

<b>Committee:</b> Strategic Development	<b>Date:</b> 31 May 2012	<b>Classification:</b> Unrestricted	<b>Agenda Item No:</b> 8.1
<b>Report of:</b> Director of Development and Renewal		<b>Title:</b> Planning Application for Decision	
<b>Case Officer:</b> Paul Buckenham		<b>Ref No:</b> PA/11/02220 PA/11/02221	
		<b>Ward(s):</b> Spitalfields and Banglatown	

## 1. APPLICATION DETAILS

**Location:** London Fruit & Wool Exchange (LFWE), Brushfield St, 99-101 Commercial Street, 54 Brushfield St & Whites Row Car Park, London

**Existing Use:** Offices, retail, public house, bank, private sports facility and car park.

**Proposal:** Demolition of Whites Row Multi-Storey Car Park, 99-101 Commercial Street (The Bank), 54 Brushfield Street (The Gun Public House) and partial demolition of the London Fruit & Wool Exchange behind the retained Brushfield Street facade and the erection of a six storey building with a basement for business, employment and retail use (Use Classes B1/A1/A2/A3 & A4) with landscaping and associated works, together with a new pavilion building for retail accommodation (Use Class A1).

### AMENDED PLANS

Amendments to external elevations of proposed building, proposed ground floor layout, increase in amount of proposed retail space.

**Drawing's and documents:** 0923\_P20\_SP00 A; 0923\_P20\_PB1 A; 0923\_P20\_P00 A; 0923\_P20\_P01 A; 0923\_P20\_P02 A; 0923\_P20\_P03 A; 0923\_P20\_P04 A; 0923\_P20\_P05A; 0923\_P20\_P06A;

0923\_P20\_E01A; 0923\_P20\_E02A; 0923\_P20\_E03A  
0923\_P20\_E04A;

0923\_P20\_S01 A; 0923\_P20\_S02A; 0923\_P20\_S03A;  
0923\_P20\_S04 A;

0923\_P20\_B01A; 0923\_P20\_B02A; 0923\_P20\_B03A;  
0923\_P20\_B04A; 0923\_P20\_B05; 0923\_P20\_B06A;  
0923\_P20\_B07A; 0923\_P20\_B08A; 0923\_P20\_B09A;  
0923\_P20\_B10;

0923\_P20\_D\_01;

0923\_X10\_SP00; 0923\_X10\_PB1; 0923\_X10\_P00;  
0923\_X10\_P01; 0923\_X10\_P02; 0923\_X10\_P03;  
0923\_X10\_P04; 0923\_X10\_P05;

0923\_X10\_E01; 0923\_X10\_E02; 0923\_X10\_E03;

0923\_X10\_E04; 0923\_X10\_E05; 0923\_X10\_E06  
0923\_P12\_PB1; 0923\_P12\_P00; 0923\_P12\_P01;  
0923\_P12\_P02; 0923\_P12\_P03; 0923\_P12\_P04  
0923\_P12\_P05;

0923\_P12\_E01; 0923\_P12\_E02; 0923\_P12\_E03;  
0923\_P12\_E04; 0923\_P12\_E05; 0923\_P12\_E06.

Design and Access Statement and Appendices;  
Transport Assessment, Draft Travel Plan and  
Delivery and Servicing Plan;  
Energy Statement;  
Sustainability Statement;  
Statement of Community Involvement;  
Draft Management Strategy;  
Arboriculture Impact Assessment;  
Environmental Statement (inc Non-Technical  
Appendix)

Response to LBTH Transportation and Highways  
comments

Response to LBTH Sustainability and Energy  
comments

Summary PPS 5 case

Design and Access Statement Addendum

Replacement ES Volume 1: Non-Technical

Replacement ES Volume 3

ES Volume 5 Addendum

Update notes responding to indicative reasons for  
refusal

- Employment
- Housing
- Gun Public House
- Executive Summary
- Financial viability appraisal supplemental note

Letters from Exemplar and City of London (dated  
17 May 2012)

**Applicant:** Exemplar Properties (Brushfield) LLP  
**Ownership:** Private  
**Historic Building:** Grade I and Grade II Listed Buildings adjacent  
**Conservation Area:** Fournier Street and Brick Lane Conservation Area  
Artillery Passage Conservation Area

## 2. BACKGROUND

2.1 Applications for planning permission and Conservation Area Consent were reported to Strategic Development Committee on 6 March 2012 with an officer recommendation for approval. Copies of the committee report and associated addendum report are attached at Appendices 1 and 2.

2.2 Members deferred both applications and indicated that they were minded to refuse planning permission on the following grounds:

1. The loss of employment uses;

2. The lack of any on-site social housing development in the proposed scheme;
  3. The loss to the local environment and heritage that would arise from the proposed demolition of The Gun public house historic building.
- 2.3 The previous deferral provides an opportunity for officers to prepare a supplemental report setting out the reasons for refusal and the implications of the decision.
- 2.4 This report also summarises representations received following the committee meeting on 6 March, considers any implications of the National Planning Policy Framework (NPPF) introduced on 27 March 2012, provides further clarification of the proposed development and outlines any modifications proposed by the applicant in an attempt to respond to Members stated concerns.

