



---

## **AGENDA FOR THE PLANNING SUB COMMITTEE A**

---

Members of the Planning Sub Committee A are summoned to a meeting, which will be held in Council Chamber, Town Hall, Upper Street, N1 2UD - Islington Town Hall on, **17 March 2020 at 7.30 pm.**

Enquiries to : Ola Adeoye  
Tel : 020 7527 3044  
E-mail : [democracy@islington.gov.uk](mailto:democracy@islington.gov.uk)  
Despatched : 9 March 2020

### **Welcome:**

Members of the public are welcome to attend this meeting.

**Consideration of Planning Applications** – This is a formal agenda where decisions are taken on planning applications submitted to the Council. Public speaking rights on these items are limited to those wishing to comment on specific applications. **If you wish to speak at the meeting please register by calling the Planning Department on 020 7527 2278 or emailing [enquiriesplanning@islington.gov.uk](mailto:enquiriesplanning@islington.gov.uk).**

<u>Committee Membership</u>	<u>Wards</u>	<u>Substitute Members</u>	
Councillor Picknell (Chair)	- St Mary's;	Councillor Klute	- St Peter's;
Councillor Clarke	- St George's;	Councillor Kay	- Mildmay;
Councillor Convery	- Caledonian;	Councillor Poyser	- Hillrise;
Councillor Graham	- Bunhill;	Councillor Spall	- Hillrise;
Councillor Mackmurdie	- Clerkenwell;	Councillor Woolf	-
		Canonbury;	
		Councillor Chowdhury	-
		Barnsbury;	
		Councillor Hamitouche	-
		Barnsbury;	
		Councillor Turan	- St Mary's;
		Councillor Wayne	-
		Canonbury;	
		Councillor Webbe	- Bunhill;

Quorum: 3 councillors

**A. Formal Matters** **Page**

1. Introductions
2. Apologies for Absence
3. Declarations of Substitute Members
4. Declarations of Interest

If you have a **Disclosable Pecuniary Interest\*** in an item of business:

- if it is not yet on the council's register, you **must** declare both the existence and details of it at the start of the meeting or when it becomes apparent;
- you may **choose** to declare a Disclosable Pecuniary Interest that is already in the register in the interests of openness and transparency.

In both the above cases, you **must** leave the room without participating in discussion of the item.

If you have a **personal** interest in an item of business **and** you intend to speak or vote on the item you **must** declare both the existence and details of it at the start of the meeting or when it becomes apparent but you **may** participate in the discussion and vote on the item.

**\*(a) Employment, etc** - Any employment, office, trade, profession or vocation carried on for profit or gain.

**(b) Sponsorship** - Any payment or other financial benefit in respect of your expenses in carrying out duties as a member, or of your election; including from a trade union.

**(c) Contracts** - Any current contract for goods, services or works, between you or your partner (or a body in which one of you has a beneficial interest) and the council.

**(d) Land** - Any beneficial interest in land which is within the council's area.

**(e) Licences**- Any licence to occupy land in the council's area for a month or longer.

**(f) Corporate tenancies** - Any tenancy between the council and a body in which you or your partner have a beneficial interest.

**(g) Securities** - Any beneficial interest in securities of a body which has a place of business or land in the council's area, if the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or of any one class of its issued share capital.

This applies to **all** members present at the meeting.

5. Order of Business 1 - 4
6. Minutes of Previous Meeting 5 - 16

**B. Consideration of Planning Applications** **Page**

1.	10-16 Theberton Street Islington, London, N1 0QX	17 - 84
2.	10-16 Theberton Street London, Islington N1 0QX	85 - 152
3.	137 -139 Essex Road Islington London ,N1 2NR	153 - 226
4.	Braithwaite House, Bunhill Row, Islington, London, EC1Y 8NE	227 - 250
5.	Michael Cliffe House, Skinner Street, London, EC1R 0WW	251 - 274
6.	Unit 139-142 Business Design Centre, 52 Upper Street, London, N1 0QH	275 - 296

**C. Consideration of other planning matters Page**

**D. Urgent non-exempt items (if any)**

Any non-exempt items which the Chair agrees should be considered urgently by reason of special circumstances. The reasons for urgency will be agreed by the Chair and recorded in the minutes.

**E. Exclusion of press and public**

To consider whether, in view of the nature of the remaining item on the agenda, it is likely to involve the disclosure of exempt or confidential information within the terms of the Access to Information Procedure Rules in the Constitution and, if so, whether to exclude the press and public during discussion thereof.

**F. Confidential/exempt items Page**

**G. Urgent exempt items (if any)**

Any exempt items which the Chair agrees should be considered urgently by reason of special circumstances. The reasons for urgency will be agreed by the Chair and recorded in the minutes.

**Date of Next Meeting:** Planning Sub Committee A, 27 April 2020

**Please note all committee agendas, reports and minutes are available on the council's website: [www.democracy.islington.gov.uk](http://www.democracy.islington.gov.uk)**

## **PROCEDURES FOR PLANNING SUB-COMMITTEES**

### **Planning Sub-Committee Membership**

Each Planning Sub-Committee consists of five locally elected members of the council who will decide on the applications for planning permission.

### **Order of Agenda**

The Chair of the Planning Sub-Committee has discretion to bring forward items, or vary the order of the agenda, where there is a lot of public interest.

### **Consideration of the Application**

After hearing from council officers about the main issues of the proposal and any information additional to the written report, the Chair will invite those objectors who have registered to speak for up to three minutes on any point relevant to the application. If more than one objector is present for any application then the Chair may request that a spokesperson should speak on behalf of all the objectors. The spokesperson should be selected before the meeting begins. The applicant will then be invited to address the meeting also for three minutes. These arrangements may be varied at the Chair's discretion.

Members of the Planning Sub-Committee will then discuss and vote to decide the application. The drawings forming the application are available for inspection by members during the discussion.

Please note that the Planning Committee will not be in a position to consider any additional material (e.g. further letters, plans, diagrams etc.) presented on that evening. Should you wish to provide any such information, please send this to the case officer a minimum of 24 hours before the meeting. If you submitted an objection but now feel that revisions or clarifications have addressed your earlier concerns, please write to inform us as soon as possible.

### **What Are Relevant Planning Objections?**

The Planning Sub-Committee is required to decide on planning applications in accordance with the policies in the Development Plan unless there are compelling other reasons. The officer's report to the Planning Sub-Committee will refer to the relevant policies and evaluate the application against these policies. Loss of light, openness or privacy, disturbance to neighbouring properties from proposed intrusive uses, over development or the impact of proposed development in terms of size, scale, design or character on other buildings in the area, are relevant grounds for objection. Loss of property value, disturbance during building works and competition with existing uses are not. Loss of view is not a relevant ground for objection, however an unacceptable increase in sense of enclosure is.

**For further information on how the Planning Sub-Committee operates and how to put your views to the Planning Sub-Committee please call Ola Adeoye/Zoe Lewis on 020 7527 3044/3486. If you wish to speak at the meeting please register by calling the Planning Department on 020 7527 2278 or emailing [enquiriesplanning@islington.gov.uk](mailto:enquiriesplanning@islington.gov.uk).**



**COMMITTEE AGENDA**

**1 10 - 16 Theberton Street**  
Islington  
London  
N1 0QX

---

**2 10 - 16 Theberton Street**  
London  
N1 0QX

---

**3 137 - 139 Essex Road**  
Islington  
London  
N1 2NR

---

**4 Braithwaite House**  
Bunhill Row  
Islington  
London  
EC1Y 8NE

---

**5 Michael Cliffe House**  
Skinner Street  
London  
EC1R 0WW

---

**6 Unit 139-142**  
Business Design Centre  
52 Upper Street  
London  
N1 0QH

---

---

**1 10 - 16 Theberton Street**  
Islington  
London  
N1 0QX

---

Application Number: P2018/3913/FUL  
Ward: St. Marys

**Proposed Development:** RECONSULTATION: Re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, and 10 and 12 Theberton Street; install a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations. (Listed building consent also submitted ref: P2018/3973/LBC).

REASON FOR RECONSULTATION: Amended description of development to note installation of extractors to rear (these previously formed part of the proposal, however were not included within the description).

**Application Type:** Full Planning Application

**Case Officer:** Nathan Stringer

**Name of Applicant:** Mr Mehmet Kocakerim

**Recommendation:**

---

## 2 10 - 16 Theberton Street

London

N1 0QX

---

**Application Number:** P2018/3973/LBC

**Ward:** St. Marys

**Proposed Development:** RECONSULTATION: Re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, and 10 and 12 Theberton Street; install a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations. (Full application also submitted ref: P2018/3913/FUL).

REASON FOR RECONSULTATION: Amended description of development to note installation of extractors to rear (these previously formed part of the proposal, however were not included within the description).

**Application Type:** Listed Building

**Case Officer:** Nathan Stringer

**Name of Applicant:** Mr Mehmet Kocakerim

**Recommendation:**

---

## 3 137 - 139 Essex Road

Islington

London

N1 2NR

---

**Application Number:** P2018/4159/FUL

**Ward:** St. Marys

**Proposed Development:** Demolition and replacement of front and rear facades (including roofing) and additions to the roof, to include a one-storey extension fronting Essex Road, and two-storey extension fronting Astey's Row (with glass box above) to accommodate 5x (1 no. 1-bedroom unit [2 person] x 2no. 2-bedroom units [3 person] x 1no. 2-bedroom units [4 person] x 1no. 3-bedroom [5 person unit) residential units; refurbishment of existing ground and first floor and creation of part basement level Class B1 office space (115sqm) and retention of ground floor (150sqm) Class A1 retail unit fronting Essex Road.

**Application Type:** Full Planning Application

**Case Officer:** Jake Shiels

**Name of Applicant:** See Agent

**Recommendation:**

---

**4 Braithwaite House  
Bunhill Row  
Islington  
London  
EC1Y 8NE**

---

**Application Number:** P2018/4275/FUL

**Ward:** Bunhill

**Proposed Development:** The installation of 65 number antennas pole mounted on 13 no. free-standing support frames upon the roof of the building, the installation of 2 no. equipment cabinets within an existing plant room and development ancillary thereto.

RECONSULTATION: Amended Statement provided detailing the type of technology and communication equipment proposed, confirming that the equipment will not be used to deliver 5G services and confirming the safety of the proposed equipment].

**Application Type:** Full Planning Application

**Case Officer:** Ross Harvey

**Name of Applicant:** .

**Recommendation:**

---

**5 Michael Cliffe House  
Skinner Street  
London  
EC1R 0WW**

---

**Application Number:** P2018/4282/FUL

**Ward:** Clerkenwell

**Proposed Development:** The installation of 86 antennas pole mounted on 10 no. free-standing support frames upon the roof of the building, as well as one equipment cabinet in association with the provision of mobile phone services.

RECONSULTATION Amended Statement provided detailing the type of technology and communication equipment proposed, confirming that the equipment will not be used to deliver 5G services and confirming the safety of the proposed equipment.

**Application Type:** Full Planning Application

**Case Officer:** Alex McCombie

**Name of Applicant:** Luminet Solutions Ltd.

**Recommendation:**

---

**6 Unit 139-142  
Business Design Centre  
52 Upper Street  
London  
N1 0QH**

---

**Application Number:** P2019/2447/FUL

**Ward:** St. Marys

**Proposed Development:** Change of use of part of the existing office (Use Class B1a) to a part office (Use Class B1a) part (68 sqm) training facility. (Sui Generis) No internal or external works.

**Application Type:** Full Planning Application

**Case Officer:** Daniel Jeffries

**Name of Applicant:** Ola UK Private Limited

**Recommendation:**

---

This page is intentionally left blank

London Borough of Islington

## Planning Sub Committee A - 14 January 2020

Minutes of the meeting of the Planning Sub Committee A held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 14 January 2020 at 7.30 pm.

