

Committee: Development Committee	Date: 8 th July 2015	Classification: Unrestricted	Agenda Item Number:
-----------------------------------------------	-------------------------------------------	----------------------------------------	----------------------------

Report of: Corporate Director of Development and Renewal	Title: Planning Application
Case Officer: Killian Harrington	Ref No: PA/14/03376
	Ward: Spitalfields and Banglatown

1. **APPLICATION DETAILS**

Location: 12-14 Toynbee Street, London E1 7NE

Existing Use: Public house (A4) and residential dwelling (C3)

Proposal: Demolition of existing structures on land adjacent to Duke of Wellington public house and creation of a total of 5 x residential units (C3 use). Replacement outdoor area to be reconfigured to the rear of the site. External alterations to the public house to include dormer and mansard roof extensions and rear extension to first and second floors of building, retaining existing ridge line and mansard roof. Retention of A4 use (Drinking Establishments) on ground floor.

Drawing and documents: Drawings:
Site location plan,
187_GA_01 REV B
187_GA_02 REV B
187_GA_03 REV C
187_GE_00 REV A
187_GE_00 REV B
187_GE_01 REV B
187_GE_03 REV B
187_GS_01 REV B
187_GA_-01 REV A
187_GA_04 REV A
187_GS_00 REV A
187_GS_02 REV B

Documents:
Design & Access Statement prepared by 21st Century
Architecture Ltd dated April 2015
Daylight & Sunlight report prepared by BVP dated
December 2014
Environmental Noise Survey and Noise Impact
Assessment Report prepared by Hann Tucker
Associates dated November 2014
Energy Strategy prepared by AJ Energy Consultants

Ltd dated November 2014.

Applicant:	Mendoza Ltd
Ownership:	Mendoza Ltd
Historic Building:	N/A
Conservation Area:	Wentworth Street Conservation Area

2. EXECUTIVE SUMMARY

- 2.1 This report considers an application for external alterations to the existing Duke of Wellington public house and a three-storey extension to provide a total of 5 flats.
- 2.2 This application has attracted a total of 382 written objections. The main concerns raised by objectors relate to the potential loss of A4 use (either immediately or gradually over time), the removal/reduction of the pub garden, inappropriate mix of residential units, impact on the Wentworth street Conservation Area and residential amenity. Careful consideration has been given to these concerns, as well as the following material planning considerations; land use, heritage and design, standard of accommodation and neighbour amenity.
- 2.3 The Council consider the proposal to be acceptable for the following reasons:
- The proposal, by juxtaposing a well-proportioned, modern building with the restoration of a Victorian pub is considered to create a lively and dynamic street frontage, providing a strong building line and sense of security for local residents and a more definitive sense of place.
 - The alterations to the pub are considered acceptable as the roof extension is subservient to the host building and does not compromise the character of the Victorian era pub.
 - A pub garden is a functional auxiliary space that only acts to supplement the public house facility. Customers can still avail of a reasonably sized outdoor amenity space for smoking and socialising and are therefore the operation of the use is not profoundly disadvantaged as a result of the proposal.
 - The proposed accommodation meets the minimum standards as set out in the London Plan Housing Design Guide and other policies outlined in this report.
 - The amenity of neighbouring occupiers would not be unduly detrimentally impacted as a result of the proposal.
 - The proposed design is in keeping with the character of the area and both enhances and preserves the Wentworth Street Conservation Area.
- 2.4 As explained within the main report, the proposal is in accordance with the Development Plan and all other material considerations.

3.0 RECOMMENDATION

3.1 That the Committee resolve to GRANT planning permission subject to the following conditions:

3.2 Conditions on planning permission

- (a) Three year time limit
- (b) Development to be built in accordance with the approved plans
- (c) Permit-free condition
- (d) Removal of Permitted Development rights to protect A4 use
- (e) Construction management plan
- (f) Directional louvres (to protect privacy of neighbours)
- (g) Submission of proposed materials and detailed drawings
- (h) Pub garden shall close at 10pm every day and no outdoor amplified music will be permitted at any time
- (i) Noise insulation measures

3.3 Any other condition(s) considered necessary by the Corporate Director for Development & Renewal.

4.0 PROPOSAL AND LOCATION DETAILS

Site and Surroundings

4.1 The site of the proposed development (12-14 Toynbee Street) is a corner site situated at the junction between Toynbee Street and Brune Street. It consists of the public house (Duke of Wellington), believed to have been built in the 19th century, and the adjacent yard/empty space currently in use as a storage and amenity area. Neighbouring buildings include a community centre immediately to the south. The surrounding area contains a mixture of residential flats and high rise office buildings with an increasing intensification of land use and diversification of commercial activity. The pub is not a listed building but the site is located in the Wentworth Street Conservation Area.