### **3. REPRESENTATIONS**

- 3.1 Since consideration of the applications on 6 March 2012, the following additional representations have been received.
- 3.2 One petition with 325 signatures objecting on the following grounds:
- ugly and architecturally substandard building proposed for Commercial Street, opposite Christ Church;
  - the removal of historic Dorset Street;
  - the demolition of the Gun Public House;
  - the demolition of Barclays Bank.
- 3.3 The petition includes the following suggested changes to address the objections:
- reopen historic Dorset Street as an east-west axis and suitable site for the development's restaurant plans;
  - insist on high quality buildings for Commercial Street opposite Christ Church;
  - reintroduce housing to this historically residential part of Spitalfields;
  - reserve all ground floor space for retail use.
- 3.4 One detailed letter and attachments from Spitalfields Trust and Spitalfields Community Group summarised as follows:
- The architecture should be more responsive within a conservation area; the 17th Century Dorset Street should be retained; more of the 1920s buildings (including the pub and bank) should be retained; the mix of uses should be richer to reflect economic and social diversity of the area and the scheme and include a variety of housing on site.
  - Following the SDC meeting on 6 March, Spitalfields Trust and Spitalfields Community Group met with Exemplar to discuss ways in which the scheme could be amended to respond to the objections but were advised by that the plans would not be amended. This has led the group to prepare an alternative development scheme for the site.

- Spitalfields Trust and Spitalfields Community group say that the alternative scheme shows how the site could be developed to enhance the historic and social character of the area, create on site housing and local employment, improve permeability, provide public spaces and retain Dorset Street. The scheme is intended to be a direct critique of the current application.
- Spitalfields Trust and Spitalfields Community Group say that If the site is developed with flare and sensitivity, the quality of life for all inhabitants and visitors to Spitalfields will be improved. There would be significant economic and social benefit.
- The objection letter is supported by concept diagrams and text setting out design rationale, analysis, and indicative floor plans and artists impressions of key views in and around the alternative development scheme.
- The letter is supported by a draft development analysis of commercial floor space in the application scheme and ion the alternative scheme. The analysis attempts to show the alternative scheme is also viable in terms of financial returns than the application scheme.

#### Officer comments

- 3.5 The petition does not raise any planning issues that are materially different from previous objections, reported to and considered by the Strategic Development Committee in reaching the decision to defer the applications.
- 3.6 The letter of objection submitted by Spitalfields Trust and Spitalfields Community Group does not raise any new matters of objection to the applications that have not been considered previously by the Strategic Development Committee but does introduce the concept of an alternative scheme to address matters of concern.
- 3.7 The illustrative proposals for an alterative scheme were prepared in response to the decision to defer the applications. The alternative scheme demonstrates that theoretically the site could be developed, but only in a manner that would seek to address those objections raised by the Spitalfields Trust, SCG and others to the application proposals.
- 3.8 This alternative scheme has not been the subject of any formal assessment in planning terms by officers at pre-application stage and is not the subject of a current planning application. Statutory consultees, local community and other stakeholders have not provided comments on the proposals.
- 3.9 Officers note that the Spitalfields Trust and Spitalfields Community Group have invested time and resources in preparing a conceptual alternative proposal. However the Local Planning Authority, in exercising its powers under the relevant Planning Acts, must consider only the development for which planning permission and conservation area consent has been applied for and consider such proposed development on its merits within the context of the development plan and other material considerations.
- 3.10 Presentation of an alternative approach to site re-development is capable of being a material consideration for the purposes of Section 70 of the Town and

Country Planning Act 1990, but the weight to be attributed to alternative approaches for which planning permission has not been applied for is very limited.

#### **4 NATIONAL PLANNING POLICY FRAMEWORK**

4.1 On 27 March 2012, the Government introduced the National Planning Policy Framework (NPPF) and withdrew the majority of former Planning Policy Statements and Planning Policy Guidance. The NPPF is a material consideration in determining all planning applications and must be taken into account in considering the information contained in this update report.

4.2 The National Planning Policy Framework introduces a presumption in favour of sustainable development for both plan-making and decision-taking. The NPPF says:

*“The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions.*

*In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.”*

4.3 The NPPF contains policy guidance directly relevant to determination of these applications. The NPPF contains policies for building a strong competitive economy. Paragraphs 18 and 19 say:

*“The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.*

*The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”*

4.4 The NPPF replaces PPS5 (Planning and Heritage) and contains policies for conserving and enhancing the historic environment. Paragraph 131 says:

*“In determining planning applications, local planning authorities should take account of:*

- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- *the desirability of new development making a positive contribution to local character and distinctiveness.”*

Further discussion on the relevance of the NPPF to considering the heritage aspects of these proposals is contained in section 5 of this report.

- 4.5 The NPPF must be reflected in the reasons given for the final decision on the applications, either in the reasons for refusal or in the event that permission is granted in the reasons for approval. A schedule containing amended reasons for approval, to replace those set out in Section 2 of the original 6 March 2012 report is attached at Appendix 3 to this report.

## 5. CLARIFICATIONS AND AMENDMENTS

- 5.1 Since the deferral of the applications on 6 March 2012, the applicant has sought to address the reasons for refusal by providing additional information, clarifications and amendments to the proposals.

### Reason one – loss of employment uses

- 5.2 The table below sets out the existing area of each employment use on site and the proposed employment floor space by type as proposed.

