

<b>Committee:</b> Development	<b>Date:</b> 8 <sup>th</sup> February 2012	<b>Classification:</b> Unrestricted	<b>Agenda Item No:</b> 7.4
<b>Report of:</b> Corporate Director of Development and Renewal		<b>Title:</b> Planning Application for Decision	
<b>Case Officer:</b> Shahara Ali-Hempstead		<b>Ref No:</b> PA/11/03309	
		<b>Ward(s):</b> Spitalfields and Banglatown	

## 1. APPLICATION DETAILS

<b>Location:</b>	Unit TG-003, Block T, Trumans Brewery, 91 Brick Lane, London E1
<b>Existing Use:</b>	A1 Retail
<b>Proposal:</b>	Change of use of unit TG-003 from Retail (A1 use) to Restaurant (A3 use)
<b>Drawing Nos:</b>	OS Site map no. P_1005 Drawing no's: P_T100, P_T102
<b>Supporting Documents:</b>	Planning and Impact Statement dated October 2011 Environmental Health Statement dated October 2011 Site photographs dated August 2011 Acoustic Report dated 17 October 2011 Supplementary Acoustic Information dated 2 December 2011 Statement of Refuse and Recycling Arrangements Revision A dated 5 December 2011 Email dated 06 <sup>th</sup> December 2011
<b>Applicant:</b>	Zeloof Partnership
<b>Owner:</b>	Zeloof Partnership
<b>Historic Building:</b>	N/A
<b>Conservation Area:</b>	Fournier Street/Brick Lane

## 2. SUMMARY OF MATERIAL PLANNING CONSIDERATIONS

2.1 The Local Planning Authority has considered the particular circumstances of this application against the Council's approved planning policies contained in the London Plan (2011), the Council's Core Strategy (2010), the London Borough of Tower Hamlets Unitary Development Plan (1998), the Council's Interim Planning Guidance (2007), Managing Development – Development Plan Document (Proposed Submission Version January 2012) relevant supplementary planning guidance and Government Planning Policy Guidance and has found that:

- The loss of the retail unit would detract from the vitality and viability of the Brick Lane District Centre and as such is contrary to policy SP01 of the Core Strategy (2010), and emerging policy DM1 (3a) of the Managing Development Development Plan Documents (Proposed Submission Version January 2012).
- The proposed restaurant (Use Class A3) would add to the over-concentration of evening and late-night economy uses in the Brick Lane District Centre. The cumulative impact of this, and other on-going proposals, would exacerbate the existing adverse amenity impacts associated with these uses on the residents of the area. The proposal is therefore contrary to the objectives of Core Strategy 2010 policy SP01(2c), Unitary Development Plan 1998 policies DEV2 and S7, policy DM1(4,6) of the Managing Development – Development Plan Document (Proposed

### 3. RECOMMENDATION

- 3.1 That the Committee resolve to **REFUSE** planning permission for the reasons set out in Section 2 above.

### 4. PROPOSAL AND LOCATION DETAILS

#### Proposal

- 4.1 The applicant proposes the change of use from a retail unit (use class A1) in the Trumans Brewery complex to restaurant (use class A3). The unit has an area of approximately 170 square metres. The Applicant estimates the restaurant would accommodate 40 covers.
- 4.2 The proposal does not include any external seating.
- 4.3 The proposed hours of operation are:-
- Monday to Thursday: 09:00 to 23:00
  - Friday and Saturday: 09:00 to 23:30
  - Sunday and Bank Holidays: 09:00 to 23:00

#### Site and Surroundings

- 4.4 The application site is located at ground floor level of a three storey building (referred to as Block T) located on the southern side of Ely's Yard. The site is bounded by 'Al Volo' restaurant to the east, Hanbury Street to the south and Corbet Place to the west. Access to the site is via Ely's yard, which in turn is reached from the main access routes into the Trumans Brewery complex off Hanbury Street and Brick Lane.
- 4.5 The character of the surrounding area is a mixture of residential, retail, commercial, industrial and manufacturing uses.
- 4.6 The residential uses within the area are situated along Hanbury Street, Wilkes Street, Princelet Street and the adjoining part of Brick Lane. The residential uses within the immediate area are situated amongst other retail, industrial and commercial uses and a large number of residential units are situated on the upper floors above commercial uses.
- 4.7 The application site is located within Fournier Street and Brick Lane Conservation area.

