

LONDON BOROUGH OF TOWER HAMLETS

DEVELOPMENT COMMITTEE - 11 OCTOBER 2017

UPDATE REPORT OF THE DIVISIONAL DIRECTOR PLANNING AND BUILDING CONTROL

Agenda item no	Reference no	Location	Proposal / Title
4.1	PA/17/00250	114 -150 Hackney Road, London, E2 7QL	Mixed use redevelopment of site including part demolition, part retention, part extension of existing buildings alongside erection of complete new buildings ranging in height from four storeys to six storeys above a shared basement, to house a maximum of 9 residential units (Class C3), 12,600 sqm (GEA) of employment floorspace (Class B1), 1,340 sqm (GEA) of flexible office and retail floorspace at ground floor level (falling within Use Classes B1/A1-A5) and provision of 316 sqm (GEA) of Public House (Class A4), along with associated landscaping and public realm improvements, cycle parking

1. BACKGROUND

- 1.1 Since publication of the agenda, the Council has received further representations from the Friends of the Joiners Arms (FOJA), Director of the New Joiners Arms (Shoreditch), Amy Lane (Mayor of London Night Time Czar) plus the finalised report from the Council's appointed Noise Consultant.
- 1.2 This update report summarises the above, provides some commentary on the issues raised and updates the officer recommendation to the Development Committee.

2. ADDITIONAL REPRESENTATIONS

- 2.1 The FoJA have provided a further representation, a letter of objection that can be summarised as follows:
 - 1) Object to proposed opening hours. Consider the opportunity for a prospective LGBT+ operator to obtain a late license for the newly developed A4 space should not be hindered by planning hour restrictions. Instead, the recommended planning hours should at the very least mirror the operating hours of the Joiners Arms at the time of its closure in 2015, and the developer has a duty to ensure adequate noise protection within the new A4 space, as per 'Agent of Change' principles.
 - 2) Consider Right of First Refusal for LBGT+ Operator in the Heads of Terms (HoT) fails to provide adequate safeguard specifically part L (a) the site owner being the only "arbiter" who will decide whether an interested party is an organisation which can operate a LGBT+ focused venue and has the financial standing to enter into a lease; (b) to *only* the Greater London Authority (GLA) being a secondary party involved in the selection criteria for a prospective LGBT+ operator, (c) concern over the leverage 'due regard' provides to the GLA feedback over selection criteria for an LGBT+ Operator; (d) concerns over implications of a reasonable endeavours clause in the draft HOT.
 - 3) Concern over use of open market rent and a 15 year length imperilling long term viability

Arising from the above three headline objections FOJA seek:

- (i) A role for LBTH Councillors in adjudicating selection criteria and any dispute resolution arbitration period,
- (ii) Named individuals or specific team in GLA referenced in HoT,
- (iii) Seek longer notice periods and expressions of interest timelines in Right of First Refusal.

- 2.2 The New Joiners Arms Shoreditch have made an additional representation stating they considered the round table meeting held on 4th September was very constructive, that Regal Homes had substantially addressed the concerns and objections previously raised, and considered the revised Heads of Terms, including the developer agreeing to contribute towards fit out costs to be fair and reasonable to all parties.
- 2.3 A letter of support has been received from Mayor of London's Night Time Czar stating the proposal as it currently stands "is excellent in many respects" however seeking (a) the opening hours not to be curtailed to midnight and (b) strongly encouraging a 25 year lease both with purpose of not jeopardising the business viability and ultimate success of the LGBT+ venue
- 2.4 With respect to the latest representation from FOJA the matter of opening hours is dealt with in Section 4 and the revised HOT's in Section 5 to this Update Report.
- 2.5 With regard to other matters raised by the FOJA in their latest representation officers can advise that there is provision made within the HOT's so that if for whatever reason the Owner does not grant a lease to a party who will run the unit as an LGBT+ focused venue then the Owner must provide the GLA with the reasonable endeavours they have taken to grant the lease to a party which fits this criteria.
- 2.6 Since the item was deferred at August Development Committee the HOT's have been defined further:
 - I. With further clarity provided regarding the financial surety, guarantee and/or rent deposit that an Interested Party has to provide when they express an interest in the A4 lease. The prospective LGBT+ Operator need only show that there is reasonable prospect by the time they start negotiating HoT for the lease that they have the required financial standing;
 - II. The Open Market Rent would be assessed by an independent RICS qualified surveyor and the results of such assessment would be provided to the GLA on request. Any such assessment would take into consideration the terms of a lease and any restrictions on the tenant which will impact on rent.
 - III. Definition of reasonable endeavours has been included in HOT's to provide clarity
 - IV. The Council's standard dispute resolution clauses have been circulated to FOJA and officers are clear this is sufficient to address any disputes should any arise in respect of the legal agreement.
 - V. The HOT's have been amended to specifically refer to the Culture Team and Culture at Risk section of that Team within the Greater London Authority (GLA).
- 2.7 Officers note the GLA is an independent organisation who have a proven track record and expertise in the protection and survival of LGBT+ nightlife venues in London and as such officers consider they are best placed to act as a secondary part to provide comment on the

