

<b>Committee:</b> Development	<b>Date:</b> 12 September 2013	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b> Director of Development and Renewal	<b>Title:</b> Applications for Planning Permission
<b>Case Officer:</b> Mary O'Shaughnessy	<b>Ref No:</b> PA/13/01647 (Variation of Condition)
	<b>Ward:</b> Millwall (February 2002 onwards)

## 1. APPLICATION DETAILS

**Location:** Units 24, 26, 28, 30 & 32, Mastmaker Road, London, E14 9UB

**Existing Use:** Light industrial (B Class Uses)

**Proposal:** Variation to condition 5 (student numbers) and condition 6 (hours of operation) of planning permission dated 10 July 2013, reference PA/13/00116 for the "*Change of use of existing light industrial units (Use Class B1) (numbers 24, 26, 28, 30 and 32) to a secondary school (Use Class D1) offering vocational courses for 14-19 year olds.*"

1. Variation of Condition 5 (Student Numbers) to limit the maximum number of students on site to 490.
2. Variation of Condition 6 (Hours of Operation) staggering the arrival time of staff and students as follows:
  - Teachers and staff - 07:00 - 23:00
  - 14 - 16 year old students - 09:30 - 15:00
  - 16 - 19 year old students - 10:00 - 15:30
  - Social enterprise units - 10:00 - 18:00

**Drawing and documents:** Drawings:  
099 REV0 (Location Plan)  
Documents:

- Planning and Impact Statement, prepared by TP Bennett, dated July 2013.
- City Gateway 14-19 Provision School Management Plan, prepared by City Gateway, dated 7 July 2013.
- Transport Assessment, Document Reference: JNY7860-01A prepared by RPS, dated 16 January 2013.
- Framework School Travel Plan, Document

Reference: JNY7860-02A, prepared by RPS,  
dated 16 January 2013.

<b>Applicant:</b>	City Gateway
<b>Ownership:</b>	City Gateway
<b>Historic Building:</b>	None
<b>Conservation Area:</b>	None

## 2. Executive Summary

- 2.1. Officers have considered the particular circumstances of this application against the Council's approved planning policies contained in the London Borough of Tower Hamlets adopted Core Strategy (2010), Managing Development Document (2013) as amended, the London Plan (2011) and the National Planning Policy Framework 2012, and have found that:
- 2.2. The introduction of staggered arrivals and departures for students controlled by condition 6 ensures that the development would not have an unduly detrimental effect on the capacity of the public transport network within the vicinity of the site. Furthermore, in light of this, condition 5 can also be varied to allow a maximum of 490 students on site at any one time.

## 3. RECOMMENDATION

- 3.1. That the Committee resolve to GRANT the variation of the conditions as set out in the description of development.
- 3.2. That the Corporate Director Development & Renewal is delegated authority to recommend the following conditions and informatives in relation to the following matters:
- 3.3. **Conditions**

### Compliance:

1. Time Limit for implementation 3 years from 10 July 2013 (date of original consent).
2. Compliance with plans
3. Compliance with Construction Management Plan
4. Compliance with School Management Plan
5. Maximum number of Students 490
6. Compliance with hours of operation

### Prior to Commencement

7. Contamination

### Prior to Occupation:

8. Travel Plan including details of management of short stay car parking spaces.
9. Delivery and Servicing Plan
10. Flood Evacuation Plan

11. Energy
12. Post completion testing to demonstrate best endeavours to comply with Building Bulleting 98 with regard to noise.

