

Land at Blossom Street, Spitalfields

in the London Borough of Tower Hamlets

planning application no. PA/14/03548 & Listed Building Consent PA/14/03618

This addendum sets out various factual updates, clarifications and corrections which need to be considered in conjunction with the Representation Hearing Report originally published on 8 January 2016.

Following the publishing of the report, The GLA has received a letter with representations dated 12 January 2016 from the applicant's agent DP9, (appended to this addendum) which highlights a number of points of clarification with regards to the report's heritage assessment as well as some minor factual corrections. Officers have taken the representations into account and comment as follows:

Heritage assessment

Para.254 – The 'Loss of Conservation Area buildings' conclusion should confirm that the loss of No. 14 Norton Folgate would not result in any harm to the Elder Street Conservation Area.

For the purposes of clarity, GLA officers are of the opinion that the aspects of the proposals that would lead to 'less than substantial harm' to the Elder Street Conservation Area are the loss of Nos. 3 – 9 Shoreditch High Street and the massing effect of block S2 in the townscape visual impact assessment (TVIA) view looking west along Fleur de Lis Street.

Para.239 – This paragraph sets out some of the public benefits that would outweigh the 'less than substantial harm' to the Elder Street Conservation Area (to which considerable weight has been attached). GLA officers recognise that there are other benefits from the proposed scheme in addition to those listed, including full and partial building retention and repairing the listed carriageway of Fleur de Lis Street; and reference to these other benefits is made elsewhere in the report.

Paras. 238 – Where reference is made to NPPF para 133, this should be a reference to NPPF para 134 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 securing its optimum viable use.'*

Para. 211 – The last sentence of this paragraph should state: *For the reasons given in this report, it is officer's opinion that there is no harm caused to the neighbouring Brick Lane and Fournier Street Conservation Area or the South Shoreditch Conservation Area, while there would be 'less than significant harm' caused to the Elder Street Conservation Area.*

Para. 416 – The second to last sentence should state: *officers have concluded that the proposal will result in ‘less than substantial harm’ to the conservation area, but will not result in any harm to neighbouring listed buildings or their setting.*

Paras. 254, 274, 292, 295 – Where variations to the language are used with respect to the degree of harm caused to the Elder Street Conservation Area, such as *slight harm* or *some harm*, throughout the report, officers can confirm that this should be replaced with *less than substantial harm* in line with the terminology used within the NPPF.

Para. 1, Bullet 2 – of the *Reasons for approval* should state that: *Whilst the development would cause ‘less than substantial harm’ to the Elder Street Conservation Area and would result in the loss of some undesignated heritage assets at the site, this harm, having paid special attention to the desirability of preserving or enhancing the character or appearance of the Elder Street Conservation Area and giving the harm identified considerable importance and weight, is outweighed by the public benefits of the scheme. No harm would be caused to neighbouring heritage assets.*

Para. 1 – Bullet 10 – This should state that: *GLA officers are of the view that there would be no harm caused to the listed building heritage asset, resulting from the applicant’s intention to carefully remove and store listed stone setts during the construction phase and repair and reinstate them to follow the historic layout of the carriageways.*

Para. 292 – This should state that: *Whilst the proposal would result in changes to the Elder Street Conservation Area and the settings to some of the neighbouring heritage assets, this would lead to ‘less than substantial harm’ to the conservation area only and, having paid special attention to the desirability of preserving or enhancing the character or appearance of the Elder Street Conservation Area and giving the harm identified considerable importance and weight, this would be outweighed by the high quality of design of proposed buildings and the wider public benefits achieved by the development.*

Para. 204 – Additional text clarifying the Court of Appeal’s ruling is proposed: *The same considerable importance and weight should be afforded to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area under section 72 of the Listed Buildings Act 1990.*

Minor factual clarifications

Para. 3 – The training, employment and enterprise contribution of £1,061,805 is based on calculations within Tower Hamlets Council’s updated Planning Obligations SPD (June 2015). The calculations have taken into account the total amount of floorspace proposed following the recent design amendments of November 2015.

