

Committee: Development Committee	Date: 6 th August 2015	Classification: Unrestricted	Agenda Item No:
Report of: Corporate Director of Development & 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

2.0 BACKGROUND

- 2.1 This application was reported to the Development Committee on the 8th July 2015, with an Officers recommendation to **GRANT** planning permission.
- 2.2 The committee resolved not to accept officer recommendation due to concerns that related to harm to the setting of the public house; the loss of the pub garden; the effect of the development on the character and appearance of the Conservation Area, the effect on the future viability of the pub and noise impacts on neighbours.
- 2.3 In accordance with Development Procedural Rules, the application was **DEFERRED** to the next committee to enable officers to prepare a deferral report to provide wording for reasons for refusal and providing commentary on the detailed reasons for refusal on the application.

3.0 THE COMMITTEE'S PROPOSED REASONS FOR REFUSAL

- 3.1 The Committee were minded to refuse the applications on the following grounds:
- Harm to the setting of the pub and the failure to preserve or enhance the character and appearance of the Wentworth Street Conservation Area
 - Effect on future viability of the Duke of Wellington pub
 - Neighbour amenity (noise)

Harm to the setting of the pub and the Wentworth Street Conservation Area

- 3.2 In their report to Committee Members, officers considered that there would not be substantial harm to the Conservation Area.

- 3.3 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.
- 3.4 Section 12 Paragraphs 133 and 134 of the NPPF 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.
- 3.5 In the officer's report to Committee Members, in terms of the proposals impact on local heritage assets, it was considered that the proposal enhanced and preserved the setting of the Conservation Area, and did not harm the setting of nearby listed buildings and the historic integrity of the pub building. It was considered that there was no requirement to weigh the public benefits of the proposal against potential harm.
- 3.6 If it is the case that the proposal would cause significant harm to the Conservation Area, then the public benefits of this proposal include the fact that the pub's historic features would remain in situ and the building being renovated, extended and preserved to a high standard for continued public house use. In addition, 5 additional new homes would be provided, helping to meet the borough's need for new homes.
- 3.7 Members have given more weight to the harm caused by the 3 storey extension and the impact of this on the character of the area than the alterations to the pub building. The borough's Conservation Officer's opinion is that the design is appropriate, and the proposal broadly accords with the Wentworth Street Conservation Area appraisal guidance in part due to its sensitive height and scale. It is however acknowledged that it is appropriate to consider the existing Duke of Wellington Public House as a non-designated heritage asset that provides a positive contribution to Wentworth Street Conservation Area.
- 3.8 Conversely, Members considered that there was no attempt to reference the vernacular design of the pub building in the extension building and that its modern shape and materials would be out of character. Members of the Committee also disagreed with officers that the pub garden represented a "gap site" as referenced in the Conservation Area Character Appraisal and instead considered that the pub garden was an important part of the main use of the site and that the loss of the garden through re-development would harm the setting of the pub, being a non-designated heritage asset within the Conservation Area. The development would cause harm to the character and appearance of the Conservation Area which is contrary to local plan policies DM23, DM24 and DM27 and the provisions of the NPPF set out above. As such the draft wording for this reason for refusal is outlined under Recommendation.

Effect on the future viability of the Duke of Wellington pub

- 3.9 In the previous officers' report it outlined that the reduction in the size of the pub garden could potentially be detrimental to the future viability of the pub. When the existing pub garden and internal floor space of the pub (which equates to 184sqm in total) are taken into account, overall there is a net loss of 26sqm. To protect the continued A4 pub use, officers recommended the removal of Permitted Development (PD) rights so as to prevent the change to any other use without the planning authority first receiving a planning application.
- 3.10 Officer's took a view in this case that removing permitted development rights that allow changes of use to other Class A uses without planning permission, there would be a much stronger likelihood of the building continuing to function as a public house in accordance with the aims of the Council's MDD Policy DM8 Community Infrastructure. There is no conclusive evidence that the reduction in the size pub garden space will make the pub unviable. However many objectors have suggested that this is the main attraction of the pub given the lack of alternative pub gardens in this area. The extent that the proposal will render the continued use as a public house unviable is a matter of fact and degree and anecdotal evidence. It should be noted that the internal floor space of the pub will increase as a result of the proposed development, although there is no information to show how the extended Class A4 floor space would be laid out.
- 3.11 However, Members did not consider the removal of Permitted Development rights to be a sufficient measure to protect the pub's viability, despite being reminded that this was always difficult to guarantee in planning terms.
- 3.12 In the absence of any viability evidence, this proposed reason for refusal could be difficult to sustain if the applicant were minded to exercise their rights to an appeal. There are also no Development Plan policies or supplementary guidance that set a minimum size for pub gardens to make the pub viable. Nevertheless, the draft wording for this reason for refusal is outlined under Recommendation.

