

<b>Committee:</b> Development	<b>Date:</b> 12 February 2014	<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> Piotr Lanoszka	<b>Ref No:</b> PA/13/02251
	<b>Ward:</b> Shadwell

## 1.0 APPLICATION DETAILS

**Location:** 375 Cable Street, London, E1 0AH

**Existing Use:** Hot Food Take-away (Use Class A5)

**Proposal:** Variation of condition 3 of planning permission granted by the Secretary of State for Communities and Local Government on 30th March 2011, reference APP/E5900/A/10/2141935/NWF, LBTH reference PA/07/03290, to allow opening hours from 9am - 10pm Sunday to Thursday and 9am - 11pm Fridays and Saturdays.

Approved Hours: 9am - 9pm Sunday to Thursday and 9am - 10pm Friday and Saturday

**Drawings and documents:** N/A

**Applicant:** Mr Tera Miah, Fried & Fabulous

**Ownership:** Freehold - London Borough of Tower Hamlets

**Historic Building:** None

**Conservation Area:** None

## 2.0 EXECUTIVE SUMMARY

2.1 The applicant seeks permission to extend the opening times of the 'Fried & Fabulous' hot food take-away from 21:00 to 22:00 Sunday to Thursday and from 22:00 to 23:00 on Fridays and Saturdays.

2.2 The main issue for Members to consider is whether the proposed extension of opening hours would result in an increase in late evening noise, disturbance and general activity in the locality and whether this would have an unacceptable impact on the amenity of local residents.

2.3 Members' attention is drawn to the two previous decisions of the Planning Inspectorate regarding operation of a hot food take-away at the site. The first appeal

has been dismissed in part due to the late opening hours proposed (until 22:30 all week) which in Inspector's opinion would result in introduction of late evening activity to a residential area to the detriment of residents' amenity. In the second appeal decision - which allowed the opening of the hot food take-away, the Planning Inspector considered that the use would be acceptable with regards to its amenity impact only if it was subject to a closing time of 21:00 Sunday to Thursday and 22:00 on Fridays and Saturdays. The Inspector noted that up to this time a certain level of noise and outside disturbance is to be expected in an urban location and that these restricted hours would mean that the premises would not attract trade from public houses and clubs after they close later in the evening, this having a particularly high potential for noise, anti-social activity and general disturbance. The Inspector also noted that such opening times would allow an appropriate balance to be struck between business viability and resident's living conditions.

- 2.4 Officers accept that in the later hours of the evening most residential occupiers have legitimate expectations to enjoy quieter periods and a peaceful living environment. Although the residents live in an urban environment, the site is not located in a town centre or in an edge of town centre location where there might be a reasonable expectation of noise and activity later into the evening.
- 2.5 In conclusion, officers consider that the hours of operation requested in this application are not compatible with the residential character of this part of Cable Street and that extending the opening hours would lead to an unacceptable increase in late evening noise, disturbance and general activity to the detriment of neighbours' amenity, which would be contrary to national, regional and local planning policy.

### **3.0 RECOMMENDATION**

- 3.1 That the Committee resolve to **REFUSE** planning permission for the reason below:
- 3.2 The proposed variation of the opening hours would result in an increase in late evening noise, disturbance and general activity in the vicinity of the premises and lead to an unacceptably harmful effect on the living conditions and amenity of the residents living directly above and adjoining the premises, and along Cable Street. This would be contrary to the general principles of the National Planning Policy Framework (2012), policy 7.15 of the London Plan (2011), policy SP03(2B) of the Core Strategy (2010), and policy DM25 of the Managing Development Document (2013). These policies require development to protect, and where possible improve, the amenity of surrounding existing and future building occupants, as well as the amenity of the surrounding public realm.

### **4.0 PROPOSAL AND LOCATION DETAILS**

#### **Proposal**

- 4.1 In March 2011 planning permission was granted on appeal for the change of use from retail (Use Class A1) to hot food take-away (A5) at 375 Cable Street (planning reference PA/07/03290, appeal reference APP/E5900/A/10/2141935).
- 4.2 Permission was granted subject to a condition restricting the time at which the hot food take-away can operate. The condition states:

*The premises shall be closed to customers outside the following times: 09:00 to 21:00 Sunday to Thursday; and 09:00 to 22:00 on Fridays and Saturdays.*

- 4.3 The condition was imposed in the interest of residential amenity.
- 4.4 The applicant seeks to vary this condition to change the opening times to 10:00 to 22:00 Sunday to Thursday and 10:00 to 23:00 on Fridays and Saturdays. In consequence, the hot food take-away would be allowed to open and close one hour later, all week.