The Proposal

4.2 The application proposes the following:

- (a) Demolition of existing structures on land adjacent to Duke of Wellington public house and creation of a total of 5 x residential units (C3 use) that would also make use of the upper floors of the existing public house building. Replacement outdoor area to be reconfigured to the rear of the site.
- (b) External alterations to the public house to include dormer and mansard roof extensions and rear extension to first and second floors of building, retaining

existing ridge line and mansard roof. Retention of A4 use (Drinking Establishments) on ground floor.

Relevant Planning History

4.4 There is no comprehensive planning history for this property and its authorised planning use is somewhat unclear. However, given the building's historic public house use and Council tax payment evidence, the property is divided between A4 use on the ground floor with one residential unit (C3 use) on upper floors.

- In 1993, planning permission was granted (ref BG/93/00026) for the demolition of an existing paint store and the construction of a tenants meeting room.
- In 2012, a planning enforcement case (ref. ENF/12/00412) queried the unauthorised extension in the pub garden, on foot of a noise complaint. As it had been there since 2008, it was subsequently deemed to be exempt from enforcement action.

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 Guidance/Statements

- National Planning Policy Framework (March 2012) (NPPF)
- National Planning Practice Guidance (March 2014)

5.3 Spatial Development Strategy for Greater London – March 2015, Consolidated with alterations since 2011 (LP)

- 3.3: Increasing housing supply
- 3.5: Housing Standards
- 7.4: Local Character
- 7.5: Public Realm
- 7.8: Heritage Assets and Archaeology

Mayor of London Housing Supplementary Planning Guidance (2012).

5.4 Tower Hamlets Core Strategy (adopted September 2010)

- SP02 Urban living for everyone
- SP05 Provide appropriate refuse and recycling facilities
- SP09: Creating Attractive and Safe Streets and Spaces
- SP10: Creating distinct and durable places
- SP12: Delivering Place making

5.5 Managing Development Document (2013) (MDD)

- DM3: Delivering Homes
- DM4: Housing Standards and Amenity Space
- DM8: Community Infrastructure
- DM14: Managing Waste

DM20: Supporting a sustainable transport network
DM22: Parking
DM23: Streets and the public realm.
DM24: Place Sensitive Design
DM25: Amenity
DM27: Heritage and the historic environment

5.6 Other Relevant Documents

The Wentworth Street Conservation Area Character Appraisal and Management Guidelines, LBTH (2007)

CONSULTATION RESPONSE

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

5.8 The following were consulted regarding the application:

External Consultees

Thames Water

5.9 Informative comment received

Historic England

5.10 No objection. Responded that the application should be determined in accordance with national and local policy guidance, and on the basis of specialist conservation advice.

Greater London Archaeology Advisory Service (GLAAS)

5.11 No archaeological requirements

Internal Consultees

LBTH Highways and Transportation

5.12 Highways have no objection to the proposed development. Highways require a section 106 'car parking permit' free agreement for this development as it is located in excellent PTAL area (PTAL 6b). Refuse storage is within the maximum distance recommended between storage and collection point; therefore it complies with Council policy. The cycle spaces are not convenient or safe. Location beside refuse storage is inappropriate.

5.13 [Planning Officer comment]: *In response to the above advice, the applicant revised the ground floor layout to ensure bins were enclosed behind doors and separated from cycle spaces. The cycle spaces have also been relocated nearer the front entrance to make them more accessible and safe. This revised layout was considered acceptable by the Highways officer.*

LBTH Environmental Health: Noise and Vibration

- 5.14 The Environmental Health (Noise & Vibration) Officer raised concerns about the stacking of the third floor living/kitchen area above a 2nd floor bedroom in the existing public house building. Robust mitigation measures that go above and beyond current British standards must be applied.