Use	Existing	Proposed	Net Change
Office Space (B1)	20,996 sqm.	35,417	+14,421
Retail/other class A uses	1,635 sqm.	2,777	+1,142
Public House	300	300	0
SME Workspace	0 sqm.	2,000	+2,000
<b>Total on-site employment floor space</b>	22,931	40,494	+17,563

- 5.3 The table demonstrates that the proposal will deliver 17,563sq m GEA additional employment floor space than existing. Using the Homes and Communities Agency Employment Densities Guide (2nd Edition 2010) Benchmark for Employment Densities, the proposed employment floor space would be capable of delivering up to 3000 jobs, depending on how it is occupied.
- 5.4 As existing, the lawful use of the London Fruit and Wool Exchange is offices Class B1. There are no planning conditions relating to the existing building that restrict the size of the individual office floor plates and there are no conditions affecting the existing LFWE building that either seek or control the provision or protection of SME floor space.
- 5.5 The site has been earmarked for development for many years and consequently, the existing space has been rented to various occupiers on short term leases to retain an income whilst a long term redevelopment the scheme is prepared. It would be possible to revert the existing building into larger floor plates again without requiring planning permission.
- 5.6 The proposed scheme would include a dedicated proportion of floor space aimed at SME's. The applicant is proposing to increase this from 1,440 sqm. (previously presented) to 2,000 sqm. It is proposed that this SME space would be protected in perpetuity through a legal agreement.

- 5.7 The proposed development would therefore provide an intensification of employment floor space and opportunities for a range of employment types over and above the current situation and as such would be in line with Strategic Objective SO16 of the Core Strategy to support the growth of existing and future businesses in accessible an appropriate locations and policy SP06 which seeks to maximise and deliver investment and job creation in the borough and support the provision of a range of employment uses and spaces.
- 5.8 In addition to the creation of additional employment floor space, the applicant has sought to address concerns raised by Members relating to the relocation of existing tenants, the provision of employment and training opportunities both during the construction stage and over the long term use of the development.

#### Existing Tenants

- 5.9 In terms of the existing tenants, the following strategy is in place to assist the existing tenants re-locate:
- Extended notice period for vacant possession provided to all existing tenants;
  - First right of refusal to occupy new SME space created in the new scheme;
  - Transitional relief on rent to existing tenants. This will take the form of 1st year rent free and 2nd year at half rent;
  - First right of refusal offered to tenants for space within other City of London owned buildings in both Tower Hamlets and neighbouring Boroughs;
  - Active relocation strategy being run by the City of London Property Advisory Team in conjunction with LBTH Employment & Enterprise Team;
  - Advice provided on relocation process, professional advisors and assistance to identify relocation options;
  - Financial assistance to mitigate costs associated with relocation.
- 5.10 The applicant is working in partnership with the City of London Corporation to co-ordinate the managed relocation of existing tenants into alternative accommodation with the prospect of future engagement and return to the proposed redeveloped LFWE. This has been confirmed formally in a letter received from the City of London Corporation dated 17 May 2012.

#### Employment & Training during Construction

- 5.11 During the course of construction, the following employment and training initiatives will be delivered:
- Minimum of 75 apprenticeships;
  - Commitment to work with suppliers and contractors to offer additional apprenticeships once construction is completed;
  - Minimum 20% of all construction jobs to be taken by local people (defined as LBTH residents);
  - Minimum of 144 weeks of 'Work Placements' during construction across all organisations, sectors, and functions within the supply chain;
  - 20% of suppliers and services to be provided by local suppliers (defined as those within LBTH);

- Job Ready training for local construction staff (including CSC cards and Health & Safety);
- Mentoring both on site and within the local area;
- Hosting of 'Jobs Fairs' prior to commencement on site to advertise positions locally;
- Agree methodology for participating in LBTH strategies before commencement on site;

#### Long Term Employment and Training Strategy

5.12 The applicant, the construction contractors and long term occupiers of the proposed scheme will enter into a social compact to include an Employment & Training Strategy controlled through the Section 106 legal agreement and ongoing work with Tower Hamlets Employment & Enterprise Team. The strategy will comprise the following elements.

- Minimum of 20 Work Placements per annum to people in education locally
- Commitment to Secondary School visits and attendance at Careers fairs
- Mentoring Programme for local students
- Target minimum of 20% 'Local Employment' on site.
- Advance notification of all new jobs to LBTH Employment & Enterprise Team;
- 'Meet the Buyer' events where local suppliers can meet the occupiers and explore opportunities for local procurement;

#### Proposed Employment and Skills Centre

5.13 Recent development work has identified a large number of workless residents in and/or around the Spitalfields, Whitechapel and Weavers area of Tower Hamlets. The Employment & Enterprise team within the Council has explored extending the provision of its employment, skills development and brokerage services to assist local people into jobs.

5.14 The LFWE development provides an opportunity to assist in the set up of a local brokerage service to develop the Council's overall advice and guidance provision which will lead to an increased volume of local residents taking up job vacancies. It is proposed to establish a new facility to enhance local engagement of workless residents and begin them on their journey toward economic activity and employment.

5.15 For the facility to be successful it must provide relevant advice, guidance and support services for local residents to overcome any barriers to work and to then identify aspirations and career goals. This would be achieved through relevant skills training, focussed work experience placements, assistance with preparation for interviews and introductions to employers. This model is outlined in the Council's Employment Strategy 2011 as the "Route way to Work".

5.16 A facility of this nature would contain a core employment brokerage function through the Tower Hamlets Skillsmatch service and partnership working with third sector organisations, training providers (including TH College) and Jobcentre Plus to enhance the local offer and widen vacancy access. A facility of this kind would involve a longer term plan 5-10 years and costs would be in the region of £200k set up and approximately £200k per year to operate which includes ongoing building costs. Funding models have been



explored for a facility of this kind and success would be based on a shared cost basis.