#### Relevant Planning History

- 4.8 PA/00/01687 Planning permission was **granted** on 30/04/2002 for Retention of the alterations to the building including the creation of a single storey addition, and the use of the ground floor as either a single showroom, three (Class A1) retail units, or a Class B1 office use with showroom facilities, with Class B1 office use on the upper two floors.
- 4.9 PA/10/01317. Site at Unit FG-014, Block F, Old Truman Brewery, 15 Hanbury Street, London, E1 6QR. Proposed is the change of use to restaurant. Granted at Appeal subject to Conditions 11/5/2011

Officer comment: This was an extant planning application requesting the extension of time. The Managing Development DPD now has stricter policy on A3 use in particular highlighting that A3 use should not exceed 25% within the Brick Lane Town Centre.

- 4.10 PA/11/03310 Change of use of unit FG-021 from car park and Sunday market to Restaurant (A3 use) **Pending decision.**
- 4.11 PA/11/03311 Change of use of unit FG-012A from The Old Truman Brewery's maintenance workshop to Restaurant (A3 use). External seating to the west of the unit located behind the line of the building's facade. **Pending decision.**
- 4.12 PA/11/03312 Change of use of part of unit CG-001 from occasional use dry hire Event Space to Restaurant. External seating areas to the south and west of the unit. **Pending decision.**
- 4.13 PA/11/03313 Change of use of part of units FG-004 and 5 from occasional use dry hire Event Space to Restaurant (A3 use). **Pending decision.**

## 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:

### 5.2 Government Planning Policy Guidance/Statements

PPS 4	Planning for Sustainable Economic Growth
PPG24	Planning and Noise
Draft NPPF	Draft National Planning Policy Framework

### 5.3 The London Plan Spatial Development Strategy for Greater London (July 2011)

Policies	2.15	Town Centres
	4.6	Support for Arts, Cultural, Sport and Entertainment Provision
	4.7	Retail and Town Centre Development
	5.17	Waste Capacity
	7.15	Reducing noise and enhancing soundscapes

### 5.4 Core Strategy 2025 Development Plan Document (September 2010)

Policies	SP01	Refocusing on our Town Centres
	SP03	Creating healthy and liveable neighbourhoods
	SP05	Dealing with Waste
	SO25	Delivering Placemaking
	SP12	Delivering Placemaking
	Annex 9	Delivering Placemaking: Spitalfields Vision

### 5.5 Unitary Development Plan 1998 (as saved September 2007)

Policies	DEV2	Environmental Requirements
	DEV55	Development and Waste
	DEV56	Waste Recycling
	S7	Special Uses

### 5.6 Interim Planning Guidance for the purposes of Development Control (October 2007)

Policies	DEV1	Amenity
	DEV10	Disturbance from Noise Pollution
	DEV15	Waste and Recyclables Storage
	RT1	Primary Shopping Frontages
	RT5	Evening and night time economy

### 5.7 Managing Development DPD (Proposed Submission Version January 2012)

Policies	DM1	Development within town centre hierarchy
	DM25	Amenity

## 5.7 **Supplementary Planning Guidance/Documents**

Brick Lane Restaurant and Retail Uses

## 5.8 **Community Plan – One Tower Hamlets**

The following Community Plan objectives relate to the application:

- A Great Place To Be
- Healthy Communities
- Prosperous Communities
- Safe and Supportive Communities

## 6. **CONSULTATION RESPONSE**

6.1 The views of the Directorate of Development and Renewal are expressed in the MATERIAL PLANNING CONSIDERATIONS section below. The following were consulted regarding the application:

### **LBTH Transportation and Highways**

6.2 No objection on highways grounds subject to condition requesting information which includes the frequency of deliveries, size of vehicle, times of day, etc and should be incorporated within a site-wide Delivery & Servicing Management Plan (also include the refuse/recycling information that has been submitted).