[Planning Officer comment]: *The applicant subsequently revised the layout to prevent incompatible stacking. No further objection.*

LBTH Design and Conservation

- 5.15 *The extensions to the existing building have been designed to reflect the overall architectural character of this attractive late nineteenth century/earlier twentieth century public house. Detailed design will be important and the necessary quality should be secured by condition. The southern flank wall of the public house was evidently not originally visible and it appears that other buildings originally abutted the public house. The proposed new build element will partly conceal this southern flank. I have no objections to the overall scale, form and design of the proposed building but it is essential that robust conditions are attached to ensure the necessary architectural quality.*
- 5.16 [Planning Officer comment]: *This will be secured via a submission of details condition attached to this decision.*

LBTH Energy Efficiency

- 5.17 No objection

Neighbours Representations

- 5.18 A site notice was erected and press notice published. A total of 100 planning notification letters were sent to nearby properties as detailed on the attached site plan. Local community and historical groups were also consulted. Due to changes to the planning application, there were a total of 3 rounds of public consultation. These are detailed as follows:
- 22/12/2014 First consultation.
 - 30/01/2015 Reconsultation due to inconsistencies in the planning application, drawings and Design and Access Statement.
 - 17/04/2015 Reconsultation due to an amended design showing reconfigured layout, revised unit mix to 1-bed apartments, recessed balconies to the front and an enlarged pub smoking area
- 5.19 A total of 382 written objections were received over the course of the 3 consultation periods, which included representations from the current tenant and customers of the Duke of Wellington, local residents and businesses, CAMRA and objections from Rushanara Ali, MP (Bethnal Green and Bow) and GLA Assembly Member John Biggs (and subsequently elected Mayor of Tower Hamlets). Two petitions of 50 signatures were also received.
- 5.20 One letter of support was received from a resident at Carter House, whose bedroom windows directly face the proposed development. The resident stated that the proposal, despite potentially blocking daylight/sunlight, would improve overall their amenity by reducing the noise impact of the existing smoking area.

Main reasons of objection:

5.21 Loss of pub and patio area

[Planning Officer comment]: *The applicant has revised Section 18 of the planning application form, proposed drawings and the Design and Access Statement to demonstrate that there would be no loss of pub. The 'commercial unit' as indicated on drawings is intended to remain as A4 use (drinking establishments). This will also be secured via a condition attached to this decision to prevent any future change of use under permitted development rights. The loss of patio area is discussed within the Material Planning Considerations section of this report.*

5.22 The new building design is out of character with the surrounding area.

[Planning Officer comment]: *LBTH Conservation Officer is satisfied that the applicant has designed the refurbishment of the 19th century building and adjacent construction of the three-storey building to sit comfortably within the Wentworth Street Conservation Area. This is discussed within the Material Planning Considerations section of this report.*

5.23 The revised proposal is for 1 bed flats only and does not accord with Council policy.

[Planning Officer comment]: *This issue is discussed under Material Planning Considerations section of this report.*

5.24 The proposed flats will not be affordable for the community and will remove existing rented accommodation.

5.25 [Planning Officer comment]: *The proposed scheme is below the threshold for providing affordable housing (10 units).*

5.26 The new patio is too small

[Planning Officer comment]: *This issue is discussed under Material Planning Considerations section of this report.*

5.27 The residential quality and amenity of the proposed flats will be poor.

[Planning Officer comment]: *The size, layout and amenity space provision of the proposed flats are policy compliant.*

5.28 The amenity of Carter House residents will be adversely affected

[Planning Officer comment]: *This issue is discussed under the Material Planning Considerations section of this report.*

6.0 MATERIAL PLANNING CONSIDERATIONS

6.1 The main planning issues raised by the application that the committee are advised to consider are:

- Land Use;
- Heritage and Design;

- Standard of Accommodation;
- Neighbour Amenity; and
- Other issues

Land use

- 6.2 In terms of the principle of residential use, delivering new housing is a key priority both locally and nationally. Policy 3.3 of the London Plan seeks to alleviate the current and projected housing shortage in the Capital through the provision of an annual target of 3,910 homes. This is reflected in LBTH Core Strategy policy SP02.
- 6.3 The principle of residential use in the area is already well established with blocks of flats such as Carter House surrounding the site. With a PTAL rating of 6a (designated as 'excellent'), this is an appropriate location for residential development in accordance with the London Plan 2015. The approved planning application ref. PA/11/02305 for 11-31 Toynbee Street opposite the Duke of Wellington delivers ground floor commercial use and residential units on upper floors, such as that submitted.