selection criteria. The GLA's publication of a LGBT+ Venues Charter underlines that commitment to the LGBT+ community as does the commissioned a study by the UCL Urban Laboratory.

3. NOISE ASSESSMENT

- 3.1 The Council engaged Three Spires Acoustics (TSA) to undertake a review of the Noise Assessment Report and Technical Note prepared by Sharps Gayler Acoustics on behalf of the applicant.
- 3.2 The review concludes that The Sharps Gayler noise assessment has been carried out appropriately, that noise criteria and significance thresholds are suitable for the development and reflect national and local planning policy and noise guidance.
- 3.3 The review recommends planning conditions to cover glazing specification details, acoustically attenuated and mechanical ventilation details and design of the small communal courtyard off Strout's Place, to ensure this provision of alternative "relatively quiet" amenity area is in line with BS8233:2014 guideline standards. Internal sound insulation details should be conditioned and a more stringent music noise limit level is also recommended.
- 3.4 The review confirms that the further details on patron noise that have been provided by Sharps Galyer which indicate that typical vocal noise associated with the use of the smoking area will cause no adverse impact. Further recommendations include the introduction of modular screens to mitigate vocal noise propagation. A Noise Management Plan is also a useful tool and can either form part of a planning condition or part of a Premises Licence condition under the Licensing Act 2003.
- 3.5 In terms of noise from patrons arriving at and leaving the venue, if there are concerns regarding the proposed operational hours a temporary operational hours condition could be imposed which would allow for the assessment of the situation over a period of time.
- 3.6 Further recommendations have also been made regarding service management, construction noise and vibration control, odour control from commercial kitchen extraction.

4. HOURS OF OPERATION – REPLACEMENT PUBLIC HOUSE

- 4.1 The FOJA have raised concerns about the planning condition recommended in the original and deferred item report that would control opening times for the proposed replacement class A4 use to 11:00pm on Sundays to Thursdays and 12:30am the morning after Fridays and Saturday trading.
- 4.2 The current public house does not have any planning controls over opening times and prior to closing in 2015, was licensed to trade until 1:00 am in the morning following Sundays to Wednesday evenings, 2:00am in the morning following Thursday trading and 4:00am in the morning following Friday and Saturday trading.
- 4.3 FOJA have argued that opening hours should be left to the licensing decision on the new premises and not be controlled by planning.

Planning control over opening hours

- 4.4 Planning and licensing are separate regulatory regimes, but there is a degree of overlap in this area. Consideration of the impact of new development on residential amenity, including noise and disturbance, is a material planning consideration. The London Plan and Local Plan have policies relating to noise and the night time economy. The Council's Core

Strategy says that impact of noise caused by the night time economy will be managed by planning controls. The Council's Managing Development Document says that development should not create unacceptable levels of noise.

