



## DEVELOPMENT COMMITTEE

12/07/2022

Report of the Corporate Director of Place

Classification: Unrestricted

### Application for Planning Permission

[click here for case file](#)

<b>Reference</b>	PA/19/02404 & PA/21/01396
<b>Site</b>	106 Commercial Street, London, E1 6LZ
<b>Ward</b>	Spitalfields & Banglatown
<b>Proposal</b>	<p>Full planning application (PA/19/02404) and listed building consent (PA/21/01396) for:</p> <ul style="list-style-type: none"><li>• The provision of 1,900sqm (Gross external area) of A3 floor space.</li><li>• Retention of existing slate roof.</li><li>• External alterations comprising the installation of roof plant and atrium changes, elevational changes (including dormer extension).</li><li>• Internal changes including creation of dining and kitchen areas, pedestrian access and fire escape routes, new waste storage and cycle parking facilities, new accesses (including accessible lifts) to the floor levels and WCs.</li><li>• Other minor internal changes.</li></ul>
<b>Summary Recommendation</b>	<ol style="list-style-type: none"><li>1. Grant full planning permission subject to relevant conditions and a S106 agreement</li><li>2. Grant listed building consent</li></ol>
<b>Applicant</b>	Time Out Market Ltd
<b>Architect/agent</b>	ISA Ltd
<b>Case Officer</b>	Tanveer Rahman
<b>Key dates</b>	PA/19/02404 validated 02/12.2019 & PA/21/01396 validated 18/06/2021

## EXECUTIVE SUMMARY

The Local Planning Authority (LPA) has considered this application against the Development Plan, the National Planning Policy Framework 2021 (NPPF) and other relevant material considerations

The proposal involves change of use of the existing building (B1/B8 use) to create a permanent fine dining food market (A3 use), incorporating 12 permanent kitchens and 2 ancillary bars. It is proposed to seat 360 people with an expected capacity of 500 (including 90 staff). The main pedestrian access would be from the existing entrance on Commercial Street.

The proposal is considered acceptable in terms of: land use, neighbouring amenity, transport & servicing, waste & recycling, human rights & equalities and infrastructure impacts.

The scheme addresses and is considered to overcome a 2018 appeal decision (APP/E5900/W/17/3188112) for a similar food market at the site which was dismissed for the following two reasons:

1. Removal of slate roof tiles causing less than substantial harm to the Conservation Area with insufficient public benefits to outweigh this harm; and
2. The location of the accessible toilet on the second floor having adverse impacts on those with protected characteristics under the PSED.

It should be noted that the 2018 appeal decision accepted the principle of the land use as previously proposed and this has not changed in terms of the current submission. Suitable planning conditions would be introduced to ensure the land use is maintained as a fine dining food market (A3 use) with the bars serving an ancillary use to the food market and not operate as an independent bar or public house. In addition, the 2018 appeal decision also dismissed concerns regarding neighbouring amenity, including any impacts beyond the red line boundary (i.e. on surrounding neighbouring streets)

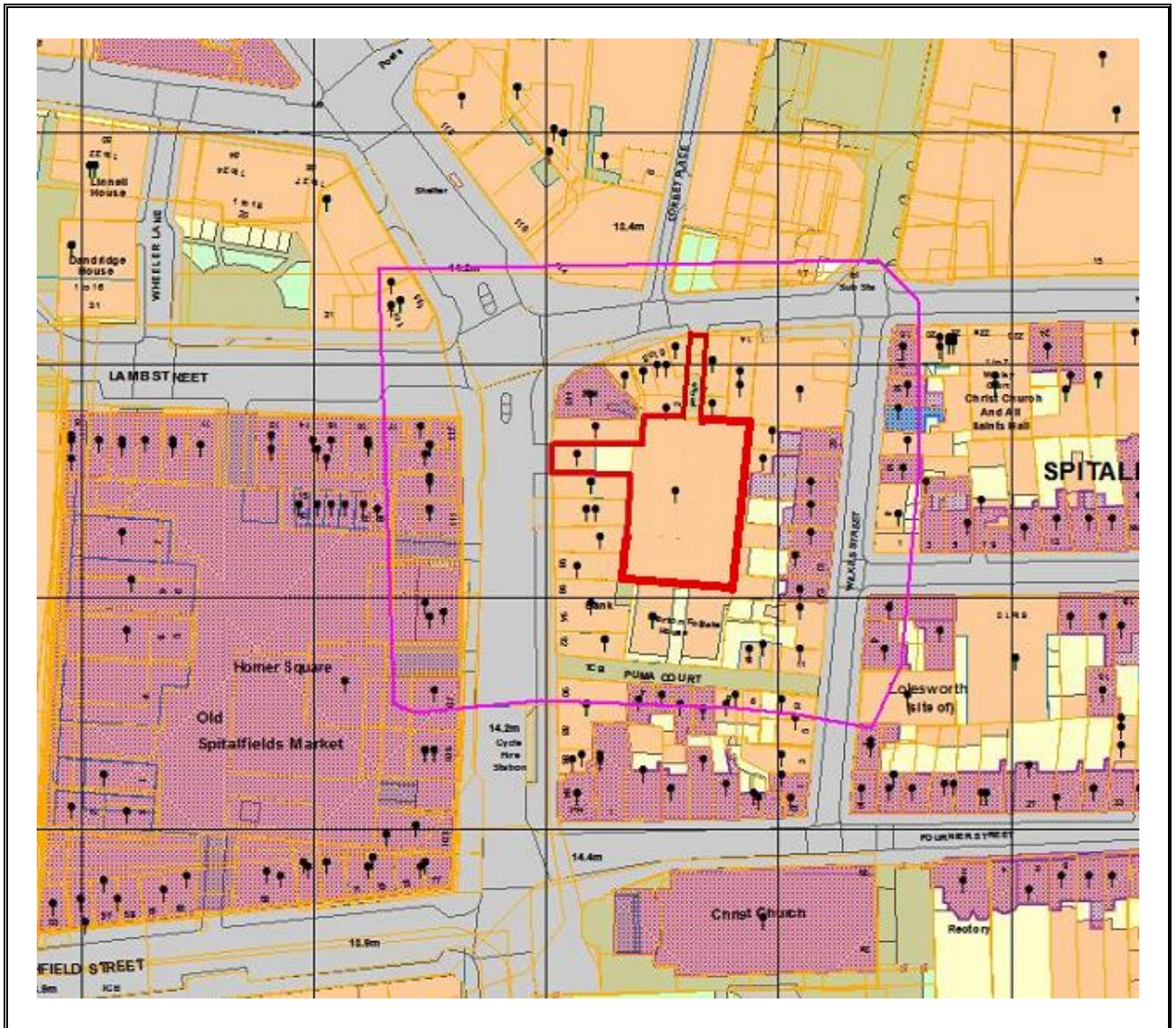
The building was Grade II listed in June 2020 and the current proposal is considered to cause 'less than substantial harm' to the building. However, as required by the NPPF, this is considered to be outweighed by the public benefits of the scheme which include:

- Securing a future long-term viable purpose for the building to ensure its maintenance and upkeep.
- An uplift in employment (circa. 200 jobs overall) and its wider role in supporting the local economy when operational.
- A more public use of the building's interior allowing more people to appreciate its heritage significance when operational, as well as benefits to local residents and the local economy during the construction process.








It is appreciated that a large number of residents have expressed concerns about the anti-social behaviour levels within the surrounding area and the perception of potential for an increase in these behaviours as a result of the proposal, as well as noise and general movement disturbance impacts. However, it is considered that that subject to conditions, the impact upon local residents can be suitably mitigated. It is also noted that a Licencing application would be required which falls outside of planning control, and that this would carefully assess some of the issues raised, including the sale of alcohol.

Overall, the development is considered to comply with relevant Development Plan policies and approval is recommended.

# SITE PLAN



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<ul style="list-style-type: none"> <li> Planning Application Site Boundary</li> <li> Other Planning Applications</li> <li> Consultation Area</li> <li> Land Parcel Address Point</li> <li> Locally Listed Buildings</li> <li> Statutory Listed Buildings</li> </ul>	<h2>Planning Applications Site Map PA/19/02404</h2> <p>This site map displays the Planning Application Site Boundary and the extent of the area within which neighbouring occupiers / owners were consulted as part of the Planning Application Process</p>	 <p><b>TOWER HAMLETS</b> London Borough of Tower Hamlets</p>
	<p>Scale: 50m grid squares</p>	<p>Date: 04 July 2022</p>



# 1 SITE AND SURROUNDINGS

- 1.1 106 Commercial Street is an approximately 0.095ha site which is bounded by: 108 Commercial Street to the west and north, 98 - 104 Commercial Street to the west and south, 96 Commercial Street to the south, Norton Folgate Almshouses on Puma Court to the south, 13 - 25 Wilkes Street to the east and 1-2 Pecks Yard/ 4 - 12 Hanbury Street and 14 - 16 Hanbury Street to the north. The main body of the application site is unusual in as much as it does not front directly onto any of the surrounding streets (apart from its western entrance), namely Commercial Street, Puma Court, Wilkes Street and Hanbury Street.

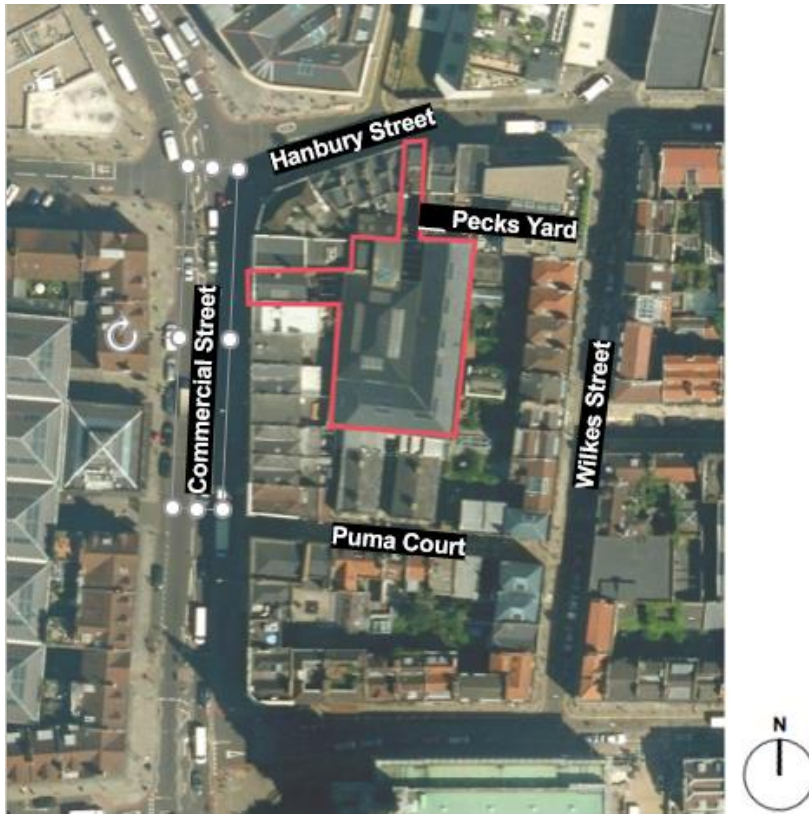


Figure 1: Aerial view of the site

- 1.2 The site is essentially made up of a single building which had office/storage (B1/B8) as its lawful uses, although it is noted that a number of temporary events have taken place within it, this has included a clothes market and the most recent being an exhibition. The host building was originally built in the 19<sup>th</sup> Century as a Horse and Carriage Repository. Alterations were made to the frontage building and courtyard roof in the 20<sup>th</sup> century. Renovation and alterations were also made around 2012 - 2013.
- 1.3 The site's main access is from Commercial Street to west and runs between 104 and 108 Commercial Street and under an existing flat 106a Commercial Street. The site has access from Hanbury Street to the north via rights of access/egress through Pecks Yard. It also has rights of egress through Norton Folgate Almshouses' amenity area onto Puma Court.
- 1.4 The existing host building is mainly three storeys with a basement. The basement consists of an L-shaped element with ramp access up to the ground floor; as well as a smaller square shaped element to the west. The ground floor contains two voids and a ramp up to the first floor. The first and second floors are roughly L-shaped.
- 1.5 The main Commercial Street entrance consists of a two-storey metal hipped roof element (with a roof light). The rest of the building is entirely three storeys and consists of an L-

shaped slate roof hipped element (with seven roof lights), a rectangular metal hipped roof element (with four roof lights), a flat roof (with a roof light), a mono-pitch and a flat roof.

- 1.6 Adjacent neighbouring properties along Commercial Street to the west are three storeys, with some containing roof accommodation. Norton Folgate Almshouses to the south consists of 2 x two-storey blocks. The majority of adjacent neighbouring properties along Hanbury Street to the north are three storeys, with 14 - 16 Hanbury Street being four storeys. 13 - 25 Wilkes Street to the east are four storeys with roof accommodation.



Figure 2: Birdseye view of the site looking eastwards



Figure 3: Interior view from first floor looking northwards





**Figure 4: Interior view from ground floor looking towards the south east corner**

- 1.7 The host building was given a Grade II listing designation on June 25<sup>th</sup> 2020. There are also a number of statutory listed buildings close to the site, with the closest being: the Grade II listed Golden Heart public house at 110 Commercial to the north, Grade II listed 13 - 25 Wilkes Street to the east and Grade II listed 4 - 7 Puma Court to the south. Other nearby statutory listed buildings of note include: the Grade II Old Spitalfields Market to the west which is just under 20m at its closest point and Grade I listed Christ Church (including gate piers and gates to vergers yard) to the south which is just over 60m at its closest point.
- 1.8 The nearest listed locally listed building is 14 Wilkes Street to the east which is approximately 30m at its closest point.
- 1.9 The site is in the Brick Lane & Fournier Street Conservation Area (CA). The Elder Street CA is to the north west, approximately 70m at its closest point. The site is also in the Spitalfields & Brick Lane Tier 2 Archaeological Priority Area. The site is located in the identified Central Area Character Area of the draft Spitalfields Neighbourhood Plan.
- 1.10 The site is in the Borough City Fringe Activity Area (that the Local Plan sets out serves as an area in the town centre hierarchy of transition between the scale, activity and character of the Central Activities Zone (CAZ) and surrounding areas). The site also in the Mayor of London's City Fringe Opportunity Area (Core Growth Area). The site itself is not located in the Brick Lane District Centre. However, this town centre (which includes designated Primary and Secondary Shopping Frontages) is in close proximity to the north and east of the site. The opposite side of Commercial Street to the west is in the CAZ and includes Old Spitalfields Market and the newer Spitalfields Market extension.

1.1 A cycle hire dock is located approximately 65m south of the site on Commercial Street and Hanbury Street is on the London Cycle Network. There is a bus stop approximately 60m north of the site on Commercial Street for buses heading south and a bus stop approximately 140m south of the site on Commercial Street for buses heading north. Liverpool Street station is approximately 0.5km to the south west and Aldgate East station is approximately 0.55km to the south. Commercial Street is on the TLRN (Transport for London Route Network).

## 2. PROPOSAL

2.1 The application proposes a change of use of the host building from office/storage (B1/B8) to a fine dining food market (A3). Internal and external changes are proposed in order to facilitate this.

2.2 The basement is proposed to contain: a private dining and function room, public WCs, a dishwashing area, staff cycle parking, staff WCs and changing area and back of house (BOH) stores. The ground floor is proposed to contain: the entrance lobby, visitor cycle parking, a bar counter for serving drinks, a dessert/bakery kitchen, flexible dining space, a new stair with integrated bleacher seating and public toilets. The first floor is proposed to contain: four signature chef areas alongside a pizza servery, a sushi counter, three dining areas, a comms room, two refuge areas and a back of house (BOH) staff area. The second floor is proposed to contain: five kitchens, a dining space/ lounge seating area, a private dining and function room, an air handling unit (AHU) filter plant room, two refuge areas and a store

2.3 The scheme would involve the addition of ten internal staircases and removal of three existing staircases. The introduction of the new staircases is to ensure adequate and safe circulation around the building. With regard to inclusive design, ramped access would be provided via the Commercial Street entrance into the main ground floor space, a new lift would be installed from the basement area to second floor level and ramped access provided at ground floor level next to the proposed lift.

