

<b>Committee:</b> Development Committee	<b>Date:</b> 14 <sup>th</sup> June 2017	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b> Director of Place	<b>Title:</b> Application for Planning Permission
<b>Case Officer:</b> Jennifer Chivers	<b>Ref No:</b> PA/16/03535
	<b>Ward:</b> Spitalfields and Banglatown

## 1. APPLICATION DETAILS

**Location:** 106 Commercial Street,

**Existing Use:** B1/B8

**Proposal:** Conversion of building (class B1/B8) to fine dining food market (Class A3).

## 2. **BACKGROUND**

2.1 This application for planning permission was considered by the Development Committee on 10<sup>th</sup> May 2017. A copy of the original report is appended.

2.2 Members were minded to REFUSE planning permission on the following grounds:

- Impact from the use
- Impact on the setting of the Conservation Area
- Impact of the proposal on the external appearance of the building particularly the roof
- The access arrangements given the level of anti-social behaviour in the area;
- Overcrowding in the area and the safety implications of this
- Noise disturbance
- Increased congestion in Commercial Street
- Servicing arrangements.

### **Land Use**

2.3 The proposed restaurant use (use class A3) would incorporate 17 permanent kitchens and a demonstration kitchen, with seating for 435 people and 200 permanent staff in an internal site area of 1,800sqm.

2.4 The application site is located within the Tower Hamlets Activity Area and the city fringe activity area, a transitional area between the Central Activity Zone (adjacent side of Commercial Street) and the Brick Lane District centre, and the residential areas of Shoreditch, Whitechapel and Bethnal Green.

- 2.5 Policy DM1 of the Managing Development Document directs evening economy uses to town centres, provided that they do not result in overconcentration, supporting a mix of uses specifically within the Tower Hamlets Activity Areas. Development in these areas should provide a transition between the scale, activity and character of the Central Activity Zone and their surrounding places. DM1 (4) states to further support the vitality and viability of town centres, restaurants, public houses and hot food takeaways (Use Class A2, A4, A5 will be directed to the Central Activity Zone, Tower Hamlets Activity Area and town centres provided that they do not result in an overconcentration of such uses and in all town centres there are at least two no A3, A4 and A5 units between every new A3, A4, A5 unit.
- 2.6 The Core Strategy (Policy LAP 1 & 2) identifies the Spitalfield's area for a vibrant mixed use area particularly to be characterised by its specialist offer in fashion arts and restaurants. The policy recognises the opportunities that the accessible location means that the focus will be on growth in the commercial sector centring on employment, retail and hospitality.
- 2.7 As such, Officer's recommended that the site could be appropriate for the proposed use given planning policies direct these uses to this central location.
- 2.8 However, the operation of the internal use of the proposed development could have the potential to adversely affect the wider environment, given the scale and intensity of the proposal and the site configuration.
- 2.9 Members were concerned that the configuration of the ground floor entry way (breakfast kitchens) would give rise to conflict between seated customers and those moving into the site. The proposed entry on Commercial Street is 3.5 metres wide with the internal area at 3 metres at the narrowest point. This conflict could be anticipated to push visitors onto the surrounding streets. In light of these concerns, Officers consider that the applicant has provided insufficient information on how these numbers of visitors to the site would be accommodated within the site.
- 2.10 The submitted transport statement provides information surrounding the number of expected visitors to the site. During weekdays it was predicted that there would be 5,040 trips generated, being 2,500 persons attending the site (approximately). During the weekend it was anticipated that there would be 7,050 trips generated being 5,325 persons. The weekend values were provided by applying 40% uplift in visitor numbers from the weekday values, however there was no justification as to how this 40% assumption was derived.
- 2.11 In contrast to a large A3 use (restaurant) where it would be anticipated that one type of food offering might be available, the proposed food market would offer 17 different types of food where seating would be restricted given the space provided for kitchens. This has the implications of providing 17 small A3 units and a highly intensive use of the internal space with a large volume of people circulating internally within the space as well as arriving into the site.
- 2.12 It is not considered that it has been sufficiently demonstrated that the predicted visitor numbers can be entirely incorporated within the site, which would therefore give rise to the potential for overspill into the public realm.
- 2.13 As such, it is open to members to conclude that the proposed development by reason of its configuration of internal uses and space would impede the ability to safely

access and exit the site and move within and around the building combined with the inability to control visitor numbers to the site would result in an over intensification of the site.