#### 3.4. **Informatives**

- Consultation with School Travel Plan Officer

### **4. PROPOSAL AND LOCATION DETAILS**

#### **Proposal and Background**

- 4.1. Planning permission for the change of use of the existing industrial units to a secondary school was granted on the 10th of July 2013. At the Development Committee on the 15 May 2013 members resolved to grant planning permission subject to a number of conditions. The applicant is now seeking to vary two of these conditions.
- 4.2. Given, the applicant is seeking to vary two conditions which were specifically subject to the Members resolution to grant, this matter is being reported back to the Development Committee for decision.
- 4.3. The proposal is for the variation of condition 5 which currently restricts the maximum number of students on site at any one time to 150 and restricts the maximum number of students enrolled to 280. The varied condition would allow a total of 490 students to be on site at any one time and would not restrict the number of students enrolled.
- 4.4. The proposals also seeks the variation of condition 6 which currently restricts the hours of operation of the school as follows:
  - Teachers and Staff – 07:00 – 23:00
  - Students – 09:00 – 23:00
  - Social Enterprise Units – 10:00 – 18:00.
- 4.5. The varied condition would have staggered arrivals and departures and would restrict the hours of operation as follows:
  - Teachers and Staff – 07:00 – 23:00 (would remain as existing)
  - 14-16 year old students – 09:30 – 15:00
  - 16-19 year old students – 10:00 – 15:30
  - Social Enterprise Units – 10:00 – 18:00 (would remain as existing).
- 4.6. The School would be managed and run by City Gateway who are a charity based in Tower Hamlets who run women's projects, youth training, youth centres and a social enterprise hub. Their aim is to assist disadvantaged local communities of Tower Hamlets that haven't benefited from the area's wider economic development. The proposed education centre would assist young people who haven't achieved in mainstream education to enjoy learning, and gain vocational qualifications with the aim to move onto employment or further education.
- 4.7. City Gateway gained 'Free School' status in early 2012 from the Department for Education (DfE). They opened a Free School in September 2012 and currently are based at Ensign Court, Ensign Street and Limehouse Youth Centre, Limehouse Causeway. They currently have a capacity for 266 places and provide vocational training for 14 – 19 year olds. The intention is to move the Free School to the site and begin operations in early September.

### **Site and Surroundings**

- 4.8. Clipper House and Mastmaker Quay, is a light industrial complex located on the western side of Mastmaker Road. There are currently eight units of different sizes within the complex. The units are two storeys in height and are planned around an open courtyard with car parking spaces around the site. Two of the units are in active commercial use by small businesses: Unit 34 is occupied by Party Ingredients who are Private Caterers and WF Senate are Electrical Supplies Distributers who occupy unit 22.
- 4.9. There is currently a boxing gym (with a ring) and church operating at Unit 28. However, there is no evidence on the statutory planning register that planning permission was ever granted for these uses. It would appear that the use of the unit as a boxing gym and church is unauthorised and this is further discussed within the planning history section of this report.
- 4.10. The site is neither listed nor located within a conservation area. There are no designated heritage assets within the immediate vicinity of the site.
- 4.11. The site forms part of the Millennium Quarter site allocation within the Managing Development Document (MDD) which sets out the vision for the development of the area.
- 4.12. Clipper House and Mastmaker Court, is one of the last remaining light industrial uses within the site allocation boundary. This marks the transition that has occurred from a mainly industrial area to a more residential area. Directly to the north of the site is Phoenix Heights which is a residential development with commercial uses at ground floor level. To the east of the site is the old Guardian Press Office site. All of the buildings have been demolished and the site is currently surrounded by a hoarding. The site is subject to pre-application discussions. To the south of the site is Gainsborough House which is a residential development. To the west of the site is a row of terraced houses which front Alpha Road. Numbers 9 – 41 Alpha Road have rear gardens which face onto the application site.

### **Relevant Planning History**

- 4.13. **PA/13/00116** – The LPA granted planning permission on the 10 July 2013 for the “Change of use of existing light industrial units (Use Class B1) (numbers 24, 26, 28, 30 and 32) to a secondary school (Use Class D1) offering vocational courses for 14-19 year olds.”
- 4.14. **PA/97/00651** – The LPA granted planning permission on the 14 August 1997 for Unit 26 for the “Change of use from B1/B8 to car servicing and valeting.”
- 4.15. **ENF/13/00077** – The planning enforcement team are investigating the unauthorised use of unit 28 as a boxing gym (with a ring) and church.