- 5.17 The service would focus its engagement on the local residential area of the west of the borough. It would also tap into the local employment market which includes the retail, hospitality and hotels sectors. The facility and its advisers would work alongside other employment and training providers to co-ordinate the service offer and form part of the Council's overall response to low employment rates and high unemployment rates.
- 5.18 The applicant is proposing to assist with the establishment of the centre through:
- The provision of 500 sqm. of floor space to accommodate the employment and skills centre rent and service charge free for 10 years;
  - The provision of an additional financial contribution of £500,000 towards pump priming the initial set up of the new centre.
- 5.19 The proposed Employment and Skills Centre would be a use falling predominantly within class A2 (financial and professional services) with some class B1 office space. The proposed centre would therefore fall within the scope of the uses for which permission has been sought.
- 5.20 The proposed pavilion building on the south west corner of the site has been identified by the applicant as a potential location within the scheme to accommodate the new centre.
- 5.21 The applicant has stated that they and the future tenant(s) of the retail and office space will also make a commitment for occupiers to work with the Centre - for example by committing to providing advanced information on all employment opportunities within the scheme to the Centre and Tower Hamlets.
- 5.22 The Centre would work alongside the Council's Employment and Enterprise Team to engage a minimum of 1,000 local workless residents per year, to up-skill or train 305 people per year and place a minimum of 150 people into jobs. Over the lifetime of the programme this equates to 1,500 local people placed into sustainable employment
- 5.23 The applicant, construction contractor and long term occupiers will provide a dedicated 'Liaison Officer' who will work with LBTH to ensure the employment & training opportunities outlined above are delivered.
- 5.24 In conclusion officers consider that the proposed development will have a wide range of tangible benefits in terms of local job creation that would outweigh any displacement of the existing jobs and businesses occupying space in LFWE and that appropriate measures would be put in place by the applicant and site owner to assist firms in finding suitable alternative accommodation and to potentially return to the development.
- 5.25 The enhanced planning obligations package with specific commitments to delivering local job creation and training, through financial contributions along with the establishment of the employment and skills centre offer a major public benefit to the Borough.

- 5.26 The enhanced offer would contribute towards improving skills and reducing worklessness in the local community thereby helping to deliver against the Community Plan objective A Prosperous Community, the Core Strategy policies SP06 to maximise and deliver investment and job creation in the borough and strategic objectives to improve education, skills and training and encourage life long learning (SO17) and policy SP07(B) supporting and working with the Skillsmatch job brokerage service to increase the number of local people obtaining access to employment opportunities.

**Reason Two – The lack of any on-site social housing development in the proposed scheme.**

- 5.27 Members previously resolved that they were minded to refuse planning permission on grounds of the lack of any on site affordable housing arising from the fact that the development subject of the application was wholly commercial in nature, being a mix of office and employment floor space with associated retail, café and restaurant uses.
- 5.28 Members will be aware that Tower Hamlets Core Strategy policy for the provision of affordable housing applies only in respect of residential developments where 10 or more housing units are proposed.
- 5.29 The London Plan and Tower Hamlets policies generally support office use in this location. The site is located in the Central Activities Zone (CAZ) where the London Plan recognises that the CAZ is the country's most important strategic office location and identifies a strategic priority to promote and co-ordinate development to provide a competitive, integrated and varied global business location.
- 5.30 The site is identified as a City Fringe Area Opportunity Site in the LBTH Interim Planning Guidance (2007). Policy CFR8 identifies employment, retail and open space as the preferred uses for the site.
- 5.31 The site falls outside of the Bishopsgate Corridor Preferred Office Location identified in Core Strategy policy SP06, this designation is intended to ensure that larger office floor plate development can be accommodated in accessible locations adjacent to the City of London and at Canary Wharf. The Managing Development DPD policy DM16 clarifies that the POL designation acts as a safeguard against loss of office floor space in these locations.
- 5.32 Policies 2.11 and 4.3 of the London Plan require that, where an increase in office floor space is proposed within the CAZ, it should provide for a mix of uses including housing, "*unless such a mix would demonstrably conflict with other policies in the London Plan*". The development proposes a mix of uses comprising office, retail, and restaurant and SME space, but does not include housing.
- 5.33 The applicant has set out that the scheme seeks to provide excellent office accommodation and retail space to support one of the strategic priorities of CAZ' as stated in the London Plan. The applicant has stated that the provision of on-site housing would fundamentally constrain the potential of the optimum office and retail development on the site to support the CAZ function in this way.