Loss of public house

- 6.4 MDD Policy DM8 details the Council's approach to Community Infrastructure. Paragraph 8.4 in the supporting text lists public houses as a community facility. The policy states that health, leisure, social and community facilities will be protected where they meet an identified need and the buildings are considered suitable for their use. Furthermore it states that the loss of a facility will only be considered if it can be demonstrated that there is no longer a need for the facility within the local community and the building is no longer suitable or the facility is being adequately re-provided elsewhere in the borough.
- 6.5 The proposal seeks to retain the existing A4 use and keep the public house operational so there will be no loss of pub. However in planning terms, the smoking area or garden could be considered an integral part of the pub, as well as the floorspace lost to the new residential entrance proposed. Concerns raised by some objectors relate to the loss of the pub and its long term viability. Officers have therefore assessed this planning application against Policy DM8, due to the reduction in floorspace of the pub and the reduction in size of its garden/smoking area, which may in turn impact of the viability of the pub performing its community infrastructure function.
- 6.6 As the applicant is providing a replacement smoking area, officers are of the view that there would not be a material loss of community infrastructure in this case. The existing smoking area is a temporary structure and is not an historic feature nor is it considered to be the main attraction or function of the pub. Whilst the proposed smoking area is smaller, it is not wholly diminished. In response to objections, the applicant has increased the proposed size from 11sqm to 20sqm, which given the site constraints, is satisfactory.
- 6.7 An outdoor area is a functional auxiliary space that only acts to supplement the public house facility. Customers can still avail of a reasonably sized outdoor amenity space for smoking and socialising and are therefore not profoundly disadvantaged as a result of the proposal.
- 6.8 The pub is not an Asset of Community Value (ACV), nor is it on the Council's list of pending applications. A recent application for ACV status was refused. The pub is

therefore not currently protected by the relevant provisions of the Localism Act (2011) as amended.

- 6.9 Notwithstanding the above, officers consider that any building on the garden could affect the viability of the premises. It is therefore considered reasonable, in order to retain the pub use and its community infrastructure function, to remove the Permitted Development rights by way of a condition attached to this decision so as to prohibit the conversion of the pub into any other use. This condition is considered to meet the six tests for conditions outlined in Paragraph 206 of the NPPF, which states that conditions must be: necessary; relevant to planning and to the development to be permitted; enforceable; precise; and reasonable in all other aspects.
- 6.10 Applying such a condition is necessary to make the development acceptable in planning terms as it safeguards community infrastructure in line with MDD Policy DM8. It is relevant because 382 objections were received, many of which concerned the potential loss of pub due to it no longer being viable. The condition would be enforced by Council officers. It is precise in its direction not to permit any other use. It is also reasonable considering it is a late 19th century public house in the historic Spitalfields area. Retaining the A4 use is not thought to be an unjustifiable or disproportionate burden on the applicant, considering the spirit of the Localism Act 2011 and the measures to protect public houses.

Heritage and Design

Statutory Duty

- 6.11 The Court of Appeal's decision in *Barnwell Manor Energy Limited v East Northamptonshire District Council* [2014] is of relevance to this application. This clarified that where a decision maker finds that a proposed development would harm the character or appearance of a conservation area, it must give that harm considerable importance and weight and very special public benefits should be required to outweigh that harm

National Planning Policy Framework ("NPPF"),

- 6.12 Section 12 of the NPPF headed "Conserving and enhancing the historic environment" contains guidance in consideration of development proposals and their effect on this historic environment
- 6.13 Paragraph 131 of the NPPF states that in determining planning applications local planning authorities need to take into account:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the positive contribution that conservation of the heritage assets can make to sustainable communities including their economic vitality; and
 - the desirability of new development making a positive contribution to local character and distinctiveness.
- 6.14 Paragraphs 132-135 require local authorities when assessing the effects of development on a heritage asset, to give weight to an asset's conservation in

proportion to its significance. Heritage assets include designated heritage assets such as the Wentworth Street Conservation Area

