more importance than the need for the provision of for cycle parking.

- In respect of Condition 7, the details of the proposed refuse store are acceptable. It is considered that adequate provision of refuse storage has been provided in an appropriate location. This is in keeping with saved policy DEV55 of the adopted Unitary Development Plan, 1998 and policy DEV15 of the Interim Planning Guidance, 2007. These policies seek to ensure appropriate level of refuse provision.
- In respect of Condition 8a and 8b, the details of the proposed extract flue and the proposed brick cladding are acceptable. It is considered that the design of the proposed casing for the extract flue and the proposed materials are acceptable and in keeping with the appearance of Fisher House. This is in line with saved policy DEV1 of the adopted Unitary Development Plan, 1998 and policy DEV2 of the Interim Planning Guidance, 2007. These policies seek to ensure appropriate design within the Borough.
- In respect of Condition 9, the submitted noise and vibration report is acceptable. It is considered that the proposed plant will not have an adverse impact on the amenity of the surrounding residential properties. This is in line with saved policy DEV2, DEV50 and HSG15 of the adopted Unitary Development Plan, 1998 and DEV1 and DEV10 of the Interim Planning Guidance, 2007. These policies seek to protect the residential amenity of the residents of the Borough.

5. POLICY FRAMEWORK

- 5.1 For details of the status of relevant policies see the front sheet for “Planning Applications for Determination” agenda items. The following policies are relevant to the application:

Government Guidance

Planning Policy Statement 1 – Delivering Sustainable Development.

Unitary Development Plan 1998 (as saved September 2007)

Policies:	DEV1	Design Requirements
	DEV2	Amenity
	HSG15	Development Affecting Residential Amenity
	DEV50	Noise
	DEV55	Development and Waste Disposal
	S5	Loss of Retail Uses
	S7	Special Uses
	T16	Transport and Development
	T18	Pedestrians

Interim Planning Guidance for the purposes of Development Control

Policies:	CP40	Sustainable transport Network
	CP42	Streets for People
	DEV1	Amenity
	DEV2	Design Requirements
	DEV4	Safety and Security
	DEV10	Disturbance from Noise Pollution
	DEV15	Waste Storage
	DEV16	Walking and Cycling Routes and Facilities
	DEV19	Parking for Motor Vehicles

RT2 Secondary Shopping Frontages
RT5 Evening and Night-Time Economy

Core Strategy Submission Version December 2009

SP03 Creating Healthy and Liveable Neighbourhoods
SO10 Promoting healthy lifestyles and enhancing peoples wider health and well-being

Spatial Development Strategy for Greater London (London Plan) (2008)

4A.20 Reducing noise and enhancing soundscapes

Community Plan The following Community Plan objectives relate to the application:

A better place for living safely
A better place for living well
A better place for creating and sharing prosperity
A better place for learning, achievement and leisure
A better place for excellent public services

Health Guidance

- Healthy Weight, Healthy Lives: A Cross-government Strategy for England: January 2008
- Healthy Weight, Healthy Lives in Tower Hamlets, a multi-agency strategy to tackle the continuing rise in overweight and obesity 2008-2012.
- Tower Hamlets Joint Strategic Needs Assessment 2008/2009
- GLA BPG Health Issues in Planning 2007.
- NHS Healthy Urban Development Unit: Watch Out for Health 2009.
- RTPI Good Practice Note 5 - Delivering Healthy Communities 2009.
- Saving Lives Our Healthier Nation White Paper 1999.
- Securing our Future Health: taking a long-term view HM Treasury, D Wanless 2002.

6. CONSULTATION RESPONSE

6.1 The views of the Directorate of Development & Renewal are expressed in the MATERIAL PLANNING CONSIDERATIONS section below.

6.2 The following were consulted regarding the application:

Metropolitan Police (Shadwell Area)

6.3 Original Application

The Metropolitan Police advised in a letter dated 18th February 2008 that the area of Shadwell adjacent to the Martineau Estate has been subject to a history of youth disorder and gang issues. The surrounding residents are made up of mainly elderly and vulnerable people who have lived in fear of local youths for a long time.