2.4 A number of existing built elements would be demolished/removed as a result of the proposed internal works. A number of these would be modern additions as opposed to original features. At basement level it would include: two staircases to ground level, areas of wall and WCs. At ground level it would include: breaking up of an entrance slab and excavation for a new basement substation, a modern partition wall under stairs to flat at no.106A, areas of wall, modern wood flooring, modern wood steps and platform, modern metal stairs to second floor level and WCs. At first floor level it would include: stairs up to second floor level, existing internal windows, walls, modern timber columns, a modern timber platform, lightweight timber staircase up to second floor level, a modern steel beam and area of floor for a new escape stair. At second floor level this would involve removing an area of floor for the new escape stair

2.5 The scheme would contain twelve kitchen and two bars serving the restaurant venue as a whole. It is proposed to seat 360 people with an expected capacity of 500 (including 90 staff). The drawings show details of 236 seats serving the separate places to eat and their respective kitchens which would be in areas of seating at: ground, first and second floor level; as well as 94 further seats contained in: the basement private dining area and function room, ground floor bleacher (bench) seating, a second floor private dining area and function room and second floor lounge seating.



Figure 5: Illustrative proposed ground floor visualisation looking south



Figure 6: Illustrative proposed ground floor visualisation looking north





**Figure 7: Illustrative proposed second floor visualisation looking east with signature chef areas in the background and bar in the foreground**

2.6 The following works are proposed to the main roof: replacement of existing roof lights with double-glazed roof lights (including a smoke vent automatic opening vent (AOV)) in the main roof for acoustic and thermal performance, maintain the existing slate roof structure with insulation packed between rafters to achieve acoustic and thermal requirements, installation of extract ducts and condensers with aluminium louvres around them, new insulated flat roof for the plant area, erection of a zinc clad dormer in the south west corner, installation of a fall arrest system around the roof to provide safe access to gutters and roof lights for maintenance, ladder bearing points added to the roof ridge and gutters, access route along gutter and roof ladder storage area. The following works are proposed to the two-storey element of the Commercial Road entrance roof: replacement of existing roof lights with double-glazed roof lights with actuated internal blinds and installation of a new insulated profile metal deck to match the existing structure.



**Figure 8: Proposed roof plan**

- 2.7 The following works are proposed to the west elevation: new ground floor entrance doors, louvers inserted at second floor level to allow natural air supply, new zinc dormer and corrugated metal cladding replaced with black sheet metal cladding. The following works are proposed to north elevation: new double - glazed window to replace existing, corrugated metal cladding replaced with charcoal grey acrylic render and new metal roller shutter to match existing installed. In the east elevation existing first floor windows are proposed to be overhauled and temporarily infilled internally.

### **3 RELEVANT PLANNING HISTORY**

#### ***Application site (106 Commercial Street)***

- 3.1 **PA/16/03535:** Conversion of building (class A1/B8) to fine dining food market (Class A3). Refused 16.06.2017 and Appeal (APP/E5900/W/17/3188112) dismissed 10.08.2018 on two grounds – 1. Removal of the slate roof would cause less than substantial harm to the Conservation Area with insufficient public benefits to outweigh this harm; 2. Location of the accessible toilet on the second floor would have adverse impacts on those with Protected Characteristics under the PSED.
- 3.2 **PA/13/00859:** Change of use of ground and first floor levels from warehouse (Use Class B8) to retail (Use Class A1). Granted 31.05.2013
- 3.3 **PA/81/00110:** Extension at first floor level for use for storage purposes. Granted 15.01.1982
- 3.4 **PA/80/00093:** Change of use to offices. Granted 22.07.1980
- 3.5 **PA/67/00066:** Use of top floor at the rear part for manufacturer of coat hangers. Granted 15.09.1967

#### ***106 Commercial Street & 14 Hanbury Street***

- 3.6 **PA/15/00403:** Change of use of the rear ground floor of 14 Hanbury Street from 'unknown' to B1 (office) and of the basement, lower ground, ground, upper ground and first floor levels at 106 Commercial Street from A1 (retail) and B8 (warehouse) to B1a (office). Granted 16.12.2015

#### ***106 Commercial Street & 16 Hanbury Street***

- 3.7 **PA/15/00597:** Glazing and entrance alterations to 106 commercial street and 16 Hanbury street. Minor demolition is proposed for the removal of the corrugated facade to Pecks Yard and to form new openings at roof level for the creation of additional skylights. Granted 05.06.2015

#### ***Norton Folgate Almshouses***

- 3.8 **PA/11/03293:** Forming of new door opening in the boundary wall of 106 Commercial Street Erection of boiler enclosure to rear yard and installation of boiler flue. Granted 08.12.2011
- 3.9 **PA/09/00379:** Renovation of existing two storey almshouses including construction of two storey additions to rear. Granted 05.05.2009

## 4 PUBLICITY AND ENGAGEMENT

4.1 Public consultation in relation to the full planning application and listed building consent included issuing of 287 neighbour notification letters to neighbouring properties, as per the site plan at the beginning of this report.

4.2 A press notice was published on July 22<sup>nd</sup> 2021 and two site notices was displayed next to the site on July 27<sup>th</sup> 2021.

4.3 Taking the full planning application and the listed building consent together, 62 letters of objection were received (including letters on behalf of Spitalfields Market Residents' Association, Arcadia Court Residents and Folgate Almshouses Charity) from 70 individuals, and 1 of which had no address; 27 letters of support were received of which 11 were provided without an address. The comments received that are material planning considerations can be summarised as follows:

### 4.4 Letters in support

- The proposal would provide much needed jobs and investment to an unused space. This would also benefit other local businesses.
- It is a suitable location for fine dining restaurant and will make better use of the site
- The two reasons for refusal have been overcome relating to disabled toilets and retaining the slate roof
- Will provide a hub and enhance the local area, add vibrancy and be a venue of choice for workers, tourists and public
- Scheme provides a welcome greater diversity of food offerings locally and help attract new visitors and trade into the area more generally.
- Will add to the night-time economy and cultural offer
- Visitors will be able to appreciate the historic space and open up the site to the public

### 4.5 Letters in objection

#### *Land use*

- The proposal is overdevelopment. The area does not need another food offer of this size. It is not appropriate in a residential area
- It would not be a fine dining experience as claimed.
- Developing the site into office space would have no neighbour impacts, would enhance the area.
- The site should be retained for retail or stables
- It would create an imbalance between residential, cultural, office and food/drink uses in the area; contrary to the Neighbourhood Plan.
- If permission is granted then a condition should be attached to stop it from being used as a public house and the sale of alcohol without a substantial sale of food.

#### *Heritage, design and character*

- The proposal is too bland and corporate and not in keeping with vibrant and creative Spitalfields.
- There is limited information on the impact to the building's historic fabric.
- Removal of the historic ramp would destroy the character and history which is not found in any other London building.
- The internal glazing and office add to the industrial character of the building and should be retained for heritage and noise insulation purposes.



- Unsightly views should not be introduced to the CA and Spitalfields generally which in turn would make the area less attractive
- The rooftop plant would be visible from upper floor properties within the CA

#### *Noise*

- Given the site's old walls it will not be possible to insulate neighbouring homes from noise generated by visitors and amplified music and will include late night noise.
- Noise from bars and event inside buildings set further away on Ely's Yard are already a problem and the proposal would add to noise from Old Spitalfields Market and The Grocer.
- Plant, extractors, rubbish contractors and glass crushers should not be audible to neighbouring dwellings when new or over time
- At the request of resident local businesses, Council street cleaners and refuse collectors do not start working until 8am on Lamb Street. The proposal would shift noisy activities onto Lamb Street before 8am.
- Tesco and The Golden Heart delivery noise can be heard in Lamb Street, and these are not as early as what is being proposed by the applicant.
- There is a lack of detail on opening hours or live events which would have noise impacts.

#### *Odours*

- Odours from existing restaurants on Hanbury Street impact homes and 12 restaurants would exacerbate this.
- Extraction from flues of concern.
- Smoking area not designated.

#### *Anti-social behaviour (ASB)*

- The site is with the Brick Lane Cumulative Impact Zone (CIZ) which was established to control ASB and the proposal is not in keeping with this.
- The proposal would exacerbate ASB, attracting young tourists and visitors wanting to drink.
- It would result in cumulative adverse impacts on neighbouring residential properties in terms of littering, loitering crime, disorder, public safety and street based smokers.

#### *Transport, highways and waste*

- Public safety and road safety is a problem and not resolved.
- No booking system so crowds will gather on a narrow pavement that is already dangerously overcrowded. Congestion on pavement/roads at unmanageable levels currently and the proposal will exacerbate this
- The site is near the traffic lights at the junction of Commercial Street, Lamb Street and Hanbury Street. This crossing here is busy and dangerous at the best of times with no pedestrian phase.
- There are insufficient security guards and chaperones to usher customers away from residential streets.
- Additional delivery vehicles will spill onto surrounding streets.
- The main entrance lobby is not generous. It will require cyclists to walk their bikes through it and leave/remove bikes from the racks, as well as other customers and potentially delivery riders.
- No additional passenger drop-off/pick-up or loading bays are proposed and existing bays are congested.

- Pecks Yard is too narrow to be an appropriate fire exit and for providing space for presenting additional waste bins
- The site has inadequate waste and recycling facilities and the proposal will increase vermin
- A single restaurant can have 5 deliveries/day so 12 restaurants is not feasible.
- Queues would form outside and queue on surrounding streets

#### *Other planning-related matters*

- Will impact on daily life and health
- The estimated customer and staff numbers are inaccurate.
- There are no designated areas for prams and high-chairs
- Internal congestion would create difficulties for the elderly and families with young children as well as those with accessibility issues.
- Fire exit /emergency exit strategy is not acceptable and leads to conflict with different users.
- It is not clear if WC facilities will be sufficient for customer numbers.
- Noise and pollution from the plant will destroy habitats including for bees.
- Specifics of the kitchens, logistics and plant and equipment are sketchy. This indicates speculative development for financial gain rather than 'curated gastronomy'.
- Additional delivery vehicles would increase air pollution.

- 4.6 A series of others written comments were made on the application that are not material planning considerations including matters dealt with separately by building regulations legislation, food hygiene regulations, licensing regulatory framework, and matters not pertaining to the application site and the proposed including reference to other business operations located outside UK.

## **5 CONSULTATION RESPONSES**

### *Internal consultees*

#### **LBTH Conservation Officer**

- 5.1 Comments are incorporated within the 'Heritage & design' section of this report.

#### **LBTH Transportation & Highways (T&H)**

- 5.2 The servicing arrangements are satisfactory subject to a planning condition securing enforcement of this arrangement and further details in relation to Service Management Plan
- 5.3 Satisfied with cycle parking provision subject to further details provided by pre-commencement planning condition to address concerns surrounding:
- Wall mounted hooks for larger/adapted cycles as they do not allow for frame and wheel to be attached.
  - Access arrangements for adapted cycles to the basement cycle staff parking would be accessed and if there is any provision for larger/adapted cycles.
- 5.4 A full and robust Construction Management Plan is required as a pre-commencement condition. This must include a commitment to not using Hanbury Street for any construction works, storage of material or construction vehicles.

## **LBTH Waste Policy & Development (WP&D)**

- 5.5 Comments are incorporated within the 'Waste & recycling' section of this report.

## **LBTH Town Centres**

- 5.6 Satisfied that the proposal has addressed concerns relating to the building's impact on the CA.
- 5.7 Pleased toilet access is now at ground level. However, would like assurance from the developer that access to toilets will be public. With increasing strain on public accessible amenities this would be helpful for visitors, and could be investigated through the 'Community Toilet Scheme'.
- 5.8 Waste will still be a concern (as it is for most of the Borough), but no objection subject to ensuring that they have the operation in place and an appropriate storage area off the street.

## **LBTH Building Control**

- 5.9 No comments received.

## **LBTH Licencing**

- 5.10 The site already has an up-to-date licence. However, the proposal is sufficiently different so a new licencing application is recommended. This application would need to be assessed by the Licensing Authority.

## **LBTH Growth & Economic Development**

- 5.11 The proposal falls under the definition of 'Major Development' as per the Local Plan's Glossary. Following obligations to be secured: 1 construction phase apprenticeship, 20% of the construction phase workforce to be local residents of Tower Hamlets, 20% goods/services procured during the construction phase should be achieved by businesses in Tower Hamlets, £7,424 to support and/or provide the training and skills needs of local residents in accessing the job opportunities created through the construction phase, £34,707.20 towards the training and development of unemployed residents in Tower Hamlets for end use phase, and no (nil) apprenticeship opportunities for end use phase.

*(During the application process, the applicant team stated that they wished to add a further obligation for 20% of end user jobs are taken up by local residents, as per the S106 agreement submitted for the appeal scheme. The LPA requested that this obligation include a commitment to help employ homeless persons being supported by the charity Crisis.*

*The LPA also requested the following further obligations: 20% end phase local produce and goods, adopt a graduate programme, end phase commitment to attend 1 local careers fair per annum, strategy for opportunities for local students to gain work experience).*

*These obligations were agreed by the applicant and are therefore also proposed to be added to the S106.)*

## **LBTH Environmental Health - Commercial food safety**

- 5.12 No objection to the scheme. If planning permission is granted then informatives should be added.



### **LBTH Environmental Health - Odours & Air Quality**

- 5.13 No objection subject to a condition requiring kitchen extraction and filtration system details and an informative reminding the developer that flues must be at least 1m higher than the highest part of nearby buildings.

### **LBTH Environmental Health - noise**

- 5.14 No objections subject to conditions

### ***External consultees***

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

- 5.15 Initial TfL received comments (set out below) have been overcome and TfL hold no objection to the scheme, subject to conditions and obligations

- A Delivery & Servicing Plan (DSP) must be submitted for the Council and TfL's approval prior to occupation. The principles set out concerning deliveries in the submitted Operational Management Plan (OMS) are supported. Additional survey work needed in relation to capacity of existing on-street loading bays on Commercial Street to accommodate additional demand for deliveries. If there is evidence that existing capacity may not be able to accommodate additional demand then suitable mitigation should be approved - these details can be secured by a pre-commencement condition or via a legal obligation.
- Site entrances should be staffed at busier times to ensure customers would not congregate on the footway of Commercial Street disrupting flow of other pedestrians and road users.
- Shower and changing facilities should be provided on site for staff.
- Width of cycle spaces should be suitably sized.
- A Workplace Travel Plan should be secured by planning obligation.
- A Construction Method Statement (CMS) and a Construction Management & Logistics Plan (CMLP) shall be produced in line with TfL's CLP guidance.,
- No skip/ construction materials shall be kept at any time on the footway or carriageway of Commercial Street
- The applicant is recommended to consider making a financial contribution to Legible London way-finding system.

### **Metropolitan Police Designing Out Crime Officer (DOCO)**

- 5.16 No objection subject to a condition requiring Secured by Design accreditation and an informative requiring engagement with the DOCO.

### **Historic England Greater London Archaeological Advice Service (HE GLAAS)**

- 5.17 No objection subject to a pre-commencement condition requiring a stage 1 written scheme of investigation (WSI) to be submitted and a stage 2 WSI to be submitted if heritage assets of archaeological interest are identified by stage 1.

### **Historic England (HE)**

- 5.18 HE stated the LPA should determine listed building consent as it sees fit and so doing so are not expressing any views on the merits of the proposals.