The £90,000 towards cycle hire contribution has been requested by TfL to address the increasing number of daily cycle trips (622) to and from the site that the development would create. Para. 385 of the report sets out the justification for this site specific contribution and confirms that this would not constitute transport infrastructure that would be funded through the Borough CIL.

Additional text to be added before para. 4 –

Crossrail

The Developer shall pay to the Council the Crossrail Contribution, which has been calculated at £4,391,560, in accordance with the following terms and for the avoidance of doubt the Crossrail Contribution payable shall be nil of the total amount payable by the Owner in respect of the Mayoral CIL Charge being greater than the Crossrail Contribution:

The Developer shall pay the Crossrail Contribution to the Council less any Mayoral CIL payment to be applied as a credit (which credit shall not include any CIL surcharge payable under Part 9 of the Community Infrastructure Levy Regulations) upon implementation.

Para. 166 – Reference to GVA should be replaced with DS2.

Para. 211 – Reference to Section 73 of the Planning (Listed Buildings and

Conservation Areas) Act 1990, should be replaced with *Sections 72 and 73 of the 1990 Act.*

Para. 234 – the reference made to the applicant's conclusion on the impact caused by the loss of undesignated heritage assets is incorrect. This should be replaced with: *the applicant believes that the proposals will cause no harm to any undesignated heritage assets.*

Para. 246 – Reference to sub-plot S1c should be replaced with S1a.

Para. 291 – This should be replaced with: *Officers are of the opinion that in this view the proposal would alter the appearance of the conservation area, but would result in no harm to the character or appearance of the Elder Street Conservation Area or the setting of the listed building.*

Para. 416 Conclusion - wording should be replaced by the following wording:

"This report has considered the material planning issues associated with the proposed development in conjunction with all relevant national, regional and local planning policy and concludes that the proposed development is acceptable in terms of land use principle (employment, mix of uses and retail); design (including urban design, views (strategic and local), public real and open space and demolition within a conservation area), heritage; inclusive design; sustainable development: environmental issues (including residential amenity); transport; and, mitigating the impact of the development through planning obligations.

As explained in the report and this addendum report, officers conclude, having had special regard to the desirability of preserving listed buildings or their setting in accordance with section 66 of the Listed Buildings Act 1990, that the proposed development will not cause any harm to the listed buildings or their setting.

As explained in the report and this addendum report, officers conclude, having paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, that the proposed development causes less than substantial harm to the Elder Street Conservation Area. The officers have given the less

than substantial harm identified considerable importance and weight. It is acknowledged, that the harm identified gives rise to a strong statutory presumption against granting planning permission.

The officers conclude that there is no harm to the adjacent Brick Lane Conservation Area, Fournier Street Conservation Area and South Shoreditch Conservation Area.

The officers conclude that in spite of the strong statutory presumption against granting planning permission, the proposed development is considered to be in overall conformity with the development plan and that the harm identified is outweighed by the public benefits identified.

Further points of clarity

For the avoidance of doubt, where reference is made to the building heights of the previous planning applications for the site, it is confirmed that the 2007 scheme included a ten-storey element (plus plant); and the 2011 consented scheme includes a nine-storey element (plus plant). The proposed residential block S3 of the current scheme is four storeys, with an additional two storey setback element along its western edge.

2007 appeal scheme:

While this scheme was refused on appeal, the Inspector's findings, as listed in para. 44 of the report, set out a number of factors that are relevant to the current proposals including the appropriateness of a ten-storey building; the quality of permeability through the site; the benefits of the proposed repair work to the Blossom Street warehouses and locally-listed buildings. It is GLA officer's view this assessment should be given some (albeit limited weight) as part of the planning history of the site.

2011 'fallback' scheme:

In distinguishing the consented 2011 scheme and to the extent that the 2011 scheme has been approved, eg demolition of certain buildings (as listed in para. 46 of the report), and has been carried forward into elements of the current scheme, the 2011 scheme (which is the subject of a certificate of lawfulness as explained in para 48 of the report) is a material consideration in the decision whether to grant or refuse the current scheme. It is GLA officers' view therefore, that the 2011 should be given some weight in the decision making process.