- 5.34 The applicant is not proposing to amend the scheme to include housing but is mindful of the need to address the principles behind London Plan Policy 4.3 and previously proposed a financial contribution towards the delivery of off site affordable housing.
- 5.35 The principle of a commuted sum in lieu of on-site provision had previously been accepted by the GLA as an appropriate in this case to meet the London Plan CAZ policies and mixed use objectives. The Managing Development DPD policy DM3 includes off site affordable housing provision as one of the range of affordable housing delivery mechanisms. The proposed financial contribution has been increased by the applicant from £300,000 to £1million to address Members concerns that the contribution would need to properly mitigate the failure to provide residential accommodation within the scheme.
- 5.36 The Council will need to facilitate the delivery of a significant level of new affordable housing in the next five years. Given national funding constraints, the effective use of existing land and assets is a vital part of any strategy to deliver this.
- 5.37 Tower Hamlets Homes and the Council have commissioned feasibility work on the capacity to carry out development on a number of in-fill sites on nine estates where earlier studies have shown that these estates have the greatest opportunity for infill development. It is envisaged that the results of the estates capacity work will be ready by Autumn 2012.
- 5.38 In addition to the estate capacity work, the Council is looking at the development capacity of approximately 15 surplus sites in its ownership with the potential of delivering new affordable homes (subject to planning permission).
- 5.39 Given the increasing financial constraints that affect housing and more specifically affordable housing delivery, the contribution could be used beneficially to unlock or speed up the delivery of homes on sites where funding is a critical issue. The contribution could enable an affordable housing scheme that already has permission but is lacking funds to be completed or to pump prime new schemes.
- 5.40 In conclusion, the mixed use approach to development within the CAZ as advocated in the London plan represents an important material consideration. Officers consider that the proposed contribution of £1 million towards off site affordable housing delivery is an appropriate response to meeting the objectives of the policy and could be used beneficially on to deliver housing through the Council's future development programmes or affordable housing initiatives.
- 5.41 In the event that Members do not agree with this conclusion, a suggested reason for refusal is included in Section 7 of this report.

**Reason Three – The loss to the local environment and heritage that would arise from the proposed demolition of the Gun public house historic building.**

- 5.42 The application proposes the demolition of the Gun Public House and proposes to provide a replacement public house as part of the ground floor mix of uses within the new development in the same location, on the corner of

Brushfield Street and Crispin Street. The applicant has also advised that the current brewery have confirmed they will operate the new public house if planning permission is granted and the scheme is developed.

- 5.43 Members will be aware that the planning system cannot control the operation of the proposed public house but can control the size and mix of uses in the proposed scheme to ensure a replacement public house is included.
- 5.44 In dealing with applications that affect heritage assets, the NPPF advises that *“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.”*
- 5.45 As set out in the 6<sup>th</sup> March report, the designated heritage assets affected by the proposed development are the Brick Lane and Fournier Street Conservation Area, the Artillery Passage Conservation Area (in terms of its setting) and the setting of listed buildings adjoining and close to the site. The undesignated heritage assets affected by the development are the buildings within Brick Lane and Fourier Street Conservation area namely the Gun Public House, the bank at 99-101 Commercial Street, London Fruit and Wool Exchange.
- 5.46 The NPPF advises that *“the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*
- 5.47 The applicant’s assessment of the significance of The Gun public house itself in terms of the wider conservation area is limited and hence the harm caused by its demolition would be less than substantial.
- 5.48 English Heritage have stated in their response to the applications that they consider the non-designated assets including the public house are significant in their own right and make a positive contribution to Brick lane and Fournier Street Conservation Area. Demolition of these buildings would cause substantial harm to the conservation area and their replacement with a single building that eliminates the divisions between the buildings within the urban block would be inappropriate and would fail to preserve or enhance the character and appearance of the Conservation Area.
- 5.49 In the context of this advice, officers have taken a precautionary approach by ensuring that the recommendation to grant conservation area consent and planning permission is made in the context of the higher test of balancing the harm caused by the loss of the public house to the wider conservation area against the public benefits of the replacement development proposed.
- 5.50 As set out in the previous report to the Strategic Development Committee, officers consider that there are substantial public benefits that would flow from the proposed development, which must be taken into account in reaching a decision. These are:

- Comprehensive redevelopment of the site to provide a building of appropriate scale, height and appearance for the local context;
- Improved permeability through the site and a better relationship between the building frontages and the street with ground floor shops, cafes and restaurants,
- Provision of new publicly accessible open spaces;
- Removal of the White's Row multi-storey car park which is described as an opportunity site in the Conservation Area Character Appraisal;
- Delivery of a key employment site, with the associated job opportunities;
- Provision of a number of training and access to employment initiatives to maximise the employment opportunities for local people, including the proposed employment and skills centre on site;
- Provision of protected space for small and medium enterprises;
- Benefits to the local economy through additional spending power of future occupants.

5.51 In conclusion, officers consider that the level of harm caused to heritage and the local environment from the loss of the public house (in itself and to the wider conservation area) would be outweighed by the wider public benefits including substantial job creation and regeneration benefits of the overall scheme. Accordingly the policy tests of the NPPF would be met.

5.52 In the event that your committee do not agree with this conclusion, a suggested reason for refusal is included in Section 7 of this report.

#### **Additional financial contributions**

5.53 Members will note that since the deferral of the applications on 6<sup>th</sup> March, the proposed contribution towards affordable housing in lieu of onsite provision has been increased from £300,000 to £1 million and that an additional sum of £500,000 has been offered by the applicant to support the set up costs of the proposed on-site Employment and Skills Centre. The total increase would be equivalent to £1.2 million.

5.54 A Supplemental Financial Review of development viability has been undertaken by the applicant to assess the effect on development viability of increasing the financial contributions associated with the scheme, to update the previous viability assessment carried out in October 2011 and reported to the Strategic Development Committee on 6 March 2012.

5.55 The updated financial assessment comes to a conclusion that additional contributions of £800,000 could be afforded without rendering the development unviable. The reasons cited in the applicant's assessment are a fall in forecast construction tender price inflation, added confidence in the regeneration effects of the proposed development and the increased interest in the potential to achieve a pre-let of the main office floor space.