**Present:**      **Councillors:**      Picknell (Chair), Clarke, Convery, Graham and Mackmurdie

### **Councillor Angela Picknell in the Chair**

**95      INTRODUCTIONS (Item A1)**

Councillor Picknell welcomed everyone to the meeting. Members of the Committee and officers introduced themselves.

**96      APOLOGIES FOR ABSENCE (Item A2)**

There were no apologies for absence.

**97      DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)**

There were no declarations of substitute members.

**98      DECLARATIONS OF INTEREST (Item A4)**

There were no declarations of interest.

**99      ORDER OF BUSINESS (Item A5)**

The order of business would be B6,B1,B3, B4 and B5.

**100     MINUTES OF PREVIOUS MEETING (Item A6)**

**RESOLVED:**

That the minutes of the meeting held on 7 November 2019 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

**101     5, 7-11& 13 GEORGES ROAD, LONDON, N7 8HD (Item B1)**

The demolition of the existing buildings and structures on the site and the erection of a building comprising an Office B1 unit and five residential dwellings (4 x three-bed and 1 x one-bed), with associated landscaping, cycle parking and refuse facilities, solar panels and roof terraces.

(Planning application number: P2019/1923/FUL)

In the discussion the following points were made:

- Members were informed that since the publication of the agenda, additional information was received from objector regarding the separation distances

between their properties and the proposed scheme.

- The Planning Officer advised that site is in close proximity to Holloway Road and although predominantly residential, there are some mixed uses. The existing buildings on site are not statutory listed but located within St Mary Magdalene Conservation Area.
- The Planning Officer informed members that the application represents a resubmission of similar scheme which had been refused planning permission by the committee on grounds of design and scale; neighbouring amenity issues; poor quality residential accommodation and failure to provide the necessary financial contribution to affordable housing.
- Meeting was informed that an appeal by the applicant was subsequently dismissed by the Planning Inspectorate for reasons such as poor quality outlook from the proposed ground floor level rear facing windows; insufficient provision of defensible space to the proposed front garden areas of the scheme and the resulting unacceptable harm to the living conditions of the occupants of St James House Flat no 1, overlooking from the roof top terrace of flat no 5 and an increase sense of enclosure.
- Members were advised that the revised scheme incorporates a defensible space at the main entrance of each proposed dwelling; omits the roof terrace from proposed House No. 5 in order to overcome looking and the primary living spaces are now on the upper floor levels to address Planning Inspector's concerns about the poor quality outlook of the units.
- Objectors raised concerns about the use of the flat roof which has been described as 'for maintenance only' as a potential area for noise disturbances; overshadowing of St James School flats; loss of privacy and the need for windows to be obscure glazed to alleviate concerns about privacy and overlooking, a sense of enclosure, loss of sunlight and daylight and lack of consultation.
- Members were reminded that although the reasons for dismissal by the Inspector did not include design/conservation issues, the applicant amended the proposals to ensure a high quality design finish is accomplished, and that all dwellings have been altered so that bedrooms are located at first floor and key living areas at second floor.
- Members heard evidence from neighbouring residents about their concerns, which included proposal being too large and tall, out of character with the street scene, overlooking and overshadowing.
- An objector was concerned that conditions stipulated in the report would not mitigate overlooking concerns into the first floor windows especially as the separation distance between the properties and the proposed scheme was less than 18m which is contrary to policy of DM2.1. An objector requested

that were the committee minded to grant planning permission, a condition to have glazed windows to protect privacy will be welcomed.

- Members were advised that in addition to the revisions, after negotiations between applicants and council officers, the applicants has agreed financial contributions of £200,000 towards affordable housing and £7,500 for carbon offset if the scheme is approved.
- In terms of the impact of the proposal on the conservation and nearby historic buildings, meeting was informed that officers having successfully negotiated amendments to the scheme, securing high quality architectural design it is considered that the scheme will demonstrably enhance the character of the St Mary Magdalene conservation area and sympathetic to the surrounding heritage assets whilst improving the living conditions of House No 5 and quality of office accommodation.
- In response to objectors concerns raised above, the applicant indicated that the roof terrace is not intended to be used by residents, acknowledging the full height window. The agent reiterated the number of revisions to the scheme reminding members that concerns regarding the height of the scheme had been considered by the Planning inspectorate and dismissed. The Agent informed the meeting that this was a constrained site and it had to be creative in addressing the amenity concerns.
- The Planning Officer acknowledged that consideration had been given to the impact of the scheme on overlooking and privacy to the neighbouring property at Nos 4,8 and 10 Chillingworth Road, located at a distance of between 16m to 22m away with the exception of the rear of No 6 Chillingworth Road which has a rear extension resulting in a reduced distance to windows of habitable rooms.
- On the concerns about the outlook and sense of enclosure, the meeting was informed that given the separation distance, the height of the proposed dwellings, it is not considered to have a harmful impact on the neighbouring residential properties especially those on Chillingworth Road.
- On the decision to depart from Council policy of 18m separation distance, the meeting was reminded that as noted in the appeal decision any overlooking or privacy concerns could be addressed with conditions relating to the windows of the new scheme.
- With regards to overlooking concerns into windows between the scheme and neighbouring residents flat, the Planning Officer clarified that in planning terms the 18 separation distance only applies with direct overlooking and not where the angle is oblique.
- In response to consultation concerns raised by the objectors, the applicant acknowledged that letters had been sent out and a public meeting which was

convened to discuss the scheme only attracted between 7-8 people. Councillor Ward, the ward councillor noted that the last time any consultation was carried out was in 2015.

- In response to a suggestion on possible amendments to the scheme, to mitigate its impact on the neighbouring residents, the applicant reiterated that most of the objectors concerns had been addressed in the revised scheme. The meeting was informed that House 5 was amended to allow a larger outdoor amenity area to the rear, that all dwellings have been altered so that bedrooms are now located at first floor and key living room at second floor.
- During deliberations members acknowledged the narrowness of the site, the revisions to the scheme, financial contributions towards affordable housing and carbon offsetting, acknowledging that in light of the Planning Inspectors comments conditions could be imposed to mitigate against the amenity concerns.
- Members agreed that the rewording of a condition to replace the door with a window leading to the roof terrace be delegated to the Planning Officer and the Chair.
- Members agreed that applicant to submit further details to prevent direct views of Chillingworth Road to Houses 1 and 2.
- Councillor Graham requested that his vote against the application be recorded.

**RESOLVED:**

That following consideration of the case officer's report (the assessment and recommendations therein), the presentations to Committee, submitted representations and objections provided verbally at this meeting, planning permission be granted subject to the conditions and informatives set out in Appendix 1 of the officer report and subject to the prior completion of a Deed of Planning Obligation made under Section 106 of the Town and Country Planning Act 1990 securing the heads of terms as set out in Appendix 1 of the officer report.

**102**

**74-76 ST JOHN STREET, LONDON, EC1 4DZ (Item B2)**

Change of use of part ground floor, basement and lower basement from Use Class B8 (storage) to flexible commercial use within Use Classes A3, A4 and D2.  
Replacement of ground floor facade and entrance doors, and fenestration to enclose existing ramp

(Planning application number: P2018/1580/FUL)

Meeting was informed that item has been withdrawn for consideration.

103

**ISLINGTON CENTRAL LIBRARY, 2 FIELDWAY CRESCENT, ISLINGTON, LONDON, N5 1PF (Item B3)**

Refurbishment of the ground and first floor of the building reinstating the public foyer from Holloway Road entrance to provide a link to the main library at ground floor level. Change of use of the north western portion of the building at ground and first floor levels in association with the creation of a rehearsal room/ theatre (D2) and associated office at ground and first floor levels. Work includes demolition of internal partitions and mezzanine floor, minor structural alterations to form new doorways, new partitions at ground and first floor level and installation of a new ventilation fan with an accompanying external louvre window which would replace the existing sash window above the loading bay doors at ground floor level upon the Fieldway Crescent Elevation. Installation of a ramp to the side elevation of the Holloway Road entrance to provide inclusive access to the building.

(Planning application number: P2019/2576/FUL and P2019/2605/LBC)

In the discussion the following points were made:

- The Planning Officer informed Committee of proposed changes to conditions 4 and 7 especially if members were minded to grant planning permission. Conditions 4 related to hours of operation especially as the front of the Library opens on to Holloway Road. Hours of operation to be Monday to Sunday and bank holidays from 10.00am to 6.00pm with all visiting members of the public vacating the building 30 minutes prior to closing time. In addition, a request that Condition 7 regarding the sound insulation be reworded was noted.
- The Planning Officer advised that in light of the proposed works which include alterations to the external appearance of the building and more extensive alterations to the internal appearance of the building, the Council Design and Conservation Officer has raised concerns of some harm to the historic fabric of the listed building especially as site lies within St Magdalene Conservation Area. The Planning Officer advised that the harm would need to be weighed against the public benefits of the scheme which includes outreach programme.
- Members were advised that the proposed works would result in the change of use of the North Western portion of the building, currently 189.6 sqm of library space to a rehearsal room/theatre (D2 use). The proposed space is to be occupied by Tall Stories, a charity theatre company which specialises in story telling performances for all ages and creates large and small touring shows.
- Members were informed that no planning permission is required for the internal works and this will comprise the demolition of internal partitions and mezzanine floor, minor structural alterations to form new doorways , new partitions at ground floor . In addition it will involve the refurbishment of the ground and first floor of the Grade II listed library building to reinstate the

public foyer from the Holloway Road entrance.

- On the loss of library floor space and its replacement with the theatre (D2) floor space, members were advised that considering First Steps Learning centre formed part of the Library's Adult Education Offer but now relocated to the second floor of the Library, the proposal would not result in undermining the use of the building as a library.
- The Planning Officer informed members that no objections had been received, alternative sites had been considered, the site has a high PTAL (Public Transport Accessibility Level) of 6b and the benefits of the scheme highlighted on page 152 of the agenda.
- Members were informed that key to the application is the substantial public benefits such as free performances for over 880 Islington residents, free tall stories provided by actors to over 300 residents (reading campaign) and a commitment by Tall stories to facilitate workshops and exhibitions at both Central and Islington libraries.
- Other benefits highlighted by the Planning Officer included a commitment from Tall Stories to undertake extensive work with schools by facilitating 3 assembly talks per calendar year and the improvement to the Holloway Road entrance which will improve accessibility into the library building.
- With regard to the impact of the scheme on the heritage assets, members noted the concerns of the design and conservation officers, but acknowledged that the reorganisation of the subdivision of the room moving the existing mezzanine floor from the northern to the southern side of the room would have a neutral or marginally beneficial impact on the historic fabric of the listed building.
- In terms of the impact of the scheme on preserving the character and appearance of the St Magdalene Conservation Area, the Planning Officer advised that although the external alterations would cause some harm, the harm would be less than substantial and should be weighed against the public benefits arising from the development.
- In response to concerns on how the public benefits associated with the scheme is to be monitored, the Director, Employment, Skills and Culture informed committee that there will be a Service Level Agreement (SLA) between both parties and the applicants have agreed to have quarterly and annual meetings with Council officers to measure performances.
- With regard to monitoring of Tall Stories commitment's, the Planning Officer advised that this could be incorporated into the SLA, the exact wording to be delegated to both the Planning Officer and the Chair if members were minded.

- Members were advised that although Council policy states that proposal of more than 8sqm of D2 floor space is best located within town centres, where site is unavailable, this can be located at local shopping areas if its use does not undermine the predominant retails and service function of the Lower Holloway Local shopping area.
- Members welcomed the proposal, noting the partnership arrangement between Tall Stories, Islington Schools, Library Services and in particular the imaginative manner in ensuring that the library is kept open. Members acknowledged the benefits that will be beneficial to Islington residents.

**RESOLVED:**

That following consideration of the case officer's report (the assessment and recommendations therein), the presentation to Committee, submitted representations and objections provided verbally at this meeting, planning permission be granted subject to the conditions and informatives set out in Appendix 1 of the officer report and subject to the prior completion of a Deed of Planning Obligation made under Section 106 of the Town and Country Planning Act 1990 securing the heads of terms as set out in Appendix 1 of the officer report.

