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# Appeal Decision

Site visit made on 1 May 2012

**by Elaine Benson BA (Hons) Dip TP MRTPI**

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

**Decision date: 28 June 2012**

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**Appeal Ref: APP/E5900/A/11/2167374**

**Site at north east junction of Corbet Place and Hanbury Street, Corbet Place, London E1 6QL**

- 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 Zeloof LLP against the decision of the London Borough of Tower Hamlets Council.
  - The application Ref PA/11/02684, dated 22 September 2011, was refused by notice dated 18 November 2011.
  - The development proposed is change of use from warehouse to bar/restaurant through the retention of the current use of the premises as a bar/restaurant.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use from warehouse to bar/restaurant through the retention of the current use of the premises as a bar/restaurant at Site at north east junction of Corbet Place and Hanbury Street, Corbet Place, London in accordance with the terms of the application, Ref PA/11/02684, dated 22 September 2011, and the plans submitted with it, subject to the following conditions:
  - 1) No music or other amplified sound shall be played within the premises so as to be audible from the nearest residential premises.
  - 2) The use hereby permitted shall not be open to customers outside the following times: 0800-2300 on any day.
  - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: P\_CP101 0911, P\_1007 0911 and waste management plan dated December 2012.
  - 4) The open area to the south of the site shall not be used for the purposes of sitting out, dining or drinking.
  - 5) The doors to the south elevation of the development must be kept shut at all times unless in use as emergency exit doors.
  - 6) Details of cycle parking, including the location, means of enclosure and means by which the cycles would be secured shall be submitted to and approved in writing by the local planning authority within 3 months of the date of this decision.

## **Preliminary Matters**

2. Planning Policy Statement (PPS) 4: Planning for Sustainable Economic Growth and PPS 24: Planning and Noise are referred to in the submissions. Both documents have recently been replaced by the National Planning Policy Framework (the Framework). Relevant considerations are addressed below.
3. The appeal site is in the Fournier Street and Brick Lane Conservation Area. There is no suggestion that the proposed development would harm the character or appearance of the area and there are no reasons to disagree. The proposal would therefore preserve the character and appearance of the Conservation Area.
4. In November 2004 planning permission was granted for the change of use of the appeal property to a bar/restaurant for a temporary period of 2 years. Although time expired, the use has continued to operate since then as Corbet Place, with the emphasis on the bar use. Given this planning status, the appeal has been determined as a proposed change of use, notwithstanding that the effects of the use are known.

## **Main Issue**

5. The main issue is the individual and cumulative effect of the proposed use on the living conditions of neighbouring occupiers.
6. The Council's second refusal reason related to the adequacy of refuse and recycling facilities. The appellant submitted a Statement of Refuse and Recycling Arrangements with the appeal which the Council confirms addresses its concerns. Taking into account the submitted information, including the former Brewery's centralised waste management system, observations made at the site visit and the Council's desire to withdraw the second refusal reason, there are no reasons to dispute that the refuse and recycling facilities are satisfactory. Accordingly, this decision focuses on the remaining issue in dispute.

## **Reasons**

### Context and Policy Background

7. The appeal site is within the Spitalfields area of London which contains a mix of creative and cultural industries. The evening economy and weekend retail and leisure activities have led to the area becoming one of the most vibrant and economically successful places in Tower Hamlets. Over the past 10-15 years a variety of new uses, including entertainment, food and drink, retail and offices have commenced in the large, redundant Truman Brewery complex which is centred on Brick Lane. The appeal building is a single storey former warehouse within the former Brewery site. It stands at the corner of Corbet Place and Hanbury Street and is accessed from the adjacent Ely's Yard.
8. Residential properties in the area surrounding the appeal site are on Hanbury Street, Wilkes Street, Princelet Street and the adjoining parts of Brick Lane. They are situated amongst retail, industrial and other commercial uses, with a number on the upper floors of ground floor commercial uses.
9. Of relevance to this proposal, saved Policies DEV2, DEV50 and S7 of the Tower Hamlets Unitary Development Plan 1998 (UDP) require new development to protect the amenities of residential occupiers from the effect of pollution,

including noise impacts and require any necessary remediation to be carried out. Policy S7 underlines the need to assess residential amenity issues when determining proposals including restaurant and bar uses. In terms of the local economy, UDP Policies EMP1 and EMP8 promote employment growth, including through the reuse of derelict buildings and encourage the growth and development of new and expanding businesses, recognising their contribution towards local employment. Of relevance to this appeal, Policy 7.15 of the London Plan seeks to minimise the adverse impacts of noise from within proposals, including by separating new noise sensitive development from major noise sources.