- 6.15 Paragraph 132 provides that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It emphasises that the weight given should be proportionate to the asset's significance, and that clear and convincing justification will be required for loss and harm to heritage assets.
- 6.16 Paragraphs 133 and 134 address the balancing of harm to designated heritage assets against public benefits. If a balancing exercise is necessary, considerable weight and importance should be applied to the statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) where it arises.
- 6.17 Proposals that would result in substantial harm or total loss of significance should be refused, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss (paragraph 133). The Planning Practice Guidance tells us that the test of whether a proposal causes substantial harm is very high and will often not arise. The Court has ruled in *Bedford BC v Secretary of State for Communities and Local Government* [2013] that such harm is that which would have such a serious impact that its significance was either altogether or very much reduced..
- 6.18 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).
- 6.19 Paragraph 137 requires local planning authorities to treat favourably those proposals that enhance or better reveal the significance of Conservation Areas and the setting of heritage assets.
- 6.20 Paragraph 138 acknowledges that not all aspect of a Conservation Area will necessarily contribute to its significance. This allows some flexibility for sustainable development to take place in or near Conservation Areas, without causing harm to the overall heritage significance.

Strategic and Local Planning Policy

- 6.21 Policy 7.8 of the London Plan seeks to record, maintain and protect the city's heritage assets in order to utilise their potential within the community. It requires that developments which have an effect on heritage assets and their settings conserve their significance, by being sympathetic to their form, scale, materials and architectural details.
- 6.22 Policies DM23 and DM24 of the Managing Development Document seek to ensure that the development is sensitive to the local character and environment and provides for safe, secure and permeable environment. Additionally, DM27 seeks for development to protect and enhance the Borough's heritage assets, their setting and their significant as key elements of developing the sense of place of the borough's distinctive places.

Assessment of Heritage Impacts

- 6.23 The following are considered to be the main heritage issues relating to this planning application:
- the significance of the Wentworth Street Conservation Area;
 - the contribution (if any) the current setting makes to the significance of the Wentworth Street Conservation Area;
 - the effects the proposed development will have on the significance of the Wentworth Street Conservation Area;
 - the scale of any harm caused by the development to the Wentworth Street Conservation Area and are there any public benefits generated to outweigh that harm
 - the acceptability of the proposed development in heritage terms
- 6.24 The Wentworth Street Conservation Area Character Appraisal and Management Guidelines (2007) describes the area's character, broadly dividing it into two character areas – west of Toynbee Street and the area to the east around Commercial Street. According to the Guidelines map, the site can be placed more to the east area, which is characterised by mid to late Victorian commercial buildings of 4-5 storeys along the road, containing shops and warehouses with a variety of well-detailed elements and polychromatic brickwork. Overall, there are offices, small shops, and a large amount of residential accommodation in the area. There is no open space apart from the Petticoat Lane market. The scale of buildings rises from 3-4 storeys in the west to 4-5 storeys in the east. The urban blocks are small with fine grain architecture.
- 6.25 The application site (12-14 Toynbee Street) makes an important contribution to the historic character of the Conservation Area, namely in the form the late 19th century public house building. The Guideline document refers to this period as being critical in the development of the area and the pub is therefore a key architectural and cultural link to the past. The document also refers to there being some gap sites and inappropriate buildings that have a very small impact on the quality of the Conservation Area. It makes reference to 'dead frontages in the area with potential to be brought back into use by small scale business and residential uses' (p13). The Duke of Wellington pub garden occupies such a gap site. Whilst it does not significantly harm the integrity of the Conservation Area, its dead frontage does not make a positive contribution to the area's character. It breaks up the traditional building line and diverts visual attention from the street's historic roots. Its redevelopment would therefore both mend and reinforce the fine grain, 19th century street pattern that the Conservation Area seeks to safeguard.
- 6.26 The proposal involves two elements.
- (j) Three storey infill extension
- 6.27 The extension will be built on the existing smoking area, with a replacement outside amenity space (20 sqm) provided in the northwest corner of the site.
- 6.28 The new apartment building's shape is a simple uniform box design and is proportionate to the existing row of buildings on Toynbee Street and is actually lower than most surrounding buildings, which are up to 4 storeys in height. It is not considered to have an overbearing effect on neighbouring properties or alter the street character or cause harm to the setting of the Wentworth Street Conservation

Area because it is in line with the shape and height of buildings set out in the Wentworth Street Conservation Area Character Appraisal and Management Guidelines outlined in paragraph 6.25.