### 6.3 **Officer Comment:**

*If the application was recommended for approval a condition would be recommended to ensure that a Delivery & Servicing Management Plan is submitted prior to occupation of the site.*

### 6.4 **LBTH Crime Prevention officer**

Objection has been raised by the crime prevention officers for the following reasons:

- The walls supposedly shielding the schemes from public residential locations were never designed to be a buffer.
- Number of extra persons, added to the existing throng of visitors, will make this place a highly dangerous location to both Police and visitors.
- Increase in restaurants to the existing will be detrimental, raise crime and anti social behaviour which will lead to increased Police presence.
- Impact residential amenity.

### 6.5 **LBTH Environmental Health**

- Raise concerns over latest applications and potential noise issues relating to customer access and egress. Note that the provisions of the Environmental Protection Act 1990 do not allow the control of noise on the street unless it is from vehicles, machinery and equipment. Therefore customers in 'high spirits' after an evening out is not actionable by us and the policing of that kind of noise would be the responsibility of other agencies.
- If approval conditions would be required in relation to detail of extraction / ventilation equipment and flue.

## 7. **LOCAL REPRESENTATION**

7.1 A total of 32 neighbouring properties within the surrounding area were notified about the application and invited to comment. A site notice was also displayed and the application was advertised in East End Life.

The number of representations received from neighbours and local groups in response to

notification and publicity of the application were as follows:

7.2	No of responses:	25	Objecting: 22	Supporting: 0
	Petitions:		Objecting: 2	Supporting: 1

7.3 The following issues were raised in representations:-

#### 7.4 Objections

- Unsuitability of the site as a restaurant and the current uses of the yard.
- Additional restaurants will increase the cumulative effect of the existing concentration of night time economy uses within the immediate and wider vicinity.
- noise nuisance
- anti social behaviour consisting of urination on resident's doors and walls, drunkenness and selling drugs
- Dispersal zone already operating in the area.
- The gates/entrance to the yard are already congested with vehicular traffic and patrons entering and leaving the yard to visit the existing bars and restaurants in Elys Yard, which include, Carbet Place Bar, Al Volo, Big Chill and Cafe 1001.
- The community do not feel safe in their houses and the streets
- Impact on Wilkes Street residents
- Impact on Hanbury Street residents
- Impact on Woodseer Street residents
- The impact of the service traffic and rubbish disposal
- The adjoining restaurant, Al Volo, has a large outside restaurant area which projects into Elys Yard. Corbet Place bar, currently operating despite having a retrospective planning application refused.

7.5 *Officers comments: The Al Volo site does not form part of this application however the alleged breach of planning control is noted and will be passed onto the planning enforcement team to investigate. The Corbet Place bar and outside seating area does not form part of this application. The other issues raised are discussed in the main part of the committee report.*

#### 7.6 Support

- Enhance the local area
- Provide more choice in restaurants
- Help the economy and small businesses
- Create jobs

7.7 *Officers comments: The above supporting comment have been noted and have been taken into consideration within the land use section of this report.*

## 8. MATERIAL PLANNING CONSIDERATIONS

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

1. Whether the loss of the retail unit would have an adverse impact on the vitality and viability of the Brick Lane District Centre; and

2. The over concentration of evening/late night economy uses in the area and the impact of the proposed use on the amenity of residents in the area.

### **Principle of the Land Use**

8.2 This application proposes a change of use from retail (Use Class A1) to restaurant (Use Class A3). The unit has a floor area of approximately 170 square metres. An indicative floor plan of the unit has been provided which shows area for seating, a kitchen and toilets. The restaurant would accommodate approximately 40 customers.

### **8.3 Site Policy Designations**

The adopted Core Strategy 2010 sets policy designations for the application site. Annex 3 of the Core Strategy details a Vision, Principles and Priorities for the different places in the Borough. The application site is located within the Spitalfields Place.