104

**TELEPHONE KIOSKS OUTSIDE 23 CALEDONIAN ROAD N1 (Item B4)**

Full planning permission is sought for the Removal of 3 existing telephone booths and replacement with 1 no. InLink unit telephone kiosk and associated alterations.

(Planning application number: P2019/1782/FULL)

In the discussion the following points were made:

- The Planning Officer advised that the installation of a free standing telecommunications structure is to be located within the Kings Cross Conservation Area and Kings Cross Local Shopping Area.
- Members were informed of objection letter received which raised two issues regarding condition 4 of the planning permission. Objector indicated that condition 4 will not be effective as this implies that the Police are not confident that the algorithmic call blocking system will be effective at reducing calls to those that are connected to crime or anti-social behaviour. In addition the objector was concerned that the condition removes the functionality to make calls to mobile phones for a minimum period of three months.
- Objector noted that the kiosk could not be considered in any way as BT meeting its universal service obligation for public call boxes but more of an advertisement structure.
- Members were informed that although the proposed structure and advert display was not desirable in planning and visual terms it would not materially harm the character and appearance of the street scene or the conservation area as the current proposal will replace the established and historical

existing booths on site which are visually dominant harmful.

- With regards to the impact of the proposal on public safety, the meeting was advised that the structure would be set away clear and acceptable distance from adjacent commercial and residential properties.
- On the question of crime prevention, the Planning Officer advised that although the site is in an area of high Anti-Social Behaviour or 'Crime risk area', the Council's Design Out Crime Officer has not objected to the siting of the InLink within this location subject to a suitably worded condition.
- Members acknowledged that although the units are not generally desirable additions to streetscene, in this instance the direct removal of 3no. telephone boxes and being replaced with a smaller 1 no InLink within the same location would significantly declutter the existing streetscape.

**RESOLVED:**

That following consideration of the case officer's report (the assessment and recommendations therein), the presentation to Committee, submitted representations and objections planning permission be granted subject to the conditions and informatives set out in Appendix 1 of the officer.

105

**TELEPHONE KIOSKS OUTSIDE 23 CALEDONIAN ROAD N1 0RU (Item B5)**

Advertisement Consent is sought for the 1 no. InLink unit telephone kiosk and associated 2 LED digital display/advertisement panels and associated alterations.

(Advertisement Consent number: P2019/1799/ADV)

In the discussion the following points were made:

- The Planning Officer advised that the installation of a free standing telecommunications structure is to be located within the Kings Cross Conservation Area and Kings Cross Local Shopping Area.
- Members were informed of objection letter received which raised two issues regarding condition 4 of the planning permission. Objector indicated that condition 4 will not be effective as this implies that the Police are not confident that the algorithmic call blocking system will be effective at reducing calls to those that are connected to crime or anti-social behaviour. In addition the objector was concerned that the condition removes the functionality to make calls to mobile phones for a minimum period of three months.
- Objector noted that the kiosk could not be considered in any way as BT meeting its universal service obligation for public call boxes but more of an advertisement structure.
- Members were informed that although the proposed structure and advert display was not desirable in planning and visual terms it would not materially

harm the character and appearance of the street scene or the conservation area as the current proposal will replace the established and historical existing booths on site which are visually dominant harmful.

- With regards to the impact of the proposal on public safety, the meeting was advised that the structure would be set away clear and acceptable distance from adjacent commercial and residential properties.
- On the question of crime prevention, the Planning Officer advised that although the site is in an area of high Anti-Social Behaviour or 'Crime risk area', the Council's Design Out Crime Officer has not objected to the siting of the InLink within this location subject to a suitably worded condition.
- Members acknowledged that although the units are not generally desirable additions to streetscene, in this instance the direct removal of 3no. telephone boxes and being replaced with a smaller 1 no InLink within the same location would significantly declutter the existing streetscape.

**RESOLVED:**

That following consideration of the case officer's report (the assessment and recommendations therein), the presentation to Committee, submitted representations and objection, advertisement consent be granted subject to the conditions and informatives set out in Appendix 1 of the officer.

106

**NATIONAL YOUTH THEATRE , 443-445 HOLLOWAY ROAD, N7 6LW (Item B6)**

Single storey entrance and studio pavilion with associated landscaping. Additional window to south elevation and automatic opening vents (AOVs) to windows to comply with fire regulations.

(Planning application number: P2019/2469/FUL)

In the discussion the following points were made:

- The Planning officer provided a number of updates. That a 18 month period has been agreed to demolish the front extension if the scheme is discontinued or the public benefits is not realised. Also there is ongoing discussions between NYT and the Director of Employment, Skills and Culture to prioritise Islington residents in securing NYT programmes.
- The Planning Officer highlighted the revisions to the proposed extension which included two flat roofed adjoining and connecting blocks; reception block projecting 11.5m beyond the front building line with a width of 54m and a height of 4.9m providing an internal floor area of 48sqm. In addition the adjoining and connecting 'studio' block would project 101m beyond the front building with a width of 91m and a height of 4.2m providing an internal floor area of 80sqm- the combined front extension which would be viewed as

two adjoining masses would have a width of 146m and an internal floor area of 128sqm.

- The Planning Officer highlighted the comments from the London Review Panel, which welcomed the revised designs to the scheme and in particular the improvement to the glazing to the north elevation.
- The meeting was informed that site is locally listed at Grade B and lies within the Mercers Road/Tavistock Terrace Conservation Area and approximately 50m to the north west of the Grade II listed Odeon Cinema at the junction of Holloway Road and Tufnell Park Road.
- The Planning Officer informed members that the proposal seeks to enhance the level of accessibility to the building through the provision of a level entrance pavilion and studio. In addition internal upgrades including the installation of a platform lift to gain access to the primary ground floor level
- Members were advised that were members minded to grant planning permission, this will be subject to planning obligations which secures the NYT public benefits and also ensures the demolition of the front extension in the event that the NYT benefits secured by planning obligations ceases to be provided.
- The Planning Officer advised that applicant had been submitted alternative options to the proposed erection of a front extension during the design development stage and officers were satisfied that the applicant's assertion that the erection of an extension upon the front forecourt was the only viable option for the expansion of the building.
- With regard to design, planning officer acknowledged that the proposed front pavilion would project beyond the established predominant building line along the section of Holloway Road and visible in public sight lines. In addition, the Planning Officer highlighted concerns with the bulk and scale of the proposed front extension which would conceal the entirety of the existing ground floor façade by matching the height of the raised ground floor level and the harm the scheme would cause to the Mercer's Road/Tavistock Terrace Conservation
- The Planning Officer advised that although the site is within the root protection area of 2no. protected street trees, no objections has been received by the Council's Tree Officer, as information provided shows that root growth is limited into the development area, however a condition securing tree protection was requested if planning permission is to be granted.
- The agent noted that the proposal complies with Council Policy DMS.12 in that it would allow the D1 facility to be enlarged so as to maximise the use of the property in providing recreational and community uses, and complement

the existing use. In addition the scheme would enhance the overall character of the area without any adverse impact on the surrounding area with the building still being retained for art/cultural uses at the present site which was to be welcomed.

- In response to options considered, the architect informed the meeting that following a full analysis of the various options highlighted on page 226 of the report, the erection of an extension upon the front forecourt of the building was the most viable method to expand the building.
- On concerns about the impact of the extension, the architect informed the meeting that as a landmark building, NYT currently lacks an adequate public presence within the street scene and will be improved as a result of the extension.
- With regards to concerns about the overall height and depth of the extension, Members were advised that applicant had submitted a revised scheme with reduced height and although officers still had concerns with the overall bulk of the proposed extension it is recognised that the site is constrained; accessibility is inadequate; the building is at capacity and the NYT programme has very little room for expansion at the current location.
- Members were informed that as a charity, National Youth Theatre having occupied the building since 1987, earning and raising all its income annually with only 9% of the income coming from public subsidy, this proposal would enable it to remain at its present location. Members were reminded that the building requires a lot of works to be carried out, it's commitment to continue providing arts and culture to the community and having just signed a 999 year lease and taken on a mortgage, the proposal would only be viable with planning permission being granted for the front extension, ie studio 7.
- The Planning Officer highlighted a number of benefits that will arise from the scheme as listed in the report not only specific to the residents of Islington and that the proposal represents improvements to the accessibility of the building.
- On the impact of the proposal on the heritage assets, The Planning Officers reminded Committee of it's statutory duty to preserve or enhance the character and appearance of the heritage assets and place great weight on this.
- Members were of the view that the proposed public benefits although linked to the use of the building outweigh any substantial harm to the character and appearance of the heritage assets.
- In response to a suggestion that the applicant use the services of local firms during construction especially with regards to the brick works, the Planning Officer advised that this could be an informative encouraging the use of local

firms.

- Members agreed that the rewording of condition 5 be delegated to the planning officer and the Chair as there is no reference to the use of blinds.

**RESOLVED:**

That following consideration of the case officer's report (the assessment and recommendations therein), the presentation to Committee, submitted representations, planning permission be granted subject to the conditions and informatives set out in Appendix 1 of the officer report and subject to the prior completion of a Deed of Planning Obligation made under Section 106 of the Town and Country Planning Act 1990 securing the heads of terms as set out in Appendix 1 of the officer report.

The meeting ended at 10.15 pm

**CHAIR**

## PLANNING COMMITTEE REPORT

Development Management Service  
 Planning and Development Division  
 Environment and Regeneration Department

<b>PLANNING SUB-COMMITTEE A</b>		<b>AGENDA ITEM NO: B1</b>
Date:	17 March 2020	NON-EXEMPT

Application number	P2018/3913/FUL
Application type	Full Planning Application
Ward	St. Marys
Listed building	Grade II Listed Building
Conservation area	Barnsbury Conservation Area (and Article 4 Direction)
Development Plan Context	Core Strategy Key Area – Angel & Upper Street Archaeological Priority Area – Islington Village Within 50m of boundaries of the Angel and Upper Street North conservation areas Angel Town Centre Article 4 Direction (A1-A2 Town Centres) Cycle Route (Local) Cycle Route (Strategic) Site within 100m of Transport for London Road Network Article 4 Direction (A1 to A2)
Licensing Implications	No licensing details submitted
Site Address	10-16 Theberton Street N1 0QX
Proposal	Re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, 10 and 12 Theberton Street and partially separate 12 & 14 Theberton Street; install a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations.

Case Officer	Nathan Stringer
Applicant	Mr Mehmet Kocakerim
Agent	First Plan – Mark Shearman

### 1. RECOMMENDATION

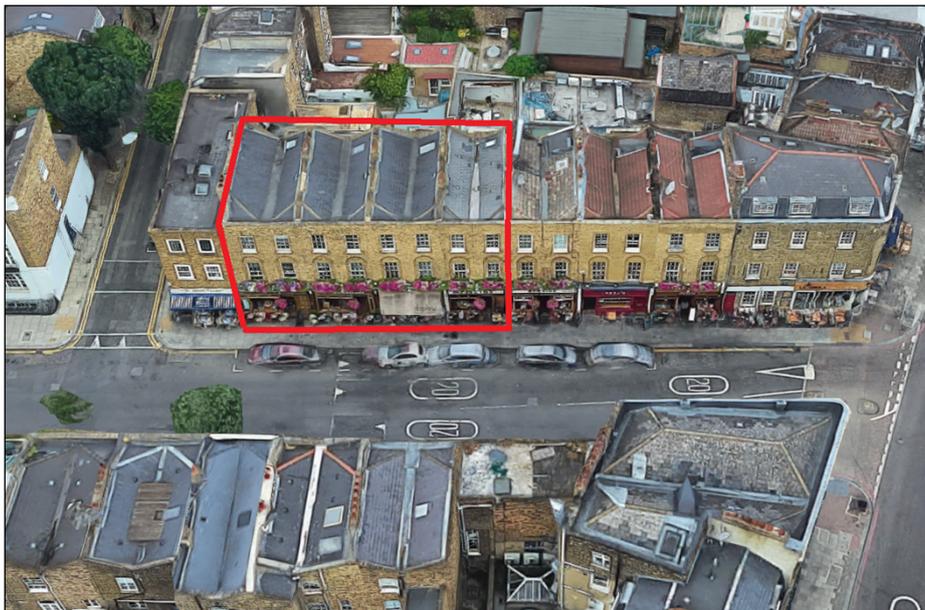
The Committee is asked to resolve to **GRANT** planning permission subject to:

- 1.1 the conditions set out in **Appendix 1** (Recommendation B).