- 6.29 The proposed materials include a light sandstone cladding with black metal cladding for ground floor façade. Timber strip cladding will interspersed with the front windows and recessed balconies. The roof will be flat parapet. The rear façade will be the same as the front but with glazed, louvered balconies. These have been deemed acceptable for the Conservation Area as they are not in contradiction of the Wentworth Street management guidelines and are not visible from Toynbee Street. The rear 3 balconies will feature 1.8m high opaque directional louvres, which would not be out of character with the modern building design and would not be visible from Toynbee Street.
- 6.30 Similar to the approved mixed-use scheme (ref. PA/11/02305) opposite the site at 11-31 Toynbee Street, the three-storey development would improve the appearance of the street scene by hardening its edges and maintaining a building line that better corresponds to the street's history. Toynbee Street is currently dilapidated in parts and needs repair which is provided by the proposed modern development and refurbishment. The proposal, by juxtaposing a well-proportioned, modern building with the restoration of a Victorian pub would create a more dynamic, 'lived-in' street frontage, providing a greater sense of security for local residents and a more definitive sense of place.
- 6.31 The height and mass of the new building would correspond with the general street character and would actually be low in height comparative to adjacent terraced dwellings which, similar to Carter House, are as high as four storeys –

(ii) Roof extension and alterations to public house

- 6.32 Three new dormer windows are being proposed as part of a new mansard extension on the north-facing upper roof slope. Although highly visible from form street level, this roof extension is considered acceptable as it is subservient to the host building and does not compromise the character of the Victorian era pub. Windows have been designed to be proportionate to those in the existing mansard below, in consultation with the LBTH Conservation Officer. The existing ridge line and mansard feature are being retained.
- 6.33 An existing chimney in the NW corner of the roof is being reduced to second floor level. Whilst this is not ideal, the chimney in question is the least visible and makes little contribution to the overall character of the building. Its reduction in height would not harm the Conservation Area. It is recognised that these works will enable the refurbishment of the upper floors of this building, prolonging the life of the building and providing a long-lasting residential use.
- 6.34 The proposed materials include London stock brickwork as existing, mansard slate as existing, period timber frame windows and doors to match existing. These materials and the proposed roof extension are also considered acceptable for the building and the Conservation Area.

The proposed development has been carefully considered with relation to local and national policy. The proposal generally accords with policy 6.9 of the London Plan and policies DM23, DM24 and DM27 of the Managing Development Document 2013 and the Government guidance in Section 12 of the NPPF.

Standard of Accommodation

- 6.35 London Plan Policy 3.5, LBTH Core Strategy Policy SP02 and Managing Development Document (MDD) Policy DM4 seek to ensure that all new housing is appropriately sized, high-quality and well-designed. Specific standards are provided by the Mayor of London Housing Supplementary Planning Guidance.
- 6.36 The proposal is for 4 x 1 bed units and 1 x studio apartment. Although this is not fully in accordance with MDD Policy DM4, the site is considerably constrained and in this instance, the Council support the current layout and room configuration as proposed. Family accommodation is considered to be less compatible with a pub use than smaller units. The constraints of converting the existing upper floors of the existing pub building and integrating with the new block is such that the design layout lends itself to smaller dwellings.
- 6.37 The 1 bed units are in excess of 50sqm and the studio unit exceeds 37sqm, thus meeting the minimum space standards as set out in the London Housing Design Guidance, Policy DM4 of the MDD (2013) and the National Space Standards set out in the NPPG. The proposal also offers the correct private amenity spaces for each unit, except the studio which is not required to have outdoor space provision. All units meet the minimum standards required (5sqm private balcony and 1500mm minimum width) and are therefore policy compliant. Floor to ceiling heights are at least 2.5m.
- 6.38 The daylight amenity for each habitable space has been assessed using the Average Daylight Factor (ADF) following the methodology of the British Research Establishment (BRE) guidance. Officers agree with the findings of the submitted report, which concludes that internal daylighting is in line with this guidance.
- 6.39 In terms of outlook of the proposed flats, the distance from the east facing windows to Carter House is approximately 9m. However the affected units in both the proposed development and Carter House are dual aspect, hence on balance, the outlook from these units is considered acceptable.
- 6.40 The proposed standard of accommodation is therefore considered to be acceptable and in line with London Plan policy 3.5, Policy SP02 of the Core Strategy and policy DM4 of the Managing Development Document 2013.