8.4 The vision for Spitalfields notes the area is a '*historic gateway to the vibrancy of Spitalfields Market, Trumans Brewery and Brick Lane*'. A priority for the Spitalfields area is '*To protect residential amenity in the area using night-time environmental, safety, licensing and planning management particularly in and around Brick Lane.*'

8.5 The site is located within the Tower Hamlets Activities Area. The Core Strategy also designates Brick Lane as a District Centre. The boundaries of the District Centre are defined in the Managing Development – Development Plan Document, Proposals Map. This document is in the process of being adopted by the Council. A proposed submission version of this document was endorsed by Cabinet on 7<sup>th</sup> December 2011, and is now at the Call for Representations Stage (a formal period of consultation with interested parties).

8.6 The Old Trumans Brewery Site falls within the proposed boundaries of the Brick Lane District Centre.

### **Loss of Retail Unit (Use Class A1)**

8.7 The proposal would involve the loss of a retail unit with a floor area of approximately 170 square metres. The unit is currently in use.

8.8 Core Strategy policy SP01 defines a hierarchy of Town Centres. Part 4 of this policy seeks to promote the supply of retail floorspace in designated centres. Emerging policy DM1 part 3a) sets criteria that should be met before the loss of retail units in designated centres should be accepted. These require an application to demonstrate that:-

- the loss of A1 would not undermine the town centre's position within the town centre hierarchy;
- the loss of A1 would not result in the overall level of A1 falling below 50% within the town centre;
- the shop has been vacant for a period of more than 12 months and robust evidence is provided of efforts made to market the shop over that period at an appropriate rent (providing three comparable shop unit rents within the town centre); and
- the new use supports the function of the town centre.

8.9 The Applicant states that there is adequate alternative provision of retail in the Old Truman's Brewery complex. However, no details of this alternative provision have been provided. As stated above the unit is currently in use as an A1 unit, and therefore the requirement to establish that the shop has been vacant for a period of more than 12 months in order to

justify the loss of the A1 unit cannot be made. Furthermore a survey conducted in August 2011 revealed that the percentage of A1 uses recorded in the revised boundary Brick Lane District Centre audit was 44.1%. Policy DM1 3a (ii) clearly states that A1 use should not fall below 50% as such the proposed loss of A1 is considered unacceptable.

- 8.10 In the absence of any detailed justification in line with policy requirements, Officers consider that the loss of the floorspace would detract from the vitality and viability of the Brick Lane District Centre, and as such is contrary to adopted and emerging development plan policy.

Principle of Restaurant Use (Use Class A3)

- 8.11 The government provides general guidance on planning for economic growth and town centre uses in PPS4: Planning for Sustainable Economic Growth. Policy EC4.2 of this document notes that local authority policies should *'set out the number and scale of leisure developments they wish to encourage taking account of their potential impact, including the cumulative impact, on the character and function of the centre, anti-social behaviour and crime, including considering security issues raised by crowded places, and the amenities of nearby residents'*.
- 8.12 Further national policy guidance is also given in Planning Policy Guidance Note 24: Planning and Noise. Annex 3 of this document provides guidance on how assessments of noise should be made. At paragraph 20 this document states that *'commercial developments such as fast food restaurants, discos, night clubs and public houses pose particular difficulties, not least because associated activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the attendant problems of noise that may be made by customers in the vicinity'*.
- 8.13 Policy SP01 2(c) of the Core Strategy seeks to encourage evening and night time economy uses that contribute to the vibrancy, inclusiveness and economic vitality of our town centre hierarchy. The policy seeks to ensure that such uses are *'Not over-concentrated in areas where they will have a detrimental impact on local people'*.
- 8.14 Saved policy DEV2 of the adopted Tower Hamlets Unitary Development Plan 1998 states that all development should seek to *'protect the amenity of residential occupiers and the environment of the Borough generally from the effect of pollution'*.
- 8.15 Saved policy S7 of the adopted Tower Hamlets Unitary Development Plan 1998 relates to proposals for 'Special Uses', which includes restaurants. The policy states that proposals will be considered in the light of the amenity of nearby residents.
- 8.16 Emerging policy DM1.6 in the MD DPD states that due to the high proportion of A3, A4 and A5 uses currently in Brick Lane Town Centre, new uses will only be supported where they do not exceed 25% of the total number of units in the Centre.
- 8.17 The site is located in the Tower Hamlets Activity Area, where policy promotes a vibrant mix of uses. Adopted Council planning policy also recognises that Spitalfields, including Brick Lane and the Old Truman's Brewery Complex, is a diverse and mixed use area with a special character. Restaurant uses, particularly those along Brick Lane itself, contribute significantly to this special character and are one of reasons why the area has become such an attractive and successful place.
- 8.18 However, the popularity of the Spitalfields area as a destination for leisure, cultural and tourism activities has increased tremendously over the last 10-15 years. The hierarchy of national, regional and local policies outlined at the start of this section recognises that a balance needs to be struck between the desirability of promoting evening economy uses, which form part of a diverse and attractive town centres, and protecting the residents who live in these areas.