### **Site and Surroundings**

- 4.5 The application relates to 'Fried & Fabulous' a hot food take-away located within the ground floor of Fisher House, a four storey post-war public housing building located on the northern side of Cable Street, some 400m east of the Watney Market District Town Centre.
- 4.6 The vicinity of the site is of a residential character with only one other commercial unit, a convenience shop (Use Class A1) located at 377 Cable Street, directly adjoining the application site. The closest residential properties are located above and directly adjoining the application premises, as well as along both sides of Cable Street.
- 4.7 The application site is located in an out of town centre location, carries no policy designations and there are no statutory listed buildings or conservation areas in its immediate vicinity.
- 4.8 Cable Street is a one-way adopted highway which also houses a fully segregated stretch of the Cycle Super Highway between the City and Barking. The site benefits from good public transport accessibility and is within short walking distance, approximately 400m, of Shadwell Overground and DLR train stations.

### **Planning History**

- 4.9 The application site has an extensive planning history. The first application for change of use from retail to a hot food take-away (ref PA/07/01104) was refused on 03/09/2007 with the subsequent appeal (ref APP/E5900/A/08/2063532) dismissed. The Planning Inspector on that occasion concluded that the proposal would be harmful to residents' living conditions due to excessive noise disturbance during evening hours (up to 22:30 all week).
- 4.10 A further application was made (ref PA/07/03290) and considered by the Committee in March 2008 when it received an officer recommendation for refusal. However, the Committee resolved to approve it subject to the opening times being reduced to 09:00 to 21:00 Sunday to Thursday, and 09:00 to 22:00 on Fridays and Saturdays. Subsequently a decision granting planning permission was issued in May 2008. A claim for judicial review followed in July 2008 (Case No CO/6311/2008). The Court ordered that the Council's decision be quashed because the reasons given for granting permission were inconsistent with the reasons given by the Committee at their meeting.
- 4.11 The application was returned to Committee in April 2009 with an officer recommendation for approval and was approved by Members at that meeting. However, a further claim for judicial review was lodged in July 2009 (Case No CO/7061/2009). The Court ruled that the planning permission should once again be quashed because Members should not have been advised that a school's healthy eating policy was not capable of being a material consideration.

- 4.12 Following this judgement, the application was reported to Committee for a third time in September 2009. On this occasion, an officer recommendation to approve the application was overturned by Members. The application was refused for health-related and highway reasons. The applicant has challenged the Council's refusal and successfully appealed (ref APP/E5900/A/10/2141935).
- 4.13 A Planning Enforcement Investigation (ref ENF/10/00115) was opened to investigate alleged non-compliance with conditions stipulating the details of the kitchen extract system and specifying opening hours.

## **5.0 POLICY FRAMEWORK**

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

### **5.2 Government Planning Policy**

National Planning Policy Framework 2012

### **5.3 London Plan 2011 with Revised Early Minor Alterations published 11/10/2013**

- 4.7 - Retail and town centre development
- 7.15 - Reducing noise and enhancing soundscapes

### **5.4 Core Strategy 2010**

- SP01 - Refocusing on our town centres
  - SP03 - Creating Healthy and Liveable Neighbourhoods
  - SP06 - Delivering successful employment hubs
  - SP10 - Creating Distinct and Durable Places
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- SO6 - Refocusing on our town centres
  - SO16 - Delivering successful employment hubs

### **5.5 Managing Development Document 2013**

- DM0 - Delivering sustainable development
- DM1 - Development within the town centre hierarchy
- DM25 - Amenity

### **5.6 Supplementary Planning Documents**

N/A

## **6.0 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:

### **LBTH Environmental Health**

- 6.3 No objection.

## 7.0 LOCAL REPRESENTATION

7.1 A total of 1133 letters were sent to neighbours and interested parties. Two site notices were displayed on 6th November 2013.

7.2 The number of representations received in response to notification and publicity of the application is as follows:

No of individual responses:                      Objecting: 69                      Supporting: 31

No of petitions received:                      1 in support with 199 signatories

7.3 The following issues were raised in objection to the proposal:

- Disturbance resulting from youths loitering outside the premises
- Proposed hours of opening inappropriate in a residential area
- General noise and nuisance would increase, further deteriorating neighbours' quality of life and amenity
- Customers engage in anti-social behaviour, littering and drug dealing. This would be exacerbated by longer opening hours
- A number of residents note that the current amount of trade at the takeaway and the premises' location does not warrant further hours of business and that the longer opening hours should not be justified due to the need of customers working late shifts as there are other nearby hot food takeaways which already open late
- Current opening hours are reasonable as they ensure that when the hot food takeaway closes the noise and disturbance dissipate and residents can enjoy some relief and get some sleep. Quiet periods during late evenings are very important to residents' quality of life.