The type of takeaway use that is proposed with this application regularly attracts gatherings of young people who engage in rowdy behaviour leaving litter on the streets. On occasions Police intervention has been necessary.

The existing local shop is on a busy one-way street and there is little or no available parking nearby. It is felt that customers may use their cars to visit the shop and in turn cause disruption and an obstruction to traffic as this road is also a bus route.

This application should be carefully examined, as the local residents would genuinely fear for their safety and quality of life if this change goes ahead.

Re-Consultation

Following re-consultation on the amended scheme, their concerns remained. They outline:

- Fears of increased anti-social behaviour created by the existence of the takeaway.
- The likelihood of parking / highways issues created by illegal parking around the premises.
- They believe there are numerous fast food outlets nearby.
- The takeaways proximity to local schools.
- The need to restrict the takeaways hours of operation.
- The government's obesity strategy that seeks to locate takeaways away from schools, parks and nurseries.
- Concerns regarding waste disposal and the level of noise the proposed plant would generate.

These views were reiterated by PC Mark Jones, the Council's Crime Prevention Officer in the July 2010 re-consultation.

Officer Comment

There is much concern surrounding the association between A5 uses and anti-social behaviour. However, there is no statistical evidence or evidence within the Councils planning policy evidence base which demonstrates that this assumption is fact.

The Councils Crime Prevention Officer noted that the takeaway premises would encourage more users at later times. In turn, this could cause more litter and anti-social behaviour. Officers consider, because the hours of operation have been restricted to 9pm during the week and 10pm at the weekend, that this will mitigate against any potential amenity impacts. Furthermore, the reduced operation hours would mean there would be no activity late at night and also would mean that any impacts from perceived anti social behaviour associated with A5 uses would be less likely. This view has previously been supported by Members at previous Committee meetings.

LBTH Environmental Health Department

6.4 Original Application

Environmental Health provided comments in January 2008 regarding the need to comply with the relevant legislation associated with food business.

They also advised that the kitchen extract system, as per the specification included in document number DP/1068/RG/02, should be 10 dBA or less below background noise levels as measured at the nearest residential façade. Additionally they felt that all noisy activities should cease by 11pm, in order to prevent noise disturbance to local residents.

Re-Consultation

Following re-consultation, they advised that the applicant should undertake a BS 4142 assessment, '*Method for rating industrial noise affecting mixed residential and industrial areas*'. They also reiterated that all plant and equipment should operate at 10dBA below the lowest measured background noise level measured at the nearest noise sensitive facade to prevent nuisance from noise or vibration.

In reference to odour, they noted that the design of ducting should discharge at least 1m above the eaves to ensure adequate dilution and dispersal of expelled air to prevent odour nuisance. A report should be provided to Environmental Health for approval, prior to the installation of plant, on how the above will be achieved.

As part of the approval of details application under PA/09/00967, Environmental Health confirmed that, following amendments to the proposed extract system by the addition of an additional silencer and the submission of a revised Noise Report, the submitted details are acceptable with regards to noise conditions. It is recommended that these details are conditioned to ensure that the assessment and measures are secured in perpetuity.

LBTH Highways Department

6.5 Original Application

Highways noted in February 2008 that, whilst the change of use from retail (Class A1) to hot food take-away use (Class A5) was likely to cause an increase in customer trip rates to and from the property, the site has a Public Transport Accessibility Level (PTAL) score of between 3 and 4, which implies a moderate to good level of access to public transport.