- 4.5 The development proposes a new Class A4 space to replace the existing pub, capable of being occupied by over 400 people. Whilst the Joiners Arms was an important part of Tower Hamlets night time offer and is a designated Asset of Community Value it is not within the main cluster of late evening venues in Shoreditch. There are existing residential premises nearby, flats within the proposed scheme and permission has been granted for residential development opposite.
- 4.6 The Council's noise consultant confirms that impact of noise emanating from within the new premises, including the smoking area could be adequately controlled by appropriate technical noise mitigation, secured through design and planning conditions.
- 4.7 Control over the potential noise impacts of patrons arriving at or leaving the premises late into the evening/early hours of the morning, when local residents might reasonably expect a quieter noise environment, is much more difficult to control. Hence the only way the planning system can seek to mitigate this impact is through control over opening hours. This was the context to recommending an opening hours condition, which sought to strike an appropriate balance. Planning conditions can set a base-line scenario within which the licensing system can operate.
- 4.8 Planning conditions must also meet a number of tests set out in the NPPF, one of which is that they must be "necessary" to make the development acceptable in planning terms.
- 4.9 Reviewing the evidence from the applicant's acoustic report and advice from the Council's noise consultant shows that there is a relatively high ambient noise climate along Hackney Road. The proposed development and other new development permitted recently will be designed to provide protection for residents, with detailed specifications controlled by condition.
- 4.10 In terms of safe, convenient and prompt dispersal of patrons from the proposed venue the Committee can take into account that fact that Hackney Road is served by night buses and London Overground is set to introduce 24 hour services on the east London Line in December 2017, with Hoxton station located 200 metres (2 minute walk) from the application site.
- 4.11 The Council's noise consultant has highlighted the use of temporary operating hours conditions being used by other local authorities to control the impacts of proposed late night opening establishments. This approach would allow the premises to operate to the late hours for an initial period of 12 months. An application to vary the condition (Section 73 of the T&CP Act 1990) could be submitted toward the end of the initial period to seek permanent late night opening. The proposed wording of the condition would be:

This permission, for the agreed operational hours of the Class A4 unit, from 0900 to 0200 the following day on Sundays to Wednesdays, 0900 to 0300 (the following day) on Thursdays and Fridays and 0900 to 0400 (the following day) on Saturdays is for a limited period of 1 year only, expiring on (enter date 12 months from decision notice). After this date the use hereby permitted shall be discontinued and the operational times revert back to 0900 to 2300 Mondays to Thursdays and 0900 – 0030 the following day on Fridays and Saturdays.

Reason: To protect the amenity of occupiers of nearby properties from noise and disturbance arising from patrons arriving at or leaving the unit during the early hours of

the morning. in accordance with the requirements of Tower Hamlets Core Strategy 2010 policy SP03(2) and SP10(4a) and Managing Development policy DM25.

5. PLANNING OBLIGATIONS - HEADS OF TERMS

- 5.1 The original committee report and the deferred item report refer to the proposed HOT's to use best endeavours to secure an LGBT+ operator for the new venue.
- 5.2 The applicant has now written to the Council stating they agree to the Draft HOT's prepared by Officers. The applicant has agreed as of today (11th October 2017) to provide any prospective LGBT+ operator to the A4 venue a 25 year lease. If the initial lease should determine within that time, there is provision within the HoT that for 25 years from the date of practical completion of the development the applicant is required to repeat the steps in the HoT and use reasonable endeavours to enter into a lease with an organisation which will operate the A4 unit as a LGBT+ focused venue.
- 5.3 The Draft HOT's have been shared with FOJA and New Joiners Arms (Shoreditch) and are attached as Appendix 1 to this Update Report.

6. RECOMMENDATION

- 6.1 The original recommendation to GRANT planning permission remains subject to:

(A) Revised planning obligations

- i. A revised HOT offer as set out in Deferral Report with an additional changed offer of any prospective LGBT+ operator to the A4 venue being provided with the option of a 25 year lease.

(B) Revised planning condition in respect of opening hours and supplementary level of detail for other noise protection conditions as set out below.

- i. Temporary opening hours, for one year, as set out above in paragraph 4.11.
- ii. Entertainment Venue Noise Limit Level Condition to include compliance with: (a) the continuous equivalent sound level Leq, 5min from music noise emanating from the venue as measured 1 metre from the façade and within a representative habitable room of neighbouring dwellings on or facing Hackney Road, Diss Street, Pelter Street and Strouts Place and (b) submission of a post occupation of A4 unit acoustic report demonstrating how sound limiting devices have been set to achieve an Entertainment Noise Level (EN)Leq,5min no greater than NR25 9am to 11pm and no greater than EN)Leq,5min NR20 11pm to 9am.
- iii. Operational Management Plan for A4 Unit/s to include submission of a noise management plan setting out details including: organisational responsibility for noise control; details of physical and managerial noise controls processes and procedures; details of noise limiter settings and any external noise limits and monitoring locations; patron noise controls; details of community liaison and complaints logging and investigation.