Neighbour Amenity

Loss of daylight/sunlight

- 6.41 Whilst the daylight levels would remain unchanged, the ground, 1st and 2nd floor residential apartments at Carter House (2 no. windows per unit) would suffer a minor loss of morning sunlight as these bedroom windows face eastwards and the proposed new building would remove light to the apartments on these three floors. However, in the applicant's daylight/sunlight report, it is noted that these rooms are dual aspect and so the loss of daylight/sunlight to Carter House would not be an unacceptable loss.
- 6.42 Vertical Sky Component (VSC) is the calculation most readily adopted in daylight assessment of existing properties, as the principles of calculation can be established by relating the location of any particular window to the existing and proposed, built environment. DM25 of the MDD and SP10 of the CS seek to ensure

that existing and potential neighbouring dwellings are safeguarded from an unacceptable material deterioration of sunlight and daylight conditions. For calculating daylight to neighbouring properties, affected by a proposed development, the 2011 BRE guidance emphasises the VSC assessment as the primary method of assessment.

- 6.43 The VSC is a quantified measurement of the amount of skylight falling on a vertical wall or window. The BRE handbook suggests a window should retain at least 27% VSC or retain at least 80% of the pre-development VSC value.
- 6.44 The VSC for each bedroom window is between 21% and 36% with minimal change from existing conditions, thereby meeting BRE standards.
- 6.45 A mosque building/community centre is situated immediately to the south of the site. As there are no windows on the building's northern elevation, there would be no impact on its daylight/sunlight intake.

Overlooking

- 6.46 The distance between the proposed units and Carter House is well below the 18m minimum that the MDD policy DM25 seeks (approximately 9m). However, the Council recognises that this is an infill development within the Central Activities Zone. The 18m minimum distance is guidance only, which needs to be balanced against the other merits of the application. The affected windows at Carter House are secondary bedroom windows, and the windows in question to the proposed development are high level (ie, designed to avoid direct overlooking). The applicant revised the rear elevation design to provide greater mitigation against the mutual overlooking of Carter House residents and future occupants of the proposed development. Two balconies were also reconfigured to the front of the development, thereby limiting the impact on privacy to Carter House. The three balconies that remain at the rear will feature translucent glass louvres, which are directional and will limit overlooking, thereby protecting the privacy of residents. These will be at a height of 1.8m.

Noise

- 6.47 The residents of this area are already subject to noise emitting from the outdoor seating area. The proposed building is likely to lessen this impact by reducing the size of the current area and limiting the amount of customers that can be there at any one time. There will be new noise impacts arising from this development as the proposed apartments will also be subject to noise from the amenity area. However, the apartments will be constructed to entertainment venue standards and will be insulated above and beyond the insulation standards for apartment buildings. This sound-proofing will be secured through a pre-commencement condition attached to this decision. It should also be noted that the proposed development is located within Spitalfields, an area of central London that is subject to an intense mix of land uses, with noise from such pub smoking areas not being uncommon.
- 6.48 The applicant provided a noise impact assessment report, which concluded that conventional noise insulation can be provided as part of construction works.
- 6.49 An appropriate condition will be attached to this decision to limit the use of the garden to ensure it closes at 10pm and no outdoor amplified music will be permitted at any time, further reducing any potential noise impact.