According to Planning Standard 3 Parking, no parking space is required for an A5 use. However, with reference to cycle parking, an A5 use should provide 1 Cycle Parking space per 50 sqm. It is calculated that the ground floor of this development is approximately 55.8 sq m. Consequently, a minimum of 2 secure bicycle parking spaces should be provided. Nevertheless, Highways originally recommended that the developer include 4 secure bicycle parking spaces in order to encourage the use of bicycles and walking rather than cars for customers of the takeaway in reference to policy DEV16 of the IPG. It should be noted that, according to the Council's Parking Space Standards, Cycle Parking Stands should be 1.2 x 0.7 metres. A Sheffield surface fixing or ground embedding model stand (shown on Figure PS1 of the IPG) was strongly advised.

Although the use of the property as a hot food take-away could generate the same or a slightly higher amount of servicing trips for deliveries, it was not anticipated that this small sized development will have a significant impact on the street network surrounding the site.

Re-consultation

Subsequent to the above, it became apparent that the location of the refuse store at the rear of the site was not appropriate and that the cycle parking needed to be lost. The LBTH Highways Officer advised in December 2009 that they were satisfied with the non provision of cycle parking in this instance, given the need for an appropriate location for the refuse store.

Further consultation in July 2010, raised no new issues but they reiterated their view that no servicing should take place from Cable Street and the potential for the increase in vehicle movements created by the new use.

Officer Comment

Please refer to the Highways section of this report for a discussion of these comments.

Jim Fitzpatrick MP

6.6 In response to the July 2010 consultation, he raised concerns that:

- There were too many fast food establishments in Tower Hamlets.
- This takeaway should not be located near schools.
- The use would create noise and disturbance to residents.
- The use would create traffic problems.

Councillor Peter Golds

In an e-mail response to the July 2010 consultation, he raised the concerns that:

- Homes in Fisher House “will be blighted”
- The use is too close to 4 local schools.
- The use would create traffic problems.
- The use would create ASB problems.
- The applicant was being allowed to get away with illegal building work and parking.

7. LOCAL REPRESENTATION

7.1 Original Consultation

On 25th January 2008, a total of 153 neighbouring properties were notified about the application and invited to comment. The application was also publicised on site.

The number of representations received from neighbours and local groups in response to notification and publicity of the application were as follows:

No of individual responses: 196 Objecting: 70 Supporting: 123
 No of petitions received: 3 against containing 134 signatories

7.2 The following local groups/societies made representations:

- Glamis Tenants and Residents Association

7.3 The following issues were raised in representations that are material to the determination of the application. They are addressed in the next section of this report:

- The proposed takeaway shop would lead to increased noise nuisance.
- The area is predominantly residential. Adequate takeaway facilities are provided close by in Watney Street. As such, there is no need for this facility here.
- The takeaway shop would enhance the existing issue of anti-social behaviour in the area.
- There is inadequate parking along Cable Street to support the proposed takeaway.
- The adjacent Bishop Challoner Catholic Collegiate School is trying to promote healthy eating to its pupils, and the introduction of a takeaway establishment would encourage poor eating habits.
- A number of pro-forma letters of support were received, principally highlighting that the proposed use would be convenient for residents in the area.

7.5 Re-Consultation

On February 12th 2009, a total of 153 neighbouring properties were notified that the previous decision had been quashed and that, if they had any views on the application, they were invited to comment by February 26th 2009. Following this a second letter was sent dated February 19th 2009 advising applicants that they had until March 11th 2009 to submit comments. They were also advised that the matter would be put before the next available planning committee.

No of individual responses: Objecting: 50 Supporting: 222
 No of petitions received: 2

1 petition was received which did not state clearly if it was in support or in objection to the proposal. The second petition received was in objection to the proposal. Neither of the petitions had covering letters outlining the reasons for submitting the petition.

7.6 No further representations were received from local groups/societies.

7.7 The following additional issues were raised in representations during the second consultation

period that are material to the determination of the application, and they are addressed in the next section of this report:

- Traffic problems - Cable Street is a one way street with a dual cycle lane
- Litter
- Odour problems

A number of pro forma letters in support of the application were also received during the most recent consultation period; no additional reasons for support were raised.