## 2. SITE PLAN



## 3. PHOTOS OF SITE/STREET



**Image 1:** Aerial view of site (highlighted in red)



Image 2: The front elevation of the site as viewed from Theberton Street



Image 3: Taken at the junction with Upper St with site is shown on the right



**Image 4:** Rear elevation (site shown in centre)

#### **4. SUMMARY**

- 4.1 The applications seek full planning permission and listed building consent for the change of use of the basement and ground floors of Nos. 12 and 14 Theberton Street to a restaurant (A3 Use Class), which lie adjacent on either side to 2no. existing lawful restaurant units at Nos. 10 and 16. The proposal also includes internal and external alterations across all four units, including re-instatement of walls and the installation of external extraction flues. These applications represent amended resubmissions of previously refused schemes which have been subject to planning enforcement action.
- 4.2 The units at Nos. 10-16 Theberton Street have previously been subject to extensive enforcement action due to the amalgamation of the building into one large restaurant, which could be used to host large groups and banquets. As such, the combined comings and goings were considered to have considerable potential to cause significant disturbance to nearby residents. The enforcement notice was upheld at appeal and further planning applications were refused. With regard to the principle of the proposed A3 uses at this location, the previous Inspectorate appeal decisions noted that the operation of separate restaurants at the site could be acceptable, subject to operational details. However, the internal layout and amalgamation of the A3 units led to concerns that the unit would be used as one very large restaurant venue, resulting in an unacceptable, cumulative impact from comings and goings of customers and their congregation on nearby pavements.
- 4.3 As part of the proposed scheme, there are significant internal alterations which include the partial reinstatement of the plan form of the units associated with the historic listed building. The ceilings within the units would also be reinstated, and the large rear atrium banqueting area that was previously associated with the larger restaurant would be removed and the ceilings and walls reinstated. The positioning of the historic stairs at No. 14 has been reinstated. All of these changes have been welcomed by the Design and Conservation Officer. It has been noted that the restoration of the historic form reverses some of the previous harm caused, which goes some way in addressing the previous enforcement matters. Whilst the flues installed to the rear of the property would impact the external fabric and setting to the rear, it is noted that several flues already exist on the

terrace. Given the benefits created by the internal reinstatement works, officers consider that on balance, the works proposed to the listed building would have a neutral impact.

- 4.4 Further benefit from the internal reinstatement of the ceiling and walls would ensure that the large amalgamated restaurant unit is subdivided into 3 smaller restaurants, which would be more akin to others located within the surrounding setting and within the wider Angel Town Centre. It is also noted that the overall number of covers across the units has been reduced from 181 to 150 (a reduction of 31) following the most recent planning application refusal; and that the largest open seating area at any of the units would be reduced from approximately 85 sqm to 31 sqm as a result of the reinstatement of the internal walls which brings the terrace as a whole closer to mirroring its historic plan form. This would ensure that the comings and goings from each individual restaurant would be further reduced, and the loss of the banquet area in the basement further ensures that the cumulative impact of the restaurant operations on the adjoining residents can be mitigated.
- 4.5 An up to date Acoustic Report and associated Acoustic Notes also accompanied the application. Public Protection have been consulted and are satisfied that the proposal is acceptable, subject to conditions providing limits to operational cumulative noise of the extractor flues, covering permitted operating hours, the monitoring of the noise survey details and timers on the flues, and internal insulation details.
- 4.6 The proposal is considered finely balanced bearing in mind the accumulation of restaurants in this section of the Angel Town Centre. On balance, given the remedial works proposed which would ensure that the existing larger restaurant across Nos. 10-16 Theberton Street would be incorporated into 3 intimate restaurants by removing the larger banquet area in the basement section; together with the reinstatement of historic plan form of the listed buildings; and given the results of the revised noise report which confirms that the restaurant would now comply with Council's noise standards, the proposal is considered acceptable subject to conditions.

## **5. SITE AND SURROUNDING**

- 5.1 The application site is a three storey mid-terrace building (plus basement) located on the northern side of Theberton Street at nos. 10-16 Theberton Street and comprises commercial units at basement and ground floor with residential accommodation on the upper floors. The subject site has a significant planning history including enforcement investigations and action on the unauthorised amalgamation of the ground and basement level units to form a large single restaurant.
- 5.2 The site is occupied by four Grade II listed, three storey over basement, mid-terrace Georgian buildings. The site is located within the Barnsbury Conservation Area, the Angel and Upper Street Core Strategy Key Area, the Angel Business Improvement District (BID), the Angel Town Centre, and the (Licensing) Angel and Upper Street Cumulative Impact Area.
- 5.3 Adjoining the east of the site are three similar listed Georgian terraced properties (Nos. 4, 6 and 8 Theberton Street), each comprised of A3 restaurants at ground floor level with residential accommodation above. Beyond these properties, to the east of the site, is the junction of Theberton Street with Upper Street, both sides of which are lined by retail and commercial properties. Adjoining the west of the site is a three storey end-of terrace building (No. 18 Theberton Street) that comprises an A3 restaurant at ground floor level with residential accommodation above. Beyond this property, to the west, is the junction of Theberton Street with Studd Street. This is the boundary of the Angel Town Centre, beyond which point Theberton Street becomes a purely residential street. Studd Street

and Moon Street are also residential streets. To the south of the site, on the opposite side of Theberton Street, is a three storey terrace of Grade II listed Georgian buildings, which comprise commercial units at ground floor level with residential accommodation on the upper floors.

## **6. PROPOSAL (IN DETAIL)**

- 6.1 The applications seek permission for the re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, and 10 and 12 Theberton Street and partially separate 12 and 14 Theberton Street; installation of a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of 2no. extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations.
- 6.2 The proposal is brought to the committee because the application has received 20 objections from neighbouring residents, generating interest in the development. The main concerns from objectors include the impact of the proposed use on neighbouring amenity with regard to noise, odour, and disturbance.

### **Revisions and additional information**

- 6.3 The applicant submitted revised drawings and additional acoustic information throughout the course of the officer assessment, to address officer comments and concerns. This includes the provision of acoustic notes outlining additional noise surveys undertaken, corrections to the rear elevation drawings, and further re-instatement of the internal plan form. Given the provision of the additional information, the application was re-consulted.

## **7. RELEVANT HISTORY**

### **Planning applications**

- 7.1 **P2015/4037/FUL:** Conversion and reconfiguration of the ground floor and basement of 10-16 Theberton Street to form three restaurants (Use Class A3) comprising the following restaurant 1, No.16 (ground floor and basement level); restaurant 2, front part of Nos. 12 and 14 (ground floor and basement level); restaurant 3, No.10 and rear part of Nos.12, 14 (ground floor and basement level and part basement level of No.16). **Refused 13/12/2019.**

**REASON:** The proposal, by reason of the large floor area and number of covers in restaurant No.3, would give rise to potential hosting and catering for large parties (such as weddings or business functions) or large numbers of smaller groups (standard restaurant diners). It is considered that the operating of such a large singular A3 unit would have the potential to result in unacceptable increases in the level of noise and disturbance experienced by adjoining neighbouring residential occupants and the wider neighbourhood. The potential for noise and disturbance is exacerbated by the presence of a banqueting scale facility at basement level, lack of noise mitigation measures to address noise transfer (such as additional insulation measures between restaurant and residential floors) and the absence of measures to control numbers of people arriving/leaving at the same time and large groups of people congregating outside of the premises to smoke. Therefore, the proposal is considered to be contrary to policies DM4.2 (Entertainment and the night-time economy), DM4.3 (Location and concentration of uses) and DM4.4 (promoting Islington's Town Centres) of the Islington Development Management Policies.

**Appeal (APP/V5570/W/16/3165702)** was dismissed for the reason below:

**REASON:** The proposal would cause significant harm to the living conditions of existing and future occupants of nearby residential dwellings with regard to noise. This would be contrary to policies DM4.2, DM4.3 and DM4.4 within Islington's Local Plan: Development Management Policies 2013 that seek, among other things, to ensure that proposals relating to entertainment and the night-time economy do not lead to significant adverse impacts on residential amenity and that the densities of restaurants and other similar uses do not lead to significant, negative cumulative impacts or cause unacceptable disturbance. Consequently, the development would not be in accordance with the development plan

- 7.2 **P2013/1041/FUL** – Basement & Ground Floors, 10-16 Theberton Street, London N1 0QX: Amalgamation of the ground floor and basement of the four individual properties (10, 12, 14 & 16 Theberton Street) and their use as a single A3 restaurant unit. **Refused 05/06/2013.**

**REASON:** The proposal would result in the creation of a large 'destination venue' restaurant capable of catering for either large parties of people (such as wedding or business functions) or a large number of smaller groups of people (standard restaurant dinners). As such, it is considered that the cumulative impact of the operation of such a large A3 unit, with banqueting scale facilities, would have the potential to result in an unacceptable increase in the level of noise and disturbance experienced by neighbouring residential occupiers, caused as a result of large numbers of people arriving / leaving at the same time and large groups of people congregating outside of the premises to smoke. Therefore, the proposal is considered to be contrary to policy Env17 (Protecting Amenity) of the Islington Unitary Development Plan 2002 and emerging policies DM18 (Maintaining and promoting small and independent shops), DM19 (Entertaining and the night-time economy), DM20 (Location and concentration of uses), and DM21 (Promoting Islington's Town Centres) of the Islington Development Management Policies (EiP Submission 2012)

- 7.3 **P112589** – 10 Theberton Street: Listed Building Consent application in connection with the conversion of the upper floors into two self-contained flats and the erection of a first floor rear extension. **Approved with conditions 20/07/2012.**
- 7.4 **P092209** – 16 Theberton Street: Listed building consent for formation of new basement under the rear of number 16 Theberton Street. (Full Planning Application P092208 also submitted) **Approved with conditions 04/01/2010.**
- 7.5 **P090256** – 12-16 Theberton Street: Listed building consent for conversion of upper floors to create 6x one-bedroom flats, together with erection of first floor rear extensions at 12 & 16 Theberton Street and general internal and external refurbishment (Full Planning Application P090255 also submitted) **Approved 06/08/2009.**
- 7.6 **P090273** -10 Theberton Street: Demolition of single storey rear extension, erection of new single storey full width, full length rear extension, excavation to create full width, full length rear basement extension, replacement of front uPVC windows on upper floors with traditional timber sash windows and internal alterations (Listed Building Application P090274 also submitted) **Approved with conditions 14/05/2009.**
- 7.7 **P090257** – 12-14 Theberton Street: Demolition of existing single storey rear extensions at 12 & 14 Theberton Street, erection of new double width single storey rear extension across 12 & 14 Theberton Street, excavation to create double width rear basement extension across 12 & 14 Theberton Street and installation of new shopfront at 12 Theberton Street (Listed Building Consent Application P090258 also submitted) **Approved with conditions 05/05/2009.**

- 7.8 **P081568** – 10-14 Theberton Street: Excavation and creation of rear basement extensions at properties 10, 12 and 14 Theberton Street, erection of ground floor extension at 12 Theberton Street and rebuilding of ground floor extension at 10 Theberton Street together with internal works in association with a lateral conversion of properties 12 and 14 Theberton Street comprising partial demolition of the party wall at ground floor level. **Refused 11/11/2008.**

**REASON:** The associated listed building consent application has been refused and it would therefore be premature to grant planning permission without the associated listed building consent.