5.19 In assisting the determination of the listed building and full planning applications HE provided the following summary:

*“The former horse and carriage repository is an exceptionally rare survival in London, which is reflected in its recent listing.. We welcome proposals to secure its long term conservation and introduction of public access through its reuse. However, the proposed alterations would result in a moderate degree harm to significance and we recommend the further development of the scheme is required in order to reduce its impact.*

5.20 HE note the proposal would involve internal alterations that result in harm to significance through the loss or alteration of historic fabric including demolition of carriage lift shaft, covering over of historic masonry floors and lowering of cills to openings around the courtyard area.

5.21 HE acknowledge the scheme would also deliver heritage benefits including introduction of public access, interpretations and better revealing of significance in some areas.

5.22 HE do not consider that the replacement roof lights would adversely impact the CA and any adverse visual only be visible in in private views.

5.23 The surviving remnants of the carriage lift shaft represent almost the only indication that the building served as a carriage repository. Demolition of the masonry pier at first floor would erode its much-depleted form further. HE encouraged consideration be given to its possible retention as a separate volume or void.

5.24 The historic masonry flooring to the stabling area is very evocative of their former use including hard engineering brick laid on its edge and, drainage channels the loss of sight of these characterful features is particularly regrettable. It is acknowledged the nature of the existing floor presents a challenge to reuses and accessibility but invite other options to be explored. Exposing small areas of floor beneath a mesh and introduction of metal strips in the floor to indicate location of stall dividers represent partial measures to mitigate impacts, although it would be preferable to expose more areas of historic flooring, and for the patterning set beneath the toughened glass to be more open so the historic floor would be more prominent.

5.25 With respect to the courtyard windows and proposed dropping of the cills HE seek retention of the metal bars across the openings as they are potentially part of the original design.

### **Spitalfields Neighbourhood Planning Forum**

5.26 Stated they did not have time to consider the application but that it would be inappropriate for a decision to be delegated and so should be determined by Committee.

### **The Spitalfields Trust**

5.27 Strong objection on the following grounds:

- Stapletons Horse Repository is an extraordinary survival. This is one of very few buildings that evokes powerfully the scale of stabling needed in the capital. The degree to which historic fabric remains is remarkable and requires a sensitively detailed scheme that works with the building, minimising alteration or removal. The robust and worn aesthetic should be retained and not sanitised as this would fundamentally change the character of the interiors.

- Covering the floors with a reversible deboned screed will obscure one of the most interesting survivals of the building for decades. The argument that the existing floor is unsuitable for the proposed use is not accepted.
- It is the applicant's responsibility to permanently uncover the ramp. Using the ramp would be more powerful than seeing it through a mesh.
- Removing the first floor central courtyard windows and lowering their cills, although understandable in their intention to allow diners a view down below, represents a loss of a huge amount of historic fabric which results in a highly inauthentic character.
- Removal of bays and creation of new openings is a heritage loss.
- There is insufficient evidence and explanation for why existing fabric is being removed and existing circulation cannot be utilised/
- Timber door architraves which have the patina associated with the heavy use of a stables should be retained.
- The enclosed area on the ground floor between the entrances to Pecks Yard and Commercial Street has a canted corner that appears to be a later alteration. This is characterful and should be retained.
- The replacement of the second floor fireplace with a new stair is a good example of where the Architects need to work with the building.
- Support HE's concerns about removing the standalone pier of the carriage lift on the first floor as it further diminishes an already compromised but important historic feature.
- The proposal fails to comply with Local Plan policy S.DH3.

5.28 Urge the local authority to be satisfied that residents of Pecks Yard and Puma Court would not be disrupted.

#### **The Spitalfields Society**

5.29 The new scheme reduces the number of kitchens and bars but it does not reduce the customer capacity and still proposes that customers can drink without consuming food in spite of the claim that the venue offers a fine dining experience.

5.30 Previous refusal reasons have been fully or partly addressed, apart from harm to the amenity and living conditions of adjoining residential properties through noise and disturbance caused by large numbers of customers entering and leaving.

5.31 There are fears that the proposal would effectively be a large bar. This is based on analysis of other Time Out markets, the applicant's intention to apply for a bar licence, the impact on the CIZ, the drawings containing little information on the impact on the listed building, the fact that this appears to be the wrong building for the proposal and the Planning Inspector's comments acknowledging that licencing was beyond the planning remit.

5.32 For these reasons it is requested that the application is refused.

#### **The Victorian Society**

5.33 Echo comments made by The Spitalfields Trust.

5.34 Consider that although improvements have been made since the scheme was originally submitted, the level of heritage harm is still unacceptable

#### **Ancient Monuments Society**

5.35 Object to the proposal. The full heritage significance of the building not been identified. (*This comment was received before building was listed and a subsequent listed building consent application submitted.*)



## St George’s Residents’ Association (Spitalfields)

- 5.36 Combined servery bars will be the focus of the venue, rather than the 12 restaurants. Time Out’s security proposals cannot prevent this.
- 5.37 Licenced venues in the area have already reached saturation point, this led to the creation of the CIZ.
- 5.38 Noise and nuisance from increased patrons, deliveries and servicing, as well as sewer capacity need to be considered.
- 5.39 Smokers will congregate on the pavement, adding to those from The Golden Heart. This will add to the nuisance and endanger pedestrians, cyclists and vehicle drivers.
- 5.40 Landlords’ notices to respect the neighbourhood are forgotten once customers leave the premises. The proposal would exacerbate this.
- 5.41 Having deliveries on Commercial Street is naïve. Delivery drivers may be tempted to reverse in Lamb Street or Folgate Street which would add to existing noise in these residential streets. Refrigerated lorries combined with reversing alarms, compressors, doors slamming, boxes and trolleys will be noisy.
- 5.42 The proposal includes cultural events. However, other licenced venues do not always adhere to their licencing arrangements.
- 5.43 There should be a balance between residential and business interests. The trend is that the interests and well-being of residents have been gradually disregarded. The application should be refused.

## 6 RELEVANT PLANNING LEGISLATION, POLICIES AND DOCUMENTS

### Adopted policy

- 6.1 Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires applications for planning permission to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 6.2 The NPPF, which the Development Plan needs to be in accordance with, sets out the Government’s planning policies for England and how these should be applied and provides a framework within which locally prepared plans for housing and other development can be produced. The purpose of the planning system is to contribute to the achievement of sustainable development which has the following three overarching objectives: economic, social and environmental.
- 6.3 The adopted development plan’s key planning policies relevant to this application are:

	<b><i>The Tower Hamlets Local Plan 2031 (2020)</i></b>	<b><i>London Plan (2021)</i></b>
Land use	S.SG1, S.SG1, D.EMP3, S.TC1, D.TC5	GG1, GG2, GG3, GG5, SD1, HC6
Heritage & Design	S.DH1, D.DH2, S.DH3, D.DH4, D.DH6, D.DH9	D3, D4, D5, D8, D9, D11, D12, HC1
Neighbouring amenity	D.SG4, D.DH8, D.ES9	D14

Transport	S.TR1, D.TR2, D.TR3, D.TR4	T1, T2, T4, T5, T7
Waste & recycling	D.MW3	SI 7
Other	D.SG3, D.SG5, S.ES1, D.ES2, D.ES5, D.ES6, D.ES7, D.ES10	GG6, D12, S6, E11, SI 1, SI 2, SI 4, SI 7

*Emerging development plan policies - Spitalfields Neighbourhood Plan 2020-2035 (2021)*

- 6.4 On adoption Neighbourhood Plans form part of the adopted development plan. The draft Spitalfields Neighbourhood Plan (SNP) was subject to two referendums in November 2021, following its preparation and subsequent Examination in Public.
- 6.5 A decision on the final status and adoption or not of the SNP awaits a decision of Full Council. In the absence of that decision, it is concluded that the policies within the draft SNP carry moderate (i.e. medium) weight aware that an independent inspector has concluded that the draft plan met the basic conditions and it passed a residential referendum but was rejected by a business referendum.
- 6.6 The draft SNP contains seven policies, four of which have no material relevance to the determination of this scheme.
- 6.7 Policy SPITAL 1 requires all development including extensions or alterations to existing buildings to be of high quality of design which complements and enhances the local character and identity of Spitalfields. It also states that development should not have a negative impact on listed buildings or other heritage assets and not have a harmful impact upon the character and appearance of conservation areas. All applications for development should take account of their impact on the Local Character Areas and have regard to identified local views. Development should contribute positively to the character of existing and nearby buildings and structures, and should have regard to the form, function and heritage of the relevant Local Character Area with new development generally favouring a palette of materials that is sympathetic to its context.
- 6.8 In broad substance the above criteria set out in SPITAL 1 echo heritage assessment considerations found in the adopted London Plan and the Local Plan.
- 6.9 Policy SPITAL 2 seeks new development to maintain and create a positive relationship between buildings and street level activity and for original street features to be retained.
- 6.10 Policy SPITAL 3 concerns public realm and given the scheme is set back from the public realm has minimal relevance to this scheme, similarly SPITAL 4 concerning urban greening is not practically applicable given the nature of the proposal and the constraints imposed upon it from being a listed building.
- 6.11 The site's main frontage is identified as non designated Heritage Asset (group) within the Central Area of the Neighbourhood Plan (A18 - 2-98 and 102-104 Commercial Street). The Neighbourhood Plan notes that these properties all make a significant contribution to the townscape of this part of Spitalfields because of their front elevations but each has had substantial changes made to the interiors and large portions of the rear sections and roofs have been radically changed since construction.

*Other legislation, policy and guidance documents*

- 6.12 Relevant to the assessment of the proposal are:
- *National Planning Practice Guidance* (last updated 2021)

- *National Design Guide* (2019)
- *Planning (Listed Buildings and Conservation Areas) Act 1990*
- *LBTH Planning Obligations SPD* (2021)
- *LBTH Reduce Recycle Waste SPD* (2021)
- *Brick Lane and Fournier Street Character Appraisal and Management Guidelines* (2009)
- Mayor of London's *City Fringe Opportunity Area Planning Framework* (2015)
- Historic England Advice Notes including Good Practice Advice Notes: No. 1 (conservation area management); No 2 (managing significance); No 3 (setting of heritage assets) and *Making Changes to Heritage Assets*

## 7 PLANNING ASSESSMENT

7.1 The key issues raised by the proposed development are:

1. Land use
2. Heritage & design
3. Neighbouring amenity
4. Transport and servicing
5. Waste and recycling
6. Other matters
7. Planning contributions and CIL
8. Local Finance contributions
9. Human Rights and Equalities
10. Planning balance

### Land use

#### Policy background

7.2 Local Plan policy D.EMP3 part 2 states that development should not result in the loss of viable floorspace outside of designated employment locations, except where they: a) provide evidence of active marketing over a continuous period of at least 24 months at a reasonable market rent which accords with indicative figures, or b) provide robust demonstration that the site is genuinely unsuitable for continued employment use due to its condition; reasonable options for restoring the site to employment use are unviable; and that the benefits of alternative use would outweigh the benefits of employment use.

7.3 Local Plan policy D.TC5 part 1a states that cafés/restaurants (A3 uses) will be supported in Activity Areas provided it can be demonstrated that the overall vitality and viability of the town centre would be enhanced.

7.4 *The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020* came into force September 1<sup>st</sup> 2020 and subsumed A1, A2, A3 and B1 into a new Class E. However, the application was submitted before this date so this new use class does not apply.

#### Assessment

7.5 The application site is located in the City Fringe Activity Area and the City Fringe Opportunity Area and is adjacent to the CAZ which is immediately to the west. The site is located away from the Brick Lane District Centre and designated shopping parades further to the east. The appeal decision in 2018 accepted the land use principles of the proposal; however, Officers note that since this time the new London Plan 2021 and Local Plan 2020 have been formally adopted.

- 7.6 Whilst the application is not accompanied by information to justify the loss of B1/B8 floorspace, as set out in D.EMP3, Officers note that the site has unique circumstances and spatial constraints. This includes: the fact that the building is not a purpose-built office space; an unusual layout containing a basement, a large open void rectangular atrium space (that runs up the building from ground floor) and narrow inefficient L-shaped first and second floors and the fact that the building is now grade II listed. The space does not lend itself to optimal use as a modern office-based function. Indeed, any bid to create an office use would likely require larger scale interventions such as cabling and equipment requirements which would be liable to give cause for greater harm to the heritage features of the listed building than the current proposals. Officers also note that the principle of the proposed land use was not a reason of refusal in the previous scheme that was subject to an Appeal.
- 7.7 The scheme offers the prospect of providing an estimated 200 (full time equivalent) on site jobs and further additional jobs to the local area through local supply chains and this would represent a significant uplift in jobs and additional income into the local economy compared to the existing lawful use for the site. The applicant has also proposed additional offers for local residents to be secured via the S106 which include: 20% end phase employment, signing up to the adopt a graduate programme, attending a minimum of 1 career fair yearly and a strategy for opportunities for local students to gain work experience; and this is further elaborated upon in section 9 and the 'Planning balance' section of this report.
- 7.8 Taken overall, the proposed seated dining food market located in the Borough's City Fringe Activity Area and Mayor of London's City Fringe Opportunity Area (Core Growth Area), is consistent with the development plan in land use terms, it optimises the use of the site and complements the existing A3 and blend of commercial uses within the local Spitalfields area. The proposal is therefore considered acceptable in land use terms.

## **Heritage & design**

### Relevant policies and legislation

- 7.9 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act (PLBCA) requires the local planning authority (LPA) have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. Section 72(1) of the PLBCA requires the LPA to pay special attention to the desirability of preserving or enhancing the character or appearance of CAs.
- 7.10 Local Plan policy S.DH1 requires development to meet the highest standards of design, layout and construction which respects and positively responds to its context, townscape, landscape and public realm. Local Plan policy S.DH3 part 1 states that: "*Proposals must preserve or, where appropriate, enhance the borough's designated and non-designated heritage assets in a manner appropriate to their significance as key and distinctive elements of the borough's 24 places*".
- 7.11 London Plan policy HC1 part C states that: "*Development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings*".
- 7.12 NPPF paragraph 195 states that LPAs should identify and assess the particular significance of any heritage asset that may be affected by a proposal and take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 7.13 NPPF paragraph 197 states that LPAs should take account of: a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) the positive contribution that conservation of heritage

assets can make to sustainable communities including their economic vitality; and c) the desirability of new development making a positive contribution to local character and distinctiveness.

- 7.14 NPPF paragraph 199 states 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”*
- 7.15 NPPF paragraph 202 states that: *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”*
- 7.16 As detailed earlier in the report draft SNP is also material consideration on relation to heritage and urban design. including in respect of policy SPTIAL1.

## Assessment

### *Background*

- 7.17 The site’s listing description is detailed, giving much useful information. The summary included within the description states: *“Former horse repository. Built or modified around 1890 as Stapleton’s Horse and Carriage Repository around an existing courtyard with stabling and frontage building possibly from around 1860-1870. Alterations to the frontage building and courtyard roof in the C20. In 2013 the office building and other parts of the site were renovated and altered”*.
- 7.18 The ‘Reasons for Designation’ given within the description are:
- “Architectural interest:*
- *as a rare surviving example of a multi-storey repository for the sale of horses and carriages;*
  - *for the architectural pretension of its frontage building with its high quality decorative brickwork;*
  - *for the survival of the horse ramp, colonnaded balcony and evidence of the removed horse stalls.”*

*“Historical interest:*

    - *for the light it sheds on the history and importance of horses and horse-drawn transport in late-C19 cities;*
    - *as the only surviving example of a horse repository in London, which was pre-eminent in the horse trade until the start of the Second World War.”*

7.19 The description is detailed, in line with current practice, and the details specifically excludes parts of the interior stating that: *‘In 2013 the office building and other parts of the site were renovated and altered, and its interior is excluded from the listing’*.