7.8 Consultation after the JR

On July 27th 2010, a total of 1072 letters were sent to neighbouring properties within the area shown on the map appended to this report and interested parties. They were notified that the previous decision had been quashed and that if they had any views on the application they were invited to comment by August 17th 2010. They were also advised that the matter would be put before the next available planning committee.

No of individual responses: Objecting: 323 Supporting: 402

The following issues were raised in representations during the third consultation period that are material to the determination of the application, and they are addressed in the next section of this report:

Objectors to the proposal

In summary, they raised the following issues:

Use

- There are already enough takeaways in the area.
- The use is out of character with the surrounding residential area.

Amenity

- Concern about unacceptable smells from takeaway.
- Unacceptable noise and vibration from the duct and use of the premises
- Concern about litter from the premises.
- Concern about waste arrangements.

Design

- Unacceptable location of duct.

Highways

- Believe it will create parking problems and obstruct the free flow of traffic along the highway and the cycle route in front of the site.

Other

- Concern about the impact of the use on the health of children.
- Concern about the takeaway's proximity to schools.
- The use would be a magnet for anti-social behaviour.
- Against Governments, Tower Hamlets Council's and Schools 'Healthy Eating' Policies.
- Could create vermin problems.

Supporters of the proposal

In summary, they felt the application was of benefit to the community because:

- A takeaway would be significantly closer to them and mean they would not have to travel such a distance for takeaway food.
- The use would be convenient and enhance the area as there were no takeaways in the immediate area currently.
- There were already too many grocers / newsagents in the area already. As such, the loss of retail accommodation was not a problem.
- Children can buy chicken and chips on their way from school.
- It will enable families to eat out close to their homes.

8. MATERIAL PLANNING CONSIDERATIONS

8.1 The main planning issues raised by the application that the committee must consider are:

- Amenity
- Design of extraction ducting / flue
- Loss of existing retail accommodation
- Refuse
- Highways
- Proximity to schools / health considerations

Amenity

- 8.2 Policies HSG15 and S7 of the adopted UDP (1998) seek to ensure that non-residential activities do not reduce the amenity of adjoining residential occupiers. Given the residential nature of this part of Cable Street and the location of residential dwellings adjoining the site, it is considered that care needs to be taken in assessing the compatibility between a Class A5 use (a hot food takeaway shop in this instance) and the residential nature of the locality.
- 8.3 Additionally, saved policy DEV2 of the adopted UDP (1998) states that all developments should seek to protect the amenity of residential occupiers. Paragraph 4.8, which follows Policy DEV2 in the UDP (1998), states that the impact of development on the amenity of residents and the environment generally needs to have been fully considered and taken into account at all stages of the development process, and is not 'tacked on' after the proposal has been worked up.
- 8.4 PPG24: Noise and Planning outlines that the impact of noise can be a material planning consideration in the determination of applications. It outlines that much of the development which is necessary for job creation will generate noise. Local Planning Authorities (LPAs) should not place unjustifiable obstacles in the way of such development. Nevertheless, they should also ensure that development does not cause an unacceptable degree of disturbance. In relation to a change of use, it should be noted that this may result in the intensification of the use which may result in a greater intrusion and LPAs should consider whether it is practicable to control or reduce noise levels or to mitigate the impact of noise through the use of conditions.
- 8.5 Annex 3 of PPG24 outlines that, in reference to fast food restaurants; they pose particular difficulties, as the associated activities are often at their peak in the evening and late at night. LPAs should bear in mind not only the noise generated within the premises, but also the attendant problems of noise that may be made by customers in the vicinity. Consideration should also be given to the disturbance that can be caused by traffic and associated car parking.