- 8.19 As the Spitalfields area has become more popular as a destination for evening economy uses there have been growing adverse amenity impacts on the residents of the area. These impacts can include direct noise impacts from individual premises or individuals and impacts associated with people making their way to and from the area more generally.
- 8.20 In the case of the Brick Lane / Old Trumans Brewery Area there are also significant problems associated with the sheer popularity of the area, and the number of people who are attracted to the area as a destination for eating and drinking in the evening. These problems are characteristic of an area where there is an over-concentration of evening economy uses.
- 8.21 Adopted policy seeks to manage additional restaurant uses where there is already an over-concentration of this type of use. Emerging MD DPD policy DM1.6 seeks to provide clarity as to what constitutes an over-concentration by setting a maximum level of this type of use in any one designated centre. In the case of the Brick Lane Centre, a threshold of 25% A3/A4/A5 uses has been set. It is noted that this threshold is significantly higher than other town centres – which is a reflection of the particular character of this centre.
- 8.22 The MD DPD policy has been informed by an up to date evidence base and is particularly relevant to this proposal. Officers consider that this policy should be afforded significant weight in this case.
- 8.23 An audit of the Brick Lane Town Centre has revealed that within the Brick Lane District Centre approximately 26% of the units within the proposed district centre boundary are already in A3/A4 or A5 use.
- 8.24 The Application submission notes a number of factors to justify an additional restaurant unit in this location. These include:-
- The proposal is for a restaurant. The use will not include a bar element or outside seating elements. There are relatively few pure A3 uses within the Old Truman's Brewery itself;
  - At 170 square metres the restaurant is small, and would not attract significantly more people to the area;
  - The restaurant is located in a part of the Brewery that is shielded from nearby residential properties by existing buildings;
  - The hours of operation are such that the use would not have an impact in early hours of morning;
  - A recent appeal decision allowed a new restaurant within the Old Truman's Brewery Complex;
  - The Old Truman's Brewery is private land, which allows a significant degree of managerial control over patrons. Security guards are always on duty to manage crowds and prevent anti-social behaviour;
  - Acoustic Reports demonstrate that noise from patrons within the premises would not have an impact on nearby residents;
  - Servicing, Waste and Delivery arrangements are carefully managed to prevent disturbance and control amenity impacts;
  - Conditions could be imposed to control other potential impacts (e.g. noise or odours from ventilation flues).
- 8.25 Officers accept that some of the direct impacts from a small restaurant in this location could be mitigated by the measures proposed by the Applicant, or by the imposition of suitable conditions.
- 8.26 For instance, the Applicant has provided a relatively detailed Statement on Refuse and Recycling Arrangements (Revision A 5<sup>th</sup> December 2011, discussed in more detail under the Highways Section of this report), which specifies how the waste would be managed to avoid



amenity impacts (noise from glass collection, odours/smells from food waste).