7.20 The building is not straightforward – structures on the site have been subject to varying degrees of change over many years of intensive use.

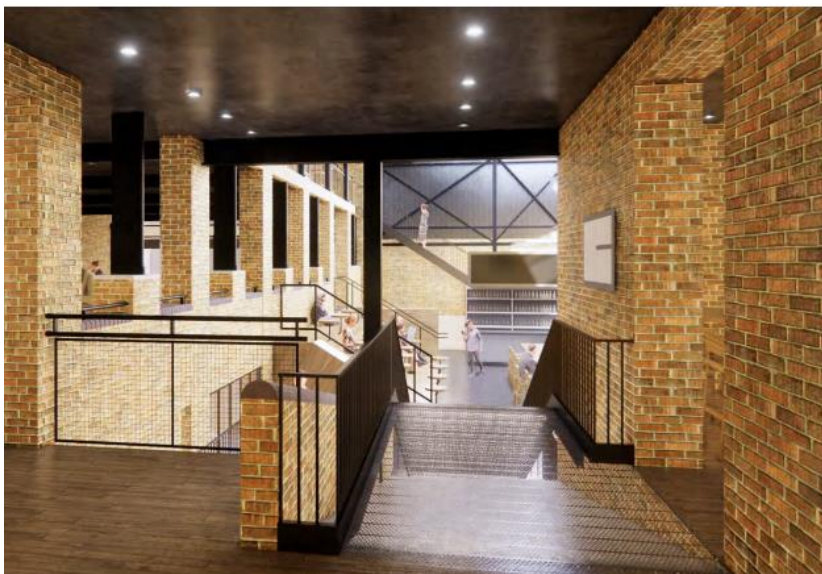
7.21 Following the dismissed 2018 appeal, the proposal was subject to much detailed change. Following the listing of the building (after the current full planning application was first submitted) the applicants were asked to identify all of the parts of the building which had



been ascribed value within the listing description. They were then asked to consider how the current proposals impacted on the identified features of significance and whether in light of the conclusions reached they wished to consider changes. The amended proposals including the submission of a listed building consent application have been subject to much discussion and some amendments.

### *Interior*

- 7.22 Overall, the proposal would preserve and restore large elements of the historic fabric of the building and use innovative ways to highlight the historic significance of the building. It would give a new use to the building and open up the interior on a formal/permanent basis. Due to the nature of the constrained site, relatively little of the exterior is visible from public areas. As such, opening up the interior to the public would better reveal the historic significance of this fascinating building as well as adding a notable feature of interest to the CA, complimenting the restored elements of Old Spitalfields Market on the opposite side of Commercial Street and the surrounding rich historic environment. The central covered courtyard is one of the Borough's most fascinating spaces, currently hidden away behind unattractive steel gates. It is considered that this bespoke proposal would restore the space and give it and the surrounding ancillary spaces new life.
- 7.23 This is a complex proposal and whilst there are significant heritage benefits there have been prolonged discussions with regard to handling of elements of the historic fabric. Concerns have centred on three areas of historic fabric – the carriage lift, masonry floors and the changes to some openings around the central courtyard. The works to the carriage lift have been much discussed. The lift has already been much altered and the loss of further fabric in the form of a masonry pier at first floor level is considered unfortunate. Whilst some amendments have been made including the retention of the carriage lift shaft walls at basement level and the introduction of glass and mesh flooring to differentiate the area of the lift it is with some regret the proposal has not managed to keep the masonry pier and full historic flooring. However, the changes to historic floor are reversible changes which is welcomed and some areas of the historic flooring would be visible under toughened glass/mesh. The lowering of the window courtyard cills is also recognized incurs some erosion of historic features as does the removal of the window casements.
- 7.24 The historic ramps are currently covered over with timber steps which are not historic and are considered to give a misleading impression. The proposal to replace the timber steps with perforated metal steps will allow views of the ramps.



**Figure 9: Illustrative proposed first floor visualisation looking west**

showing new metal mesh staircase over existing concrete ramp



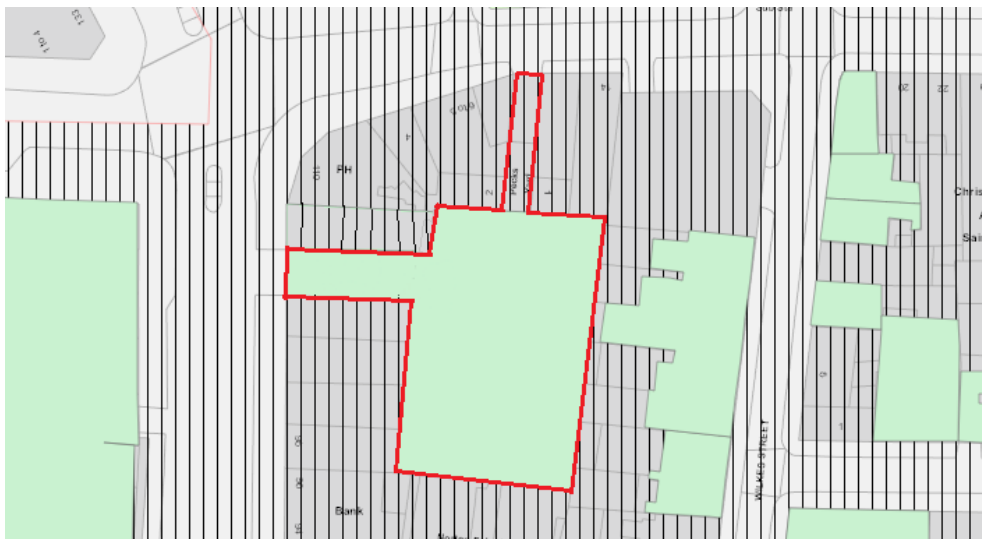
**Figure 10: Interior view of first floor looking west, with pier to be demolished labelled as '3'**

- 7.25 Given the heritage impacts identified to the carriage lift, masonry floors and some openings around the central courtyard; Officers consider that it is necessary at this stage to discuss the practicalities of why these alterations are proposed.
- 7.26 The pier is proposed to be demolished as preserving it would create a pinch point in terms of circulation/access at first floor level and would also obscure one of the signature chef areas which would potentially create confusion in terms of customers being able to see and order from it. However, Officers do note that metal strips in the flooring is proposed in this area in order to provide a visual reminder of the former lift which is considered to be a creative approach to ensure that the memory of this important historic feature remains.
- 7.27 The existing floor is not level or flat and scheme proposes covering it to create a flat surface that enable it to be readily cleaning and provide accessibility for all. Historic England in their comments recognised the practical challenge the existing floor posed to meet current needs, Officers note that some glass/mesh areas are proposed within the flooring to provide views of the existing stone flooring below so the public would retain some views of this historic feature. Whilst concerns that the mesh would obscure these views are noted and accepted the approach taken is accepted is necessary and on balance acceptable. The detail and level of patterning to the metal mesh would be subjected to listed building conditions and will be informed by an ambition to maximise the visibility of the historic floor set below.
- 7.28 The lowering of the window cills would have the benefit of providing views from the upper floor seating areas downwards, creating more open views for seated customers. Whilst the majority of these windows would lose cill height and glazing, it is worth noting and welcomed that the westernmost window opening, window casement and glazing in the internal south elevation would be maintained as is existing, thus providing a visible feature and record of the wider design of the windows which would be readily visible to the public. Furthermore, the internal windows serving the basement would be preserved which is considered to be a benefit in terms of the public being able to appreciate these historic features.
- 7.29 Officers note that all of Historic England concerns have not been overcome, particularly in regard to the loss of the pier and covering of the floor. However, as set out in paragraphs

7.26 - 7.28 above, Officers note that there are strong practical reasons as to why these could not be fully addressed.

### Exterior

- 7.30 Replacement of the existing steel gates with traditional timber gates on the Commercial Street entrance is welcomed.
- 7.31 The intention to repair rather than replace historic windows is welcomed and will ensure the windows will endure and be preserved for future generations.
- 7.32 The proposed double slim-line roof lights would replace existing roof lights which are considered to be modern and of no special character. It is also worth noting that this is likely to improve thermal and acoustic qualities of the building. No objections are therefore raised to them.
- 7.33 The appeal scheme proposed both the slate and corrugated roof coverings to be replaced by a new insulated roof with a bituminous cap sheet and it also proposed raising of ridge heights. The current application proposes the retention of the existing slate roof (believed to be a replacement dating from 2012) with insulation packed between rafters thus ensuring that the existing ridge height is maintained. It also includes the removal of the existing corrugated metal roof covering (which is of relatively recent construction) and the installation of new insulated profile metal deck 'to match the existing, on existing roof structure'.
- 7.34 Paragraph 10 of the appeal decision states that: *'both the corrugated metal element of the atrium and the slate roof – are an intrinsic part of the character and appearance of this part of the CA as it exists now. The loss of the slate in particular would erode the identity and significance of this part of the CA.'*



**Figure 11: Plan showing the site in context with the CA (lined hatch) and statutory listed buildings (light blue fill)**

- 7.35 The current proposal by maintaining the slate roof and to install a material to match the metal roof covering is considered a significant improvement over the previous refused application.
- 7.36 The small proposed dormer and rooftop plant/screening would be similar to the appeal scheme (the Inspector raised no objection to these elements) and there would only be minimal views of these elements from street level. There would also be heritage benefits to

the appearance of Pecks Yard by replacing the dilapidated metal cladding with charcoal grey render and a new black metal roller shutter to match the existing.

- 7.37 The site falls in the Central Character Area of the draft SNP to which eleven local views are identified for purposes of new development proposals, many with an eye on views of Spitalfields Christ Church. The scheme would have no material impact upon any of these eleven views nor the heritage significance derived from setting of 92-98 and 102-104 Commercial Street nor to Puma Court that are all buildings identified as non-designated heritage assets within the draft SNP. It is also considered that the proposed Commercial Street timber door would be of benefit to the townscape, given its location within these assets.
- 7.38 To conclude, the exterior works would both preserve the appearance of the listed building and the character and appearance of the CA and maintain the same acceptable relationship to the street and the surrounding public realm, subject to a condition requiring details of all external materials to be approved (including roof coverings and roof lights as well as exterior doors).

#### *Heritage & design conclusion*

- 7.39 The scheme has evolved over time, with greater attention paid to limiting the degree of interventions made to and loss of historic fabric and as such that is of heritage benefit. The scheme will secure a long-term use for the site that can ensure retained heritage features are well maintained and restored where necessary. Historic England published advice is clear that finding a long-term economically viable future use to listed buildings is important in ensuring their long term well-being, upkeep, maintenance and preservation.
- 7.40 The scheme will also better reveal the heritage asset and ensure the public gain ready access to the site and its historic interiors with a proposal that works with and maintains and makes accessible the overall internal form of this unique building. The proposal would also give rise (as detailed earlier in the report) to loss of some internal built features of heritage significance and others that would be preserved but covered over and as such would give rise to some harm to heritage assets. This is considered to be less than substantial harm. As set out earlier in the report, there are however some concerns with regard to elements of the proposed internal changes. The harm to the interior is considered less than substantial (towards the middle of less than substantial). The harm to the exterior is considered less than substantial (towards the lower end of less than substantial). Therefore, as per NPPF paragraph 202, public benefits to outweigh this harm need to be demonstrated and this will be discussed in the 'Planning balance' section below.

#### **Neighbouring amenity**

##### Privacy, daylight/sunlight, light pollution and overbearing/sense of enclosure

- 7.41 Local Plan policy D.DH8 requires development to protect neighbour amenity by safeguarding privacy and ensuring acceptable outlook. Development must also not result in an unacceptable material deterioration of the daylight and sunlight conditions of surrounding development. Nor should the development result in an unacceptable level of overshadowing to surrounding open space and private outdoor space. The levels of artificial light, odour, fume or dust pollution during the construction and life of the development must also be assessed.
- 7.42 The external changes to the external elevations and roofscape are considered to be relatively minor, with the only additional massing consisting of a small windowless dormer in the south west corner and rooftop plant with screening which is similar to the appeal scheme (the Inspector raised no objection to these elements). As such, the proposal would not give

rise issues of adverse daylight/sunlight impacts or overbearing/sense of enclosure impacts to neighbours. Furthermore the external changes would not introduce any new windows or others opening that could give rise to overlooking or light pollution.

## Noise

### *Policy background*

- 7.43 Local Plan policy D.ES9 part 1a requires development to use the most appropriate, layout, orientation, design and use of buildings to minimise noise and vibration impacts. Part 1b requires development to identify/outline mitigating measures to manage noise and vibration from new development. Part 1b requires a noise assessment where noise-generating development is proposed. Part 3 requires development to demonstrate that the level of noise emitted from any new heating or ventilation plant will be below the background level by at least 10dBA.

### *Appeal scheme*

- 7.44 The Inspector's decision for the dismissed 2018 appeal raised no objection in terms of noise impacts towards neighbours.
- 7.45 It noted resident concerns regarding noisy behaviour from those customers consuming alcohol. However, the Inspector was clear that the applicant is required to obtain a new or amended licence (outside of the planning regime) and stated that as part of such an application: *"the applicant needs to convince the local licensing body that this would not increase such behaviour"*.
- 7.46 It raised no objection to deliveries taking place between 4am - 7pm, stating: *"I do not consider that the addition of further deliveries or refuse collections at this time would result in material harm to the occupiers of those dwellings"*.
- 7.47 It raised no objection to operation of the proposed plant such as ventilation and cooling systems on the roof, stating that: *"it is not beyond reason that screening could be used so as to mitigate the aural impact of any external plant"* and *"Taken in the round, I do not find that the proposal would result in an unacceptable level of noise created by plant"*.
- 7.48 It raised no objection to additional noise from potentially having 400+ patrons leaving at closing time. Although, it recognised there would be some additional noise, it stated that this could be controlled by the licensing (in regard to sale of alcohol) and environmental health regimes; as well as a planning condition requiring operational policies to secure patron dispersal (with some scope to rectify any faults during operation).

### *Current application*

- 7.49 The current submission is accompanied by: an Operational Management Statement (OMS), RBA Acoustics listing letter, Big Sky Acoustics Listing, Refuse Store Noise Assessment, Plant Noise Assessment, Noise Assessment Report, Noise Impact Assessment and a Revised low level plant noise level assessment (submitted during the application process).
- 7.50 The OMS set out measures that are proposed to reduce noise impacts which include: placing the glass crusher in the basement, engagement of a specialist acoustic company to mitigate noise break-out from plant and internal systems, submission of a traffic management plan, submission of details for noise monitoring, submission of a noise management plan and submission of a noise dispersal policy.



- 7.51 These reports have assessed operational and activity noise from use (operation of ground floor refuse facilities) and plant noise (air handling unit (AHU), condenser units and extractors) impacts towards sensitive receptors close to the site. This has included taking noise surveys at nearby properties.
- 7.52 The Council has appointed an Independent Noise Consultant to act on behalf of the Council in terms of reviewing the noise reports submitted and carrying out necessary survey work. It should be noted that the Council's noise team has raised no objections.
- 7.53 Officers share the conclusions reached by the Council's independent noise consultant, with the benefit of reviewing the aforementioned submitted documents and having regard to the conclusions reached by the Inspector in the appeal decision, which did not find that the current scheme would give rise to unacceptable noise impacts.
- 7.54 Officers therefore consider that the proposal would create no unacceptable noise impacts subject to the following conditions (some of which go beyond those recommended by the Inspector and have been agreed with the applicant team to address neighbour concerns):
- Basement glass crusher to only operate from 9.00 - 18.00 daily to limit any potential noise from its operation to less sensitive times.
  - Waste and recycling collection to only operate from 10am - 4.30pm Monday to Saturday, to limit any potential noise from collection vehicles and moving of bins.
  - Updated OMS (incl. details of engagement of a specialist acoustic company to mitigate noise break-out from plant and internal systems (including a sound limiting device), a traffic management plan, noise monitoring, a noise management plan and a dispersal policy (with time-based review mechanisms).
  - Opening hours limited to 8am - 11.30pm Monday to Saturday and 10am – 10.30pm Sundays and Bank Holidays.
  - Noise/vibration details to be submitted, with installation of plant to be in accordance with the approved details
  - Maintenance schedule for extract equipment.
  - Neighbour comments and complaints log to allow the operator and local residents to monitor and address any issues that may arise during operation.
  - Noise limiter to be fitted to amplified noise equipment.