10. The Council's Interim Planning Guidance (2007) (IPG) Policy DEV1 seeks to protect and where possible improve amenities and the public realm and ensure that development does not create unacceptable levels of noise; Policy DEV10 specifically relates to disturbance from noise pollution and requires attenuation measures where necessary. In respect of the evening and night-time economy, Policy RT5 requires consideration of the proximity of residential accommodation, the cumulative impact and level of disturbance associated with A3, A4 and A5 uses and the nature of the activity, including the impact of its operating hours and mitigating measures. The IPG was subjected to extensive public consultation and a sustainability appraisal and therefore attracts some weight in this decision.
11. The Tower Hamlets adopted Core Strategy 2010 (CS) reclassifies the Brick Lane area as a District Centre which should be enhanced to contain a range of shops and services to meet the needs of local communities. Among other things, CS Policy SP01 encourages evening and night-time economy uses that contribute to the vibrancy, inclusiveness and economic vitality of town centres. This is balanced by the need to avoid an over-concentration of uses where they would have a detrimental effect on the amenities of local residents. This reflects the CS *Vision* for Spitalfields. The area in and around Brick Lane is identified as "a historic gateway to the vibrancy of Spitalfields Market, Trumans Brewery and Brick Lane". The former Brewery site and the Brick Lane area are also identified as an area of high intensity and the Tower Hamlets Activity Area promotes the vibrant mix of uses that are economically competitive, based on a defined set of principles.
12. The submission version of the Council's Managing Development (MD) Development Plan Document (DPD) was endorsed by its Cabinet in December 2012, after the determination of the appeal application. Policy DM1.6 sets out percentage thresholds to prevent over-concentrations of A3, A4 and A5 uses in town centres. The MD DPD is more recent than the IPG, responds to the policies in the 2011 London Plan and in the view of the Council attracts more weight than the IPG. However the weight to be attributed to this document is disputed by the appellant. The MD DPD has only recently been published for public consultation. Due to its very early stage in the adoption process, the emerging MD DPD is given very limited weight in this appeal as its policies may change as a result of consultation comments and following formal examination.
13. Furthermore, emerging policy DM1.6 would set the maximum level of A3, A4 and A5 uses in Brick Lane at 25% of the total number of units. This is higher than the level set in other town centres, reflecting the character of the centre. The Council's land use survey indicates that 26% of the uses are already in A3, A4 or A5 use. However the Appellant's survey leads to a lower figure. The

evidence also highlights a number of alleged inaccuracies in the Council's assessment, which have not been responded to by the Council. The degree of uncertainty leads me to give very little weight to the statistical evidence. The appellant's wider concerns about the content of the MD DPD, tensions between its policies and those of the recently adopted CS and its evidence base are noted. However, this appeal is not the forum to discuss its merits and the MD DPD policies should be assessed in accordance with the formal adoption process.

14. Corbet Place generates some 20 direct jobs and its economic value to the local economy is acknowledged. The identified policies, guidance and aims are consistent with the London Plan and also with the general national policy objectives set out in the Framework.

#### Main Issue

15. The appeal site lies within the Brick Lane District Centre. It is one of the local evening economy leisure uses which include restaurants and bars, including the various uses within the former Brewery site. Local policies support a vibrant mix of uses within the defined Tower Hamlets Activity Area and it is recognised that the area around the appeal site is a diverse and mixed use area with a special character. There is therefore no policy objection to the proposed use in principle. However, it is necessary to balance the desirability of promoting evening economy uses with protecting residents who live in the area. To determine this appeal, visits to the site and surrounding area were carried out at various times to assess the impact of the proposed use.
16. As the popularity of the area for leisure, culture and tourism has increased, the number of people visiting during the evening and night-time has grown significantly. The Council has identified a number of adverse impacts resulting from this success, including the direct noise from premises and from individuals inside or outside them. The numbers include those passing through the area who are likely to link trips to the various leisure facilities. In the Council's view this has amounted to an over-concentration of such uses.
17. Objections were made to the appeal proposal and the Council states that that over the last 10 years there have been a number of complaints about noise emanating from the former Brewery site and antisocial behaviour. However, the submitted photographs and evidence do not indicate that these concerns relate specifically to the appeal use, or indeed the former Brewery site as a whole. The alcohol-related crime information and the intention of the Metropolitan Police to introduce a "Saturation Policy" along with the licensing regime are also noted. It is clear that there are difficulties caused by the concentration of entertainment uses within a confined area and measures proposed as part of the multi-agency approach to the situation could help protect the living conditions of local residents.
18. However, the Council accepts that the proposed use, in itself, would bring about a relatively small change in the balance of uses, acknowledging that antisocial behaviour in the area cannot be attributed to the appeal site alone. This view is supported by an email from a local Police officer to the appellant which indicates that in his opinion the appeal site "is not a venue that often comes up on our radar" (other than in respect of bag thefts), whilst strongly expressing the wider need for the proposed Saturation Policy. No evidence has been provided which demonstrates that the continuation of the appeal use