[Officer comment: these issues will be addressed in the material planning considerations section of the report]

- The business is already trading outside the permitted hours

[Officer comment: this application was submitted as a result of a Planning Enforcement Investigation (ref ENF/10/00115), however the breaches that occurred in the past and have now ceased or been resolved are not considered to be a matter that should be given significant weight in the consideration of this application]

7.4 The following issues were raised in representations supporting the proposal:

- Convenience for people living and working in the area, in particular for patrons who work until evening hours
- There is community support for the take-away use which meets the needs of local people and provides a range of food

[Officer comment: these issues will be addressed in the material planning considerations section of the report]

## **8.0 PROCEDURAL MATTERS**

- 8.1 Section 73 of the Town and Country Planning Act 1990 allows for an application to be made to develop land without compliance with conditions previously attached or to grant planning permission subject to conditions that differ from those previously imposed. S73 states that on receipt of such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted and that the effect of granting an application under S73 is a new planning permission.
- 8.2 In accordance with tests set out in Circular 11/95 and paragraph 206 of the NPPF, planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 8.3 The applicant wishes to vary the opening hours to enable operation between 10:00 to 22:00 Sunday to Thursday and 10:00 to 23:00. In effect the premises would open an hour later and close an hour later, all week.
- 8.4 As premises were previously allowed on appeal to operate from 09:00 and this was considered satisfactory with regards to residential amenity impacts, it would be unreasonable and unnecessary for the local planning authority to further restrict the morning opening time as per applicant's request. For that reason, Members are requested to consider only the implications of extending the opening hours by one hour in the evening with the morning opening time remaining as previously approved.
- 8.5 As such, members should consider the following proposed wording of the condition:

*The premises shall be closed to customers outside the following times: 09:00 to 22:00 Sunday to Thursday; and 09:00 to 23:00 on Fridays and Saturdays.*

*Reason: To safeguard the amenity of adjoining occupiers.*

## **9.0 MATERIAL PLANNING CONSIDERATIONS**

- 9.1 The main planning issue raised by this application that the Committee must consider is whether the proposed extension of opening hours would result in an increase in late evening noise, disturbance and general activity in the locality and whether this would have an unacceptable impact on the amenity of local residents. In reaching a decision Members should balance any possible adverse amenity impact arising from extended opening hours against benefits which longer opening hours could bring to the local economy and viability of the business. Officers consider that the proposal would not raise any highways issues, impact on the vitality and viability of the nearby town centres or detract from local residents' ability to adopt healthy lifestyles.
- 9.2 The National Planning Policy Framework sets out the Government's land use planning and sustainable development objectives. The framework identifies a holistic approach to sustainable development as a core purpose of the planning system and requires the planning system to perform three distinct but interrelated roles: an economic role, a social role and an environmental role. These roles are mutually dependant and should not be undertaken in isolation.

- 9.3 According to paragraph 109 of the NPPF the planning system should contribute to and enhance the natural and local environment by preventing development from contributing to noise pollution which could adversely affect surrounding existing development. Of particular relevance to the control of noise pollution through planning is paragraph 123 of the NPPF which specifies that planning policies and decisions should aim to
- avoid noise from giving rise to significant adverse impacts on health and quality of life;
  - mitigate and reduce to minimum other adverse impacts on health and quality of life arising from noise, including through the use of conditions;
  - recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land use since they were established; and
  - identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.
- 9.4 Policy 7.15 of the London Plan acknowledges that reducing noise pollution and protecting good soundscape quality contributes to improving quality of life, and consequently requires development proposals to seek to reduce noise by minimising the existing and potential adverse impact of noise.
- 9.5 The Council's Core Strategy policy SP03(2B) seeks to address the impact of noise pollution in the Borough by managing the impact of noise created by the night-time economy through planning controls while policy DM25 specifies that in seeking to protect the amenity of surrounding existing and future residents and building occupants, as well as the amenity of the surrounding public realm, development should not create unacceptable levels of noise.
- 9.6 There are two potential sources of noise disturbance which could affect the amenity of neighbouring residential occupiers as a result of this application. The first is the noise arising from operation of the extract system located at the back of the premises. As the extract system was constructed in accordance with requirements of the Council's Environmental Health Officers and they raise no objection to the extended hours, it is considered that any nuisance arising from extended operation of the extract system would not warrant refusal on amenity grounds.
- 9.7 The second potential source of disturbance is that which could arise from comings and goings as well as from patrons congregating outside the premises. It is this second source of disturbance which could have a particularly pronounced effect on the amenity of adjoining occupiers during the quieter evening periods.
- 9.8 The Fried & Fabulous hot food take-away is located within a ground floor of a residential block, with flats located both above as well as directly adjacent to the application premises. Furthermore, there are residential properties on either side of Cable Street, in both directions from the application site.
- 9.9 The character of the area is residential with only one other commercial unit - a convenience store in the adjoining unit at 377 Cable Street. The dominant source of noise in the area is from traffic along the one-way Cable Street, from passers by including cyclists and from the nearby DLR railway line located to the north of the application site.