Tower Hamlets Council's reasons for refusal and Alec Forshaw's assessment of the amended scheme

For the avoidance of doubt, the content of the reasons for refusal of the Tower Hamlet's committee meeting on 21st July 2015 and the follow-up meeting of 27th August 2015 are addressed in the representation hearing report. This is also the case with regards to the content of Alec Forshaw's assessment of 26th November 2015.

As set out in the 'Heritage' chapter of the report, GLA officers are of the view that the proposals would result in *less than substantial harm* to the Elder Street Conservation Area and no harm would be caused to the neighbouring listed buildings, or the listed carriageways. The loss of undesignated heritage assets on the site is acknowledged and detailed in the report, and it is concluded that the high quality design of their

replacement buildings along with the wider public benefits of the scheme will outweigh their loss.

Copies of both documents are appended to this report addendum.

Other clarifications

- **Para.92 bullet 8** – should read: *proposals will cause substantial harm to the heritage asset.*
- **Para. 126** – should read: *The application site comprises a variety of building forms and uses as set out in paragraphs 5 to 16 of this report...*
- **Para. 164** – should read: *As set out in Table 3, the percentage of family units proposed across all tenures is 22.5 per cent.*
- **Para. 181** – should read: *As detailed in paragraph 96 of this report, the Spitalfields Community Group state that the full retention of Nos. 12 and 13 Blossom Street is encouraging...*
- **Para. 211** – should read: *As detailed in paragraph 5 of this report, the entire site is located within the Elder Street Conservation Area...*
- **Para. 255** – should read: *As discussed in paragraph 17 of this report...*

Representations to the Mayor

Since the publication of the representation hearing report on the 8th January 2016, the Mayor is advised that he has received 2 further representations objecting to the proposals.

Appendix

1. **Appraisal of revised scheme, Alec Forshaw, 26 November 2015**
2. **Tower Hamlets Strategic Development committee decision, 27 August 2015**
3. **DP9 response letter to the hearing report, 12 January 2016**

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APPRAISAL OF REVISED SCHEME SUBMITTED BY BRITISH LAND NOVEMBER 2015

DESCRIPTION OF THE REVISIONS

1. On 21st November 2015 British Land submitted revisions to the London Mayor and Tower Hamlets for the planning application reference PA/14/03548 which had been called in by the Mayor on 23rd September 2015.
2. The revision involves the retention and refurbishment of Nos.12-13 Blossom Street, which had previously been proposed for demolition and rebuilding behind a retained façade. Nos.12 and 13 Blossom Street are thus effectively separated from the new office development which replaces the other existing buildings on this street block (S1). Although the new office building will butt up against the rear of Nos.12 and 13, the floor levels above ground floor will no longer line up, and Nos. 12 and 13 will have their own service core, stair and lift.
3. The existing roofs of Nos.12 and 13 Blossom Street are retained, including the lower three storey element of No.12.
4. The overall change in floor space is modest, with a net loss of 531 m², made up of a reduction of 395 m² offices/B1 use and 145 m² of restaurant/A3 use, and an increase of 9 m² of retail. More significantly, however, is that 1,323 m² of new-build Grade A offices are replaced by 928 m² of refurbished B1 office space in Nos.12 and 13 Blossom Street.
5. There are no changes proposed to any other part of the scheme, either within street block S1, or the other street blocks comprising the application.

THE BALANCE OF HARM AGAINST PUBLIC BENEFIT

6. The application site comprises a significant part of a designated heritage asset, namely the Elder Street Conservation Area. Under the National Planning Policy Framework the assessment of proposals that involve either substantial harm or insubstantial harm to a designated heritage asset require consideration of the balance of the harm caused against the public benefits achieved (Paragraphs 133 and 134 of the NPPF).
7. A relevant consideration with the proposals for Norton Folgate is the extant planning permission granted in 2011 for the development of site S1.
8. On 27th August 2015 the London Borough of Tower Hamlets refused planning permission on the grounds that the proposals caused substantial harm to the Elder Street Conservation Area because of the amount of demolition of buildings that contribute positively to the character and appearance of the area

and because the mass, height and bulk of the proposals were out of scale with the existing character and appearance of the area, and that this harm was not outweighed by public benefits, in particular because of the inadequate provision of housing in total and the low proportion of social housing.