Agenda item no	Reference no	Location	Proposal / Title
5.2	PA/17/00732	Land Bounded By Watts Grove And Gale Street, London, E3 3RE	Redevelopment to provide three residential blocks ranging from 3-7 storeys to provide 65 dwellings, plus bicycle parking, together with link from Compton Close, a new east-west pedestrian between Watts Grove and Gale Street, and two disabled parking spaces on Gale Street.

1.0 CORRECTIONS AND CLARIFICATIONS

- 1.1 Under S106 Non-financial contributions Paragraph 3.1 Correction – omit c), ‘Management Plan to safeguard access to play spaces’ as this is a duplicate of condition 9 under ‘Prior to completion conditions.
- 1.2 Condition 15 under ‘Prior to Occupation which says ‘Detailed design of the wind mitigation measures for the non-recessed balconies to ensure that wind conditions are acceptable for their intended use to be omitted. Further consideration of the scheme in relation to the location of the recessed balconies and the overall height of the proposed development, it would be considered unreasonable to request wind mitigation measures.
- 1.3 Following the receipt of an addendum Design and Access Statement, Paragraph 7.42 Correction - A large area of public realm landscaping is proposed as part of the new north-south route from Compton Close and the east – west link between Gale Street and Watts Grove (measuring approximately 470m²). The boundary adjoining Compton Close would have an installation of 1.8m high entrance gate to ensure security of the access.
- 1.4 Paragraph 7.97 to be amended to read ‘The proposal would provide approximately 211sqm of communal amenity space which is in excess of the 105sqm requirement. The communal amenity space is located within the courtyard blocks of A and B.
- 1.5 Following amendments to the scheme, Paragraph 7.100 correction: ‘The scheme is predicted to contain 24 children split across the different age group (0-15 years of age) using the GLA child yield calculations as per the LBTH Planning Obligations SPG. The following is a breakdown of the expected number of children per age group:
- Under 5 years 13
 - 5-11 years 7
 - Over 12 years 4
- 1.6 Paragraph 7.105, to be amended for clarity - should ‘The proposal includes the provision of an additional 470sq.m of public realm landscaped amenity area as part of the new north-south route and new east-west pedestrian link.
- 1.7 Under Highways and Transportation, paragraph 7.151 to read ‘ The applicant has proposed a total of 108 cycle parking spaces, for the residents of the scheme within and is located in the courtyard area for Blocks A and B and along the north-south route for Block C and .
- 1.8 Under ‘Noise and Vibration’: Add - A detailed environmental noise survey has been undertaken by the applicant and report submitted with the application concludes that appropriate internal noise level can be achieved by providing suitable materials to the

building fabric in line with the criteria detailed within BS 8233 and as required by the LBTH MDD Policy DM25, given that the site is relatively quiet. An appropriate condition will be imposed to ensure the following:

- i. intrusive noise criteria detailed within Table 4 of BS8233 '*Sound Insulation and Noise Reduction for Buildings*' are not exceeded;
- ii. structure-borne noise does not exceed LA_{max} 35 dB;
- iii. exposure to vibration is no higher than of "low probability of adverse comment" in accordance with BS6472 '*Evaluation of Human Exposure to Vibration in Buildings*';.

Agenda item no	Reference no	Location	Proposal / Title
5.1	PA/17/01618	(Locksley Est Site D) Land adjacent to 1-12, Parnham Street, London	Residential development comprising 17, one, two, three and four bedroom flats available for affordable rent. The height of the building ranges from five to eight storeys.