### Odours

- 7.55 It is considered that the proposal would create no unacceptable odours impacts subject to the condition recommended by the LBTH Environmental Health (odours) team requiring details of the proposed extract ventilation system.

### Anti-social behaviour

- 7.56 Local Plan policy D.DH2 part 1c requires development to incorporate the principles of 'secured by design' to improve safety and perception of safety for pedestrians and other users.
- 7.57 As set out in the 'Noise' section above, impacts from alcohol (including cumulative impacts on the CIZ taking into account other existing A3 and A4 uses within the area) would be assessed by the Licensing authority.
- 7.58 In regard to customers that would leave the premises and then interact with others as part of the evening economy and later on the night-time economy, it is considered that this could be addressed by the condition requiring an updated OMS, in particular the requirements for a noise management plan and a dispersal policy (with time-based review mechanisms).

- 7.59 The Metropolitan Police's Crime Prevention Officer has provided comments in relation to the proposal. The Officer has not raised concerns in relation to the proposal and the increase in ASB and raises no objection subject to a condition requiring Secure by Design accreditation to be achieved.
- 7.60 Objectors have commented that there is a high level of ASB occurring around the site. Whilst the effects of ASB on site can have a negative impact on the amenity of residents, the applicant has outlined steps that could be undertaken on site to manage the visitors to and from the site. It is also considered that a condition should be attached requiring a visitor management strategy which would include details of door supervision to manage any queues along the public footpath, limiting the site capacity, potential proposals for management of smokers, patrol personnel and managing visitor egress from the site by ensuring staggered stall closing times.
- 7.61 It should also be noted that the closure time of the venue is 11:30pm so this is not proposed as a late-night venue, and it is considered that the focus is on the consumption of food rather than alcohol. The measures that the applicant is proposing will assist in minimising any ASB might occur as a result of this proposal and in light of this, and the conditions proposed.
- 7.62 For these reasons and paying due regard to the appeal decision (which set out that ASB could not be substantiated as a planning refusal reason) it is considered that the use would not add significantly to the existing ASB issues which occur in the locality.

#### Conclusion on neighbouring impacts

- 7.63 For the reasons stated above, Officers consider that on balance the proposal would create no unacceptable neighbouring amenity impacts.

#### **Transport & servicing**

- 7.64 Development Plan policies promote sustainable modes of travel and limit car parking to essential user needs. They also seek to secure safe and appropriate servicing.

#### Delivery & servicing

- 7.65 The application is accompanied by a Transports Statement and a Delivery & Servicing Plan (DSP). The DSP sets out that: all deliveries and servicing (not including refuse collections) will take place from Commercial Street (between 5 - 7am, 10 - 11am and 3 - 4pm), access from Hanbury Street will be for refuse collection and emergency access only and egress onto Puma Court (through a legal right of access that the landowner has over Norton Folgate almshouses' amenity area) for emergencies only. Public and staff access would be from the Commercial Street entrance. The bays which are proposed to be used for servicing are on the east and west sides of Commercial Street and allow unrestricted loading from 7pm – 7am and time-limited loading from 10am – 4pm. Hanbury Street has double yellow lines on its north and south side which permits loading at any time.
- 7.66 LBTH T&H raised no objection to these proposals. TfL raised no objection subject to a condition requiring an updated survey of existing Commercial Street on-street loading bays and potential mitigation measures should they no longer have capacity for delivery and servicing requirements.

#### Cycle parking

- 7.67 London Plan policy T5 sets out that cycle parking standards for A3 uses in areas with higher minimum cycle parking standards should be: 1 long-stay space/175sqm gross external area

(GEA) for employees and 1 short-stay space/20sqm gross external area (GEA) for visitors/customers.

- 7.68 Based on the scheme's 1,911sm GEA the proposal would need to provide 11 long-stay spaces and 96ec short-stay spaces to accord with T5.
- 7.69 The application proposes 11 basement cycle parking spaces for staff and 49 short-stay spaces in the ground floor entrance area. The number of short-stay spaces therefore falls short of T5 requirements. However, the two highway authorities (TfL and LBTH T&H) raise no objection to the cycle parking provision subject to receipt of further detailed design secured via condition relating to inclusive design features. Officers also recognise that that the site's spatial constraints limit the amount and type of cycle parking that can be provided

#### Transport & servicing conclusion

- 7.70 Paying due regard to comments from Borough Transport and Highways Team and TfL, it is concluded the proposal would not unduly impact the capacity and safety of the transport and highway network, subject to conditions requiring: a Construction Management Statement, a Construction Management Logistics Plan, a Workplace Travel Plan and additional Commercial Street servicing bays (with potential mitigation should there be insufficient capacity).

#### **Waste & recycling**

- 7.71 Local Plan policies require adequate refuse and recycling storage alongside and combined with appropriate management and collection arrangements.
- 7.72 The submitted DSP estimates the following waste generation, based on an estimated 2,000 - 2,250 customers per day producing 1.5L of waste (3,375L total): 844L uncompacted glass (25% of total), 506L residual food (15% of total) which would be dewatered to 480L, 675L uncompacted general waste (20% of total) and 1,350L uncompacted cardboard (40% of total). A glass compactor would reduce volume at a 5:1 ratio, food would be dewatered to reduce mass, cardboard would be compacted to reduce volume and general waste would be compacted at a 3:1 ratio.
- 7.73 The refuse and recycling bins would be held in a refuse store in the north east corner of the ground floor. It would contain: 4 x 240L glass bins (960L total), 4 x 120L food waste bins (480L total), 2 x 1,110L dry mixed recycling bins (2,200L total) and 1 x 1,110L general waste bin.
- 7.74 The refuse bins would then be moved to Pecks Yard for collections 20 - 30 minutes before collection and returned to the refuse store shortly after, with collection vehicle of a private contractor to park on Hanbury Street. No bins would be presented on the street. A maximum of two collections will be made per day and it would be done to avoid peak hours and not in the early morning – notwithstanding proposals in the DSP Officers proposes a condition limit the refuse collection period to 10.00 - 16.30 Monday to Saturday only, so as to reduce potential noise impacts to neighbours from collection vehicles and movement of bins. Collections are proposed to be managed by the applicant using the same slot booking system as for deliveries, with no more than one refuse vehicle attending site at any one time.
- 7.75 It is anticipated that there would be a total of 11 collections a week, consisting of: 2 weekly glass collections on Fridays, Saturdays and Tuesdays; 7 daily residual food collections, 2 weekly general collections and 6 -7 weekly cardboard collections. The collections above are not cumulative as multiple collections can take place at the same time into the same vehicle.

- 7.76 LBTH WP&D has reviewed the submitted information and raised no objection. They did query whether doors into the lift area could open inwards to prevent blocking off the refuse store when open. However, it is noted that this would not be possible due to the presence of a ramp. LBTH WP&D also queries how the management of the shared bin presentation area in Pecks Yard would be managed. In response, the agent clarified that barring 6 - 8 Hanbury Steet all properties have the same landowner, and that the current arrangement is proposed to continue with the addition of the management approach set out in the submitted DSP. Should these arrangements change (for example due to change of the landowner/s then a new DSP would be required to be submitted for approval) For these reasons, Officers consider that the proposal would have acceptable waste and recycling arrangements.
- 7.77 The waste and recycling arrangements are acceptable, will be controlled by planning condition and are consistent with the relevant Local Plan policies.

### **Other matters**

#### Second appeal dismissal reason (accessible WC)

- 7.78 Paragraphs 42 - 46 of the Appeal Decision pointed out that: the accessible toilet on the second floor relied upon the being operational at all times that the building would be open, the public sector equality duty (PSED) requires protection of those with a disability and those who are in stages of pregnancy and maternity and that it would impractical for them to rely on the sole public lift which could also be used by other patrons and that patrons on the second floor may also use this WC rather than travel to the other WCs in the basement. The Inspector therefore dismissed the appeal on the grounds that the second floor toilet would represent neither high quality design nor a good standard of amenity for all existing future occupants of the building which would have an adverse impact on those with protected characteristics under the PSED.
- 7.79 The current proposal now has an accessible toilet at ground floor level, as well as a secondary accessible WC at second floor level. Officers therefore consider that the Inspector's dismissal reason has been overcome.

#### Other matters

##### *Fire safety*

- 7.80 London Plan policy D12 part A states that all proposal must achieve the highest standard of fire safety.
- 7.81 A document entitled 'THIRD PARTY REPRESENTATIONS' was submitted during the application process. Page 14 contains a letter from the London Fire & Emergency Planning Authority (Dated 31.10.2016) stating that they were: "*satisfied with the proposals*". Whilst that appears to relate to the previous scheme, Officers note that the current scheme is similar in nature and in fact now contains less kitchens and more stairs which could be used for escape.
- 7.82 Officers also note that the current scheme would need gain Building Regulations approval (which falls outside of planning control.) This would cover specific and detailed fire safety impacts of the proposal. Officers are of the view that fire safety would therefore be adequately assessed under the Building Regulations regime and raise no objection in this regard.

## **Planning balance**

- 7.83 In line with NPPF paragraph 202 the 'less than substantial harm' to the Grade II listed 106 and 106a Commercial Street resulting from the development needs to be weighed against public benefits.
- 7.84 National Planning Practice Guidance sets out that: "*planning public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit*".
- 7.85 Examples of heritage benefits may include sustaining or enhancing the significance of a heritage asset and the contribution of its setting or reducing or removing risks to a heritage asset.
- 7.86 The main public benefits resulting from the proposals include: uplift in employment (circa. 200 new operational on site and other linked jobs) and its role in supporting the wider economy, a more public use of the building's interior allowing more people to appreciate its heritage significance. There would also be benefits to local residents and the local economy from skills and training opportunities during the construction process. Another public benefits is permanent public access to the building that will enrich the conservation area, finding a long term purpose for the building, and improvements to the exterior (the new Commercial Street gate and Pecks Yard cladding) and its relationship to the street.
- 7.87 Officers conclude that on balance these public benefits outweigh the identified heritage harm and as such the proposals would accord with the provisions of the NPPF as they relate to harm to designated heritage assets.

## **Infrastructure impact**

- 7.88 The proposal is for a change of use and does not propose additional floorspace. It would not therefore be liable for Tower Hamlets Community Infrastructure Levy (CIL) payments.
- 7.89 Development plan policies seek financial contributions to be secured by way of planning obligations to offset the likely impacts of the proposed development.
- 7.90 The applicant is required to meet the financial contributions that are sought by the Council's Planning Obligations SPD which are set out in section 8 of this report below.

## **Human rights & equalities**

- 7.91 The proposal does not raise any unique human rights or equalities implications. The balance between individual rights and the wider public interest has been carefully considered and Officers consider it to be acceptable.
- 7.92 The proposed development does however provide a series of benefits through the provision of an entertainment venue and the creation of jobs.
- 7.93 Officers are satisfied that the proposed development would not result in adverse impacts upon equality or social cohesion.



## 8 CONCLUSION

- 8.1 Officers assessed the proposed development against the relevant development plan policies, having regard to the consultation responses received and other material considerations.
- 8.2 Taking all these factors into account, the proposed development is considered to be acceptable and it is recommended that planning permission is granted, subject to the planning conditions and obligations set out in this report.

## 9 RECOMMENDATION

- 9.1 Resolve to **GRANT** planning permission subject to the prior completion of a legal agreement to secure the following planning obligations and conditions as set out below.

### Financial Obligations

- a. **£7,424.00** towards construction phase employment skills training
- b. **£34,707.30** towards end-user phase employment skills training
- c. **£10,000** towards legible London wayfinding signage
- d. **£750** monitoring charge per heads of term

### Non-Financial Obligations

- a. Economic benefits:
    - i. 20% local goods/service procurement - best endeavours
    - ii. 20% local labour in construction
    - iii. 1 construction phase apprenticeship, at a minimum of level 3
    - iv. 20% end phase employment (including a commitment to help employ homeless persons being supported by the charity Crisis) - best endeavours
    - v. 20% end phase local produce and goods - best endeavours
    - vi. Adopt a graduate programme
    - vii. End phase commitment to attend 1 local careers fair per annum
    - viii. Strategy for opportunities for local students to gain work experience
  - b. Transport matters:
    - i. S278 (any highway works that may be required on Commercial Street and Hanbury Street)
  - c. Noise and complaints log
- 9.2 That the Corporate Director of Place is delegated the power to impose conditions and informatives to address the following matters:

### Planning Conditions (Full planning permission)

- 9.3 The conditions apply to each phase of the proposed development, insofar as they are relevant to that phase.

### Compliance

1. Three year time limit
2. Compliance with approved plans and documents
3. Noise - Opening hours 08.00 - 23.30 Monday to Saturday and 10.00 - 22.30 Sundays and Bank Holidays.

4. Noise - Glass crusher usage to operate only between 9.00 - 18.00 Monday to Sunday inclusive.
5. Noise - Waste and recycling collection only between 10.00 - 16.30 Monday to Saturday inclusive.
6. Waste management strategy
7. Land use - A3 use class only (and no other use class) with the two bars shown on plan serving only ancillary function to the operation of the seated food market
8. Highways - No food take away or collection service
9. Noise/odours - Installation in accordance with the mechanical services plan
10. No external music
11. Noise limiter to amplified noise equipment
12. Neighbour comments and complaints log
13. Land use - No drinks to be served without a food order
14. Toilets to be made publicly accessible (during opening hours only)

#### Pre-commencement

The inclusion of the following pre-commencement conditions has been agreed in principle with the applicants, subject to detailed wording.

15. Archaeology - Archaeological Written Scheme of Investigation – two phase
16. Heritage - Samples and details of all internal and external materials (incl. area of proposed glazed/mesh flooring)
17. Highways - Updated survey of existing Commercial Street on-street loading bays and detail mitigation measures
18. Highways - Construction Management Statement
19. Highways - Construction Management Logistics Plan

#### Pre-superstructure works

20. Highways - Travel Plan
21. Highways - Scheme of Highway Improvement Works
22. Security - Details of all Secure by Design measures
23. Highways - Cycle parking details (incl. staff shower facilities)
24. Noise/odours - Kitchen extraction and filtration details
25. Noise - Updated noise/vibration details to be submitted with installation of plant to be in accordance with approved details

#### Prior to occupation

26. Noise/highways - Updated Operational Management Statement (incl. details of engagement of a specialist acoustic company to mitigate noise break-out from plant and internal systems (including a sound limiting device), a traffic management plan, noise monitoring, a noise management plan and a dispersal policy (with time-based review mechanisms)
27. Noise/odours Maintenance schedule for extract equipment
28. Highways - Updated Delivery & Servicing Plan
29. Heritage Storyboard and Heritage Interpretation Strategy

#### Post-occupation

30. Noise – Plant verification report
31. Post completion noise testing

#### **Informatives**

1. Licence required
2. Flue height
3. Details of layout and operation of a food premises
4. Adherence with Workplace Health, Safety and Welfare Regulations 1992 and The Work at Height Regulations 2005.