9. The revised scheme requires this balance to be re-assessed.

HARM

a) Demolition

10. The retention of Nos.12 and 13 Blossom Street is welcome, comprising buildings that contribute positively to the character and appearance of the Conservation Area. It is worth noting that Historic England, in its formal comments on the previous scheme in February 2015, stated, with regards to the warehouses, that “ the proposals are for the substantial retention of the buildings as a whole, with both the interior and exterior subject to sensitive restoration. In our view, this is a major heritage benefit of the scheme.” While Historic England may have misread the previous plans, its statement might now apply to the revised scheme, without any need to be re-written. The revisions now do something which Historic England already thought was being done.
11. It should be noted however that despite their apparently separate treatment, the warehouses will remain embedded and abutted by the new-build offices immediately to the west, such that the warehouses have no effective visual segregation or outlook. The applicant’s revised Design and Access Statement makes much of the retention of Room 4, which at present is separated by a thick wall from Nos.12 and 13 Blossom Street. The raising of the floor and inserting service and toilets in Room 4 will leave little of heritage value. Despite retaining Nos.12 and 13 Blossom Street, the opportunity has not been taken to define them externally in the manner of the 2011 consented scheme.
12. Furthermore, Nos.12 and 13 Blossom Street are a comparatively small part of the overall site. The previous criticisms remain unchanged regarding the treatment of existing buildings on site S1 – namely the demolition of No.14 Norton Folgate and Nos.3-9 Shoreditch High Street, and the alterations to Nos. 15 and 16-19 Norton Folgate (including inserting an access way through their ground floors), and Nos.5-11A Folgate Street. These all comprising modestly scaled buildings that contribute positively to the character and appearance of the Conservation Area, all capable of re-use but requiring sensitive treatment. The scale of development on the other street blocks adjacent to No.14 Blossom Street and behind the retained façade of No.27 Blossom Street, together with the treatment of No.2 Elder Street and No.161 Commercial Street and Nos.4-8 Elder Street remain unchanged by the revisions, and the existing objections still stand.

b) Scale and form of new development

13. Apart from the retention of Nos.12 and 13, there are no changes to the height and bulk of the new-build offices on the remainder of site S1. Indeed the omission of the previously proposed additional floor and the retention of the existing roofs of Nos. 12 and 13, including the lower three storey element of No.12 will reveal the difference and contrast in scale between old and new even more noticeably than before, particularly in the views along Fleur de Lys Street, looking west. The new offices in the current scheme continue to rise 10 storeys high sheer above the rear wall of Nos.12 and 13, plus a slightly set-back 11th storey and plant.
14. The 2011 approved scheme sought to achieve a legible and practical separation between the retained Blossom Street warehouses and the new offices (rising to a maximum of nine storeys) facing Norton Folgate and Shoreditch High Street, by creating a public space between the two distinct elements. The lower height and further distance of the new offices from the exposed rear of the warehouses resulted in a much less harmful impact and a more humane piece of townscape. The 2011 scheme was far more respectful of the existing delicate grain of the area and sought to provide an urban regeneration that balanced the demands of heritage and redevelopment. Claims by the applicant, and Historic England, that the current scheme is better than the 2011 consent are not supported by this analysis. The present revision does nothing to change the situation, or the comparative merits of the 2011 scheme.

BENEFITS

a) Heritage

15. The retention of Nos.12 and 13 Blossom Street reduces the amount of harm caused by the proposals, and, as Historic England has previously noted, sensitive refurbishment is a genuine benefit. Nevertheless it should be noted that the existing buildings are robust, in reasonable condition and perfectly capable of re-use without major intervention. If they were put on the market today they would be readily acquired by someone wanting to use them for commercial purposes. Their retention is something that should be happening anyway, is something that was part of the 2011 scheme, and is not a compensation for undesirable demolition and excessive redevelopment elsewhere in the Conservation Area.

