



## 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

**Ref: Name/Identifier**

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 ' <i>Collision levels in Greater London (2011-2013)</i> ' 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)