- 7.9 **P081571** – 10-14 Theberton Street: Listed Building Consent application in connection with excavation and creation of rear basement extensions at properties 10, 12 and 14 Theberton Street, erection of ground floor extension at 12 Theberton Street and rebuilding of ground floor extension at 10 Theberton Street together with internal works in association with a lateral conversion of properties 12 and 14 Theberton Street comprising partial demolition of the party wall at ground floor level. **Refused 11/11/2008.**

**REASON:** The proposed internal alterations would have a detrimental effect on the architectural and historic interest of the Grade II listed buildings due to loss of the remaining original plan form of the buildings and loss of historic fabric within the buildings. Therefore, the proposal would be contrary to the guidance set out in PPG15

- 7.10 **880833** – 14 Theberton Street: Change of use of the ground floor from shop to estate agents (Class A2). **Approved with conditions 31/10/1988.**

#### **Enforcement History**

- 7.11 **APP/V5570/F/14/2225985:** Planning Enforcement appeal made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

**The breach of planning control as alleged in the notice was:** the amalgamation of the basement and ground floors of four individual properties (10,12,14 & 16) Theberton Street and their use as a single restaurant unit (A3).

**Decision:** Appeal dismissed; the enforcement notice is upheld and planning permission on the deemed application is refused.

#### **Pre-applications**

- 7.12 **Q2018/1437/MIN** – Pre-application for conversion from A2 to A3 for nos 12 and 14 at ground floor and basement levels, internal alterations.

### **8. CONSULTATION**

#### **Public Consultation**

- 8.1 Letters were sent to occupants of 39 adjoining and nearby properties on 31 January 2019. A site notice and press advert were also displayed. Following the submission of revised plans and documents, the applications were re-consulted on 19 December 2019; they were again re-consulted on 23 January 2020 following a correction to the description of the proposed development. The public consultation of the application therefore expired on 6 February 2020, however it is the Council's practice to consider representations made up until the date of a decision.

8.2 At the time of the writing of this report, 20 objections had been received from the public with regard to the application, including a letter of objection from the Moon Street and Studd Street Residents' Association. The concerns raised are summarised below:

- size of the proposed restaurant at Nos. 12-14 is excessive, noting it would have the ability to cater for up to 70 covers on one floor, with potential operation as a destination venue (see **paragraphs 10.15-10.31**);
- the impact of a restaurant of such a scale on the wider amenity of neighbours given the size and number of covers (from 60 to 80 covers), including from noise, disturbance, and comings and goings (see **paragraphs 10.61-10.88**);
- concern that the pavement is too narrow for tables and chairs, A-frame boards, noting that when the restaurants are full there is often no room for pedestrians (see **paragraph 10.95**);
- impact of additional highway movements upon residents, including increased noise, rubbish and traffic (see **paragraphs 10.89-10.95**);
- detrimental impact of the development upon the character and appearance of the listed buildings and the wider conservation area (see **paragraphs 10.32-10.60**);
- concern regarding noise and odour impacts from proposed extraction equipment (see **paragraphs 10.65-10.85**);
- concern that the applicant has a significant history of non-compliance with building regulations/alcohol license and a disregard for regulations, and no confidence that conditions would be complied with (see **paragraphs 10.98-10.99**). (*Officer note: failure to comply with the conditions attached to either the planning permission or listed building consent would be a planning enforcement matter*); and
- concern regarding noise from existing extraction equipment (which were installed without planning permission and operate continuously), noting that the current systems are noisy and impact homes on the eastern side of Studd Street. Request that should permission be granted; the extractors are required to be upgraded using low sound emitting systems (see **paragraphs 10.98-10.99**). (*Officer note: the scope of this report is limited to the proposal under consideration, which does incorporate the installation of 2no. extraction flues (see paragraphs 10.65-10.85). Any concerns relating to the lawfulness of existing equipment is a planning enforcement matter and any noise nuisance would be dealt with under the Environmental Protection Act 1990*).

#### **Internal Consultees**

8.3 **Design and Conservation Officer:** the unsympathetic design of the rear extraction flues would be balanced by the greater reinstatement of the historic separation between the properties. On balance, subject to conditions requiring the submission and approval of design details for internal works, the proposal would create a neutral impact on the significance of the heritage assets.

8.4 **Public Protection (Noise) Officer:** raises no objections to the proposal, subject to a number of conditions to ensure that noise generated by the operation of the restaurants does not cause undue harm to neighbouring residential amenity (outlined in **paragraph 10.80**).

#### **External Consultees**

8.5 None.

## **9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATION & POLICIES**

- 9.1 Islington Council (Planning Sub-Committee A), in determining the planning application has the following main statutory duties to perform:
- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990);
  - To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance.)
  - As the development affects the setting of listed buildings, Islington Council (Planning Committee) is required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses (S66 (1) Planning (Listed Buildings and Conservation Areas) Act 1990) and;
  - As the development is within or adjacent to a conservation area(s), the Council also has a statutory duty in that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area (s72(1)).
- 9.2 National Planning Policy Framework 2019 (NPPF): Paragraph 10 states: "at the heart of the NPPF is a presumption in favour of sustainable development."
- 9.3 At paragraph 8 the NPPF states that the planning system has three overarching objectives in achieving sustainable development, being an economic objective, a social objective and an environmental objective.
- 9.4 The NPPF seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.
- 9.5 Since March 2014 Planning Practice Guidance for England has been published online.
- 9.6 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.
- 9.7 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:
- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

9.8 Members of the Planning Sub-Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.

9.9 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

### **Development Plan**

9.10 The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The policies of the Development Plan that are considered relevant to this application are listed at Appendix 2 to this report.

9.11 Weight is attributable to the Draft London Plan.

9.12 The site has the following designations under the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and the Finsbury Local Plan 2013:

- Grade II listed buildings
- Barnsbury Conservation Area (and Article 4 Direction)
- Archaeological Priority Area – Islington Village
- Within 50m of boundaries of the Angel and Upper Street North conservation areas
- Core Strategy Key Area – Angel & Upper Street
- Angel Town Centre
- Article 4 Direction (A1-A2 Town Centres)
- Within 100m of TLRN
- Cycle Route (Local)
- Cycle Route (Strategic)
- Site within 100m of Transport for London Road Network

### **Supplementary Planning Guidance (SPG) / Document (SPD)**

9.13 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

## 10. ASSESSMENT

10.1 The main issues arising from this proposal relate to:

- Land Use
- Design and Conservation
- Neighbouring Amenity
- Highways and Transportation
- Accessibility
- Refuse and Recycling

### **Land Use**

#### Existing lawful use

- 10.2 The last known lawful use of the properties at nos. 12 and 14 was as A2 (professional services); whilst the last known lawful use of at properties at nos. 10 and 16 was as A3 (restaurant). Notwithstanding the lawful use of the units, the properties have been amalgamated and operated as a single A3 restaurant unit. This combined use has been the subject of extensive planning enforcement history, including the issuing of an enforcement notice on 15 August 2014 requiring the cessation of the combined use. A subsequent appeal against this enforcement notice was dismissed dated 15 July 2015 and prosecuting proceedings for non-compliance of the Notice has resulted in a successful conviction.
- 10.3 In terms of the principle of the use, it must be noted that no permission has been granted for the A3 use of the units at nos. 12 and 14. As noted above, these have been operated unlawfully under the A3 use class. When taking into consideration the lawful use of unit nos. 12 and 14, the proposal would result in the loss of approximately 275 sqm of A2 commercial floorspace within the Angel Town Centre.
- 10.4 As noted above, the ground floors and basements of all of the units have previously been converted to serve as A3, and the interconnected layout of the units allows for their operation as a single restaurant. Specifically, at basement level wide openings have been created, resulting in a vast restaurant complex. These works and the associated A3 use were considered to be unlawful, and have been subject to enforcement notices. Albeit, the openings associated with the basement were granted (with alterations) listed building consent on appeal.
- 10.5 Policy DM4.4 of the Development Management Policies 2013 seeks to maintain and enhance the retail and service function of Islington's town centres, including the Angel Town Centre. However, there is no specific policy protection for A2 uses. Part A of the policy requires that application for more than 80 sqm of floorspace within the A Use Classes (including both A2 and A3 uses) should be located within designated Town Centres. Therefore, the replacement of the existing A2 use class with an A3 use, both within the A Use Classes, is acceptable in principle subject to the relevant considerations discussed further within the report below.

Principle of A3 uses in this part of Theberton Street

- 10.6 The application site is subject to a number of policy constraints relating to the A Use class function of the host building within the Angel Town Centre. Therefore, in terms of this proposal, it is important to consider the requirements of policies DM4.3 and DM4.4 of the Development Management Policies 2013.
- 10.7 Policy DM4.3, Part A states:
- 'A. Proposals for cafes, restaurants, drinking establishments, off licences, hot food takeaways, lap dancing clubs, nightclubs, casinos, betting shops, amusement centres and other similar uses will be resisted where they:*
- i. would result in negative cumulative impacts due to an unacceptable concentration of such uses in one area; or*
  - ii. would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area.'*
- 10.8 Due to the borough's densely developed, mixed-use nature, a range of main Town Centre uses occur in close proximity to places where people live; therefore, it is important to ensure a mix and balance of complementary day and night-time uses that creates an attractive and vibrant area that co-exists successfully with neighbouring residential areas. Certain types of use can cause detrimental cumulative impacts as a result of their concentration or location. The Council will therefore resist applications for such uses where they would cause harm to the character, function and amenity of an area or negatively impact on the health and wellbeing of the borough's residents.
- 10.9 Specifically with regard to the Angel Town Centre, paragraph 2.6.9 of the Core Strategy 2011 outlines the area's role as a focus for Islington's evening economy, which includes internationally renowned theatres as well as restaurants. It advises that these uses benefit from being located near each other and the council wishes to build on this cluster and so strengthen the Angel as a cultural destination. However, the council will be robust in using its powers to ensure that the quality of life for residents in the area is not undermined by these activities.
- 10.10 Policy DM4.4, Part C states:
- 'C. Development within designated Town Centres is required to:*
- i. be appropriate to the scale, character and function of the centre;*
  - ii. contribute positively to the vitality and viability of the centre;*
  - iii. promote a vibrant and attractive place;*
  - iv. respect and enhance the heritage, character and local distinctiveness of the centre;*
  - v. provide a variety of different sized units;*
  - vi. meet the council's policies on Inclusive Design; and*
  - vii. will not cause detrimental disturbance from noise, odour, fumes or other environmental harm.'*
- 10.11 There are a significant number of A3 restaurant and café units within the immediate surrounds of the application site at Theberton Street (including lawful A3 uses at nos. 10 and 16), and within the Angel Town Centre in general. Noting that the proposed A3 use is not out of character with the surrounds, officers consider that the principle of the proposed A3 uses would meet criteria i), ii), and iii) as listed above. However, whilst the Council notes that the Angel area is a focus for Islington's evening economy, consideration must

be given any harmful impacts of the proposed increase in lawful A3 restaurant units within the vicinity.