- 5.56 Officers have sought independent advice on the revised offer and associated viability assessment. In summary the independent advice concludes that whilst a re-assessment of build cost inflation may have been a factor which has changed the development appraisal calculation, the likelihood of a significant pre-let of the proposed commercial floor space by a prospective tenant is far more important in influencing the improved financial offer. Together, these factors have changed the appraisal calculation and prompted the improved financial contributions.
- 5.57 The advice to officers also recommends that if Members are minded to grant permission, the associated legal agreement should ensure that the proposed contributions are offered on an unconditional basis, that the trigger points for payments are set appropriately to ensure the contributions can be used to properly mitigate the impact of the development and that the contribution towards affordable housing delivery is used on schemes being promoted on Council or Tower Hamlets Homes sites to avoid land costs.
- 5.58 The Council has received a letter from Exemplar setting out that interest in the scheme has been received from a number of potential occupiers and they are in active discussions with two occupiers who would like to pre-let a significant part of the scheme. The letter goes on to say that the increased interest has allowed greater certainty to be factored into the appraisals and has enabled the improved offer that has been submitted. The letter explains that the overall offer exceeds that tested in the viability assessment by £400,000 in view of a commercial decision on the part of the applicant to increase the Employment and Skills Centre contribution from £100,000 (in the viability assessment) to £500,000 to ensure that the centre has the best chance of success.
- 5.59 In conclusion, the additional financial contributions can be taken into account as material considerations by Members in coming to a decision on the application for planning permission. However in coming to a decision, Members are also reminded of the provisions of regulation 122 of the Community Infrastructure Regulations 2010 which state:
- A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*
- (a) necessary to make the development acceptable in planning terms;*
  - (b) directly related to the development; and*
  - (c) fairly and reasonably related in scale and kind to the development*
- 5.59 The contribution towards the employment and skills centre start-up costs is not required explicitly by planning policies, but is intended to ensure that delivery of the centre would not be fettered by financial considerations. Whilst this contribution is a material consideration it would not “necessary” to grant permission within the meaning of the above regulations.
- 5.60 The contribution towards off-site affordable housing is considered necessary within the meaning of the above regulations in order to meet the objectives of the London Plan policies for mixed use development in the CAZ. The additional contribution that would arise if the Crossrail contribution is discounted for early payment and transferred to the Council for affordable housing delivery is entirely voluntary and therefore this element would not be necessary in terms of the regulations.

## 6. RECOMMENDATION

6.1 In light of the additional information and amendments to the scheme officers maintain the previous recommendation to grant planning permission and conservation area consent, subject to changes to the proposed heads of terms as set out for completeness below.

6.2 That the Committee resolve to **GRANT** planning permission subject to:

A. Any direction by The London Mayor;

B. The prior completion of a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) within three months of the date of this resolution, to secure the following planning obligations:

- |  |            |
|--|------------|
| • Contribution to training, employment and enterprise initiatives  | £700,000   |
| • Contribution to training centre start up costs (additional)  | £500,000   |
| • Contribution to off site affordable housing delivery (increased)   | £1,000,000 |
| • Contribution to local community facilities   | £350,000   |
| • Contribution to borough Idea Stores, libraries and archives  | £31,282    |
| • Contribution to borough indoor leisure facilities  | £101,147   |
| • Contribution to local public open space and public realm   | £199,227   |
| • Contribution to local heritage initiatives   | £412,152   |
| • Contribution to sustainable transport projects   | £48,000    |
| • Standard monitoring charge (2%)  | £66,836    |
| <br>   |            |
| • Total Tower Hamlets contributions  | £3,408,644 |
| <br>   |            |
| • Contribution to Crossrail  | £2,026,716 |
| <br>   |            |
| • Standard clause to allow for 20% reduction in Crossrail contribution if paid by 31 March 2013;   |            |
| <br>   |            |
| • Additional affordable housing contribution equivalent to the value of 20% of the Crossrail contribution in the event that the standard discount arrangement would apply; |            |
| <br>   |            |
| • Strategy for managed relocation of all existing firms (detailed above);  |            |
| <br>   |            |
| • Provision and safeguarding of 2,000sq m of SME floor space.  |            |

### Employment and training during construction

- Target to achieve at least 20% of all construction and ancillary jobs to be taken by Tower Hamlets residents;
- Commitment to use reasonable endeavours to achieve throughout the construction period that at least 20% of all supplies and services shall be provided by local suppliers where available and practicable;
- Commitment to provide minimum 75 local apprenticeships leading to recognised technical or vocational qualifications during construction phase;
- To facilitate work experience and management placements across all associated organisations, sectors and functions and across the complete

supply chain for a minimum of 144 weeks of placements per year or part years by any breakdown;

- Job ready training for local construction staff;
- Mentoring both on site and within the local area;
- Strategy for local promotion of construction positions.

#### Long term employment and training opportunities

- Provision of a dedicated 'Tower Hamlets Spitalfields employment and skills centre, minimum 500 sqm. Floor space provided rent free for 10 years, with location and specification to be agreed;
- Main occupier of the office floor space to enter into a Social Compact to facilitate training, work experience and apprenticeships to maximise access to employment opportunities including
  - minimum of 20 Work Placements per annum to people in education locally
  - commitment to Secondary School visits and attendance at careers fairs
  - mentoring programme for local students
- Target minimum of 20% 'Local Employment' on site;
- Advance notification of all new jobs to LBTH Employment & Enterprise Team;
- 'Meet the Buyer' events where local suppliers can meet the occupiers and explore opportunities for local procurement;
- Commitment to ensure that occupiers of the commercial floor space across the development work with the Council to procure 20% of supplies and services locally subject to procurement/competition rules;

6.3 That the Strategic Development Committee note that the contribution towards the employment and skills centre start-up costs, the proposed provision of space rent free to facilitate the establishment of the training centre and the additional contribution toward off site affordable housing arising from the Crossrail payment discounts are material considerations but are not necessary to grant planning permission under the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

6.4 That the Corporate Director Development & Renewal is delegated authority to negotiate the legal agreement indicated above.

