

DEVELOPMENT COMMITTEE, 12th July 2022

UPDATE REPORT OF THE DIRECTOR OF PLANNING AND BUILDING CONTROL

Agenda item no	Reference no.	Location	Proposal / Title
5.1	PA/19/02404/A2 & PA/21/01396/NC	106 Commercial Street, London, E1 6LZ	<p>Conversion of building (class B1/B8) to fine dining food market (Class A3) including:</p> <ul style="list-style-type: none">• The provision of 1,900sqm (Gross external area) of A3 floor space.• Retention of existing slate roof.• External alterations comprising the installation of roof plant and atrium changes, elevational changes (including dormer extension).• 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.• Other minor internal changes.

1.0 NEW REPRESENTATIONS

1.1 10 additional objection letters (including a letter on behalf of the Bengali East End Heritage Society). have been received from members of the public since the publication of the committee report. 4 of these representations were made by people that previously submitted representations. The additional points raised are:

- Committee members should have made a visit to Norton Folgate Almshouses to understand the ability of residents (including those with mobility issues) to escape if there is a fire at the application site.
- There is already a Judicial Review on a planning application from Truman Brewery for a retail and office development, demonstrating the local community's concerns over Council decision-making.
- The application should not be determined until the Spitalfields Neighbourhood Plan is adopted.
- Should homes not be a priority?
- Community-led ideas should be supported by planning and the proposed development should be stopped.
- In December an elderly resident was hospitalised after being knocked into the road by revellers. Who will take responsibility when these incidents increase?
- The development would take money away from local businesses.
- Food markets are 'pop up' brands that can relocate easily unlike existing businesses.
- Public objections are not visible online. (*Letters are not published online but are summarised in committee reports.*)
- The proposal is not in keeping with the historic market typology of the surrounding area.

- 1.2 A letter of objection was also received from the East End Preservation Society which raised the following main points:
- The building is currently used as a successful event, market and exhibition space. It does not therefore require a new use to offer heritage and employment benefits.
 - There would be damaging effects on Bengali businesses in Brick Lane.
 - Public benefits are slim and do not outweigh heritage harm.
- 1.3 A further letter of objection was received from The Spitalfields Trust. This did not raise any new issues on the merits of the scheme. However, it stated that the 14 day re-consultation period was unfair. (*The Council's Statement of Community Involvement sets out that a shortened 14 day consultation period is required on amendments to an application which has already been consulted on.*)
- 1.4 A petition (with 168 names and addresses but no signatures) from Bangla Town Business Association was also received. It raised the following points:
- There would be loss of the building's historic fabric.
 - There would be harm to the cultural and social importance of Brick Lane, driving up of rents for local independent business (such as curry houses) which would make it difficult to survive.
 - No public benefits to outweigh conservation harm.
 - The Council has a responsibility to protect the diversity and characteristics of Brick Lane, in terms of ethnicity and the mix of small and medium businesses.

2.0 CLARIFICATIONS

Clarification of the weight attributed to the draft Spitalfields Neighbourhood Plan (SNP)

- 2.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) says:

"In dealing with an application for planning permission or permission in principle] the authority shall have regard to—

(a) the provisions of the development plan, so far as material to the application, (aza) a post-examination draft neighbourhood development plan, so far as material to the application,]

(aa) any considerations relating to the use of the Welsh language, so far as material to the application;]

(b) any local finance considerations, so far as material to the application, and (c) any other material considerations."

- 2.2 The legislation does not say what weight should be attributed to the draft neighbourhood plan in this context. The National Planning Practice Guide provides some guidance on the weight that can be attached to an emerging Neighbourhood Plan when taking decisions on planning applications.

"An emerging neighbourhood plan is likely to be a material consideration in many cases. Paragraph 48 of the revised National Planning Policy Framework sets out that weight may be given to relevant policies in emerging plans in decision taking. Factors to consider include the stage of preparation of the plan and the extent to which there are unresolved objections to relevant policies. A referendum ensures that the community has the final say on whether the neighbourhood plan comes into force as part of the development plan. Where the local planning authority publishes notice of a referendum, the emerging

neighbourhood plan should be given more weight, while also taking account of the extent of unresolved objections to the plan and its degree of consistency with NPPF.”

- 2.3 The draft SNP was the subject of an independent examination between February and July 2021. The Inspector’s recommendations were published on 15 July 2021.
- 2.4 The SNP, amended in line with the Inspector’s recommendations, was the subject of two referenda in November 2021. The residential referendum voted in favour of the Neighbourhood Plan, whilst the business referendum voted against.
- 2.5 This is an unusual situation and the Council will have to make a decision on whether to “make” the SNP (i.e. to adopt the SNP formally as part of the Development Plan). Officers have therefore taken legal advice on how to apply Section 70(2) of the 1990 Act in this scenario.
- 2.6 The legal advice is that whilst officers await a report containing a recommendation to Full Council, it would be reasonable to give the policies of the draft SNP *moderate* weight. This is because: (i) an independent inspector has concluded that the draft NP has met the basic conditions; (ii) the draft NP has passed a residential referendum; and (iii) although the draft NP was rejected at a business referendum, there is still the prospect that the draft SNP could be *made* given that the law does not require the draft NP to have passed both referenda.
- 2.7 Whilst officers have attributed moderate weight for the reasons explained, the committee could afford the draft SNP more weight, given the stage of its production, if they consider it to be appropriate. Whilst officers have attributed moderate weight for the reasons explained, the committee could afford the draft SNP more weight, given the stage of its production, if they consider it to be appropriate in their consideration of the two applications in front of them (PA/19/02404 + PA/21/01396). Although officers would advise the Committee attributing it full weight would not be appropriate given the Neighbourhood Plan has not been adopted.
- 2.8 Paragraphs 6.7 to 6.11 of the main report explain that the applications would be in accordance with the relevant policies of the SNP. Hence if more than moderate weight were to be attributed, then the logical conclusion is that this would reinforce compliance with the SNP and would not lead to a different recommendation on the applications.