## **5. POLICY FRAMEWORK**

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

- 5.3. **Government Planning Policy Guidance/Statements**  
National Planning Policy Framework (March 2012) (NPPF)  
Policy Statement – planning for schools development (August 2011)
- 5.4. **Spatial Development Strategy for Greater London - London Plan 2011 (LP)**  
3.18 Educational Facilities  
6.1 Strategic approach  
6.3 Assessing effects of development on transport capacity  
6.7 Better streets and surface transport  
6.9 Cycling  
6.10 Walking  
6.12 Road network capacity  
6.13 Parking
- 5.5. **Tower Hamlets Core Strategy (adopted September 2010) (CS)**  
SP08 Making connected Places  
SP09 Creating Attractive and Safe Streets and Spaces  
SP10 Creating Distinct and Durable Places
- 5.6. **Managing Development Document (adopted April 2013) (MDD)**  
DM20 Supporting a Sustainable transport network  
DM22 Parking  
DM23 Streets and the public realm  
DM24 Place sensitive design  
DM25 Amenity
- 5.7. **Tower Hamlets Community Plan**  
The following Community Plan objectives relate to the application:
- A Great Place to Live
  - A Prosperous Community
  - A Safe and Supportive Community
  - A Healthy Community

## 6. CONSULTATION RESPONSE

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

6.2. The following were consulted regarding the application:

### **Transport for London (TfL)**

6.3. Extensive discussion between the council planning officer, school operator and TfL took place post the granting of the original consent concerning minimising impact to the transport network while enabling the school to function and operate efficiently.

6.4. The revised proposal (varying condition 6 – hours of operation) suggested that the school opening hours would be amended as follow, as stated in the application form: Teacher & Staff: 0700-2300hrs, Pre 16 pupils: 0930-1500hrs, 16-19 yrs old: 1000-1530hrs, and social enterprise: 1000-1800hrs.

- 6.5. This is considered acceptable by TfL as students will be generally arriving outside the AM peaks and departing in a staggered manner during the PM; this helps relieve capacity impact to the bus network.
- 6.6. Having regarded the proposed change of operational hour, TfL considers that the suggested revised cap on maximum number of students (varying condition 5 – student number) by the applicant would be acceptable.
- 6.7. To ensure impact to the public transport network would be kept to a minimum; TfL considers that the school management plan be strictly enforced and be secured by condition; the travel plan would also need to be revised to reflect the new proposed arrangement and enrolled into the STAR accreditation scheme.
- 6.8. TfL request the following informative be attached: *“TfL should be consulted on any further changes to the operational hour, number of students on site and changes to the school management plan in future; and may therefore seek an contribution toward public transport service enhancement if deemed necessary in light of change in circumstances in future.”*
- 6.9. Subject to the above are being met, TfL has no objection to the proposal.
- 6.10. **[Officer Comment:** Conditions and informatives would be attached to any permission granted as requested.]

#### **LBTH Transportation and Highways**

- 6.11. These conditions were attached to the parent application in response to TfL concerns over the development's impact on local bus capacity. TfL have responded to the proposed variation to conditions 5 and 6 and are satisfied they can be discharged subject to the school management plan being strictly enforced and secured by condition and a revised travel plan that reflects the new proposed arrangements. The Borough Highway Officer support TfL's views and has no further comments.
- 6.12. **[Officer Comment:** With regard to who requested the conditions, it is noted that in the first instance a condition restricting the maximum number of students on site was requested by TfL. At the committee meeting Members amended this condition to lower the maximum number of students allowed on site. Should planning permission be attached the conditions as requested would be attached. ]

### **7. LOCAL REPRESENTATION**

- 7.1. A total of 218 neighbouring properties within the area shown on the map appended to this report were notified about the application and invited to comment. The application has also been publicised on site and in the local press. No representations have been received from neighbours and local groups in response to notification and publicity of the application.

### **8. MATERIAL PLANNING CONSIDERATIONS**

- 8.1. Section 73 of the Planning Act allows the variation or removal of a condition imposed on a planning permission. This application seeks to vary condition 5 and 6 of the consented permission.

- 8.2. The development which this application under s.73 seeks to amend has been judged acceptable in principle when it was considered at the 15 May 2013 Development Committee where Members resolved to grant subject to conditions. Government advice states that when assessing these types of applications, that local planning authorities should, in making their decisions, focus their attention on national or local policies or other material considerations which may have changed significantly since the original grant of permission, as well as the changes sought.
- 8.3. Since the grant of planning permission in July 2013 there have been no changes in national or local policies. As such, this report focuses on the changes sought. However, at appendix 1 there is a copy of the planning report and update report presented to members on the 15 May 2013 to inform members.
- 8.4. The main planning issues raised by the application that the committee must consider are:
- § Highways
  - § Amenity