9.4 In terms of the Listed Building Consent with reference PA/21/01396, recommendation is to Resolve to **GRANT** Listed Building Consent subject to conditions as follows:

9.5 **Listed building consent (conditions):**

1. Three year time limit
2. Compliance with approved plans and documents
3. Internal and external materials
4. Further details of the treatment of the toughened glazing floor and metal patterning

## **APPENDIX A: APPROVED DOCUMENTS & DRAWINGS SCHEDULE**

### **Documents**

- DESIGN & ACCESS STATEMENT Rev.A by ISA Architects, Dated June 2021
- LISTED BUILDING DESIGN STATEMENT by ISA Architects, Dated June 2021
- PLANNING APPLICATION ADDENDUM by ISA Architects, Dated October 2021
- TIME OUT MARKET SPITALFIELDS LISTING INTERPRETATION STRATEGY
- THIRD PARTY REPRESENTATIONS by ISA Architects, Dated January 2022
- 106 COMMERCIAL STREET - HERITAGE ADDENDUM by Bidwells, Dated 29.10.2021
- HERITAGE SCHEDULE OF CHANGES by ISA Architects, Dated June 2021
- Time Out Market in Spitalfields Walkthrough Rev A by ISA Architects, Dated June 2021
- Construction Management Statement (DRAFT) by ISA Architects, Dated 30.06.2022
- Transport Statement by Alan Baxter, Ref: 1773-061, Dated June 2022
- Delivery & Servicing Plan by Alan Baxter, Ref: 1773-062, Dated June 2022
- Time Out Market in Spitalfields - Hanbury Street Construction Commitment letter from Didier Souillat
- Refuse Store Noise Assessment by RBA Acoustics, Ref: 7780.ATN01.ATN.0 rev.0, Dated 02.09.2019
- Plant Noise Assessment by RBA Acoustics Ref: 7780.RP01.PNA.0 rev.0, Dated 30.04.2019
- Noise Assessment Report by RBA Acoustics Ref: 7780.RP02.NAR.1 rev.0, Dated 30.04.2019
- Noise Impact Assessment by big sky acoustics Ref: 19100907r2, Dated 28.10.2019
- Letter from RBA Acoustics, Ref: 7780.LE01.0, Dated 12.08.2020
- Letter from big sky acoustics, Ref:20080951, Dated 20.08.2020
- Revised Low Level Plant Noise Assessment by RBA Acoustics Ref: 7780.RP04.PNA.0 rev.0, Dated 13.05.2022
- OPERATIONAL MANAGEMENT STATEMENT by Time Out Market, Dated June 2021
- Statement of Community Involvement by Time Out Market, Dated November 2019

### **Drawings**

- Location plan - 1635(PL)110A
- Existing level -01 - 1635(EX)001D
- Existing level 00 - 1635(EX)002D
- Existing level 01 - 1635(EX)003D
- Existing level 02 - 1635(EX)004D
- Existing roof level 02 - 1635(EX)005D
- Existing sections A and B - 1635(EX)006D
- Existing sections C and D - 1635(EX)007B
- Existing east and west wall elevations - 1635(EX)010B
- Existing south and north wall elevations - 1635(EX)011B
- Existing Peck's Yard elevations - 1635(EX)012B
- Existing section through Commercial Street ramp- 1635(EX)013B
- Proposed level -01 strip out works - 1635(SO)001A
- Proposed level 00 strip out works - 1635(SO)002A
- Proposed level 01 strip out works - 1635(SO)003A
- Proposed level 02 strip out works - 1635(SO)004A
- Proposed roof out works - 1635(SO)005A
- Proposed strip out works sections A and B - 1635(SO)006A
- Proposed strip out works sections C and D - 1635(SO)007A

- Proposed strip out works section E - 1635(SO)008A
- Proposed strip out east and west wall elevations - 1635(SO)009A
- Proposed strip out south and north wall elevations - 1635(SO)010A
- Proposed strip out Peck's Yard elevations - 1635(SO)011A
- Proposed level -01 plan - 1635(PL)101B
- Proposed level 00 plan - 1635(PL)102C
- Proposed level 01 plan - 1635(PL)103C
- Proposed level 02 plan - 1635(PL)104C
- Proposed roof levels - 1635(PL)105A
- Proposed sections A and B - 1635(PL)106B
- Proposed sections A and B - 1635(PL)107A
- Proposed east and west wall elevations - 1635(PL)115B
- Proposed south and north wall elevations - 1635(PL)116B
- Proposed Peck's Yard elevations - 1635(PL)117B
- Proposed section through Commercial Street - 1635(PL)118B



## APPENDIX B: SITE PHOTOGRAPHS



Existing view looking eastwards towards the main Commercial Street entrance



Existing view looking southwards towards the Pecks Yard Entrance



Existing view looking southwards along Wilkes Street  
(site is not visible)

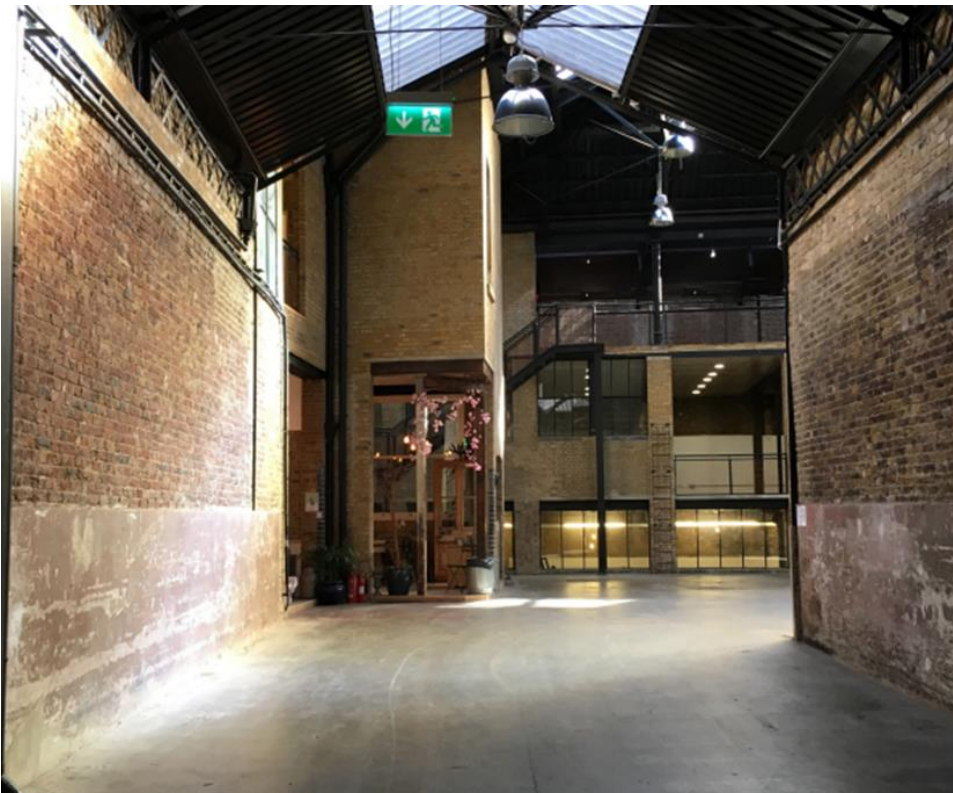


Existing view looking northwards from Puma Court  
(site visible in the background)





Interior view of existing basement with cobbled flooring visible

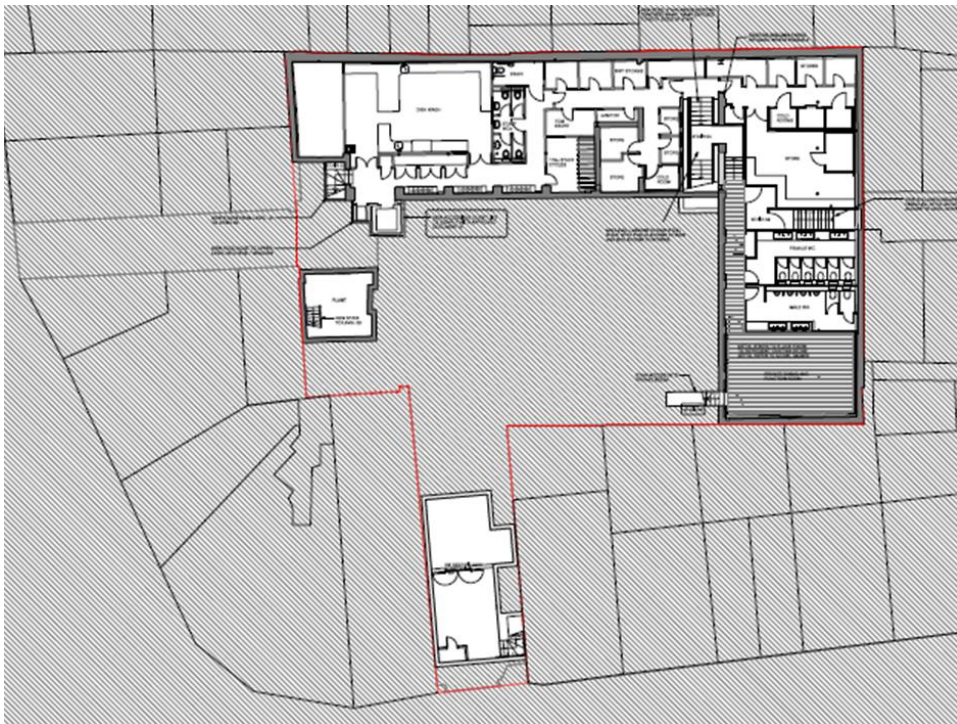


Interior view of existing ground floor entrance with ramped access

## APPENDIX C: SELECTED DRAWINGS

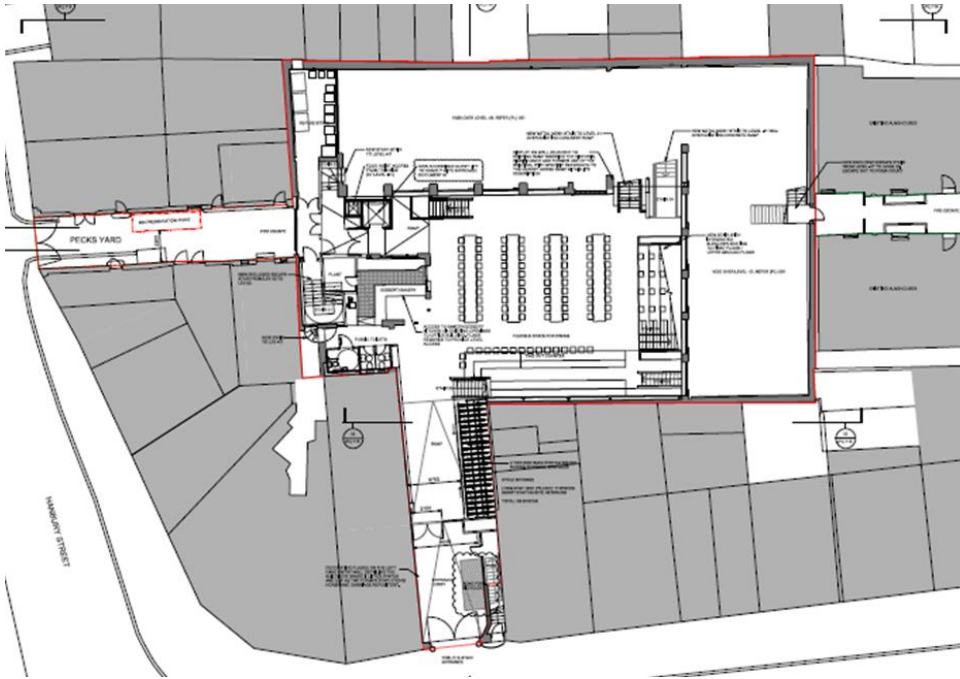


Visualisation of ground floor bleacher seating

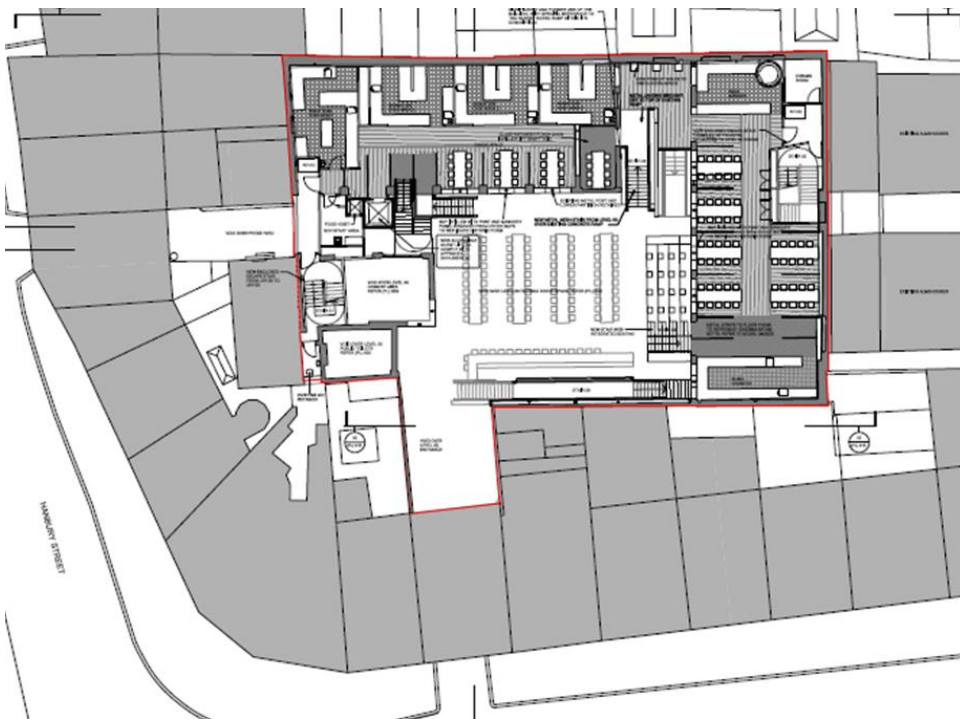


Proposed basement plan

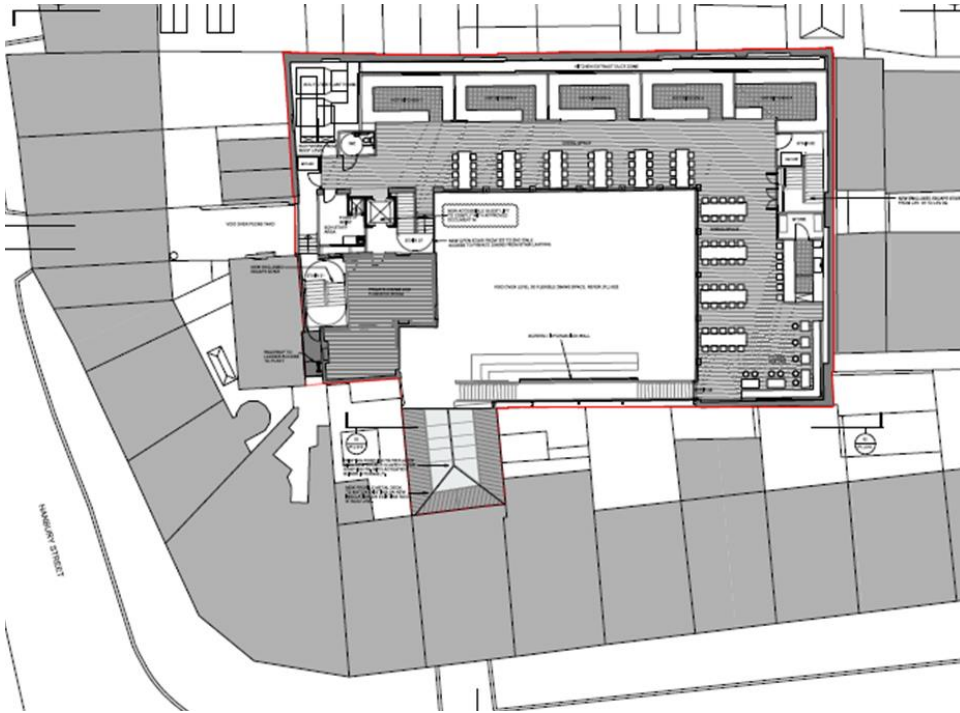




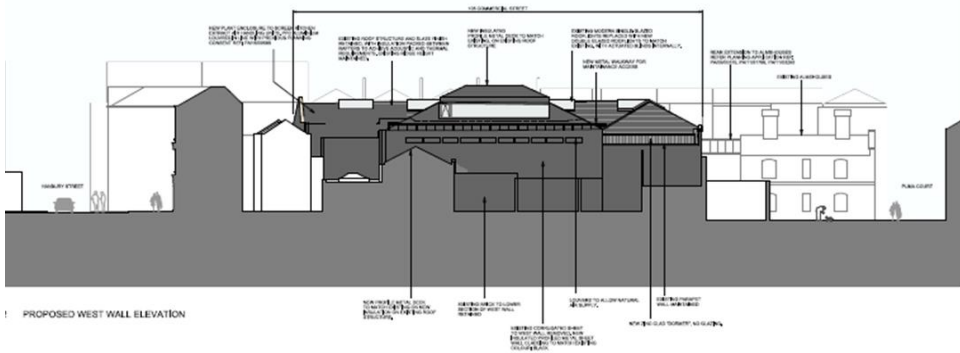
Proposed ground floor plan



Proposed first floor plan



Proposed second floor plan



Proposed west elevation





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## Appeal Decision

Inquiry Held on 15 to 23 and 25 May 2018

Site visit made on 21 May 2018

by **Cullum J A Parker BA(Hons) MA MRTPI IHBC**

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 10 August 2018

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**Appeal Ref: APP/E5900/W/17/3188112**