would have any discernable effect on adverse amenity impacts suffered by neighbouring residential occupiers.

19. Nonetheless, the Council considers that the proposal would set an undesirable precedent which would begin to erode the character, enjoyment and usability of the area to the detriment of the District Centre, and that the proposed development would contribute towards the cumulative increase in noise and disturbance and antisocial behaviour in the area. A number of the representations made, including photographs, refer to the external decked area to the east of the appeal site and to the wider use of Ely's Yard. Although it is stated that the decked area is used as a smoking area, these areas are not part of the appeal premises and their use could not appropriately be controlled by conditions as part of this appeal.
20. The entrance to the Corbet Place is not directly from the public highway. Patrons would have to pass through Ely's Yard which has a number of routes leading to the overall former Brewery complex and beyond. These routes would allow for the gradual dispersal of patrons. Pedestrian flows were surveyed over 4 days in February 2012. The results give an indication of pedestrian movements at that time, but can only be a snapshot due to the variance in numbers of tourists over the year and the likely increase in patrons visiting the area during periods of good weather. Therefore in terms of overall numbers the assessment has been given limited weight.
21. The main routes between public transport facilities and Ely's Yard are from Hanbury Street or Brick Lane and these appear to be the most commonly used routes. Objections have been received from residents living on both streets, however, the Council has not provided any statistical or other evidence to demonstrate the effect of Corbet Place patron numbers on the area, nor does it dispute the appellant's evidence. The survey demonstrates that the pedestrian impact of Corbet Place patrons is proportionally low when compared with the overall number of people leaving Ely's Yard. Considering the relatively small size of Corbet Place, there are no convincing reasons to reach a different conclusion.
22. Corbet Place is bounded by buildings which act as a buffer between the entrance to the appeal premises and the nearest residential properties on Hanbury Street and Wilkes Street, and by walls on the Corbet Place and Grey Eagle Street boundaries. Windows are glazed with acoustic glass and there is a lobby to the entrance. In addition, a limiter to the sound system prevents its volume exceeding a predefined limit. Therefore there is unlikely to be noise breakout from the appeal premises, as confirmed by the Council's Environmental Health Officer and the Acoustic Report submitted with the application. It is concluded that if adequately maintained, these measures are sufficient to contain noise from the appeal premises.
23. Furthermore, this proposal is for a restaurant/bar which closes at 2300 hours. Corbet Place is therefore not a late night venue. Its operating hours could be limited by condition to protect neighbouring amenities. The Council states that the position of Corbet Place within the Brewery complex may well limit its direct impact on local residents. Other similar uses in the locality have later opening hours, including off-licences selling alcohol at a late hour. From the evidence provided, it appears that the majority of concerns raised relate to late night disturbance, particularly at times when residents can expect undisturbed