b) Economic activity

16. The revisions result in a decrease in the amount of commercial floor space provided. The need to create additional commercial space in the Central Activity Zone was one of the reasons why the Mayor decided to intervene, in order to meet London Plan targets. The reduction of 1,323 m² of Grade A offices presumably reduces the benefits of the scheme in these terms. The retention of Nos.12 and 13 Blossom Street, however, does keep buildings that

are capable of flexible re-use at potentially more modest rents than new-build offices, thus helping the diversity of the commercial sector. The argument must be, however, that if this is a significant issue, why not apply it to much more of the existing site where there are existing buildings that could be modestly refurbished and let at affordable rents. Nos.4-8 Elder Street, indeed, are already in good condition and beneficially occupied by small businesses, yet are proposed to be expensively remodelled.

c) Affordable Housing

17. It is assumed that the revisions proposed are 'cost neutral' to the profitability of the overall scheme. The applicant has previously made the argument through formally-submitted viability analysis that the marginal profitability of the scheme allows only a relatively low provision and proportion of affordable housing on site S3 (40 units of which 29 are private, 4 intermediate and 7 social/affordable). If the revisions were to alter the profitability of the scheme, either way, one would expect the social housing offer to change accordingly.

CONCLUSION

18. It is considered that the revisions to the proposals do not significantly change the balance of harm and public benefits, and that the decision taken by Tower Hamlets in August 2015 remains sound. The proposals continue to cause harm to the character and appearance of the Elder Street Conservation Area that are not outweighed or justified by public benefits, and in the light of alternative proposals to develop the site, the revised application should be refused on the same grounds.

Alec Forshaw
MRTPI, IHBC

26th November 2015

Committee: Strategic Development	Date: 27 th August 2015	Classification: Unrestricted	Agenda Item Number:
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Report of: Director of Development and Renewal Case Officer: Beth Eite	Title: Applications for Planning Permission and Listed Building Consent. Ref No: PA/14/03548 (Full Planning Application) Ref No. PA/14/3618 (Listed Building Consent) Ward: Spitalfields and Banglatown
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1. APPLICATION DETAILS

Location: Land bounded by Elder Street, Folgate Street, Blossom Street, Norton Folgate, Shoreditch High Street and Commercial Street, E1.

Existing Use: Retail (A1), Public House (A4), Office (B1), Storage and Distribution (B8) and Non-Residential Institutions (D1).

Proposal: Application for planning permission (PA/14/03548)

Redevelopment of the former Nicholls and Clarke urban block and adjoining former depot site, Loom Court, and land and buildings north of Fleur de Lis Passage and Fleur de Lis Street, including retention and refurbishment of buildings, for commercially led mixed-use purposes comprising buildings of between 4 and 13 storeys to provide B1 (Office), A1 (Retail), A3 (Restaurants and cafés), A4 (Public house) and 40 residential units; together with new public open spaces and landscaping, new pedestrian accesses, works to the public highway and public realm, the provision of off-street parking, and ancillary and enabling works, plant and equipment.

The application is accompanied by an Environmental Statement, Addendum and other environmental information. The Council shall not grant planning permission unless they have taken the environmental information into consideration.

Application for listed building consent (PA/14/03618)

Works to the public highway (Fleur de Lis Street) including repair and replacement, where necessary, of the carriageway and pavement, installation of cycle parking, hard landscaping and all necessary ancillary and enabling works, plant and equipment.

2. BACKGROUND

- 2.1 This application for planning permission was considered by the Strategic Development Committee on 21th July 2015. A copy of the original report is appended.
- 2.2 The application was recommended for approval, however members voted to refuse planning permission and listed building consent based on the loss of heritage and subsequent harm to the conservation area as well as the lack of housing within the scheme, combined with the lack of affordable housing as a proportion of the housing

3.0 PROPOSED REASONS FOR REFUSAL

FULL PLANNING PERMISSION

- 1) The development would result in the total and partial loss of, and unsympathetic alteration, to a significant number of heritage assets which make a positive contribution to the character and appearance of the conservation area. Their replacements, by reason of the scale, mass and design would be harmful to the character and appearance of the conservation area. As a result, the proposal would cause 'less than substantial' harm to the Elder Street Conservation Area and the Brick Lane and Fournier Street Conservation Area. The public benefits associated with the proposal, including but not limited to additional employment floorspace, additional housing and bringing back vacant buildings into active use would not overcome the identified harm to the conservation area.