### **External Appearance and Impact on Fournier Street/ Brick Lane Conservation Area**

- 2.14 The Council's Managing Development Document policy DM24 (1A) seeks to ensure that design is sensitive to and enhances the local character and setting of the development.
- 2.15 The existing warehouse lies within the Fournier Street/ Brick Lane Conservation area and is surrounded on all sides by existing buildings and visibility is limited. The existing building preserves much of its original features and internal appearance and has a positive contribution to the character and appearance of the Conservation Area.
- 2.16 As officers previously discussed the roof is only visible from the rear upper floors of those residential properties on Wilkes Street. It should be brought to Member's attention that the existing roof is not original as light wells have been inserted and the current slate tiles were installed in 2012. However it is acknowledged that a slate roof is typical of a Victorian warehouse building, and indeed the character of the Fournier Street/ Brick Lane Conservation Area. Conversely the proposal introduces a aluminium roof material that is not original to the Conservation Area.
- 2.17 The interiors of the building area not listed, and therefore the Council has no recourse to require the retention of internal features, therefore on balance, the loss to the exterior of the building would not preserve or enhance the conservation area.
- 2.18 Officer's considered that the proposal have been sensitively designed within the context of the historic built form and visibility from the public realm and would preserve the character and appearance of the Fourier Street/ Brick Lane Conservation Area. In arriving at a decision regarding this application, Members are reminded of the obligations established by the National Planning Policy Framework 2012 (NPPF) to consider the irreplaceable nature of the historic environment, and to require clear and convincing justification for any harm caused to its significance (NPPF paragraph 132). Further the Council has a duty under Section 72 (1) Planning (Listed Buildings and Conservation Areas) Act 1990) to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
- 2.19 Where less than substantial harm arises, this harm should be weighed against the public benefits of a proposal, including its retention in its optimum viable use (paragraph 134). The conclusion reached by a 2014 Court of Appeal case, Barnwell Manor, noted that 'considerable weight and importance' should be given to any harm to listed buildings and their settings, and correspondingly to any harm to the character and appearance of conservation areas pursuant to 72(1) of the 1990 Act. Accordingly, careful consideration should first be given to assessing whether the proposal causes harm to the listed buildings and conservation areas and their settings and the desirability of avoiding that harm before undertaking the balancing exercise that is required by paragraph 132 to 135 of the NPPF. Considerable weight and importance should be given to the desirability of preserving (causing no harm to) conservation areas and their settings when carrying out that balancing exercise.

- 2.20 It is understood that the Committee consider that the loss of the existing slate roof on site and the proposed replacement aluminium roof would cause harm to a designated heritage asset, namely the Fournier Street/ Brick Lane Conservation Area.
- 2.21 The NPPF describes harm to heritage assets as being either substantial or less than substantial. Substantial harm should only result in situations where the significance of the whole heritage asset is diminished. Officers therefore recommend that any harm that could result from the proposed development would be classified as 'less than substantial' given the state of disrepair of the existing buildings, and the architectural value of the existing buildings. Pursuant of the 'public benefits' test as set out above, Officers consider the main public benefits of the scheme to be the redevelopment of a brownfield site, the renovation and securing a viable ongoing use of a Victorian warehouse building which makes a positive contribution to the Conservation Area, and the provision of additional jobs and apprenticeships.
- 2.22 The Committee's justification for the harm caused to the significance (NPPF paragraph 132) of the Fournier Street/ Brick Lane Conservation Area is understood to include:
- a. The loss of the existing slate roof; and
  - b. the inappropriate design and materials proposed for the replacement aluminium roof

#### **Access arrangements given the level of anti-social behaviour in the area**

- 2.23 Policy 7.3 of the London Plan 2016, seeks to create safe, secure and appropriately accessible environments where crime and disorder and the fear of crime does not undermine the quality of life or cohesion.
- 2.24 Residents stated that the vibrant night-time economy in close proximity to the host site is considered to exacerbate problems of crime and anti-social behaviour. This included human waste being left around the site, rubbish, drugs and disturbances throughout the night.
- 2.25 The Metropolitan Police consultee has not objected to the proposal and does note there is a high level of anti-social behaviour around the site.
- 2.26 The Tower Hamlets Brick Lane Town Centre manager considers that the increase in people to the area would increase anti-social behaviour in the area. The current policing in the area is ineffectual and this could potentially increase the perception of crime in the area.
- 2.27 Officers maintain that while there is evidence of a level of criminal activity recorded in and around the host property, in light of the inner city location, a high number of visitors to the area it cannot be considered that the anti-social behaviour is exceptional given its context, and therefore officers consider that there is insufficient evidence provided by residents to sustain this as a reason for refusal.

#### **Overcrowding and pedestrian and vehicular safety**

- 2.28 As noted above, insufficient justification has been provided to demonstrate that the proposal will not have a detrimental impact upon the safety and free-flow of pedestrian and vehicle traffic in the surrounding street network due to the volume of visitors and vehicle movements generated by the proposal, contrary to policies SP09

of the Core Strategy 2010 and DM20 of the Managing Development Document 2013 which seeks to ensure that new development does not have an adverse impact upon the safety and capacity of the road network.