### **Highways**

#### *Policy Context:*

- 8.5. Policy SP07 of the CS states that secondary schools should be located in highly accessible locations and integrated into secondary and main movement routes. Also relevant is policy SP09 of the CS and DM20 of the MDD which seek to ensure that new development has no adverse impacts upon the safety and capacity of the road network by ensuring new development is appropriately located depending on its type and scale with developments generating a higher number of trips to be located in town centres and/or other areas well served by public transport.
- 8.6. The site is accessible by public transport with bus stops located a short walk away on Marsh Wall. The bus stops on Marsh Wall are approximately a two to three minute walk from the proposed school site (approximately 190 metres). There is also a bus stop at Westferry Road (Byng Street stop) to the west of the site which is approximately 400 metres from the site (four to five minute walk). The area has a Public Transport Accessibility Level (PTAL) of 3 which indicates 'moderate' level of accessibility.

#### *Local Area and Site:*

- 8.7. There are a total of five bus routes operating within 400 metres of the site. The service from Stratford to Asda (Crossharbour) stops at the Marsh Wall bus stops. The D3 (London Chest Hospital to Asda (Crossharbour)), D7 (Poplar to Mile End Station), 135 (Moorefield's Eye Hospital to Asda (Crossharbour)), and N550 (Trafalgar Square to Canning Town Station) services stop at Westferry Road (Byng Street Stop). These services provide links to Canary Wharf, Poplar, Bow, Stratford, Shoreditch, Liverpool Street and Limehouse.
- 8.8. South Quay DLR station is located within a four to five minute walk of the proposed school site (approximately 380 metres). Finally the centre of Canary Wharf, including the Jubilee Line station is approximately a six to seven minute walk from the proposed school site (circa 550 metres).

8.9. Mastmaker Road routes traffic north to south. It is a single carriageway road and is street lit along its length with footways on either side of the carriageway up to four metres in width. Mastmaker Road provides access to various business units and residential units and is subject to a 30 mile per hour speed restriction.

8.10. The site has existing vehicular access from Mastmaker Road and the main pedestrian entrance to the school would be from Mastmaker Road.

*Assessment:*

8.11. The application is for the variation of condition 6 (hours of operation) to allow a staggered arrival and departure time for students to alleviate the impact of the development on the public transport network specifically the bus network. The applicant also seeks to vary condition 5 (number of students) to restrict the number of student on site at any one time to 490.

8.12. During the course of the previous application, TfL had raised concerns about the impact of the number of students would have on the transport network. As a result they suggested a condition restricting the maximum number of students on site at any one time to 302 and a condition restricting students from arriving at the school before nine.

8.13. At the Development Committee meeting on the 12 May 2013, members resolved to grant planning permission subject to a condition restricting the maximum number of pupils enrolled to 280 and the maximum number of students on site at one time to 150. This was to address concerns regarding impacts of the school on the local transport network. The planning permission was issued with this condition attached.

8.14. It is noted that concerns were also raised in relation to anti-social behaviour however these related to the hours of operation of the social enterprise units and this was resolved by restricting the hours of operation of these units to between 10:00 – 18:00. This application does not proposed any change to this part of the condition.

8.15. The applicant has advised that condition 5 which restricted the number of students prevents the school from opening. They currently have space for 280 students at their current sites and the purpose of the previous application was to seek permission for a change of use to allow the school to relocate to one larger premise's where they could have capacity for up to 490 students.

8.16. In order to resolve this matter the applicant met with TfL and Council Planning Officers. At this meeting it was established that the key issue was the impact of students arrivals and departures on the public transport network specifically buses which are at capacity in the area.

8.17. As a result the applicant is seeking to vary condition 6 (hours of operation) to stager pupil's arrival and departure times as follows: 14-16 year old students – 09:30 – 15:00 and 16-19 year old students – 10:00 – 15:30. This would mean that students would not be using public transport during the am and pm peaks. TfL support the amended condition.

8.18. Moving to condition 5, given students would be travelling outside of the am and pm peak, the maximum number of students on site can be raised to 490. TfL support the amended condition.

8.19. It is noted that a School Travel Plan was secured by condition for the previous development via condition. The purpose of a School Travel Plan is to encourage



sustainable means of transport for staff, students and visitors. This condition would be attached again in line with TfL comments.