- sleep. As the appeal premises closes at 2300 hours, its customers are unlikely to contribute directly to noise occurring during the night.
24. The appellant indicates that there are security guards at the various exits of the former Brewery site who provide surveillance of customers accessing or leaving the appeal premises and the wider Brewery site during the busiest hours. Amongst other things patrons are prevented from entering or leaving with open drink containers. These security measures and the overall site management identified would contribute towards the effective supervision of the identified negative impacts.
25. In respect of Corbet Place and the wider Brewery site, the evidence is convincing that the noise of customers leaving Corbet Place does not and would not normally unduly influence the character of the existing noise environment or otherwise harm the living conditions of local residents. It is concluded that the hours of operation reduce the potential for noise or antisocial behaviour nuisance. Although the current use does not have planning permission, it is a material consideration that no enforcement action had been taken to require the use to cease, with the exception of a noise abatement notice in December 2005 which was complied with. Moreover, the Council has identified no specific antisocial or amenity concerns associated with this particular use.
26. In 2011 an appeal relating to the extension of the time limit for implementation of a 2005 planning permission for the change of use to a restaurant was allowed (APP/E5900/A/11/2147453). This site is within the former Brewery complex and the District Centre, close to the appeal site and nearer to residential properties, lying directly opposite Wilkes Street. The Inspector noted the mixed character of the wider area and that the site was part of the wider redevelopment of the Brewery site. He also acknowledged that it was in the District Centre, where local policy encouraged the area to continue as a diverse ethnic community with fashion, art and restaurant uses. He also referred to specific references in the CS to the higher intensities of such uses in the former Brewery. The adopted policy context and locational factors identified in this recent appeal are materially unchanged. There is sufficient evidence to reach a similar conclusion that the currently proposed development is acceptable.
27. The Council's concerns about precedent are acknowledged. However, in terms of the cumulative effect of the proposed use, there are emerging policies which if adopted could limit the number of A3, A4 and A5 uses operating in the area where adverse effects are identified, following an assessment of their individual merits. The specific circumstances of this appeal include the previous planning permission, that the use continued for a number of years without objections and that planning permission has been granted for similar uses locally since Corbet Place first opened, including within the former Brewery site. Taking these factors into account, the context and material considerations relating to the appeal proposal are unique and would be unlikely to be repeated. This decision could not therefore be reasonably considered to set a precedent.
28. In terms of other antisocial behaviours identified, there is no evidence that concerns about urinating in the street or doorways relate to customers of Corbet Place. Furthermore, it is noted that there are sufficient toilets within Corbet Place and the surrounding businesses and that the former Brewery site also provides portable urinals during peak hours.

29. A 2010 appeal decision relating to a site at 135 Brick Lane has been considered (APP/E5900/A/10/2134635). The appeal involved the change of use of a garment factory with residential accommodation above which would have resulted in the loss of flexible workspace, contrary to employment policy and direct harm to residential amenities. The property is not part of a wider complex with a long-standing planning history and is not identified as within the District Centre or Tower Hamlets Activities Area, as is the current appeal site. No 135 is in an area where there are fewer entertainment uses and the Inspector felt that the existing character should be retained. The relevant issues and the overall balance of considerations identified by the Inspector were significantly different to the current appeal proposal which has been assessed on its own merits.

### Conclusions

30. The Council's CS and related guidance encourage and support the focus of night-time economy uses within the old Brewery site and the Brick Lane District Centre. These objectives have been balanced with protecting the living conditions of local residents and it is concluded that there is no verifiable evidence that Corbet Place has generated noise, disturbance or antisocial behaviour such as to harm residential amenities or that it unacceptably contributes to a cumulative effect or would do so if planning permission were to be granted subject to controlling conditions.
31. There are a large number of commercial premises within the local area, which have opening hours exceeding those of the appeal property and which the evidence indicates are more likely to generate the identified harmful effects. Furthermore, the Council acknowledges that the continuing use of Corbet Place would have a marginal effect on the existing situation. It is therefore concluded that the balance between night-time activities and the peace and quiet of residents would be preserved.
32. It follows therefore that no conflict has been identified with UDP Policies DEV2, DEV50 and S7; Policies SP01 and SP10 of the CS; and Policies RT5, DEV1 and DEV10 of the IPG. There is no conflict with the identified objectives of the London Plan. These conclusions take account of the Framework. No substantive evidence has been provided which would lead me to conclude that the development plan policies are in conflict with the Framework. Accordingly, consideration of the Framework has not led me to reach any different overall decision. For the reasons given above and having regard to all other matters raised, the appeal should therefore be allowed.

### Conditions

33. Conditions are necessary to ensure that the development is carried out in accordance with the approved drawings. To protect the living conditions of residential occupiers in the vicinity it is necessary to limit the hours of operation to those approved in the earlier, temporary permission; to limit noise levels and to impose a condition requiring the doors on the south elevation to be kept closed except for when used as fire doors. For the same reason, the external area to the south of the site should not be used for sitting outside, eating and drinking.
34. The Council has suggested the submission of a scheme to prevent the transmission of noise and vibration from the appeal building and to control the

level of music heard from outside the premises. However sound insulation measures have been carried out and no objections have been raised by Environmental Health. Accordingly there is no need for this condition. In the interest of sustainable travel, cycle parking shall be provided within 3 months. As the use has already commenced, there is no need for the suggested time limit condition.

35. In some instances the wording of the suggested conditions has been varied to better reflect the guidance in Circular 11/95 The Use of Conditions in Planning Permissions or to better reflect the appeal proposal.

*Elaine Benson*

INSPECTOR