- 8.27 The Applicant has also provided an Acoustic Report (prepared by RBA Acoustics dated 17<sup>th</sup> October 2011, Revision 1). This document includes the results of a noise survey undertaken over a 6 day period from 6<sup>th</sup> – 11<sup>th</sup> October 2011. The survey recorded noise levels from monitoring positions in Corbet Place, Hanbury Street, Quaker Street and Wilkes Street. Measurements were taken between the hours of 22:00 and 01:00.
- 8.28 The study notes that existing noise levels around the site already exceed those recommended by the World Health Organisation document '*Guidelines for Community Noise*'. However, the study concludes that a small restaurant in this location (shielded from residential properties by nearby buildings) would not result in any significant additional noise levels. Given this study, the Council's Environmental Health section do not consider that an increase in noise levels *per se* should form a reason for refusal.
- 8.29 Environmental Health Officers also consider that other more direct amenity impacts, such as the installation of an adequate flue and ventilation system to disperse cooking odours could be controlled by condition if the application were to be recommended for approval.
- 8.30 However, none of the above measures would address the issue of the over-concentration of this type of use within the District Centre, and the more general adverse amenity impacts that they cause.
- 8.31 Although on an individual basis, a small restaurant might not add significantly to problems of over-concentration, incrementally additional restaurants will only exacerbate the existing amenity problems. Increasing the offer of this type of use further promotes Brick Lane / Old Truman's Brewery as a destination for eating and drinking in the evening. This in turn brings additional people with cumulative impact of disturbance, pavement congestion and anti-social behaviour.
- 8.32 To deal with the problem of over-concentration, and the threat of continual incremental increases in the amount of this type of use, the Authority is setting a threshold value of 25% A3/A4/A5 uses in the Brick Lane Centre. The most recent audit of the Brick Lane centre shows that 26% of the units are in A3/A4/A5 use. In exceeding this value Officers consider that the proposal, and the related applications which are currently under consideration, would lead to an over-concentration of this type of use in the Brick Lane District Centre.
- 8.33 This would be contrary to adopted policy SP01(c) of the Core Strategy, and the direction of policy travel indicated by policy DM1(4, 6) of the Managing Development Plan Document (Submission Version January 2012).

## **Highways**

### Access and Servicing

- 8.34 Core Strategy policy SP09(3) seeks to ensure that new development has no adverse impact on the safety and capacity of the road network. The site is located in a location with very good access to public transport. The site, and the wider Old Truman's Brewery complex, is privately controlled land. The primary accesses to the Old Truman's Brewery complex are from existing entrances on Hanbury Street and Brick Lane.
- 8.35 The scheme does not propose any car-parking for customers or staff. The proposal is therefore unlikely to have any significant impact on the highways network.
- 8.36 The proposal does not include any cycle parking. However, this issue could be resolved by condition if the application were recommended for approval.