1.0 ADDITIONAL REPRESENTATION

1.1 The Council has received three additional representations objecting to the scheme, including an objection from Cllr Andrew Wood. A petition objecting to the scheme containing 151 signatories has also been received. These are summarised as follows:

1.2 In Objection

Representation from Cllr Andrew Wood

- Lack of site maintenance.
- Site is part of the green grid.
- Tower Hamlets has a shortage of green space which is set to rise
- The draft Local Plan (regulation 19 consultation) says *"As the borough becomes more densely populated, levels of open space deficiency are expected to increase. Improving existing open spaces and maximising opportunities to enhance the green grid and deliver small green interventions, such as pocket parks, as well as strategic open space will become increasingly important, especially within deficient areas."*
- The site is included in the draft Local Plan as being an area of open space deficiency.
- Draft Local Plan policy says "maximising the opportunities to create/increase publicly accessible open space (including playing pitches and ancillary sporting facilities) with a range of sizes and for a range of users, particularly in the following locations (which are expected to experience the highest level of open space deficiency) Limehouse".

1.3 Representations from local residents and the petition raise the following issues:

- Loss of open space/biodiversity
- Affordable rents are too expensive for local residents
- Lack of maintenance of space has given impression that it is unwanted
- Many residents of 1-12 Parnham Street are elderly/vulnerable and will be adversely impacted by construction/ Health/stress impacts
- Local community oppose the development
- There are other more suitable brownfield sites
- Loss of trees on the site, which have numerous benefits
- Site would be best used as an orchard
- Overshadowing
- Noise
- Loss of Outlook

1.4 The majority of issues raised above, are already addressed within the committee report.

1.5 Since the publication of the committee report, the Council has continued the progression of the new local plan, the next stage being publication of the 'Regulation 19' draft Local plan for consultation. This means that the document is as we would wish to submit to the Secretary of State for examination. As the Regulation 19 version is still subject to public comment on its legal compliance and soundness and has not been considered by an Inspector, its weight remains limited.

- 1.6 Within the draft local plan, figure 14 on page 122, provides an indication of access to Open Space and annotates areas of 'open space deficiency'. This covers a portion of the application site. It has been suggested within the representation that this further supports the position the site should not be developed.
- 1.7 In response, it is important to note, the intention of the figure is to highlight areas not define policy and as such, the map does not preclude development within these areas. The Committee should note that a number of the Council's proposed site allocations are located in many of these areas. The aim is to manage development, rather than to restrict it. In this case, a number of enhancements have been secured to existing open space spaces within Locksley Estate, which will be secured through a "Grampian" condition. The development itself will provide access to enhanced open space and child play space within it's boundary for both the new occupiers of the scheme and residents at 1-12 Parnham Street.
- 1.8 The Committee is invited to take additional representations into account in their determination of the application

2 RECOMMENDATION

- 2.1 Officer recommendation remains that planning permission should be **GRANTED** for the reasons set out in the report.

DRAFT Heads of Terms

Hackney Road, 114-150 - s106 Agreement (PA/17/00250) (DRDBC.861)
Without prejudice and subject to contract

These heads of terms are not intended to create any legally binding obligations but shall be subject to committee approval and completion of the s106 agreement.

Lease of A4 establishment

Definitions

'Friends of the Joiners Arms' means [DETAILS TO BE CONFIRMED]

'GLA' means the Greater London Authority – For attention of Culture Team and Culture at Risk Team;

'Interested Party' means any organisation which proposes operating a Lesbian, Gay, Bisexual and Transgender focused venue and has the financial standing to enter into the Lease including satisfying the Owner that there is a reasonable prospect within the period of time allowed for in paragraphs 10(b) and (c) that they have the ability to provide a surety, guarantee and/or rent deposit which would be acceptable to a reasonable landlord;

'Lesbian, Gay, Bisexual and Transgender focused venue' means a venue which adopts the LGBT+ Venues Charter published by the GLA;

'Lease' means a lease of the Public House granted on commercial terms and at Open Market Rent by the Owner;

'Local Press' means at least one local newspaper which circulates in the locality of the Public House and at least one relevant Lesbian, Gay, Bisexual and Transgender focused publication;

'Notice' means the notice to be sent, no later than seven months before completion of Shell and Core of the Development, directly to the Friends of the Joiners Arms and to the GLA for circulation and also to be published in the Local Press advising of the prospective grant of the Lease and inviting any Interested Party to express an interest in taking the Lease within a period of no less than 1 month from publication of the notice. The notice shall also advise parties what information needs to be submitted as part of their expression of interest in order to evaluate them against the Selection Criteria;