As a result the proposal is not considered to be sustainable development in accordance with paragraph 14 of the NPPF and is contrary to Development Plan policies SP10 of the Core Strategy 2010 and DM24 and DM27 of the Managing Development Document 2013 as well as having regard to the Elder Street Conservation Area Character Appraisal and the Historic England: Good Practice Advice 3.

- 2) The proposal by reason of the low proportion of housing compared to employment floorspace within the scheme fails to adequately address the borough's housing needs in accordance with strategic objective 7 within the Core Strategy which requires the delivery of housing to meet the objectives set out in the London Plan. This, combined with the low percentage of affordable housing would fail to ensure the development contributes to the creation of socially balanced and inclusive communities.

As a result the proposal is contrary to paragraph 47 of the NPPF which requires housing supply to be boosted significantly, policy SP02 (1) of the Core Strategy 2010 and policy 3.3 of the London Plan 2015 which requires Tower Hamlets to deliver 3,931 new homes a year. The proposal is also contrary to policy SP02 (3) which requires housing development to provide 35%-50% affordable housing on all sites providing 10 or more residential units.

LISTED BUILDING CONSENT

- 1) The proposed works to the grade II listed carriageway on Fleur de Lis Street, without any associated planning permission for redevelopment represents an unwelcome and unnecessary intrusion into the historic fabric of the street, causing less than substantial harm to this heritage asset. With no redevelopment proposals in place this harm is not outweighed by any public benefits and is therefore contrary to Development Plan policies SP10 of the Core Strategy 2010 and DM24 and DM27 of the Managing Development Document 2013 as well as having regard to the Elder Street Conservation Area Character Appraisal and the Historic England: Good Practice Advice 3.

4.0 CONSIDERATION

- 4.1 It is the professional view of officers that the above reasons for refusal could be defended at appeal, however the likelihood of success may be limited, particularly with regard to the low proportion of housing within the scheme. The reasons for this are set out below:

4.2 General proportion of housing

Tower Hamlets Core Strategy and Managing Development Document identify that there is a need for both employment floorspace and new housing within the borough. Other than within employment areas such as Preferred Office Locations and Local Office Locations it does not identify which use should be promoted over another. Clearly Tower Hamlets has challenging housing targets but it also has a policy which supports the growth of employment floorspace.

- 4.3 Strategic Objective 7 within the Core Strategy identifies that within the plan period the Council will seek to “deliver housing growth to meet general and specialist housing demand in line with London Plan targets”. Equally Strategic objectives 15 and 16 seek to achieve successful employment hubs through “supporting the thriving and accessible global economic centres of canary Wharf and the City Fringe which benefit from the regional and local economies” and “to support the growth of existing and future business in accessible and appropriate locations.
- 4.4 The annual monitoring report for 2012-2013 states that 37,028sqm of office floorspace has been lost over this period, predominantly for replacement with residential uses.
- 4.5 In summary the Local Plan provides support for both employment and residential uses, as such there is no obligation for the developer to provide housing within this scheme. It is intentionally employment-led in order to meet the aspirations of the GLA and the emerging ‘tech-city’ sector.
- 4.6 Where the Local Plan places no emphasis on residential over employment floorspace the draft Opportunity Area Planning Framework identifies a need for between 288,000sqm and 385,000sqm additional employment floorspace up to 2033 with the strength of demand within the ‘inner core area’ of the OPAF boundary (which this site falls within). Within the inner core emphasis is placed on the importance of new office floorspace and ‘Strategy 3 – Striking the balance between employment and residential’ states the following: “New build employment floorspace will be encouraged and supported. Strong consideration should be given to developing employment-led schemes and to the opportunity to provide an overall uplift in

employment floorspace”

- 4.7 It should also be noted that there was no residential floorspace provided within the extant scheme.

4.8 **Affordable Housing**

Comments were also raised by members with regard to the lack of affordable housing within the scheme. Policy SP02 of the Core Strategy requires developments to provide 35-50% affordable housing, however this is subject to viability and whether the scheme can afford that percentage of affordable housing.