- 10.12 With regard to the acceptability of separated A3 uses at the site, it must be noted that the principle of such uses was previously considered to be acceptable by the Planning Inspectorate under appeal reference APP/V5570/C/14/2225985 (appeal dismissed 24/06/2015) (Decision attached at **Appendix 3**). This is a significant material consideration in the assessment of the proposal. Specifically, with regard to the introduction of a restaurant uses at the site, paragraph 94 of the decision states:

***“In this part of Islington, with its high concentration of retail and restaurant uses, I do not consider that the principle of separate A3 uses for Nos 12 and 14 would be significantly harmful. I acknowledge that this in theory would result in a concentration of restaurant uses along this part of the Street but the separate uses of these premises would not, in my view, be significantly and cumulatively different from the other separate lawful nearby A3 uses in Theberton Street and Upper Street.”***

- 10.13 It is also noted that the principle of separate A3 uses did not warrant a reason for the refusal of the most recent planning application (ref: P2015/4037/FUL); rather, that application was refused as a result of the excessive size of the proposed floor area and number of covers in restaurant No.3, which was considered to have the potential to result in unacceptable increases in the level of noise and disturbance experienced by adjoining neighbouring residential occupants and the wider neighbourhood.
- 10.14 Overall, the principle of the proposed A3 uses at the site is acceptable, subject to further consideration with regard to the size of the proposed units and the resulting potential impacts upon neighbouring residential amenity.

#### Proposed unit sizes and potential operational impacts

- 10.15 This application, and the previously refused applications, relate to three restaurants across the properties known as ‘Restaurant 1’ (at No. 16), ‘Restaurant 2’ (No. 12-14) and ‘Restaurant 3’ (No. 10).
- 10.16 Under the previously refused planning applications refs: P2013/1043/FUL and P2015/4037/FUL (dismissed at appeal ref: APP/V5570/W/16/3165702), significant concerns were raised with regard the layout and capacity of the proposed restaurant/s. Each of these applications proposed the provision of large opening dining areas at both ground and basement levels with a double height atrium spanning across the rear of the units which could be used for banqueting spaces. As such, the combined comings and goings would have considerable potential to cause significant disturbance to nearby residents. Furthermore, the double height atrium space at the rear exasperated the levels of noise transfer from the basement space to nearby sensitive uses.
- 10.17 The continued A3 use of the site is subject to a number of previous planning and enforcement appeals, the most relevant to the application currently under consideration being:

- APP/V5570/C/14/2225985 (Appeal D) (attached at **Appendix 3**), dismissed and enforcement notice upheld 24/07/2015. The appeal was against an enforcement notice requiring the cessation of the use of the ground floors and combined basement area of nos. 10-16 as a single restaurant unit); and
- APP/V5570/W/16/3165702, dismissed 20/11/2017 (attached at **Appendix 4**). The appeal was against the Council's refusal to grant permission for the conversion and reconfiguration of the ground and basement levels of nos.10-16 to form three restaurants (P2013/1043/FUL).

10.18 Previous key findings from the above Planning Inspectorate decisions include:

***“However, whilst finding that separate uses could be acceptable, I share the concerns of the Council and others about the premises being used for one very large restaurant venue. Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller premises. There have been no noise mitigation measures put forward by the appellant and from what I saw I consider that the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.”*** (Par. 95 of Appeal Decision APP/V5570/C/14/2225985 dated 24/07/2015).

***“I observe from the plans and my site visit that all three restaurants would still be capable of accommodating large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings. I accept that the operation of separate restaurants would reduce the previously documented harm through a more staggered pattern of bookings. However, this would be counter-balanced by the increase in the number of covers and the fact that very large groups would still be able to book Restaurants 2 and 3. Consequently, an increase from the 150 covers noted by the previous Inspector would lead to an unacceptable, cumulative impact from the comings and goings of customers and their congregation on nearby pavements.”*** (Par. 9 of Appeal Decision APP/V5570/W/16/3165702 dated 31/10/2017).

10.19 Significant weight is attributed to the previous planning refusals, as well as the associated Planning Inspectorate appeal decisions. It is therefore important to outline what revisions have been made as part of this application to seek to overcome the previous reasons for refusal, specifically with regard to the most recently refused scheme (ref: P2015/4037/FUL).

#### Covers/Seating Area

10.20 Under the previously refused applications, the Council held concern that the significant expanse of proposed seating areas (notably at basement level) and the resulting customer covers would afford the capability for the restaurants to hold large ‘banqueting’ style events, which would have far greater potential for noise and disturbance than four smaller and more intimate restaurants next to each other. Specifically, the failure to reinstate the original basement form was considered to be unacceptable. Within the delegated report for the most recently refused 2015 application (the plans for which incorporated the use of a significant portion of the basement as a large open seating area associated with Restaurant 3), paragraph 20 states:

*“It is officers’ view that the extension of restaurant 3 across the entire basement floor would not materially change the existing unauthorised arrangement sufficiently to be classed as an intimate small scale restaurant. It would have a similar operation to the existing arrangement with the banquet style area maintained at basement level. Such a size would not be characteristic within the area and the location of several units adjacent to each other and would therefore be contrary to policy DM4.3 of the Development Management Plan.”*

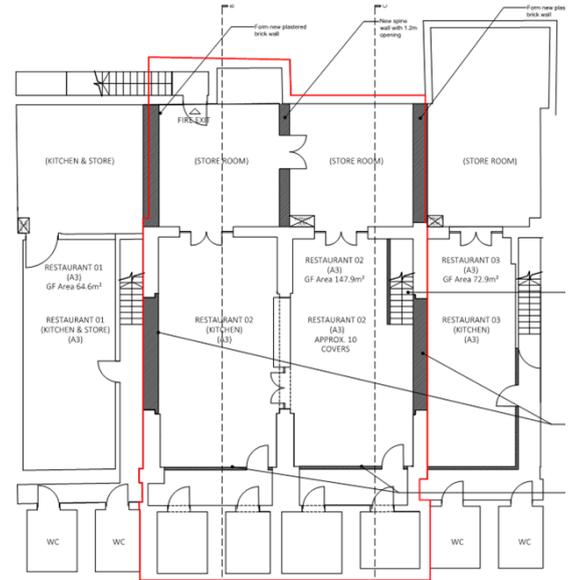
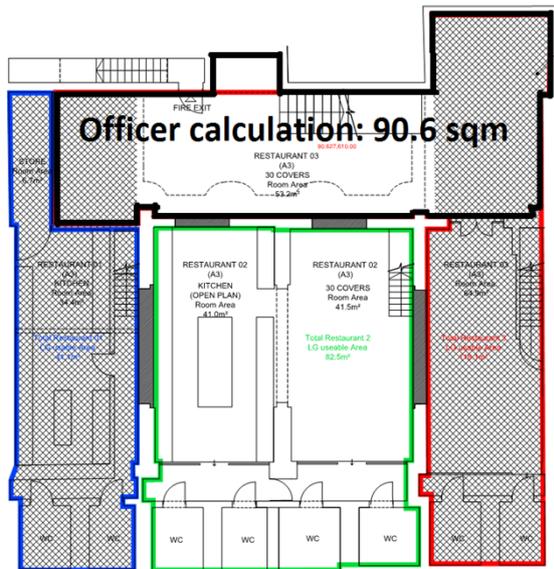
- 10.21 The proposal currently under consideration seeks to permanently close the majority of the openings at ground and basement floor levels, as well as infill the double storey atrium at the rear of the units to separate ground and basement levels in this location. These openings and atrium currently act to connect each of the restaurant units, and have led to the establishment of substantial open seating areas capable of hosting large banqueting groups.
- 10.22 Following the closure of openings and the infilling of the atrium, this application seeks permission to establish a lawful A3 use across three separate restaurants. Each of the proposed restaurants would cover both ground and basement floor levels, however only Restaurant 2 would include customer seating at basement level (approximately 10 covers). The remainder of the basement floorspace across the site would be used as kitchens and store rooms. Most of the existing openings between the units at basement level would be infilled, with the exception of two openings between unit nos. 12 and 14. Importantly, the large banqueting spaces (comprised of open seating areas at basement level across the units) associated with the previously refused applications have been removed.
- 10.23 A comparative analysis of the details of operation for each restaurant proposed under the current application, compared to those proposed under the most recently refused application (ref: P2015/4037/FUL), is shown in the tables below.

Property	Proposed Floorspace	Proposed covers	Previously refused	Difference +/-
Restaurant 1	GIA: 110 sqm Seating Areas: 45 sqm	30 covers	36 covers	-6 covers
Restaurant 2	GIA: 269 sqm Seating Areas: 140 sqm	80 covers	60 covers	+20 covers
Restaurant 3	GIA: 134 sqm Seating Areas: 59 sqm	40 covers	85 covers	-45 covers
<b>TOTAL:</b>	<b>GIA: 513 sqm Seating Areas: 259 sqm</b>	<b>150 covers</b>	<b>181 covers</b>	<b>-31 covers</b>

**Table 1:** Restaurant covers, proposed vs. previously refused

Property	Largest proposed open seating area	Previously refused largest open seating area	Difference +/-
Restaurant 1	Approx. 26 sqm	Approx 29 sqm	-3 sqm
Restaurant 2	Approx. 31 sqm	Approx. 41 sqm	-10 sqm
Restaurant 3	Approx. 30 sqm	Approx. 91 sqm	-61 sqm

**Table 2:** Largest open seating areas per restaurant, proposed vs. previously refused



*NB: whilst the labels on the plans submitted for the previously refused 2015 application indicate that the largest open seating area for restaurant 3 at basement level was 53.2 sqm, scaled measurements of the plans indicated that the open area would, in fact, have covered 90.6 sqm. This exacerbated officer concerns with the proposal and contributed to the refusal of the application. For the table above, the floorspace figure as measured on the plans is used; however, for the avoidance of doubt, it is important to note that the current proposal represents a significant reduction in open seating floorspace when compared to either scenario. The previously refused basement plan (officers calculations shown) and proposed basement floorplan are shown in Images 1 and 2 below.*

**Image 1:** previously refused basement plan

**Image 2:** proposed basement plan

- 10.25 The proposal represents a decrease in both overall capacity and open seating areas when compared to the most recently refused scheme. In total, across the three restaurants there would be 25 less covers, including 45 less covers at Restaurant 3 and 6 less in Restaurant 1. Whilst Restaurant 2 would see an increase in 20 covers, this is a result of the additional internal ground floor area created following the infilling of the rear double-storey atrium which previously acted to increase capacity for large banqueting style events. The increase of 20 covers for a total of 80 covers given its overall size and the mitigation measures with re-instatement of ceilings and walls is considered to be acceptable. Furthermore, the total number of covers at the three restaurants would be 31 less than previously refused; paragraphs 10.26-10.30 outline the justification of these covers.
- 10.26 Importantly, the proposed restaurants have been subject to significant internal reconfigurations when compared to the previously refused schemes. As noted above, the refused schemes included large expanses of open seating areas, including a very significant space within Restaurant 3 of 91 sqm at basement level spread across the rear of nos. 10-14 and below the double-height atrium space. The proposed partitions at both ground and basement levels, as well as the infilling of the atrium, would not only ensure that the restaurants are self-contained, but would also significantly reduce the size of the largest open seating areas at each restaurant. As outlined in the table above, the largest open seating area at any of the restaurants would not exceed approximately 31 sqm, significantly reducing the capacity for the venues to host larger group gatherings. This amount of open floor area, and the resulting customer capacity, is not considered to be excessive for a restaurant unit.