- 8.6 This proposal is for the change of use from A1 retail to A5 hot food takeaway use. In reference to the plant associated with the use, the applicant has submitted manufacturer's specifications of the ventilation ducting. These have been reviewed by Environmental Health who have advised that the noise reports are satisfactory and confirmed that the proposed plant would operate at 10dBA or less below background noise levels. A condition will be placed on the planning permission to ensure that the plant is always operated in accordance with these approved assessments.
- 8.7 Consideration has also been given to the associated noise that will be generated as a result of the change of use to a hot food takeaway. Noise would be generated by customers using the premises. There may also be extra noise generated in the vicinity of the site by customers. Consideration also has to be given to customers arriving by car and the noise and disturbance this would contribute.
- 8.8 It is considered that, as no car parking will be provided and because of the limited nature of car parking along Cable Street, the majority of customers would travel on foot or via public transport. There would be an increase in noise from customers at the premises and within the vicinity of the site. However, it is felt that, by restricting the hours of operation of the A5 use, the impact on the amenity of the surrounding residents would be minimal.
- 8.9 A number of objections were received from surrounding residents and separately from the local police with concerns relating to the current anti-social behaviour issues in the area and the potential increase in loitering and trouble should a takeaway facility be approved.
- 8.10 It is recognised that there could be an increase in activity in the area due to people using the takeaway facility, which could result in an increase in noise. However, the link between A5 uses and anti social behaviour is a perceived link. There is no statistical evidence to support such a contention, nor is there any evidence in planning policy, to suggest that there is a direct link between A5 uses and anti-social behaviour.
- 8.11 The first time this application was presented to the Development Planning Committee on 12th July 2008, the proposed opening hours were between 9am and 11pm daily. It was considered that these hours would not be acceptable as there would have been a detrimental impact on the surrounding residents, in terms of noise generated as a result of the use late into the evening. This matter was discussed at the Development Committee. It resolved that a condition limiting the hours of operation should be placed on the planning permission to deal with this issue. The applicant has confirmed in writing that the requested hours of opening for the proposed hot food takeaway are between 9am and 9pm Sundays to Thursdays and 9am to 10 pm on Fridays and Saturdays: the same as the hours as recommended by the Development Committee on 12th July 2008 and 1st April 2009.
- 8.12 In light of the reduction in hours from 11pm to 9pm on weeknights and 10pm on the weekend, it is considered that this would result in a lesser impact on the amenity of the surrounding residents. Up until 9pm on weeknights and 10pm on weekends, a certain level of noise and disturbance is to be expected in this urban location. It should also be noted that this site is located adjacent to a busy road: Cable Street. On balance, it is considered that by controlling the hours of use, the impact on the amenity of the surrounding residents in terms of noise would not be harmful. This would be in line with saved policy DEV2, HSG15, S7 of the adopted UDP (1998) and PPG24 Planning and Noise.

Design of the Extraction Ducting / Flue

- 8.13 This application proposes the installation of an extraction system to support the cooking of hot food at the premises. The previous drawings presented to the Development Committee showed the location of the proposed duct at the rear elevation of the property. It was

proposed to fix an external duct to the rear that would have expelled fumes and odour above the eaves of the fourth floor of the building.

- 8.14 The subject building has a double frontage, with a Class A1 retail use at ground floor level on the south elevation. It has residential character, including the main entrance to the flats on the upper floors of Fisher House, on the north elevation of the building. This elevation also includes balconies and windows to habitable rooms.
- 8.15 The originally proposed ducting would have been clad in a brick material to match the existing building, fixed up the middle of the rear elevation, adversely affecting the appearance of the building and the outlook for those using their balconies at third floor level.
- 8.16 Amended drawings (DP/1068/RG/04B and DP/1068/RG03A) were submitted to the planning department for consideration, following the Committee decision to relocate the duct and approve the application. The new location of the duct is now on the side, eastern elevation of the property. The vertical ducting is to be enclosed in brickwork to be built up from ground floor level to roof level to match the main building and the remainder of the extract duct is to be painted black.
- 8.18 It is considered that the amended location of the duct would not have a detrimental impact on the character and appearance of this mainly residential building. This is in line with saved policy DEV1 of the adopted UDP (1998) and DEV2 of the Interim Planning Guidance (2007). These policies seek to ensure appropriate design within the Borough.