**106 Commercial Street, London E1 6LZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Didier Souillat of Time Out Markets Ltd against the decision of the Council of the London Borough of Tower Hamlets.
  - The application Ref PA/16/03535, dated 2 December 2016, was refused by notice dated 16 June 2017.
  - The development proposed is conversion of building (Class B1/B8) to fine dining food market (Class A3).
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. On 24 July 2018, the government issued its revised *National Planning Policy Framework* (the Framework). This replaces an identically named document issued in 2012. I have sought the views of the main parties in respect of the revised Framework. Comments were received from the Appellant and the Rule 6 Party (The Spitalfields Society) which I have incorporated in making this decision. For the avoidance of doubt, it is this recent Framework I have taken into account in reaching this decision.

### Main Issues

3. The main issues are:
  - i) Whether the proposed development would preserve or enhance the character or appearance of the Conservation Area and preserve the setting of any nearby heritage assets, and;
  - ii) The effect of the proposed development on the living conditions of nearby occupiers with specific regard to noise and disturbance, and;
  - iii) Whether or not the proposal would lead to the over-intensive use of the site detrimental to the safety of users of both the site and the local street network.

## Reasons

### Heritage assets

4. The appeal site consists of an entranceway leading onto Commercial Street; with the main part of the building located to the rear of properties on Commercial Street, Hanbury Street, Wilkes Street and Pump Court in a 'landlocked' situation. The building itself comprises two main areas. The first is an L-shaped former stabling block with slate roof outer with roof lights and timber/metal framed inner and some cobbled floors. The second part is covered by an atrium with corrugated sheeting and windows. In terms of heritage considerations, the proposal seeks to replace the existing external roof form, by (for the slate roof) raising its height, removing the rooflights and, for the whole roof, using a bituminous roofing cap sheet. The existing entrance gates off Commercial Street would also be replaced.
5. The appeal site lies within the Brick Lane and Fournier Street Conservation Area (CA). The significance of the CA derives from its historic character with visitors being able to see the various building styles dating from the Georgian period onwards. These provide an insight into the evolution of this part of London, where you are able to see buildings ranging from the visually imposing Christ Church of Spitalfields (by Hawksmoor), which is a Grade I listed building, to Georgian terraces that housed various immigrant communities such as those involved in the silk workshops located in the attics some of which are listed: including those on Wilkes Street. The CA also contains Victorian structures such as the appeal building which was a repository, and the Spitalfields covered market area.
6. The CA has continued to evolve since this period, with buildings from the 20<sup>th</sup> Century, such as the low rise office block of Widen and Kennedy on the corner of Hanbury Street and Wilkes Street. The roofscapes from those different epochs are seen from a variety of levels and heights, including those from public areas such as street level and those from private areas such as commercial and domestic buildings within and near to the CA. It is both the character and appearance of the townscape which includes the variety in building characters and ages, land uses, building heights and the roofscape, from which the significance of the CA derives; as partly identified within the Conservation Area Appraisal<sup>1</sup>.
7. Given the land locked nature of much of the site, the roofscape is an integral part of the understanding the character and appearance of this part of the CA and the contribution the appeal building makes to it. It should be noted that the current slate roof on the appeal building is a replacement dating from around 2012. Nevertheless, Mr Froneman, for the Council, explained in his oral evidence to the Inquiry, that the value of the slate roof was one of *'harmony and narrative connection'*<sup>2</sup> with the past; I concur. Even though the slate is not original itself, it is a material that one would typically expect to see on a building of this type from the Victorian era.
8. The appellant suggests that the recent corrugated steel and plastic roof-lit section does not fulfil that role<sup>3</sup>. However, viewers of the roof are able to see

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<sup>1</sup> CD6

<sup>2</sup> APP6 Closing Submissions for the Appellant, page 18, para. 64

<sup>3</sup> Ibid.



both the slate 'L-shaped' roof of the former stable block and the corrugated atrium roof as two separate entities yet part of one building. This remains the case whether the roof as a whole is viewed internally or externally. In part this is due to the different functions the two main parts of the building are likely to have fulfilled historically, with the stabling and carriage areas having lower ceiling heights and a sloped ramp between the levels, whereas the main atrium area adjacent to the entrance off Commercial Street having no separate levels with observers being able to see both the atrium roof and glimpses of the inside of the slate roof from ground level.

9. Externally, and from a variety of viewpoints, one is able to see both the slate roof and the corrugated atrium; both of which have rooflights. These are seen in the context of the wider roofscape, where the predominant roof materials within this part of the CA are slate or pantiles.
10. I acknowledge that the slates are a recently replaced material and that panoramic sight of the slate roof and corrugated atrium are mainly restricted to private views; albeit from a large number of residential and commercial buildings. However, this does not provide justification for the introduction of a charcoal grey bituminous roofing cap sheet to all areas of the roof form as indicated on the application form (or a similar material). The appellant contends that the roofing material proposed would represent a stage in the on-going organic sequence of changes the building has undergone. But this misses the point that the existing roof – both the corrugated metal element of the atrium and the slate roof – are an intrinsic part of the character and appearance of this part of the CA as it exists now. The loss of the slate in particular would erode the identity and significance of this part of the CA.
11. Accordingly, I find that the proposal would have a negative impact on the significance of the CA as a heritage asset. In paying special attention to the duty set out in S72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, (PLBCA) the alterations to the roof would fail to preserve or enhance the character or appearance of the Brick Lane and Fournier Street Conservation Area. As a result, the proposal would result in less than substantial harm to the CA for which the desire to preserve should be given considerable importance and weight. It should be noted that less than substantial harm does not mean less than substantial planning objections. Moreover, the Framework is clear at Paragraph 193 that 'great weight should be given to the asset's conservation'.
12. Paragraph 196 of the Framework identifies that where less than substantial harm to the significance of a designated heritage asset occurs, this harm should be weighed against the public benefits of the proposal. I undertake this assessment within the overall conclusion of this decision. Nonetheless, at this stage it is important to recognise that the proposal would be contrary to Policy SP10 of the *Core Strategy 2010* (CS) and Policies DM24 and DM27 of the *Managing Development Document 2013* (MDD), which amongst other aims seek to ensure that developments protect and enhance the borough's heritage assets, their settings and their significance.
13. It is important to note that the proposal has the potential to improve aspects of the building which could be considered to contribute negatively to the character and appearance of the CA. For example, there is a general consensus that the entrance gates off Commercial Street, which currently consist of metal doors



with graffiti and posters, detract from the appearance of the CA. Other heritage benefits include the removal or replacement of existing windows some of which are in a state of dereliction, and also the ability to reveal the inside of the building to a wider audience. However, these benefits do not in themselves outweigh the less than substantial harm I have identified above, which remains.

14. Whilst the Council did not refuse permission on the basis that the proposal would fail to preserve the setting of any listed buildings under S66(1) of the PLBCA, it has identified what it considers to be harm to the setting of the Grade II listed buildings at 13-25 Wilkes Street. Under cross-examination Mr Froneman also alleged harm to the setting of the listed building of 4-7 Puma Court; however this was not advanced at the closings stage by the LPA. The Rule 6 Party considered that there would be harm to the settings of these listed buildings and also the Grade I listed Christ Church Spitalfields and listed buildings on Fournier Street.
15. From the written and oral evidence before me, it is clear that the significance of these listed buildings derive principally from their architectural and historical interest. For example, I was able to see from my site inspection that both internally and externally these buildings retain architectural features from the Georgian period onwards. When traversing down Wilkes Street, for example, the observer is able to gain some insight into the heritage of the eastern end of London and imagine how the area may have felt a few centuries before with such a large concentration of Georgian period buildings. However, the significance of the residential listed buildings is principally concentrated on their inherent architectural and historic interest, of which the appeal building, dating from a later period, plays no greater part than simply being near to the listed buildings or visible in views from these.
16. Similarly, in terms of Christ Church Spitalfields, the significance of that building revolves in part around its connection with the English Baroque architect Nicholas Hawksmoor rather than any direct or indirect associative connection with 106 Commercial Street. Indeed, many of the concerns over the settings of these listed buildings relates to the change in the view either of or from these buildings. However, that is not the same as its setting nor does it mean that a change in this context equates to harm to the setting of the listed buildings.
17. In this case, I find that the significance of these listed buildings remains unchanged; with the observer being able to experience the surroundings of the listed buildings and, importantly, the proposal having no more than a neutral impact on the elements that contribute to their significance.
18. The Council advanced the argument that 'if the character of the conservation area is harmed in that respect' (with regard to the change of roof material), 'of necessity, the setting of the listed buildings must be as well'. However, this is to over-complicate the matter. Put simply, the CA is harmed in this instance as the proposed roofing material would fail to preserve the character or appearance of the CA and the slate roof is from where elements of significance of the CA derive. However, the slate roof does not contribute to the significance of the listed buildings beyond the fact that it is located in close visual proximity to the listed buildings. In this respect, I find that the proposal would have no more than a neutral impact on the setting of the nearby listed



buildings. As a result, and paying special regard to the desirability of preserving the buildings or their settings under S66(1) of the PLBCA, the proposal would preserve the settings of these listed buildings.

19. Lastly, on heritage matters, I note that the Appellant considers that the appeal building should be considered a non-designated heritage asset (NDHA). Primarily this is on the basis of the external appearance of the building, with limited detail provided in terms of its significance. Paragraph 197 of the Framework requires that *'the effect of an application on the significance of a NDHA should be taken into account in determining the application'*.
20. I saw from my site inspection that the building has attributes of architectural interest both internally and externally. For example, the internal and external roof forms and structures, floor coverings which include marked horse stalls within the cobbles and the overall layout of the building. Only a limited degree of assessment of significance of such features has been provided and there may be ways in which internal features that contribute to significance could potentially be incorporated into any finalised scheme. Nevertheless, this does not alter my findings in respect of the less than substantial harm to the significance of the designated heritage asset and the failure to preserve the CA as identified above.

#### *Living conditions*

21. The main parties agree that the appeal site currently benefits from an alcohol licence that permits it to sell alcoholic beverages up to 22:00. A licensing application to extend this to 23:30 was refused by the Council exercising its powers under the licensing regime.
22. The appeal site is located within a Cumulative Impact Zone (CIZ). A CIZ is a mechanism used by licensing authorities in areas where there are considerable concentrations of issues principally related to the consumption of alcohol. The evidence of nearby residents makes clear that locally these include anti-social behaviour, urination, defecation, sexual acts, unruly and drunken behaviour, noise and other such disturbances on local streets. The CIZ means that when considering licensing applications for new or amended alcohol licences, the applicant needs to convince the local licensing body that this would not increase such behaviour.
23. My remit is to consider the planning merits of the proposal before me, and to assess the impact on living conditions arising from the proposal in planning terms. This is distinct and separate from considerations that one may have under the licensing system; even though it may appear to the layperson that there are areas of overlap.
24. I acknowledge that there are both recently and currently an issue with principally alcohol related behaviour within the local area. However, it is difficult to see how the proposal in this case, which would provide a 'fine dining' experience under an A3 Class restaurant use, would specifically exacerbate these concerns. It was discussed during the suggested conditions session as to how planning conditions could be imposed to ensure that the building would only be used for this A3 use and not as a public house.
25. As this proposal is to be dismissed for other reasons, this matter is not explored in any greater detail here. However, through the use of other

regulatory regimes, such as licensing, the potential imposition of planning conditions, and the use proposed in this case – the principle of which none of the main parties deem unacceptable – concerns relating to disturbance arising from anti-social behaviour directly attributable to the appeal site have the potential to be addressed.

26. With regard to noise from deliveries and refuse collections, prior to the Inquiry, the appellant altered the anticipated delivery strategy so that these would take place between 04:00 to 07:00. The reasoning provided was that between those three hours in the morning there was a significant level of spare capacity within the loading bays on Commercial Street. I heard concerns in respect that this activity taking place so early in the morning would disturb occupiers of the residential accommodation located on the upper floors of buildings on Commercial Street in particular. This could arise from delivery drivers talking loudly, slamming vehicle doors, listening to radios or operating tail lifts for example.
27. I was directed to Condition 5 of permission PA/11/00602<sup>4</sup> for the Spitalfields Market, where deliveries should not take place before 08:00, and understand this was a result of concerns of residents close to the premises where deliveries were noisy. I also understand that the Spitalfields Market serves around 180+ operators. The appeal building would serve 17 kitchens with a centralised ordering system in order to control the times and numbers of deliveries. The appellant was unable to point to an example where such a system works perfectly. What is more, such is the nature of food operations that, on occasion, there may be a need to have 'emergency' deliveries where items may have run out of stock.
28. Nevertheless, it is for me to consider the proposal on its own merits. In this case there is sufficient loading/unloading capacity within the local street network although this is at a different time to those of some other businesses operating in the area. With regard to noise from the deliveries, this needs to be seen in the context of what is a busy inner city ring road where ambient noise from vehicles and people along Commercial Street is already present.
29. It was pointed out that occupiers of the residential upper floors of Commercial Street and Hanbury Street may want to close windows to mitigate the noise from deliveries and refuse collections. However, it is likely that such occupiers are already undertaking such actions if the existing noise from the local roads, patrons and other businesses are already noisy. Indeed, whilst there is a planning condition relating to the Spitalfields Market, this does not exclude other operators within the same area using Commercial Street. Given the scale of operations, I do not consider that the addition of further deliveries or refuse collections at this time would result in material harm to the occupiers of those dwellings.
30. In terms of noise from plant such as ventilation and cooling systems on the roof, for example, in the main these would be situated behind a sloping roof, away from the adjoining residential properties on Wilkes Street. There is no detailed assessment of visual impacts which may occur following the submission of details relating to a specific planning condition. Nonetheless, it is not beyond reason that screening could be used so as to mitigate the aural

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<sup>4</sup> See R6 (5)



impact of any external plant. Taken in the round, I do not find that the proposal would result in an unacceptable level of noise created by plant.