- 10.27 It must be noted that the previous Inspectorate appeal decision (ref: APP/V5570/C/14/2225985) makes specific reference to the likely acceptability of the separation of the properties into “*four smaller premises*”; and that the refused 2015 application was upheld at appeal (ref: APP/V5570/W/16/3165702) partly because the proposed separation of the site into three (rather than four) restaurants ensured that it would still be capable of accommodating large groups (as outlined at paragraph 9.17 of this report). However, the second appeal was largely upheld due to operational harm caused by an increase in restaurant covers and the fact that very large groups would still be able to gather in Restaurants 2 and 3. Whilst the proposal currently under consideration includes the provision of three (rather than four) separate restaurants, it differs from the previous schemes as it would no longer offer the opportunity for very large groups to gather for ‘banquet’ style functions, as a result of the:
- reduction in overall covers across the site; and
  - significant reduction in open seating area floor spaces following the re-instatement of walls
- 10.28 As noted above, the property at no. 12-14 Theberton Street would be operated as a single restaurant (Restaurant 2), rather than two separate units; and the restaurant would also allow for a greater number of covers (+20) than under the previously refused schemes. However, the layout of the restaurant has been revised throughout the course of the application at the request of officers to ensure that, despite the increase in covers, the resulting space does not afford an opportunity for large group gatherings. The resulting restaurant would operate across two frontages, and the units would largely be divided by internal partitions save for 2no. small doorway openings at each ground and basement floor levels. At ground floor, the resulting restaurant would be separated into four individual seating areas (each with a maximum cover of 20), with one seating area at basement level with a cover of 10. Therefore, whilst the overall cover numbers represents an increase upon the previous scheme, the layout and partitioning of the restaurant ensures that its operating impact would be more akin to two separate units with a shared kitchen rather than one large open-plan restaurant.
- 10.29 As discussed, the proposal includes important variations to the previously refused schemes, including the infilling of the double height atrium within the rear extension (resulting in significantly smaller spaces with lowered ceilings); the installation of separating walls; and the removal of the ground floor level barrelled ceilings at nos. 12, 14 and 16, and their replacement with insulated ceilings between the units and the flats above. The sound insulation measures proposed are discussed in greater detail within the neighbouring amenity section of this report at paragraphs 10.61-10.88.
- 10.30 Furthermore, officers note that the number of covers capable of being accommodated at the site is an important additional consideration in assessing the acceptability of the scheme. Therefore, a condition (Condition 12) has been recommended requiring the provision of detailed cover numbers the new A3 restaurant at Nos. 12-14 as part of a wider Scheme of Management Plan, which is to be submitted and approved by the Local Planning Authority prior to the first occupation of the unit.

10.31 It is therefore considered that the potential operational impacts of the proposed restaurant units would be acceptable, subject to the inclusion of appropriate conditions. This is discussed further within the neighbouring amenity section at paragraphs 9.62-9.89 of this report. Overall, officers consider that the proposed self-contained A3 restaurant units at nos. 10, 12-14 and 16 Theberton Street are acceptable in principle, subject to conditions, and the application therefore accords with policies DM4.3 and DM4.4 of the Development Management Policies 2013.

### **Design and Conservation**

10.32 The application site comprises 4no. adjoining three-storey (plus basement) properties which form part of a Grade II listed early C19th terrace on the northern side of Theberton Street and within the Barnsbury Conservation Area. The significance of the buildings includes their architectural design and materials, evidence of the original plan-form and their own townscape contribution including their contribution to the character and appearance of the conservation area. It is also noted that there are a number of other Grade II listed building within proximity to the site, including at nos. 4-8 Theberton Street (adjoining), nos. 20-44 Theberton Street to the west and nos. 3-5 Theberton Street opposite.

10.33 Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

10.34 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

10.35 Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

10.36 The application site is located within the Barnsbury Conservation Area, which is the largest in Islington and is of outstanding importance. The area contains a wide variety of architectural styles with distinctive detailing, with a number of historic shopfronts which are critical to the character and historic charm of the area. It also contains many of the best examples of late-Georgian/early-Victorian residential developments in London, including some of the finest sequences of squares and terraces in London, such as Gibson Square (approximately 100m to the west of the site).

10.37 Policy CS9 of Islington's Core Strategy 2011 and Policy DM2.1 of Islington's Development Management Policies 2013 accord with the National Planning Policy Framework (NPPF) in seeking to sustain and enhance Islington's built environment. Taken together, they seek to ensure that proposed development responds positively to existing buildings, the streetscape and the wider context, including local architecture and character, surrounding heritage assets, and locally distinctive patterns of development.

- 10.38 Policy DM2.3 states that Islington's historic environment is an irreplaceable resource and the council will ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance.
- 10.39 As discussed within the land use section of this report, the site is the subject of significant planning, listed building, and enforcement history. It is noted that a number of internal works had been undertaken without Listed Building Consent. An Enforcement Notice relating to internal and external alterations to the heritage assets (ref: E08/03958) was therefore issued in 2014. This was the subject of appeal ref: APP/V5570/F/14/2220720 (see **Appendix 3**), in which the Inspectorate dealt specifically with each individual fixture/fitting subject to the Notice. In the case of the properties at Nos. 10-16 Theberton Street, there were 29 contraventions subject to the Notice, most of which were deemed unacceptable and dismissed. The works dismissed have now been removed/altered and the Notice complied with to the satisfaction of the Council. However, the Inspector did allow the retention of a number of the Items, including:
- the insertion of elaborate timber doors and door surrounds into the rounded arch openings within the original real wall/s at basement level across all four units;
  - the installation of alarm boxes to the front elevation;
  - the insertion of barrelled ceilings at ground floor level of nos. 12, 14 and 16;
  - the creation of 4no. double door width openings between Nos. 10 and 12 at basement level;
  - the creation of 4no. double door width openings between Nos. 12 and 14;
  - the creation of 4no. double door width openings between Nos. 14 and 16;
  - the installation of valences to awnings;
  - the installation of internal cladding with cobble-rubble stone and tile to walls at ground floor; and
  - the creation of wide rounded arch openings with rear basement walls.
- the retention of rear openings between 10-12 and 14-16 subject to a downstand at ceiling level being inserted.
- 10.40 Whilst the Items outlined above were allowed at appeal, the associated appeal relating to the use of the properties as a single amalgamated A3 unit was dismissed (as were each of the subsequent planning appeals, as discussed previously within the land use section of this report). The applications under consideration therefore include additional internal and external alterations in order to ensure the demarcation of the units and therefore the acceptability of the use in both planning and listed building terms. The proposed internal works include: re-instatement and installation of previously removed party walls in the basement and ground floor between nos. 14 and 16 and nos. 10 and 12, re-instatement of a timber staircase and door, installation of a ground floor to remove the double height atrium, and removal of modern doors. The proposed external works include the installation of 2no. kitchen extract ducts at the rear.

#### Internal works

- 10.41 It is proposed to reinstate party walls in the basement and ground floor between nos. 14 and 16 and nos. 10 and 12, to match those previously removed. The proposed walls will be constructed of reclaimed brick and plastered to match the surviving walls. This work re-introduces previously demolished elements of the original plan-form and is therefore supported.

- 10.42 The proposal also includes the formation of new partitions between the basement WCs and the restaurant spaces, with traditional timber panel doors to match those previously removed. It is also proposed re-instate a timber door in the opening between the entrance hall and ground floor front room of no. 12. These works are supported in principle, subject to a condition on the Listed Building Consent (Condition 3) requiring that the re-instated doors shall be six panelled timber doors with mouldings to the ground floor, and four panelled doors with moulding to the basement floor.
- 10.43 It is also proposed to reinstate a timber staircase to match that previously removed between ground and basement floor levels at no. 12. This work re-introduces a staircase in the position of the removed original and is therefore welcomed.
- 10.44 The application also proposes the installation of a ground floor in the double-height atrium to the rear of nos. 12 and 14, including the removal of the modern staircase and all balustrades. The existing atrium occupies a modern extension to the building which is not of historic or architectural interest. The works are supported as they ensure that the internal spaces of the rear extension align to the vertical floor hierarchy of the host buildings, and reduce the harmful impact which a large double-height addition has had on the character and plan-form of the listed buildings.
- 10.45 It is also proposed to remove the modern doors between the rear extension and nos. 12 and 14. This is acceptable as one of the openings is not of historic interest and the other two historically relate to rear windows, not doorways.
- 10.46 Following the submission of the applications, the applicant has revised the proposal to enable more of the internal historic plan form to be reinstated. This includes the insertion of separating party walls between Nos. 12 and 14 within the rear extension at both ground and basement floor levels, to ensure that a level of delineation between the two units is created at rear. Although the ground and basement floor levels of these buildings have lost the vast majority of their historic detailing and finishes, there is clearly a benefit to reinstating the original cellular plan-form, and of reinstating more of the historic separation between the properties including the extension of this separation to within the two storey rear extension. The greater reinstatement of the historic separation between the properties is welcomed.
- 10.47 Overall, the proposed internal works aim to revert the interior of the listed buildings closer to their original plan form, and are considered to be acceptable in principle.

#### External works

- 10.48 The applications also propose the installation of 2no. kitchen extracts at the rear, one each at nos. 10 and 12, and the installation of an intake duct at the rear of no. 12. Both of the extracts would run along the rear elevation of the buildings (between closet additions at first floor level), and would terminate at the line of the butterfly parapet, approximately 2 metres above the top of the second floor window openings.
- 10.49 The Barnsbury Conservation Area Design Guidelines state:

*“10.16. The Council is opposed to the erection of large vent pipes on the rear elevation of commercial properties where this is harmful to amenity. Where possible existing chimney flues should be used. Any new flues should be modest in size, and painted a dark colour.”*

*10.17. Large flues and vent pipes can often detract from the visual amenity of the area. The Council will therefore seek to ensure that these are appropriately located and are of a suitable size and design.”*

- 10.50 The proposed kitchen extraction ducts, and in particular the entirely new duct, would compound the existing harm that has been caused to the rear of the terrace by cumulative mechanical plant. The extraction ducts and intake would be placed on some of the few rear elevations which retain something close to their historic appearance above ground level. They would cause harm to the historic and architectural interest of a designated heritage asset by reason of their unsympathetic design. Although the rear elevation of a terraced building is often one of the more appropriate locations for such plant, a listed building is subject to specific policies which mean that any interventions need to conserve or better reveal its special historic and architectural character. The proposed ducts would cause harm to the special historic and architectural character of the heritage asset, including to the setting of neighbouring heritage assets. This harm would be less than substantial.

Impact of the proposal upon significance of designated heritage assets, and Balance of harm

- 10.51 As noted above, the application properties are Grade II listed and are located within the Barnsbury Conservation Area. The site is also within proximity to, and adjoins, other Grade II listed buildings.
- 10.52 Therefore, in the determination of the applications, the assessment of the proposal must consider the impact on these heritage assets in accordance with the legislation set out in Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which is outlined below.
- Section 66(1) provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
  - Section 72(1) provides that in the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of (amongst others) the planning Acts, special attention shall be paid to the desirability of preserving or enhancing the character.
- 10.53 The South Lakeland District Council v Secretary of State for the Environment case and the Barnwell Manor case (East Northamptonshire DC v SSCLG) establish that “preserving” means “doing no harm”.
- 10.54 The decision of the Court of Appeal in Barnwell Manor confirms that the assessment of the degree of harm to the heritage asset is a matter for the planning judgement of the decision-maker. However, where the decision-maker concludes that there would be some harm to the heritage asset, in deciding whether that harm would be outweighed by the advantages of the proposed development, the decision-maker is not free to give the harm such weight as the decision-maker thinks appropriate. Rather, Barnwell Manor establishes that a finding of harm to a heritage asset is a consideration to which the decision maker must give considerable importance and weight in carrying out the balancing exercise.