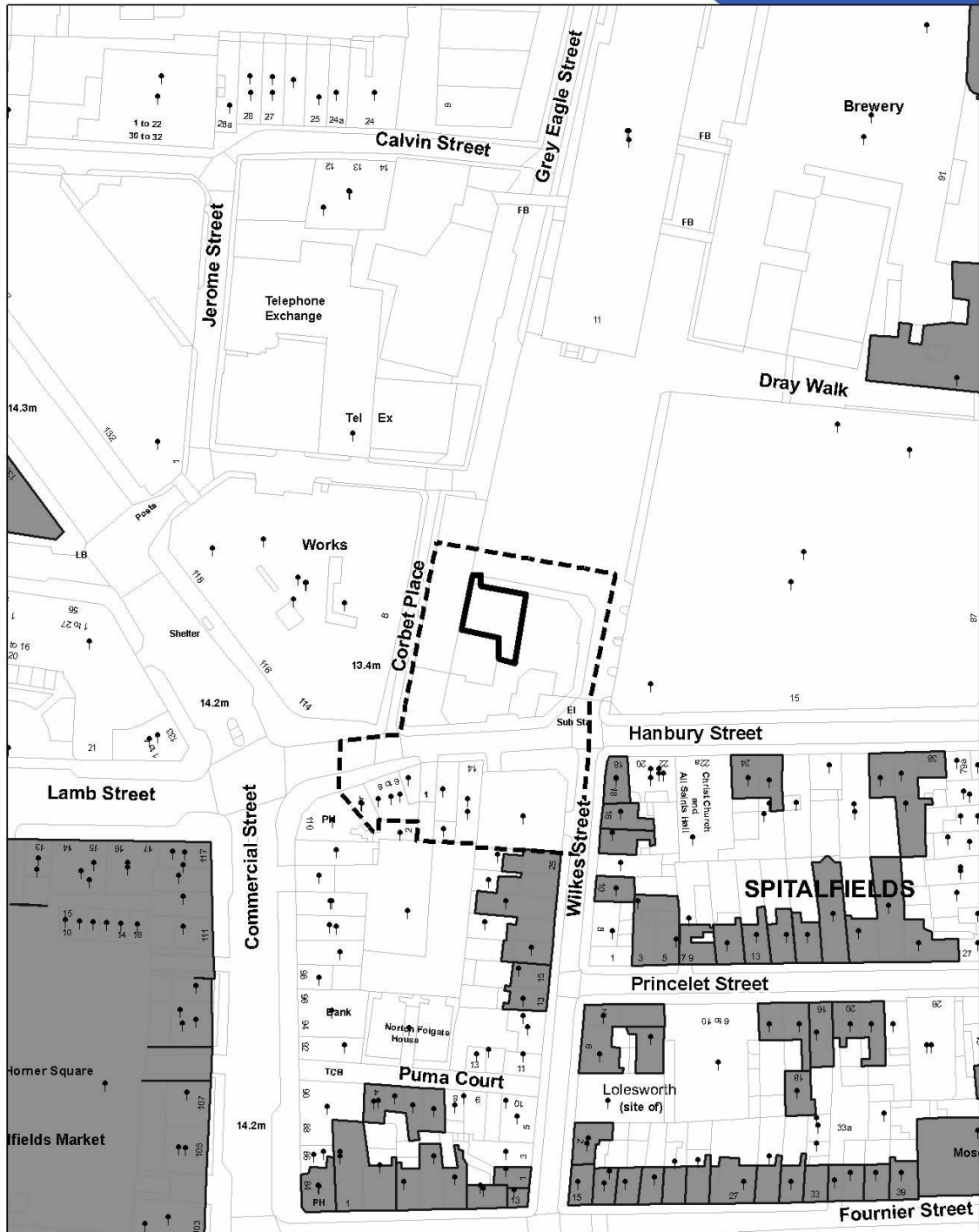
### Waste Refuse and Recyclables Storage

- 8.37 Core Strategy policy SP05 requires new development to implement the Waste Management Hierarchy of reduce, reuse and recycle. UDP policy DEV56 requires new development to make adequate provision for the storage of waste and recycling.
- 8.38 The Application includes a Statement (Revision A dated 5<sup>th</sup> December 2011) detailing the proposed refuse and recycling arrangements. The proposal would make use of a centralised waste management system controlled by the operators of the Old Truman's Brewery complex. This system includes the provision of dedicated recycling points for cardboard and glass which are shared by many of the businesses that operate within the complex. These points are located in the eastern part of the Old Truman's complex, on the other side of Brick Lane from this site.
- 8.39 The Statement notes that the majority of waste would comprise cardboard, glass, food waste and used cooking oil. Recyclable waste would be taken to storage / collection points via a route which runs through the middle of the Old Truman's complex. The route avoids areas of public highway / footway – except for a short distance where it crosses Brick Lane. The recyclables would be moved in rubber wheeled bins, and would only be moved between the 09:00 and 22:30 daily. Glass crushing and cardboard bailing is only carried out between the hours of 09:00 to 18:00 Mondays to Fridays and 09:00 to 13:00 hours on Saturdays.
- 8.40 The Statement notes that Food Waste and Cooking Oil would have to be collected by appropriate specialised firms.
- 8.41 Detailed information on the frequency of vehicles required for deliveries and servicing has not been provided. However, the size of the Old Truman's Brewery complex is such that it is likely that these vehicles could safely access the site without having any significant impacts on the highways network. If the Application were recommended for approval, additional details of these matters could be secured by condition.

## **9. CONCLUSIONS**

- 9.1 All other relevant policies and considerations have been taken into account. Planning permission should be refused 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.

# Planning Application Site Map



- Planning Application Site Boundary
- Consultation Area

- Locally Listed Buildings
- Statutory Listed Buildings

Land Parcel Address



1:1,250

This Site Map displays the Planning Application Site Boundary and the neighbouring Occupiers / Owners who were consulted as part of the Planning Application process.

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