Other Issues

Highways

- 6.50 The proposed development is car-free (secured via a condition attached to the decision notice) and involves the creation of a new pedestrian entrance at the front. Cycle parking (4 no. spaces) have been provided in the plans and, following a revised layout to ensure separation from waste storage, are accessible, secure and convenient to use, in accordance with MDD Policy DM22. Access to the flats will be from Toynbee Street and an outdoor corridor/steps will lead to each flat entrance.

Refuse

- 6.51 Refuse is proposed to be stored in the front utility area of the main access, where it is collected from Toynbee Street. The applicant has provided adequate separation between the bin and cycle storage.

7 Human Rights Considerations

- 7.1 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:-

- 7.2 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 Conventions rights are likely to relevant including:

- Entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the 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's interest (Convention Article 8); and
- Peaceful enjoyment of possession (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 competing interests of the individual and of the community as a whole"

- 7.3 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.

- 7.4 Members need to satisfy themselves that the measures which are proposed to be taken to minimise, inter alia, the adverse effects of noise, construction and general

disturbance are acceptable and that any potential interference with Article 8 rights will be legitimate and justified.

- 7.5 Both public and private interests are to be taken into account in the exercise of the Council's planning authority's power and duties. Any interference with a Convention right must be necessary and proportionate.
- 7.6 Members must, therefore, carefully consider the balance to be struck between individual rights and the wider public interest.
- 7.7 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.
- 7.8 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.

8 Equalities

- 8.1 When deciding whether or not to proceed with the project, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector duty). Some form of equality analysis will be required which is proportionate to proposed projects and their potential impacts.
- 8.2 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.
- 8.3 With regard to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation there are no identified equality considerations.

9 Local Finance Considerations

- 9.1 This application is subject to the Borough's Community Infrastructure Levy (CIL), which came in to force for applications determined from 1st April 2015. This is a standard charge, based on the net new floorspace of the proposed development, the level of which is set in accordance with the Council's adopted CIL charging schedule.
- 9.2 The estimated Borough CIL contribution for this development is **£54,000.00**. This is payable on commencement of the development, and the amount will be confirmed at that stage by the LBTH Infrastructure Planning Team.
- 9.3 The LBTH Borough CIL secures infrastructure contributions from development and can be spent by the Council on those infrastructure types set out in the Council's Regulation 123 list.

- 9.4 Members are reminded that the London Mayoral CIL will be payable on this scheme. The likely CIL payment associated with this development would be **£9,450.00**

10 Conclusion

- 10.1 On balance, the proposed development is acceptable and complies with policy. The proposal is not without its shortcomings in terms of layout but the applicant has addressed these as much as it is possible on a site of this size. The conditions attached to this decision seek to rectify these issues.
- 10.2 There will be no loss of pub and the provision of outdoor pub amenity space is reasonable and in accordance with MDD Policy DM8.
- 10.3 The bulk and scale are in keeping with surrounding buildings (many of the terraced properties are at least 4 storeys in height) and do not harm the integrity or the setting of the Wentworth Street Conservation Area.
- 10.4 The proposed mix of units, layout and the allocated private amenity space are deemed to be appropriate and in accordance with the London Plan 2011 and London Housing Design Guide, LBTH Core Strategy and MDD Policies DM01, DM03, DM08, DM22, DM24, DM25 and DM27.
- 10.5 Taking into consideration the following: Central Activities Zone location; the current housing shortage in the borough; recent historic evidence of dilapidation/vacant sites in the area; recently approved planning application ref PA/11/02305; and the need to safeguard the 19th century public house building from decay, any impacts on neighbouring properties and residents are not considered significant enough to warrant a refusal in this case.
- 10.6 Although there would be some minor loss of daylight/sunlight to residents of Carter House, the proposal would not appear incongruous or overbearing, relative to the surrounding buildings. There is already a degree of overshadowing and mutual overlooking of residences as building heights vary widely. By infilling a gap in the existing building line, the proposal would visually enhance the street scene and improve public safety. It would also ensure more intensified mixed use activity at this location in accordance with LBTH Core Strategy SP03 and MDD Policy DM25
- 10.7 All other relevant policies and considerations have been taken into account. Planning permission should be **approved** for the reasons set out in RECOMMENDATION section of this report.