31. It is clear that with regard to noise from patrons that there would be an increase in sound above what is currently an unoccupied building. The concerns of the Council and Rule 6 Party primarily revolve around customers leaving the appeal site. These are based upon the assumption that all patrons leaving the building at the end of the evening will behave in a manner akin to that which I have assessed above in terms of anti-social behaviour.
32. Clearly, potentially having 400+ patrons leaving at closing time requires some form of management so that they can move on from the site to another destination, such as home, in a safe manner. I would find it surprising if the operations of the building as a 'fine dining' experience would mean in practice that 400+ persons would be spilling out onto the public realm at the same time. Pragmatically there would be a flow of patrons arriving and leaving the site throughout its operational hours.
33. Even so, if 400+ people were to leave the building at once this would create some noise – on Commercial Street where the main entrance is, and onto surrounding streets such as Pump Court, Wilkes Street, Hanbury Street, Lamb Street as people disperse. The reality is that most operators of food or dining venues have little control over the behaviour of patrons once they have left the building; beyond controlling what is consumed by the customers on the premises. In this respect, sales of alcohol will be licenced, sold by only one operator and subject to other regulatory regimes. What is more, the appellant is willing to comply with a condition that would require the submission and agreement of operational policies so as to secure patron dispersal.
34. There is little before me that suggests that 'operational policies' or strategy document would not work in practice. Indeed, I note that in Closings whilst the Council indicate that the dispersal strategy relies upon the operational policies being implemented and they are unsure how this would work in practical terms, there is nothing to suggest that such a scheme would not work<sup>5</sup>. Even were there to be some faults in such operational policies, there is scope within the construction of planning conditions to ensure that these could be rectified. Moreover, whilst I do not rely upon these here, there do lie additional controls outside of the planning regimes which may also take effect; such as powers the Council have under environmental health or licensing regimes.
35. The Council also advanced the point that the appellant's assessment does not consider the cumulative impact of patrons in combination with the already high numbers of pedestrians on Commercial Street and Hanbury Street<sup>6</sup>. However, the Council provides little detailed readings for the current noise levels on these streets. Taken in the round, I agree that the proposal would contribute further sound to the local noise environment.
36. However, the combination of operational dispersal policies which could be controlled by planning condition, the likelihood of many patrons heading westward towards the public transport services around Liverpool Street Station and the City rather than eastwards, the ability to use and reasonably rely upon other regulatory regimes to control or enforce unacceptable levels of noise

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<sup>5</sup> LPA10 Pages 10-11, Paras 51-54

<sup>6</sup> LPA10, Page 11, Para 56



from patrons leaving the site, would ensure that the impact of the proposal would not lead to a significant adverse impacts on health and the quality of life.

37. Accordingly, the proposal would accord with Policies SP01 and SP03 of the CS, Policies DM20, DM23, DM25 of the MDD and Policies 7.3 and 7.4 of the *London Plan 2016* and Paragraph 180 of the Framework insofar as they relate to living conditions.

*Safety of users and local street network*

38. In terms of the safety of users and visitors to the appeal site, I have considered this from two main aspects; both internally and externally.
39. Internally, I heard evidence in respect of the staircases and fire safety. In terms of the former, concerns related to how patrons would circulate between the different floors between the 17 kitchen areas and the seating areas. It is not ideal for customers to be travelling between floors, and especially going down stairs with trays of food, metal cutlery, crockery and drinking glasses. I also share some of the concerns raised in respect of the legibility of circulation particularly as to how the concept would work in practice. This is especially pertinent in this case as it would differ significantly from a 'typical' food court which are normally on one floor and/or have less food offerings.
40. However, the planning system should not seek to stifle innovation per se, and it was clear from the evidence of Mr Souillat that the building would operate a 'meet and greet' service, where the concept would be explained to visitors. Added to this, the project is being overseen by an 'Approved Inspector' under the Building Regulations, whose role is to ensure that the development would achieve at least minimum standards of safety. Indeed, Mr Murphy (Building Control Manager for the LPA) was unable to identify any particular aspect where the proposal would fail to meet the minimum standards set out in the Building Regulations. I acknowledge that there were some aspects where the internal design could be further adapted so as to provide an even safer environment. Nevertheless, my remit is not to approve or confirm the acceptability of proposals under the Building Regulations, which is properly for the appropriate authority.
41. Similarly, I heard concerns in respect of fire safety and whether the proposed internal layout could safely ensure the evacuation of staff and customers in the event of a fire. The building would have three primary routes for evacuation; out through Pecks Yard onto Hanbury Street, the main entrance out onto Commercial Street and an exit onto Pump Court. There would also be refuge points on the primary staircases. In such circumstances, I do not find that the proposal would result in any identifiable harm to future occupiers in respect of fire safety. I am reinforced in this view by the fact that no specific concerns were raised by the London Fire and Emergency Planning Authority.
42. At the Inquiry I heard concerns raised in respect of the accessible toilet that would be located on the second floor next to the demonstration kitchen<sup>7</sup>. This would be the only accessible or disabled toilet provided for customers to the building and relies upon the *Disability Discrimination Act 1995*<sup>8</sup> compliant lift being operational at all times the building is open. I have not been directed to any specific guidance or policy which dictates that accessible toilets should be

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<sup>7</sup> See also APP6 Appellant's Closings, pages 9 and 10, paragraphs 30 and 31

<sup>8</sup> Now repealed and replaced by the *Equality Act 2010* in England.



located on the ground floor. Conversely, I was not directed to any examples where such a location was designed into a scheme by any party.

43. The Public Sector Equality Duty (PSED), under S149 of the *Equality Act 2010*, requires that due regard to the need to, amongst others, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The definition of 'Protected Characteristics' include people who have a disability and those who are in stages of pregnancy and maternity. At the Inquiry, the feasibility and practicality of the location of the single accessible toilet – which presumably, given that is where such facilities are normally provided, would contain baby changing facilities – on the second floor was pointed out by the Council.
44. Common sense suggests that the location of the accessible toilet on the second floor would be impractical for those with mobility issues or those caring for such persons. Either single parents or couples with children in pushchairs requiring use of the accessible toilet changing facilities would also face practical issues with the sole public lift and second floor location of the WC. There is also a strong likelihood that other patrons would seek to use the accessible WC rather than travel from the second floor to the basement level where the main toilets are located.
45. In such circumstances, I find that the location of the accessible toilet on the second floor of this three storey part of the building would represent neither high quality design nor a good standard of amenity for all existing future occupants of the building. What is more, in relation to the PSED, were I to allow the appeal, it would result in significant adverse impact on those with disabilities, and would also be likely to result in similar significant adverse impacts on those who are in stages of pregnancy and maternity. These are not adverse impacts which would be surmountable in this case given the specific location of the facility in question.
46. Consequently, the proposal would conflict with Policies DM23 and DM25 of the MDD, which, amongst other aims, seek to ensure that buildings promote good design principles to create buildings, spaces and places that are high quality, sustainable, accessible, attractive, durable and well-integrated with their surrounds. There would also be conflict with the Framework, in that decisions should ensure that developments will function well and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users<sup>9</sup>.
47. Externally, in terms of concerns relating to pedestrian use of local pavements, the Council's witness (Mr Wisher) accepted that the evidence of Mr Burrage (for the Appellant) in that there would be sufficient capacity on the footway not to infringe the Guidance given by Transport for London (TfL) on pavement comfort levels<sup>10</sup>. I see no reason to disagree. Moreover, there is both a legitimate and reasonable expectation that the management of the appeal building would mean that groups of people congregating outside the main entrance to smoke would be moved along should this impede pedestrian traffic. Again there is little before me that suggests that such actions would not work in practice.

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<sup>9</sup> See Paragraph 127, the Framework

<sup>10</sup> APP6, Closing Submissions, Page 12, Para 42.

48. In terms of the road crossing on the junction with Hanbury Street, Lamb Street and Commercial Street, much was made of Table 4.3 of the *Collision levels in Greater London (2011-2013)*' report by TfL<sup>11</sup> in that the accident ratio for Tower Hamlets is 2.66 accidents per year, whereas the average for this junction is 3.2 per annum. Put another way, on average this junction has roughly 0.5 more accidents per year. However, when one examines the underlying data in greater detail it is clear that many of these accidents (and near misses identified by Mr Wisher) revolved around pedestrians, motorists or cyclists not looking or being aware of their surroundings.
49. It is oft heard that you 'cannot legislate against stupidity'. Whilst the reduction of collision rates should generally be sought as a positive thing, this does not provide justification for the refusal of planning permission. Neither TfL nor the Council's own Highways Team raise significant objections that the use of this single building would result in a severe effect on the local highway network. I see no reason not to concur with such a position. Accordingly, I do not find that the proposal would be detrimental to the safety of users of the local street network.
50. Lastly, I note the concerns raised in respect of the deliveries to the site; the potential noise aspect I have considered under the previous main issue. Given that there would be sufficient capacity within the local street network to accommodate deliveries I do not find that this factor weighs against the proposal.
51. To conclude on the third main issue identified, I do not find that there would be material harm in terms of fire safety, movement internally, nor on the local street network. In this respect, I do not find significant conflict with Policies SP01 and SP03 of the CS or Policies 7.3 and 7.4 of the *London Plan 2016* cited in the Council's decision notice as they focus on streets and designing out crime, for example. However, I have found that there would be conflict with Policies DM23 and DM25 of the MDD. I have also found, exercising my duties under the PSED, that the proposed location of the accessible toilet would result in significant adverse impacts were I to allow the appeal; and these are not surmountable on the basis of the scheme before me.

#### **Other Matters**

52. A legal agreement, dated 25 May 2018<sup>12</sup>, under 106 of the TCPA has been submitted by the Appellant. Put simply, this would secure monies for Crossrail, highway improvement works in relation to providing 59 short stay cycle places, and secure a minimum of 6 local apprenticeships. These would comply with the CIL Regulations and Regulation 122 and 123, insofar as they are necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to the development.
53. Concerns were raised by the Council in respect of where the cycle stands could be placed in the local area, with concerns over land ownership. However, this is a matter that, were permission forthcoming, could be resolved through negotiation and advice from providers of such local facilities. As such, I find

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<sup>11</sup> APP3

<sup>12</sup> See APP5



that the provision of local infrastructure secured through the submitted S106 agreement should be taken into account.

### **Overall Conclusion**

54. Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, sets out that the determination of proposals must be made in accordance with the development plan, unless material considerations indicate otherwise. In this case, the proposal would be contrary to Policy SP10 of the CS, and Policies DM23, DM25, DM24 and DM27 of the MDD. It would therefore not accord with the adopted development plan.
55. The benefits of the proposal are well documented within the written submission, but include; the re-use of the currently vacant building, the ability to soundproof the building so as to lessen the amount of sound omitted from the building, the economic benefits of job creation (including apprenticeships) and the more general benefits of economic activity on the wider local economy. These are public benefits that support economic growth and productivity, which I afford significant weight in favour of the proposal<sup>13</sup>.
56. I also note that the submitted legal agreement would secure items such as cycle parking stands and monies for Crossrail which could, conceivably, accrue benefits beyond the specific users of the appeal site. Whilst not a specific reason for granting planning permission per se, these benefits should nevertheless be afforded modest weight.
57. In considering Paragraph 193 of the Framework, it is clear through the statutory duty set out at S72(1) of the PLBCA and local and national planning policies that great weight should be given to the asset's conservation. In this case, I do not find that these public benefits would outweigh the less than substantial harm to the designated heritage asset in the form of the CA. The harm to the heritage asset, mainly through the removal of the slate roof, has not been justified as the only way in which the sound insulation could be achieved to attain other planning aims. What is more, it is highly likely that were the slate roof removed it would not be replaced to a more historic form in the future resulting in the permanent loss of the contribution the slate roof makes to the character and appearance of the CA.
58. Other significant adverse impacts include that which would arise from the location of the accessible toilet on the second floor to persons with Protected Characteristics under the PSED. This is also a factor which points to a proposal that fails to achieve a well-designed place as sought under Chapter 12 of the Framework, and in particular Paragraph 127.
59. For the reasons given above, I conclude that the proposal would conflict with the adopted development plan and there are no material considerations that indicate a decision should be made otherwise than in accordance with it. Accordingly, the appeal should be dismissed.

*Cullum J A Parker*

INSPECTOR

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<sup>13</sup> In accordance with Paragraph 80 of the Framework

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Meyric Lewis of Counsel, instructed by:	Director of Legal Services for the LB of Tower Hamlets
<i>He called:</i>	
Patrick Murphy, BSc (Hons), C.Build E MCABE, MIFSM	Building Control Manager
Rachel Jenman	Town Centre Manager
Neil Wisher, BSc (Hons), C.Eng, MICE, MIHT	Highways Consultant
Ignus Froneman, BArch.Stud, ACIfA, IHBC	Historic Environment Consultant
Dani Fiumicelli, BSc (Hons), MSc, MCIEH, MIOA	Noise Consultant
Kirsty Gilmer, BA (Hons), MA	Principal Planning Officer

### FOR THE APPELLANT:

Rupert Warren QC, instructed by:	Bidwells
<i>He called:</i>	
Didier Souillat	CEO, Time Out Market
Graham Currie, BArch DipArch	Director, ISA Architecture and Design Limited
Geoff Burrage BSc (Hons), MSc, MCIHT	Alan Baxter Ltd
Richard Vivian BEng(Hons), MIET, MIA, MAES, MIL	
Steven Handforth MA, IHBC	Divisional Partner, Bidwells
Jonathan Phillips BA(Hons), DipTP, MA, MRTPI	Group Partner, Bidwells

### FOR THE RULE 6 PARTY (SPITALFIELDS SOCIETY):

Katherine Barnes of Counsel, instructed by: The Spitalfields Society

*She called:*  
Rupert Wheeler  
BA (Hons), Dip Arch, RIBA  
Juliet McKoen  
Patricia Jones  
Chris Dyson  
RIAS, RIBA, FRSA  
David Donoghue  
Jon Shapiro  
John Twomey



DOCUMENTS HANDED IN AT INQUIRY

<b>Ref:</b>	<b>Name/Identifier</b>
LPA1	Appearances on behalf of LB Tower Hamlets
LPA2	Short Opening Submissions on behalf of LB Tower Hamlets
LPA3	GOAD key
LPA4	Delegated Officer Report (PA/13/02336) Cladding to N elevation
LPA5	Draft Suggested Conditions
LPA6	S106 Obligations – CIL Regulations Compliance Schedule
LPA7	Delegated Planning Decision Report (PA/18/00187/NC) 14 Hanbury Street – inc drawing ref CW-0121-210 Revision A
LPA8	Draft suggested conditions version 2
LPA9	Draft Suggested Conditions – Final draft
LPA10	Closing submissions on behalf of LB Tower Hamlets
LPA11	Signed and dated, 25 May 2018, copy of the Statement of Common Ground
APP1	Appearances for the Appellant
APP2	Appellant's Opening Points
APP3	Extract 'Collision levels in Greater London (2011-2013)' Report by TfL: Table 4.3 Automatic Traffic signal junctions: collision rates per site per year by Borough
APP4	Draft <i>Planning Obligation by deed under Section 106 of the Town and Country Planning Act 1990</i>
APP5	<i>Planning Obligation by deed under Section 106 of the Town and Country Planning Act 1990</i> between Truman Estates Limited, Mayor and Burgesses of LB Tower Hamlets and Time Out Market London Limited (dated 25 May 2018)
APP6	Appellant's closing submissions
R6(1)	Order of Appearances on behalf of the Spitalfields Society [Rule 6 Party]
R6(2)	Opening statement on behalf of the Spitalfields Society (R6 Party)
R6(3)	Summary – The Spitalfields Society approach to the application
R6(4)	Proof of Mr John Twomey describing the findings of a visit to Time Out Market in Lisbon
R6(5)	Condition Permission for Development (PA/11/00602) in relation to Central Area, Spitalfields Market
R6(6)	Agenda Item 7.1 PA/11/00602
R6(7)	Closing submissions on behalf of the Spitalfields Society (R6 Party)