Detrimental impact on neighbour amenity

- 3.13 In the previous officers' report it was outlined how the minor impacts on the amenity of Carter House residents and future residents at 12-14 Toynbee Street would be mitigated. This includes reducing overlooking by providing directional louvres for the proposed rear balconies and setting rear windows at a high level. Noise impacts would be mitigated by the Council recommending a compliance condition (pub garden must be vacated nightly by 10pm) and a pre-commencement condition requiring the submission of sound proofing details for approval by the planning authority.
- 3.14 However, despite reasonable measures outlined above and the site's location in the Central Activities Zone (CAZ), Members still considered that it would be unreasonable for future occupiers of the proposed units to be subject to noise from a pub and garden. The Committee was also concerned that the increase in internal space coupled with a reduction in external garden space would result in

overspill of pub customers onto the adjoining pavements. Whilst other regulatory regimes (i.e. licensing) would be able to control extent of outdoor drinking permitted, the planning system has an important role in considering amenity impacts. It would be reasonable to conclude that the significant reduction in the size of outdoor space at a popular and well patronised public house would inevitably result in some customers congregating outside in the adjoining streets thereby dispersing noise and disturbance more widely than at present. Hence, a suitably worded reason for refusal is listed below.

- 3.15 Whilst officers do not wish to change their original recommendation, the views of the Committee and the comments from the objectors to the application are important material considerations.

Implications of a decision to refuse planning permission

- 3.16 In the event that the Committee resolves to refuse the application, the following options could be exercised by the applicant.
- 3.17 The applicant could approach the Council for further pre-application advice on an amended proposal and thereafter submit a new application that deals with the reason for refusal.
- 3.18 The applicant could exercise their right to appeal to the Secretary of State against the Council's decisions. The appeals would be determined by an independent inspector appointed by the Secretary of State. Section 3 of this report sets out the officer assessment of the likelihood of success in defending the reason for refusal. However if the Committee do resolve that the application for planning permission should be refused officers will seek to robustly defend the Council's position.

4.0 RECOMMENDATION

- 4.1 Officers' original recommendation as set out in the officers' report for Development Committee on 8th July 2015 to grant planning permission for the proposal remains unchanged.
- 4.2 However, if Members are minded to refuse planning permission for this scheme, then officers would recommend the following reasons for refusal:

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1. The proposed development would cause harm to the Wentworth Street Conservation Area. The design and appearance of the proposed modern extension would be out of character with the local area and would cause harm to the character and appearance of the Wentworth Street Conservation Area and combined with the loss of the pub garden would harm the setting of other local heritage assets, including the Duke of Wellington Public House itself. This harm is not outweighed by the public benefits of the scheme and

therefore the proposed development fails to comply with policies DM24 and DM27 of the Managing Development Document (2013), SP10 of the Core Strategy (2010), policies 7.4 and 7.8 of the London Plan (Consolidated with Alterations since 2015), the National Planning Policy Framework (2012) and National Planning Policy Guidance.

2. The proposed development would result in the loss of existing outdoor space that would undermine the future viability and vitality of the existing Duke of Wellington pub (12-14 Toynbee Street) and thereby fail to protect its function as community infrastructure. As such, the proposal would be contrary to policy SP01 of the adopted Core Strategy (2010) and policies DM2 and DM8 of the Managing Development Document (2013), Policy 3.1(b) of the London Plan 2015, National Planning Policy Framework (2012) and the National Planning Policy Guidance.
3. The proposed development would be detrimental to the amenity of new residents of the proposed development due to the potential for fumes and excessive noise resulting from the close proximity of the proposed residential accommodation and the proposed smoking area and public house use and would result in increased noise and disturbance to the occupiers of existing residential properties. Therefore the proposal would be contrary to policy DM25 of the Managing Development Document (2013), the London Plan 2015 National Planning Policy Framework (2012) and the National Planning Policy Guidance.