'Open Market Rent' means the rent at which the Public House might reasonably be expected to achieve in the open market, and for the Owner to have ensured that such amount is first assessed by an independent RICS qualified surveyor and the results of such assessment to be provided to the GLA on request;

'Public House' means the 316 sqm (GEA) Class A4 unit forming part of the Development as shown on Plan [XX];

‘Reasonable Endeavours’ means that it is agreed the Owner under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this agreement the Owner will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable to expect: in the case of the Owner, of a competent commercial developer in the context of the Development/ OR and in the case of the Owner, of a competent landowner in the context of the Development;

‘Selection Criteria’ means the criteria on which the Owner will determine if a business meets the requirements of an Interested Party and evaluate parties should there be more than one expression of interest.

‘Shell and Core’ means the structure and building envelope will be completed, including all elements of outside walls and roofs where relevant, and will be wind and water tight and the relevant building regulations shall be complied with insofar as they apply to shell space. All external access ways will be included up to the main entrance door of the Public House. The following mains services will be installed;

- i. Electricity – provision of a main cut out;
- ii. Gas – provision of a sleeve;
- iii. Water – provision of a sleeve; and
- iv. Telecommunications – provision of a duct.

1. The Owner shall provide the Council and the GLA with at least seven months prior written notice of the intended completion of Shell and Core.
2. The Owner shall not grant the Lease unless and until it has published the Notice and the period within the Notice has expired.
3. No later than 28 days before the Notice is published the Owner shall provide for approval by the GLA the Selection Criteria, with such approval not to be unreasonably withheld or delayed.
4. If more than one Interested Party expresses an interest in taking the Lease, the Owner shall;
 - (a) provide the GLA with the expressions of interest no later than 14 days after the period specified in the Notice; and
 - (b) invite comments on the selection of the Interested Party within a period of 28 days following the submission to them. The Owner shall have due regard to any comments received from the GLA within the said period of 28 days.
5. Subject to paragraphs 4, 9 and 10 below, the Owner will use all Reasonable Endeavours to grant the Lease to an Interested Party which has responded to the Notice.

6. A Lease granted to an Interested Party shall include a covenant requiring the Public House to be operated as a Lesbian, Gay, Bisexual and Transgender focused venue for the duration of the Lease.
7. A Lease granted to an Interested Party shall provide for a rent free period of 12 months at the beginning of the tenancy and a contribution from the Owner towards fit out costs up to a maximum of £130,000 but only on the basis that the Interested Party will carry out and complete all fit out works to the Public House that are necessary for its intended use.
8. Subject to paragraph 10 below, the Public House shall remain a Lesbian, Gay, Bisexual and Transgender focused venue for 25 years from the date of Practical Completion of the Development, unless otherwise agreed in writing by the Council's S106 Monitoring Officer.
9. If the Lease should determine before 25 years then the Owner shall republish the Notice and repeat paragraphs 2-5 and 10 – 12.
10. Subject to paragraph 11, if:
 - (a) no Interested Party responds to the Notice; or
 - (b) despite using Reasonable Endeavours, the Owner has not been able to agree the heads of terms for the Lease with an Interested Party within 2 months of receipt of the Interested Party's response to the Notice; or
 - (c) despite agreeing heads of terms within the said period of 2 months and using Reasonable Endeavours to enter into a Lease, the Owner has not been able to grant the Lease to an Interested Party within a further 3 months of the heads of terms being agreed,

then the Owner may grant the Lease to any person or organisation which is not an Interested Party.

11. Paragraph 10, (b) and (c) shall not apply until such time as notice has been provided to the GLA setting out the Reasonable Endeavours referred to in paragraph 10 (b) and (c). If no objection is received from the GLA within 28 days of submission of the said notice, the Owner may proceed with granting the Lease to any person or organisation which is not an Interested Party. If an objection is received from the GLA within 28 days of submission of the said notice, the procedure outlined in this paragraph 10 shall be repeated or the dispute resolution provisions provided in this Deed shall be commenced.
12. The Owner shall provide the Council and the GLA with details of the person or organisation to whom the Lease has been granted within 7 days of the Lease having been completed.