Loss of Existing Retail Accommodation

- 8.19 The existing site was a general convenience store that provided goods for surrounding residents, including general groceries items. The site is currently vacant. Directly adjacent to the retail unit is 377 Cable Street, which currently operates as a general convenience store (Class A1 retail use).
- 8.20 In the determination of change of use applications involving the loss of Class A1 retail uses, consideration is given to saved policy S5 of the adopted UDP (1998). This policy outlines that applications for changes of use from retail uses outside of district centres and local parades may be favourably considered where there is an adequate provision in the locality for essential shops to meet local needs. In this location, it is considered that there are similar types of shop in the immediate area. As such, it is considered that the introduction of a Class A5 use (takeaway) in this location would be acceptable against this Council Policy.

Refuse

- 8.21 The Council's Unitary Development Plan (1998) requires developments which are likely to produce significant quantities of waste, to include adequate arrangements for its collection and storage. A condition has been included on the planning permission requiring a bin, as per plan, and that it should be installed before the use commences. This is considered adequate to address refuse concerns.

Highways

- 8.22 The site is located on a one-way street where parking is very limited. Cable Street is also a well used local bus route. Whilst it is recognised that there are restrictions on parking in the area, it is not considered that a takeaway (Class A5) use in this location would have a detrimental impact on the safety of pedestrians or other road users or affect the free flow of traffic in this area. With regard to trip rates, it is anticipated that the majority of users will be from the local area and will arrive to the site by foot. Given the reduced opening hours, any

noise generated from patrons will be limited to the early parts of the evening.

- 8.23 In relation to servicing such as deliveries, Highways have advised that, although the use of the property as a hot food take away would be likely to generate the same or slightly higher amount of servicing trips, it is not anticipated that this small sized development will have a significant impact.
- 8.24 It should also be noted that no loading or unloading is allowed in front of the property. There is a raised cycle route along the north side of Cable Street and the Council's Parking Development Officer has advised that no kerbside loading or unloading would be allowed at the front of the property. The applicant has advised that servicing would continue as existing. Servicing currently occurs at the side and rear of the property. An informative will be placed on the planning permission advising the applicant that no deliveries are allowed along Cable Street at any time.
- 8.25 Policy DEV16 of the IPG seeks the provision of secure cycle parking, with a minimum of 4 secure cycle parking spaces required. However, in this dense urban environment, it was considered that the need for a suitable location for the refuse bin took precedent in this instance to the need for the provision of cycle parking. The Council's Highway Department and Cleansing Department were consulted and are in agreement.

Proximity to Schools / Healthy Eating

- 8.26 Concerns were raised that the adjacent Bishop Challoner Catholic Collegiate School is trying to promote healthy eating to its pupils, and the introduction of a takeaway establishment at 375 Cable Street would encourage poor eating habits, have bad health consequences and consequently be contrary to aims of the School's healthy eating programme, as well as Government guidance and Tower Hamlets own policies.
- 8.27 In Tower Hamlets, the Council's current planning policy (contained within the Core Strategy (Submission version December 2009) Policy SP03 (1d)) seeks to reduce the over concentration of certain uses where they detracts from the ability to adopt healthy lifestyles. Such uses can include takeaways amongst others.
- 8.28 The supporting text to this policy (paragraph 4.9), seeks to put into practice this policy where an over concentration of 'unhealthy' uses is identified. However, this area is not identified in the plan as being affected by an over concentration of 'unhealthy uses' and the Council's land use survey of the area has revealed that there is not an over concentration of takeaway uses adjacent to this site. Therefore, this policy does not apply to this application.
- 8.29 As a consequence of the above, the Council has no current specific planning policy to restrict takeaway uses on healthy eating grounds in this area. However, it should be noted policy objective SO10 does indicate that the Council seeks to:

“... deliver healthy and liveable neighbourhoods that promote active and healthy lifestyles and enhance people's wider health and well-being”.