- 9.10 It is important to note that while Cable Street can be a busy thoroughfare during the morning and afternoon peak hours, the street is more peaceful later into the evening with minimal motor vehicle or bicycle traffic. It appears that during the later hours what limited activity there is in the area consists of local residents walking home from nearby train stations and bus stops. There is little footfall after the afternoon rush hour and the soundscape is of a relatively peaceful, quiet character - notwithstanding an occasional muted sound of a DLR train passing to the north of the application site.
- 9.11 The nearest town centre is the Watney Market District Centre located approximately 400m to the west. This centre is within a short walking distance away and contains a range of shops and services including a range of cafes and hot food take-aways which are open until late into the evening. There is also a number of hot food take-away premises located along the northern side of Commercial Road, also some 400m walking distance.
- 9.12 While a petition in support as well as a number of support letters were received, the Council has also received a substantial number of objections from residents living adjoining to and in the vicinity of the application premises. The objectors are concerned that the hot food take-away use - which already leads to disturbance during evening hours, would be extended further into the evening to the detriment of their amenity and living standards. In particular, residents are concerned about groups of youths loitering outside the premises leading to noise disturbance, littering and anti-social behaviour; while the supporters note the convenience of having a local hot-food take-away open into later in the evening.
- 9.13 The two previous decisions of the Planning Inspectorate regarding operation of a hot food take-away at the site are of note. The first appeal has been dismissed in part due to the late opening hours proposed (until 22:30 all week) which in Inspector's opinion would result in introduction of late evening activity to a residential area to the detriment of residents' amenity.
- 9.14 In the second appeal decision - which allowed the opening of the hot food take-away, the Planning Inspector considered that the use would be acceptable with regards to its amenity impact only if it was subject to a closing time of 21:00 Sunday to Thursday and 22:00 on Fridays and Saturdays. The Inspector noted that up to this time a certain level of noise and outside disturbance is to be expected in an urban location and that these restricted hours would mean that the premises would not attract trade from public houses and clubs after they close later in the evening, this having a particularly high potential for noise, anti-social activity and general disturbance. The Inspector also noted that such opening times would allow an appropriate balance to be struck between business viability and resident's living conditions.
- 9.15 Officers acknowledge that in the later hours of the evening most residential occupiers have legitimate expectations to enjoy quieter periods and a peaceful living environment. Although the residents live in an urban environment, the site is not located in a town centre or in an edge of town centre location where there might be a reasonable expectation of noise and activity later into the evening.
- 9.16 As discussed above, the background noise climate or the soundscape within the vicinity of the site, after the afternoon peak hour, is of a quiet character for an urban area, with little vehicular traffic and few pedestrians. There is no commercial activity nearby during late evening hours. As such, the extension of opening times by one hour, up to 22:00 Sunday to Thursday and 23:00 on Fridays and Saturdays, would introduce additional activity into the area and would result in further disturbance to neighbours' amenity and living conditions.



- 9.17 While the applicant and some supporters argue that there is demand from customers to extend the trading hours to reflect their working schedules, there are many other hot food take-aways and restaurants which are open until late within a short walking distance away, within the town centre of Watney Market and on Commercial Road.
- 9.18 In conclusion, officers consider that the hours of operation requested in this application are not compatible with the residential character of this part of Cable Street and that extending the opening hours would lead to an unacceptable increase in late evening noise, disturbance and general activity to the detriment of neighbours' amenity, which would be contrary to national, regional and local planning policy.

## **10.0 HUMAN RIGHTS CONSIDERATIONS**

- 10.1 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. In the determination of a planning application the following are particularly highlighted to Members:
- 10.2 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".
- 10.3 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.
- 10.4 Were Members minded not to follow officers' recommendation, Members need to satisfy themselves that the potential adverse impacts from noise and general disturbance are acceptable and that any potential interference with Article 8 rights will be legitimate and justified.
- 10.5 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.

10.6 Members must, therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

10.7 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.