- 8.20. The applicant has also submitted an updated School Management Plan to reflect the staggered arrival and start time approach. The revised School Management Plan would be approved as part of this application and compliance with the School Management Plan would also be secured via condition in line with the consented scheme.
- 8.21. In conclusion, by staggering the arrival and departure time of students the pressure on the local bus service during the am and pm peak is alleviated. In turn, this means that the number of students on site at any one time can be raised to 490. It is considered that the variation of condition 5 and 6 should be allowed given there would not be an unduly detrimental impact on the safety and capacity of the surrounding highway network and public transport network.

### **Amenity**

- 8.22. Strategic policy SP10 of the CS and policy DM24 of the MDD seek to protect the amenity of residents of the borough. With regard to the variation of condition 6 (hours of operation) the varied hours would not have an unduly detrimental impact on the amenity of adjacent residents given they are more restrictive than the consented hours.

### **Conditions**

- 8.23. In line with paragraph 3.3 of this report it is proposed to retain the conditions (aside from those varied by this application) which were part of the original decision notice.
- 8.24. It is noted that the applicant is seeking to discharge condition 10 (flood evacuation plan) attached to the parent permission. This application was received on the 8 August 2013 and is currently being assessed by officers. Should this condition be discharged ahead of the decision for this application being issued it would be possible to approve the documents and revert condition 10 to a compliance condition. This would mean the applicant would not need to discharge the details associated with condition 10 again.

### **Human Rights**

- 8.25. Planning decisions can have Human Rights Act 1998 implications and in terms of relevant provisions of the Human Rights Act 1998, the following are particularly highlighted to Members:-
- 8.26. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. "Convention" here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant, including:-
- § Entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of a person's civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process;

- § Rights to respect for private and family life and home. Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest (Convention Article 8); and
- § Peaceful enjoyment of possessions (including property). This does not impair the right to enforce such laws as the State deems necessary to control the use of property in accordance with the general interest (First Protocol, Article 1). The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole".

- 8.27. This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as local planning authority.
- 8.28. Members need to satisfy themselves that the measures which are proposed to be taken to minimise, inter alia, the adverse effects of increased traffic generation on the highway and any noise associated with the use are acceptable and that any potential interference with Article 8 rights would be legitimate and justified.
- 8.29. Both public and private interests are to be taken into account in the exercise of the Council's planning authority's powers and duties. Any interference with a Convention right must be necessary and proportionate.
- 8.30. Members must, therefore, carefully consider the balance to be struck between individual rights and the wider public interest.
- 8.31. As set out above, it is necessary, having regard to the Human Rights Act 1998, to take into account any interference with private property rights protected by the European Convention on Human Rights and ensure that the interference is proportionate and in the public interest.
- 8.32. In this context, the balance to be struck between individual rights and the wider public interest has been carefully considered. Officers consider that any interference with Convention rights is justified. Officers have also taken into account the mitigation measures governed by planning conditions to be entered into.

### **Equalities**

- 8.33. The Equality Act 2010 provides that in exercising its functions (which includes the functions exercised by the Council as Local Planning Authority), that the Council as a public authority shall amongst other duties have due regard to the need to-
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.34. The protected characteristics set out in the Equality Act are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Equality Act acknowledges that compliance with the duties set out may involve treating some persons more favourably than others, but that this does not permit conduct that would otherwise be prohibited under the Act.

- 8.35. The proposal is for a non-denominational mixed sex secondary school which will improve the choice of schools and number of secondary school places within the borough, as such it is considered that any impact in terms of fostering relations and advancing equality with regard to sex, race, religion and belief will be positive.
- 8.36. The proposed works associated with the change of use include creating accessible entrances to the buildings which would make the buildings more accessible at ground floor level which would improve access for persons with a disability. However, it is noted that persons with a disability requiring use of a wheelchair would only be able to access the ground floor level of the school. However, given that they can receive a full teaching experience or visitors can access all the key activities it is considered that this would not result in inequality.
- 8.37. With regard to age, gender reassignment, pregnancy and maternity, and sexual orientation there are no identified equality considerations.

## **9. CONCLUSION**

- 9.1. All other relevant policies and considerations have been taken into account. The variation of condition application should be supported for the reasons set out in RECOMMENDATION section of this report.