- 4.9 In this case the applicant initially submitted the scheme with 27% affordable housing, through negotiation and robust interrogation of their viability assessment it was found that an extra 3% could viably be provided, as a result the developer converted a 2-bed private unit into a 3 bed affordable rented unit which then means the scheme provides 30% affordable housing. This is the maximum affordable housing that the scheme can provide and as such a refusal reason based upon the low proportion of affordable housing within the scheme would be challenging to successfully argue on appeal.

5.0 IMPLICATIONS OF THE DECISIONS

- 5.1 Following the refusal of the applications the following options are open to the Applicant. These would include (though not be limited to):

1. The applicant could appeal the decisions and submit an award of costs application against the Council. Planning Inspectorate guidance on appeals sets out in paragraph B20 that:

“Planning authorities are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the Council”.

2. There are two financial implications arising from appeals against the Council’s decisions. Firstly, whilst parties to a planning appeal are normally expected to bear their own costs, the Planning Inspectorate may award costs against either party on grounds of “unreasonable behaviour”. Secondly, the Inspector will be entitled to consider whether proposed planning obligations meet the tests of CIL Regulations 2010 (Regulation 122)
3. A future “call in” by the London Mayor or a future appeal should it be successful, might result in the developers being able to provide affordable rented housing at up to 80% of market rents. Similarly, the developer may elect to either renegotiate planning obligations previously agreed or prepare a unilateral undertaking for a subsequent appeal which could potentially result in a lesser S.106 planning obligations package (both in terms of financial and non-financial obligations negotiated by your officers).

- 5.2 Whatever the outcome, your officers would seek to robustly defend any appeal.

6 RECOMMENDATION

- 6.1 Officers do not wish to change their original recommendation to **GRANT PLANNING PERMISSION and LISTED BUILDING CONSENT**, subject to conditions and the completion of a s106 legal agreement.

PEH/TAH/DP3359

12th January 2016



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Dear Mr Keogh,

BLOSSOM STREET, E1: STAGE III REPORT RESPONSE

On behalf of our client, British Land Property Management Limited, we write this letter in response to the Stage III Report for the full planning and listed building consent application for the group of sites known collectively as Blossom Street, E1 (ref. PA/14/03548 and PA/14/03618). The Stage III Report (the report) was published on 8th January in advance of the Representation Hearing with the Mayor of London on 18th January.

The report contains a significant amount of information and detail on the proposals. However, there are a number of points which we would seek clarification or minor factual corrections on. These are set out in more detail below.

Heritage Assessment

The heritage assessment goes into considerable detail on the existing buildings, their heritage significance, assessing the level of demolition and the quality of the replacement buildings in terms of their impact on the setting of nearby listed buildings and the Elder Street Conservation Area (in accordance with Section 66 and Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 respectively). However, there are certain passages in the report which potentially make contradictory assertions and it is in relation to these assertions that we seek absolute clarity.

It is our understanding that the 'less than substantial harm' conclusion on the setting of the Conservation Area is derived from the loss of the 3-9 Shoreditch High Street buildings (noted in paragraph 254 as Nos. 3 – 9 Norton Folgate which is assumed to be an error) and the impact of the new buildings on views looking west along Fleur de Lis Street (paragraph 274). It is not clear whether it is considered that 'less than substantial harm' is caused by the loss of 14 Norton Folgate which paragraph 246 notes has "*some value*" but is not then referenced in the conclusion at paragraph 254.



As noted at paragraph 239, the public benefits that outweigh the finding of 'less than substantial harm' include:

1. Economic benefits – supporting the CAZ, the uplift of jobs, short and long term employment opportunities;
2. Housing delivery benefits – contributing towards Tower Hamlets targets and on site affordable housing;
3. Social benefits – widening access to employment in Tower Hamlets; and
4. Environmental benefits – including delivering energy efficient buildings, public access and public realm improvements, repairing the urban grain and bringing uses back to vacant areas.

In addition to the above, we would add that there are considerable heritage benefits including bringing back into use vacant and in some cases derelict buildings, retaining buildings and parts of buildings that contribute positively to the Conservation Area, repairing the historic street layout and repairing the statutorily listed Fleur de Lis Street.