6.5 That the Corporate Director Development & Renewal is delegated authority to issue the planning permission and impose conditions and informatives to secure the following matters:

#### Conditions:

1. Permission valid for 3 years;



2. Development in accordance with approved plans;
3. Details of the following matters to be submitted to the local planning authority for approval prior to commencement of the development and the development to be carried out strictly in accordance with the approved details:
  - All external facing materials with mock ups to be provided, including materials facing the central courtyard and public routes;
  - Detailed design of the proposed pavilion building;
  - Detailed design of the proposed top two floors of the main office building;
  - Details of all proposed fenestration;
  - Details of the treatment of the internal face of the retained LFWE Brushfield Street elevation;
  - Details of the design of the proposed junction between the retained LFWE Brushfield Street elevation and new development either side;
  - External hard and soft landscape treatment within the site boundary including the central courtyard and public routes;
  - Finished floor levels and associated external spot heights for the public route, public spaces and ground floor internal spaces;
  - Street scene improvement works including hard and soft landscaping, way-finding and tree planting to Brushfield Street, Crispin Street, White's Row and Commercial Street;
  - Detailed design of proposed footway crossings and visibility splays for the proposed vehicular access points on Crispin Street;
  - Construction management plan;
  - Delivery and servicing plan;
  - Written scheme of archaeological investigation;
  - Ground contamination survey and remediation strategy;
  - Water impact assessment in conjunction with Thames Water.
4. Details of the following matters to be submitted to the local planning authority prior to commencement of the relevant part of the development and the development to be carried out strictly in accordance with the approved details:
  - Shop front and external signage design code;
  - External lighting and CCTV;
  - External mechanical ventilation and plant;
  - Design of the proposed green roofs and bat boxes;
  - Secure cycle parking, changing and shower facilities for occupiers and visitors;
  - Electric vehicle charging points.
5. Details of the following matters to be submitted to the local planning authority and implemented strictly in accordance with the approved details, prior to first occupation of any part of the development hereby permitted:
  - Internal lighting strategy to prevent obtrusive light spill, as set out in the Environmental Statement and Addendum submitted with the planning application;
  - Public art strategy;
  - Estate management strategy;
  - Noise and vibration assessment for external plant and machinery in accordance with BS4142.

6. Details of tree planting, including species to be provided prior to commencement of the development and the agreed planting scheme to be implemented during the first planting season following first occupation of any part of the development.
7. Limit on hours of construction.
8. Noise levels for plant not to exceed existing background levels.
9. Restriction of class A3 and A4 uses to no more than 50% of overall provision of ground floor class A1-A4 floor space.
10. Restriction of retail, restaurant, café and public house (Class A1, A2, A3 and A4 uses) customer/public opening hours to 0900-2300 hours Mondays to Saturdays and 0900 -2230 hours Sundays and Bank Holidays.
11. Limitation on size of ground floor retail, café and restaurant uses to prevent amalgamation.
12. Development shall not commence until a 278 agreement with the local highway authority and Transport for London has been completed for highway and street scene improvement works surrounding the site.
13. The development shall not be occupied until the site archaeological investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation. A
14. Development shall not be occupied until the central stone pediment to the Brushfield Street elevation has been reinstated in full to the satisfaction of the local planning authority in accordance with the approved plans.
15. Development shall not be occupied until street scene improvement works have been completed in accordance with S278 agreement.
16. Secure the provision of minimum area of photo voltaic cells on the roof of the development.

Informatives:

1. Definition of development for the purposes of discharging relevant conditions;
  2. The permission is subject to a S106 agreement;
  3. Contact Thames Water;
  3. Building Regulation Approval required;
  4. Any other informative(s) considered necessary by the Corporate Director Development & Renewal.
- 6.6 That, if within 6 weeks of the receipt by LBTH of the Mayor of London's Stage II report the legal agreement has not been completed, the Corporate Director Development & Renewal is delegated the power to refuse planning permission.
- 6.7 That the Strategic Development Committee resolve to **GRANT CONSERVATION AREA CONSENT** for application PA/11/02221 subject to the following conditions and informatives:

Conditions

1. Demolition to commence within 3 years;
2. Demolition in accordance with approved plans
3. Demolition shall not commence until details of the following matters have been submitted to and approved by the local planning authority and demolition to take place strictly in accordance with the approved details:
  - Scheme of archaeological investigation and recording

- Means of site enclosure;
  - Demolition method statement and management plan;
  - Façade retention method statement.
4. Demolition not to take place during the black redstart nesting season (April to July inclusive), until a black redstart survey has been undertaken immediately prior to commencement of demolition.
  5. Grampian condition preventing demolition works until submission of details of a construction contract relating to the associated planning permission PA/11/02220 or an alternative means of ensuring that demolition on the site will only occur immediately prior to the development of the new building.
  6. Recording of important architectural or historic features
  7. Materials salvage and re-use arrangements.