### **Noise disturbance**

- 2.29 The Core Strategy SP10 and Managing Development Document DM25 seek to protect, and where possible improve the amenity of surrounding existing and future residents and building occupants, as well as the amenity of the surrounding public realm.
- 2.30 In terms of breakout noise, the acoustic reports confirmed that this would be adequately dealt with, without any conflicting information from experts, officers consider it would be difficult to justify this as a reason for refusal.
- 2.31 However, the proposal has the potential to create noise disturbance. The proposal recommended several strategies for dispersal of customers upon closing. However, once patrons leave the site it is out of the control of the applicant to monitor or supervise.
- 2.32 Given the expected numbers of visitors to the site and the site capacity, a large number of visitors would be leaving the site up until 11.30pm during the week and it is reasonable for members to conclude that this could give rise to unacceptable noise and disturbance to neighbouring residents throughout the later evening that cannot be controlled through conditions or through the management of the site.

### **Increased congestion in Commercial Street and servicing arrangements**

- 2.33 Core Strategy policies SP08, SP09 and Policy DM20 of the MDD together seek to deliver an accessible, efficient and sustainable transport network, ensuring new development has no adverse impact on safety and road network capacity, requires the assessment of traffic generation impacts and also seeks to prioritise and encourage improvements to the pedestrian environment
- 2.34 Policy SP09(3) of the Core Strategy seeks to ensure new development has no adverse impact on the safety and capacity of the road network.
- 2.31 The subject site gains access from Commercial Street which is controlled and managed by Transport for London, with the servicing proposed to take place on Commercial Street in the loading bays on both sides of the street. Transport for London have not objected to the proposal or the impact on the street.
- 2.32 As the highways authority have not objected to the potential for congestion on Commercial Street or the proposed servicing arrangements it is considered that this reason could not be sustained as a reason for refusal.

### **Conclusion**

- 2.33.1 In accordance with Development Procedural Rules, the application was **DEFERRED** to a later committee to enable officers to prepare a deferral report to provide wording for reasons for refusal and provide commentary on the detailed reasons for refusal on the application.

### **3. IMPLICATIONS ARISING FROM A DECISION TO REFUSE THE APPLICATION**

- 3.1 In the event that the Committee resolves to refuse the application, the following options could be exercised by the applicant.
- 3.2 The applicant could withdraw the application and later approach the Council for further pre-application advice on an amended proposal and thereafter submit new applications.
- 3.3 The applicant could exercise their right to appeal to the Secretary of State against the Council's decision and lodge an application for costs. The appeal would be determined by an independent inspector appointed by the Secretary of State.

#### **Financial implications - award of costs**

- 3.4 In dealing with appeals, all parties, including the Local Planning Authority, are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
- 3.5 Unreasonable behaviour in the context of an application for an award of costs may be either:
- procedural – relating to the process; or
  - substantive – relating to the issues arising from the merits of the appeal.
- 3.6 An example of the former might be failing to keep to the requirements of an appeal timetable to submit statements of case or other evidence. An example of the latter might be taking a decision which could be described as unreasonable in the context of all of the evidence available to the decision maker. It is this latter aspect that the Committee members in their role as decision makers need to be mindful of.

### **4. RECOMMENDATION**

- 4.1 Officers' original recommendation as set out in the officers' report for Development Committee on 10<sup>th</sup> May 2017 to **GRANT** planning permission for the proposal remains unchanged.
- 4.2 However, if Members are minded to refuse planning permission for this scheme, then the proposed refusal reasons are as follows:

Reasons for Refusal:

#### Land use/ road safety

1. *The proposed development by reason of its configuration of internal uses and space would result in an over intensification of use which would restrict to the ability of customers to safely access and exit the site, the ability to move within and around the building, the inability to control the number of visitors in the site and to ensure that new development does not have an adverse impact upon the safety and capacity of the street network. The proposal is therefore inappropriate development and contrary to policy 7.3 and 7.4 of the London Plan (2016),*

*policies SP01 and SP09 of the Tower Hamlets Core Strategy (2010), and policies DM20 DM23 and DM25 of the Tower Hamlets Managing Development Document (2013).*

Impact on the conservation area

- 2. The proposed development by virtue of the impact to the external appearance of the roof and the loss of the slate roof, and proposed acoustic roof would cause less than substantial harm to the character and appearance of the Brick Lane and Fournier Street Conservation Area and would fail to preserve or enhance the character of this heritage asset. The harm identified to the designated heritage asset is not outweighed by the public benefits of the scheme. The scheme would therefore be contrary to paragraph 134 of the National Planning Policy Framework, and policies SP10 of the Core Strategy (2010) and policies DM24 and DM27 in the Managing Development Document (2013).*

Noise

- 3. The proposed development would cause harm to the amenity and living conditions of occupiers of adjoining residential properties through the overbearing impact of noise and disturbance generated as large numbers of customers enter and exit the development. The development would therefore be contrary to policies SP10 of the Core Strategy (2010) and DM25 of the Managing Development Document (2013) which seek to protect amenity for future and existing residents.*