It would be helpful for the Mayor to confirm the areas he considers to cause less than substantial harm and the benefits that outweigh this.

It should be noted that at paragraph 237 and 238 of the report that the test at paragraph 133 of the NPPF is referred to and set out. Assuming the Mayor makes a finding of 'less than substantial harm' this would not be the correct test from the NPPF. The correct test where less than substantial harm is found is set out at paragraph 134.

The assessment of 'less than substantial harm' is contradicted at paragraph 211 which states that "*it is officers' opinion that there is no harm to any Conservation Area*". This conclusion is repeated at paragraph 416.

Paragraph 254 refers to "*slight harm*" as do the heritage conclusions at paragraphs 292 and 295 and bullet 2 of the Reasons for Approval. Paragraph 274 refers to "*some harm*" but that this harm will be "*less than significant*". The NPPF does not use the terms "*slight harm*" or "*less than significant harm*". It is assumed that in these instances the assessment concludes there is 'less than substantial harm'.

Bullet 2 of the Reasons for Approval refers to "*the Conservation Area or other surrounding heritage assets...*". We would suggest "or" should be changed to "and". Furthermore, this bullet also makes the inference that harm is threefold, (i) the Conservation Area, (ii) surrounding heritage assets, and (iii) loss of onsite undesignated assets. This should be addressed in the main part of the assessment of heritage.

Bullet 10 of the Reasons for Approval (page 4) also notes that there will be "*no significant harm*" to the statutorily listed Fleur de Lis Street. We interpret this as 'less than substantial harm' also but seek clarification on this point.

We request that you clarify where 'no harm' is referenced and what is meant by 'slight', 'some', 'no significant' and 'less than significant' harm.



Paragraph 292 notes that there would be slight harm to the Conservation Area but also the “*settings of various neighbouring heritage assets*”. Please clarify which assets are being referred to and what the impacts are.

In addition to the above, paragraph 204 makes reference to the Court of Appeal’s ruling in Barnwell Manor. The paragraph refers to the weight to be afforded a listed building and its setting but not to the setting of a Conservation Area which should also be given the same weight as per the court’s decision. We feel this should be noted for the avoidance of doubt.

Minor Factual Corrections and Clarifications

Paragraph 3 refers to the training, employment and enterprise contribution of £1,061,805. We would appreciate clarity as to how this is calculated as it significantly exceeds previous calculations. Furthermore, we would request that the cycle hire contribution should be caveated that the payment will only be liable if it does not conflict with the Community Infrastructure Levy Regulations 2010 and amendments.

Paragraph 58 refers to only two of the three reasons that the Mayor of London can take over an application. The impact on more than one borough is referenced elsewhere in the report and thus should be mentioned here.

Paragraph 166 refers to the applicant’s consultants being GVA for the viability assessment. DS2 are our client’s consultants for viability purposes while GVA act for Tower Hamlets.

Paragraph 211 refers to Section 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This should refer to Section 66 and Section 72 of the Act (in relation to listed buildings and conservation areas respectively).

Paragraph 234 notes that the applicant concludes that the impact of the loss of the undesignated heritage assets on the significance of the designated heritage assets is ‘less than substantial harm’. This is not correct and we have maintained that we believe the proposals cause no harm to any undesignated heritage assets.

Paragraph 246 refers to sub-plot S1c. This should be sub-plot S1a.

At paragraph 291, reference is made to “*limited impact*”. Please clarify as to whether this should read “*limited beneficial impact*”.

Finally, there are also some general inaccuracies on the heights of consented and proposed buildings. The consented scheme is referred to as the number of storeys plus plant whilst the proposed scheme is referred to as the total number of storeys (including plant). Furthermore, the 2007 application is 10 storeys plus plant and noted as a lower height than the smaller consented scheme. The 2011 consented scheme is also noted as being 9 storeys at its tallest whereas it is 9 storeys plus plant (51.6m AOD to the parapet of the plant). It should also be noted that S3 is 4 storeys plus a setback storey at level 5.

We request that these points be addressed through an addendum to the Stage III Report in advance of the Representation Hearing. Should you require any further information on this letter, please contact Tom Horne or Paul Henry of this office.

Yours faithfully

DP9 Limited

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