- 8.30 Objectors to the scheme have held that the central government document entitled *“Healthy Weight, Healthy Lives: A Cross Government Strategy for England”*, published in January 2008 should be given some weight in the consideration of this application. This document highlights the need for local authorities to manage the proliferation of fast food outlets as a means of combating their known adverse impact on community health. In particular, it suggests that such management should be scaled up around schools and parks.
- 8.31 It's not disputed that two schools are within 200m of the site. Nevertheless, it has to be

recognised that this central government document is guidance, not planning policy. Furthermore, Officers have considered as part of the assessment of this application other guidance that seeks to promote healthy eating and lifestyles. None of these documents are enshrined in specific government planning policy advice as yet. As such, Officers do not believe that this guidance can be given significant weight in the consideration of this planning application, particularly in comparison with specific planning policies that have been publicly tested and found 'sound'.

8.32 Moreover, in addition to the lack of healthy eating planning policy guidance, it should be additionally noted that there are other fundamental flaws in potentially using healthy eating as a reason for refusal for this application. Specifically:

- It is not possible to argue that a hot food takeaway, by definition, serves unhealthy food since not all 'hot food' is unhealthy and not all 'takeaways' are unhealthy. Furthermore, planning legislation does not seek to make any such distinction.
- Other uses also may also sell 'unhealthy food'. For example, a newsagent (Class A1 retail use) might sell crisps, fizzy drinks and chocolate and a bakery might sell cakes etc. Practically, nobody would seek to restrict retail shops on such a basis. Therefore, it is difficult to argue that Class A5 takeaways alone should be refused on unhealthy eating grounds, particularly since the planning system does not seek to control whether the produce sold in such an establishment is 'healthy' or 'unhealthy', only its use.
- Solely to blame hot food establishments for health problems would ignore the fact that other issues (e.g. poverty, lack of health education, lack of exercise, poor environment etc) are significant contributory factors in creating unhealthy lifestyles. Such an approach would therefore be unsafe.
- A recent planning appeal decision in Waltham Forest has supported that the view that a direct link between food brought in a hot food takeaway and unhealthy diets in individuals is impossible to sustain.(262-268 High Road, Leytonstone E11 3HS: Appeal references: APP/U5930/C/09/2105005+2105431 & A/09/2112069).

In summary, the Governments Planning Inspector in this case made it clear that a direct link between food bought in hot food takeaways and unhealthy / imbalanced diets in individuals is difficult to sustain because it is difficult to argue that all hot food takeaways are unhealthy ("*a direct association between food bought in hot food takeaways and unhealthy / imbalanced diets in individuals is difficult to sustain as an unvarying principle*"). He therefore stated that he gave little weight to this consideration as part of his judgement that a takeaway was acceptable here.

Given this ruling from the Inspectorate, it is considered that a reason refusal on this basis is unlikely to be substantiated in Tower Hamlets.