Other matters

- 2.9 The second line of paragraph 2.5 of the committee report should read: *“It is proposed to seat up to 360 people (317 of these seats are illustratively shown in the public areas of the proposed ground, first and second floor plans and the remaining seats would be in the proposed basement and second floor private function rooms but are not shown on the drawings”.*
- 2.10 Condition 13 is proposed to be removed due to concerns about its enforceability. In order to ensure that the reason for condition 13 is followed through (i.e. to maintain the venue as a food market rather than a bar or public house), it is proposed that

condition 26 is updated to include requirements that at least 8 kitchens/serveries should be open at the same time as the bar serveries and that the entire scheme should be run by a single operator.

2.11 A further condition is proposed to remove permitted development rights for the change of use of the proposed food market (A3 use).

2.12 Drawing 1635(PL)107A should be labelled as 'Proposed sections C and D'.

3.0 RECOMMENDATION

3.1 The committee is invited to note the additional representations and the clarifications. There are no changes proposed to the officer recommendation to grant full planning permission and listed building consent.

Agenda item no	Reference no	Location	Proposal / Title
5.2	PA/21/02120/NC	Mooring at West India Dock North, Hertsmere Road	Proposed mooring of barge providing a spa facility comprising an open-air heated pool, sauna, plunge, treatment rooms, alcohol free cafe and wellness facilities.

1.0 NEW REPRESENTATIONS

1.1 9 additional representations have been received from members of the public since the publication of the committee report. 5 of these representations were made by people that had already submitted representations. The new/additional points of objection which have been raised are:

- Since the opening of the Elizabeth line the area has been busier, and this proposal would increase footfall further.
- Views of the water would be ruined.
- The proposal could potentially lower the value of our homes.
- The noise impact assessment is incorrect on the grounds that the noise from the barge will get louder as it travels upwards towards the flats to the north. Therefore, the noise levels at these flats would be louder than cited in the noise report.
- The noise from the Absolute Pleasure boat combined with this proposal will mean an increase in noise volumes.
- There are alternative locations where the mooring would be more suitable.
- The barge operator would likely apply for an alcohol licence at a later date.
- The committee report does not make reference to PA/20/00996
- The opening hours of the barge on Sundays, as referenced in the Committee Report, do not reflect the opening hours proposed by the applicant of 9am to 9pm on Sundays.

1.2 The Noise Impact Assessment submitted by the applicant measures the prevailing noise at the development site from 12:00hrs on Friday 27 May 2022 for approximately 72 hours. This involved the measurement of any noise generated by the Absolute Pleasure Boat over this period. In addition, the Noise Impact Assessment was reviewed by the Council's Environmental Health Officers who are aware of the context of the site and the other noise generating uses in the surrounding area. The Environmental Health officers found the method of testing used in the Noise Impact Assessment to be sounds and that the anticipated noise emissions to be at levels that would not unduly affect neighbouring occupiers.

1.3 As set out under the clarification section of the report below the Sunday opening hours have been updated; the premises would only be open between 09:00 and 21:00 on Sundays.

1.4 The Committee Report does not make reference to PA/20/00996, which relates to the application site. This is because this application was withdrawn, and it is not usual practice to include withdrawn applications in the planning history.

1.5 All of the above other matters outlined above that are considered to be material considerations have been covered in the existing Committee Report.

2.0 CLARIFICATIONS

- 2.1 Paragraph 2.6 of the Committee Report sets out that the proposed opening hours for the internal space are between '07:00 and 21:00 on Sundays', this should read between '09:00 and 21:00 on Sundays'. In addition, the external spaces should only be accessible between 09:00 and 21:00 on Sundays.
- 2.2 Condition 3, found under paragraph 8.4, should be corrected to read 'Hours of use - The premises would be open between 07:00 and 23:00 on Monday to Saturday, and between 09:00 and 21:00 on Sundays. The external spaces would only be accessible between 09:00 and 23:00 on Monday to Saturday and between 09:00 and 21:00 on Sundays'.
- 2.3 Paragraph 4.2 of the Committee Report states that 78 letters of representation had been received, of which 24 were in support. This should have read that 79 letters of representation had been received, of which 25 were in support.
- 2.4 Paragraph 6.2 and 6.3 of the Committee Report makes reference to 'The Isle of Dogs Neighbourhood Plan' (or 'NP'). The application site does not in fact sit within the neighbourhood plan area and hence the Neighbourhood Plan doesn't comprise part of the Development Plan and its policies are not relevant to this proposal.

3.0 RECOMMENDATION

- 3.1 The committee are invited to note the additional representations and the clarifications. There are no changes proposed to the officer recommendation to grant planning permission.