## **11.0 EQUALITIES ACT CONSIDERATIONS**

11.1 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs, gender and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. Officers have taken this into account in the assessment of the application and the Committee must be mindful of this duty inter alia when determining all planning applications. In particular the Committee must pay due regard to the need to:

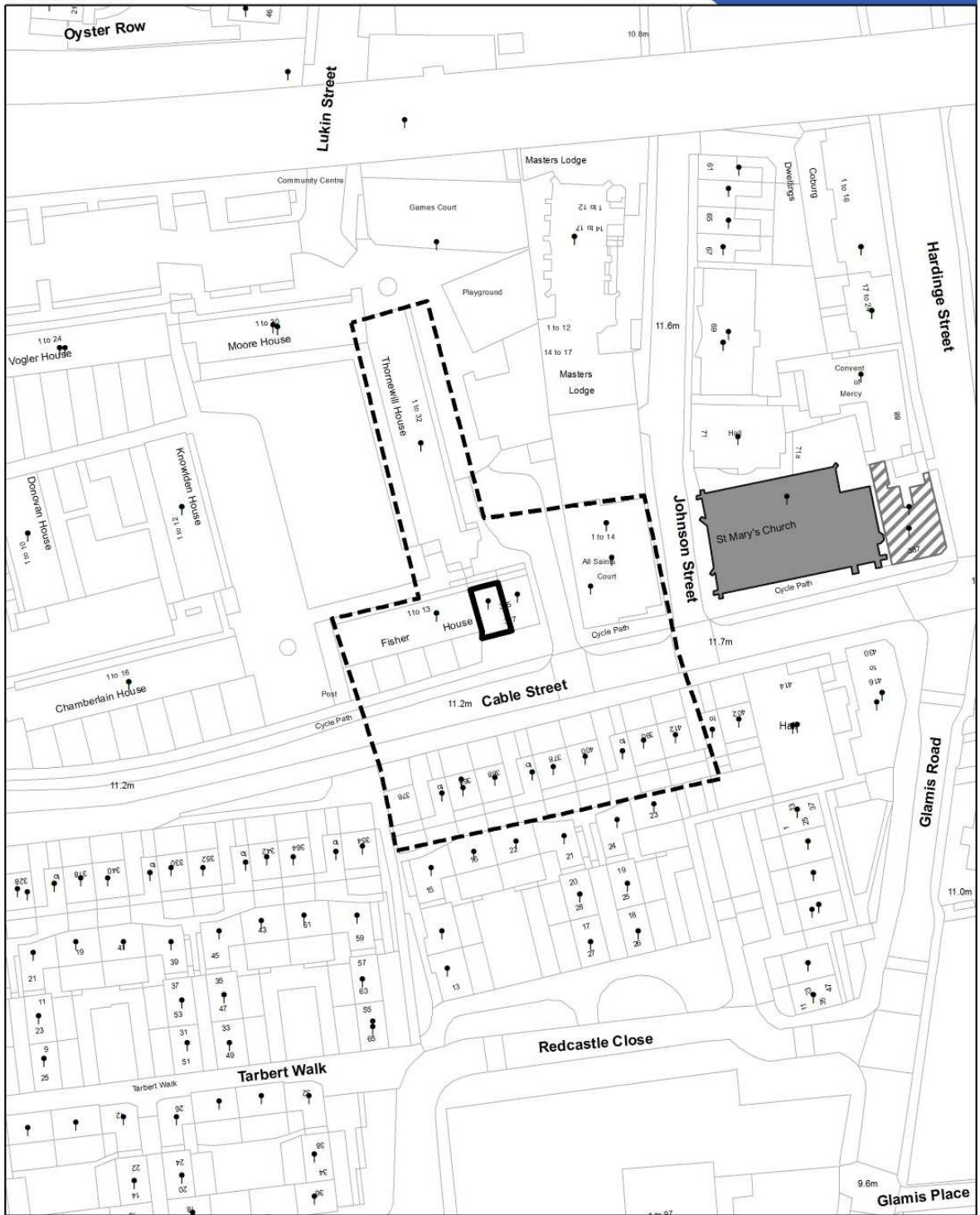
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## **12.0 CONCLUSION**

12.1 All other relevant policies and considerations have been taken into account. Planning permission should be REFUSED for the reasons set out in the MATERIAL PLANNING CONSIDERATIONS section of this report.

## **13.0 SITE MAP**

**Planning Application Site Map**  
**PA/13/02251**



- Planning Application Site Boundary
- Consultation Area
- Locally Listed Buildings
- Statutory Listed Buildings
- Land Parcel Address
- OSLine

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

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