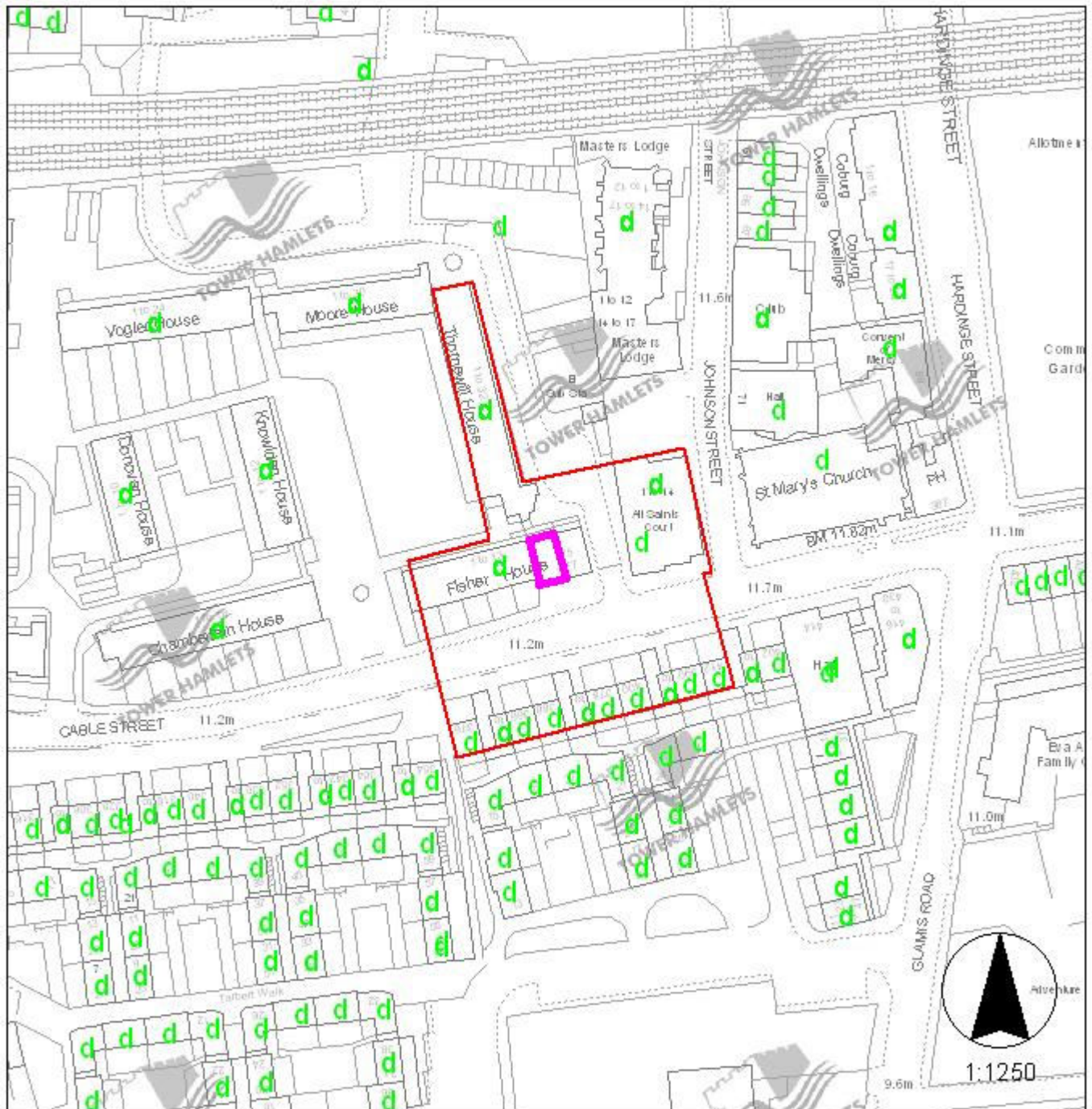
8.33 In conclusion, whilst the recent judicial review decision found that healthy eating was capable of being a material consideration in the determination of this application, it is considered that the lack of specific planning policy guidance, the limited weight that can be given to other guidance, and lack of a direct link to food brought in a takeaway and unhealthy diets, means that little weight can be given to such considerations. As such, a reason for refusal on healthy eating grounds is not sustainable when the facts of the matter are considered.

Conclusions

8.34 All other relevant policies and considerations have been taken into account. Planning

permission should be approved for the reasons set out in the SUMMARY OF MATERIAL PLANNING CONSIDERATIONS and the details of the decision are set out in the RECOMMENDATION at the beginning of this report.

Site Map



Legend

-  Planning Application Site Boundary
-  Consultation Area
-  Land Parcel Address

This Site Map displays the Planning Application Site Boundary and the neighbouring Occupiers / Owners who were consulted as part of the Planning Application process. The Site Map was reproduced from the Ordnance Survey mapping with the permission of Her Majesty's Stationery Office © Crown Copyright. London Borough of Tower Hamlets LA095968