Informatives:

1. Submission of demolition notice under the Building Regulations

- 6.8 That, if within 3 months of the date of this committee the legal agreement has not been completed, the Corporate Director Development & Renewal is delegated power to refuse planning permission.

**7. CONCLUSIONS**

- 7.1 Taking into account all relevant policies and material considerations officers recommend that planning permission and conservation area consent should be granted.
- 7.2 If Members are minded to refuse the application in line with the resolution to defer, subject to any direction by the Mayor of London, the suggested reasons for refusal are as follows:

Planning permission

1. The proposed development would provide a significant increase in office floor space within a large development scheme falling within the London Central Activities Zone (CAZ), without directly providing housing on site as part of a mixed use development. The proposed development would therefore be contrary to policies 2.11 and 4.3 of the London Plan 2011 which seeks to ensure that new office development within the CAZ delivers a mix of uses including housing in the interests of ensuring economic growth is complimented and supported by appropriate levels of housing.
- 2 The demolition of the Gun Public House would cause total loss of an existing heritage asset that makes a positive contribution to the Brick Lane and Fournier Street Conservation Area. Its replacement with a building of inappropriate of scale, bulk and massing, within an inappropriate design approach that eliminates the divisions between separate buildings within the urban block would fail to preserve or enhance the character and appearance of the Brick Lane and Fournier Street Conservation Area and would harm the setting of neighbouring listed buildings contrary to policy 7.8 of the London Plan, policy SP10 of the Core Strategy 2010, saved policy DEV28 of the Unitary Development Plan 1998, policies DM24 and 27 of the Managing Development DPD

(submission version 2012) and policy CON2 of the Council's Interim Planning Guidance 2007.

### Conservation area consent

1. The demolition of the London Fruit and Wool Exchange (except Brushfield Street façade), Gun Public House, bank at 99-101 Commercial Street and the White's Row Car Park, in the absence of an acceptable redevelopment proposal would be premature and would harm the character and appearance of the Brick Lane and Fournier Street Conservation Area, would harm the setting of adjacent and nearby listed buildings and would be contrary to policy 7.8 of the London Plan (2011), policy SP10 of the Core Strategy 2012, saved policy DEV28 of the Tower Hamlets Unitary Development Plan 1998, policy CON2 of the Council's Interim Planning Guidance 2007.

## **8. IMPLICATIONS OF A DECISION TO REFUSE PLANNING PERMISSION**

- 8.1 If the Strategic Development Committee resolves to refuse planning permission and conservation area consent, the applications must be referred back to the Mayor of London under the provisions of the Planning Acts and the Town and Country Planning (Mayor of London) Order 2008. The Mayor of London must then determine whether to take over the application for his own determination or allow the planning authority's decision to stand.
- 8.2 If the applications are subsequently refused, the applicant could decide to submit an amended application to overcome the reasons for refusal or the applicant could appeal to the Secretary of State.
- 8.3 In considering the implications arising from defending an appeal, officers must take into account the relative strength of the proposed reasons for refusal, notwithstanding the suggested reasons set out section 7 of the report.
- 8.4 In respect of the reasons for refusal indicated by the Strategic Development Committee, officers consider that the first reason relating to loss of employment uses can be addressed adequately through the direct job creation opportunities arising from the scheme, the measures to assist with relocation of existing businesses, the enhanced training and employment commitments that aim to ensure that local people have the best possible opportunities to take up jobs arising from this and other developments in the area, all of which would be secured through planning obligations and conditions. For this reason, officers consider that it would not be possible to defend this reason for refusal at appeal.
- 8.5 In respect of the second reason for refusal relating to the failure of the scheme to provide any on site affordable housing, an Inspector would take into account whether the failure of the scheme to provide on-site housing would have a harmful effect on delivering against the Council's housing targets or would undermine the application of the London Plan policies for mixed use development.
- 8.6 The proposed financial contribution for off-site affordable housing offered in lieu of provision within the scheme would be a material consideration. Officers consider that this reason would be defensible on appeal but consideration

would have to be given to the level of off site affordable housing contribution being offered to mitigate the extent of policy non-compliance.

- 8.7 In respect of the third reason for refusal, an Inspector would take into account how the loss of the heritage asset and the proposed replacement development would meet the statutory tests of preserving and enhancing the character and appearance of the conservation area and the effect on the setting of listed buildings. In coming to a final view, an Inspector would take into account policies in the NPPF which require the heritage issues to be balanced against public benefits arising from the development. Officers consider that this reason could be defended on appeal, but the extent to which this may be successful would depend on the Inspectors judgement on the relative weight to be applied to heritage and regeneration matters.
- 8.8 There are two financial implications arising from appeals against the Council's decision. Firstly, whilst parties to a planning appeal are normally expected to bear their own costs, the Planning Inspectorate may award costs against either party on grounds of "unreasonable behaviour." Secondly, the Inspector will be entitled to consider whether proposed planning obligations meet the tests set out in Regulation 122 of the Community Infrastructure Regulations 2011, including whether they are necessary to enable the development to proceed.
- 8.9 Notwithstanding, the above, the Council would vigorously defend any appeal that may arise.

## **9. APPENDICIES**

- 9.1 Appendix One – Strategic Development Committee Report to Members on 6 March 2012.
- 9.2 Appendix Two – Addendum Report 6 March 2012.
- 9.3 Appendix Three – Amended summary of material planning considerations