- 10.55 There is therefore a “strong presumption” against granting planning permission for development which would harm a heritage asset. In the Forge Field case the High Court explained that the presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. Paragraph 196 of the NPPF provides that where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. A local planning authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.
- 10.56 The case-law also establishes that even where the harm identified is less than substantial (i.e. falls within paragraph 196 of the NPPF), that harm must still be given considerable importance and weight.
- 10.57 When more than one heritage asset would be harmed by the proposed development, the decision-maker also needs to ensure that when the balancing exercise is undertaken, the cumulative effect of those several harms to individual assets is properly considered. Historic England does not suggest that the cumulative effect of the individual instances of harm identified amounts to substantial harm and officers do not consider that the total harm (i.e. the cumulative effect of the several instances of harm identified) amounts to substantial harm.
- 10.58 In assessing the proposals hereby under consideration, special regard has been had to the desirability of preserving the listed buildings, their setting, and any features of special architectural interest which they possess; as well as the setting of the adjoining and adjacent listed buildings. Whilst the proposed extraction ducts at the rear elevation are clearly not desirable and would cause less than substantial harm to the heritage assets, the proposal would enable more of the internal historic planform to be reinstated. Although the ground and basement floors of these buildings have lost the majority of their historic detailing and finishes there is clearly a benefit to reinstating the original cellular plan-form, and of reinstating more of the historic separation between the properties including the extension of this separation to within the two storey rear extension.
- 10.59 Therefore, the unsympathetic design of the rear extractions would be balanced by the greater reinstatement of the historic separation between the properties. On balance, with the abovementioned revisions to the scheme, the works would create a neutral impact on the significance of the heritage assets. To ensure that the resulting impact of the rear extractors is minimised, a condition has been attached to both the planning permission (Condition 11) and Listed Building Consent (Condition 5) requiring the submission of detailed design drawings for the approval of the Local Planning Authority within 2 months of the decision notice date.
- 10.60 In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special attention has been paid to the desirability of preserving or enhancing the character and appearance of the Barnsbury Conservation Areas. In accordance with Section 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been had to the desirability of preserving the listed buildings, their settings and any features of special architectural interest which they possess. Overall, subject to the recommended conditions, the proposal is considered to bring benefits in the form of greater reinstatement of the historic plan-form of the properties, which is considered to neutralise the less than substantial harm caused to the heritage assets by the introduction of the extraction ducts at the rear elevation. The

proposal therefore accords with the NPPF 2019, policies 7.4, 7.6 and 7.8 of the London Plan 2016, policy CS9 of the Islington Core Strategy 2011, and policies DM2.1 and DM2.3 of the Islington Development Management Policies (2013) and the guidance contained within the Urban Design Guide 2017 and the Conservation Area Design Guidelines.

### **Neighbouring Amenity**

- 10.61 Policy DM2.1 of the Development Management Policies 2013 states that development should not have an adverse impact on neighbouring amenity in terms of noise, overshadowing, overlooking, privacy, sunlight and daylight receipt, over-dominance, sense of enclosure and outlook.
- 10.62 Policy DM6.1 Part G states that noise generating uses should, where possible, be sited away from noise sensitive uses.
- 10.63 Paragraph 6.19 of the Development Management Policies advises that the Council will expect noise generating uses and sources to be adequately separated from established residential areas and other noise sensitive uses (such as care homes, school and hospitals). However, given the borough's density and character it is acknowledged that noise generating uses cannot always be sited away from residential areas. Where potentially noisy developments (such as entertainment venues) are proposed within residential areas, the council will expect the use not to give rise to noise disturbance.
- 10.64 Policy 7.6 of the London Plan 2016 requires buildings and structures not to cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy and overshadowing, in particular. Policy DM2.1 of the Development Management Policies 2013 states that development should not have an adverse impact on neighbouring amenity in terms of noise disturbance, overshadowing, overlooking, privacy, sunlight and day light receipt, over-dominance, sense of enclosure and outlook.

### **Noise Pollution**

#### *Operational Noise*

- 10.65 The amenity impacts relating to the A3 units primarily relate to noise and potential anti-social behaviour late at night.
- 10.66 The site has been subject to significant enforcement history with regard to its operation as a single restaurant unit. Subsequent planning applications have been refused (and upheld at appeal) due to concerns regarding the layout and capacity of the unit/s, each of which provided large open dining areas at both ground and basement levels which could be used for banqueting spaces. As such, the combined comings and goings were considered to have considerable potential to cause significance disturbance to nearby residents. Key findings by the Inspectorate with regard to the use include:

***“[...] Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller premises... the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.”*** (Par. 95 of Appeal Decision APP/V5570/C/14/2225985 dated 24/07/2015) (See **Appendix 3**).

***“I observe from the plans and my site visit that all three restaurants would still be capable of accompanying large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings.”*** (Par. 9 of Appeal Decision APP/V5570/W/16/3165702 dated 31/10/2017) (See **Appendix 4**).

- 10.67 As discussed within the land use section of this report at paragraphs 10.2-10.31, the proposal differs from the previously refused schemes in that it would result in the creation of three separate restaurants with reduced overall covers. The capacity of the units to host large banqueting spaces has also been removed as a result of the re-instatement of ceilings and walls as well as reconfiguration of the internal layout with storage spaces and kitchens situated within the previous banqueting space. Therefore, the potential operational impacts of the proposed restaurant units would be acceptable, subject to the inclusion of appropriate conditions to protect neighbouring amenity levels.
- 10.68 Upon submission, the applicant provided an Acoustic Report and Acoustic Design Note in support of the application. These were reviewed by the Council’s Public Protection (Noise) officer, who requested that the Acoustic Report be updated to include details regarding the noise from patrons outside affecting nearby residents inside (internal  $L_{Amax}$ s from outdoor activity); as well as clarification regarding the relatively low quoted representative sound levels within the premises; and details of measures and controls proposed to ensure that the quoted levels are representative, do not rise, and impacts minimised (i.e. layout changes will not mean larger groups/functions, isolation of speakers from structure, controls of amplified music, smoking areas/patrons arriving or leaving etc.).
- 10.69 The applicant subsequently submitted a revised Acoustic Note to cover the requested additional items. Measurements of the sound transmission between the restaurant and the residences above were undertaken on a Friday night at 21:00. The results demonstrate noise levels 5dB more than the figure previously quoted. However, the revised document failed to provide adequate detail with regard to the restaurant conditions during the survey (no notes were provided regarding measurement position, number of diners, whether music was playing etc.)
- 10.70 Subsequently, the applicant submitted a further Acoustic Note which provides details of two additional acoustic surveys undertaken on both a quiet weekday evening (Tuesday) and on a busy Friday evening between 19:30-21:00. For these surveys, measurements were taken within the front seating area of no. 10 and the rear ground floor mezzanine and rear basement area of no. 14. The Tuesday evening acoustic survey was undertaken while the restaurant was at around one-third full capacity, whereas the Friday evening survey was undertaken while the restaurant was at full capacity with all tables occupied.
- 10.71 The noise limit criteria as set out within the submitted Noise Report are set out in Table 3 below. The Council’s Public Protection (noise) officer has raised no concerns with regard to the proposed criteria.

Source	Criteria
Operational noise emissions to adjoining properties	Operation noise shall not exceed a level of LAeq,5min 30dB within adjoining premises to 23:00 hours and LAeq,5min 25dB beyond this time.
Mechanical services plant and equipment	The rating level of the new equipment shall be at least 5dBA below the prevailing background level at 1m from the most-affected residential property, when assessed in accordance with BS 4142:2014.
Patron noise to the front façade	Noise from patrons to not increase the pre-existing ambient sound level by more than 2.9dBA, equating to a “none/not significant” effect description, as defined by IEMA Guidelines. Individual LAfmax values from patrons should not exceed the 10 <sup>th</sup> highest measured existing LAfmax level to outside of 1 <sup>st</sup> floor façade during the late evening period.

**Table 3:** Acoustic criteria

10.72 The results of the internal sound level surveys, measured in LAeq, are shown in Table 4 below.

Internal sound level measurements (LAeq)			
Survey Date	Measured levels (front seating area at No. 10)	Measured levels (rear ground floor mezzanine at No. 12)	Measured levels (rear basement at No. 12)
Friday 15 <sup>th</sup> March 2019	80dB	–	–
Tuesday 27 <sup>th</sup> August 2019	71bD	70dB	69dB
Friday 30 <sup>th</sup> August 2019	78dB	78dB	75dB

**Table 4:** internal sound level measurement survey results

10.73 The results indicate that the acoustic levels at the rear seating areas are generally lower than those at the front, due to less patrons per unit area. Measured sound levels over the course of the March survey were LAeq 80dB. The measured spectral data in octave bands, and calculated operational sound transmission into the bedroom of Flat 12A (directly above the rear of the unit at no. 12), are shown in Table 5 below (LAeq 80dB).

Calculated operational sound transmission into Flat 12A Bedroom (LAeq 80dB)									
Description	63	125	250	500	1k	2k	4k	8kHz	
Measured source sound level Leq dB	64	67	74	79	77	70	63	54dB	80dBA
Measured sound insulation of separating floor	22	34	38	45	50	57	62	68dB	Dw(+C'tr) 49(-5)
<b>Calculated sound level</b>	<b>42</b>	<b>33</b>	<b>36</b>	<b>34</b>	<b>27</b>	<b>13</b>	<b>1</b>	<b>0dB</b>	<b>34dBA</b>

**Table 5:** calculated operational sound transmission into Flat 12A Bedroom

10.74 These results demonstrate that the calculated noise levels into the adjoining habitable rooms are up to 9dBA above the sound level criteria of LAeq 25dB beyond 23:00 and

4dBA above the criteria of LAeq 30dB up to this time. The information provided recommends that in order to meet the above criteria, the sound insulation performance of the separating floor (between the restaurant units and the flats above) is to be improved by at least 9dB. Works to achieve this would likely include the removal of the (non-original) barrelled ceiling to the front of the restaurants at nos. 12-14, and the removal of existing ceilings to the rear (within the modern extension). The applicant's acoustic consultant recommends that once the ceilings have been removed and separating walls constructed, a primary ceiling of two layers 15mm SoundBloc plasterboard is affixed to the joists of the separating floor with mineral wool insulation between joists.

The applicant has also undertaken two external sound level surveys, taken at nominally 1m from a first floor window overlooking Theberton Street using a microphone on a telescopic pole arrangement between 21:30-00:00 hours. During the course of the survey, the area was witnessed as being busy (even into the later periods) with actively high traffic. The results of both surveys indicate that the measured LAFmax levels were dominated by traffic sources. During the course of the first survey, the author noted that the noise levels from patrons was at a "very low level". During the second noise survey, undertaken on Tuesday 27<sup>th</sup> August, it was noted that the measured noise levels reduced past 23:00 hours, and that overall the figures were generally lower than those measured on the Friday. The noise events were logged throughout the survey and related closely with observed traffic activity, along with non-associated pedestrians and other street activity. The levels measured reflect the noise consultant's opinion that "people leaving the restaurant generally did not wait outside to talk but moved down the street." Therefore, the results indicate that noise from patrons entering and leaving the premises did not impact the measured levels.

*Extracts/Intake*

- 10.75 The proposed extraction/intake equipment to be installed at the rear nos. 10 and 12 will provide supply and extract ventilation to the kitchen. The fans are to be installed internally, ducted at first-floor roof level and the kitchen extract ducts will rise up the rear of the building and terminate at the eaves. The information submitted provides details of computer modelling used to calculate the noise contribution from the plant to outside the nearest noise sensitive windows (the windows to the flats immediately adjacent to the ductwork). The cumulative calculated specific sound levels, calculated in accordance with BS 4142:2014, are shown below in Table 6.

<b>Description</b>	
Calculated specific sound level at first floor flats overlooking rear façade	LAeq 47dB
Background sound level	LA90 57dB
Acoustic feature correction	0dB
Rating level	Lar 47dB
<b>Excess of rating level over background sound level</b>	<b>-10dB</b>

**Table 6:** assessment for equipment during operational hours

- 10.76 The installation of duct-mounted attenuators on the atmospheric side of each of the extraction fans has been incorporated into the above calculations. Officers note that there are a number of existing extraction ducts and equipment at the rear of the site (associated with adjoining restaurants), and the resulting background noise is elevated as existing. Therefore, any increase in sound level, even marginal, has the potential to cause an adverse impact upon amenity. Whilst the Council's standard criteria is for such equipment to achieve a level of 5dBA below the background LA90 sound level, taking into consideration the existing elevated sound level, the extraction plant has been designed to ensure that the specific noise level is 10dBA below the current background sound level. This is to ensure that the proposal does not result in an increase to the overall cumulative sound.
- 10.77 The Council's Public Protection (Noise) officer has reviewed the submitted acoustic notes, paying close attention to the result of the surveys as outlined above. Following the submission of the additional information requested, the officer raises no objections to the proposal, subject to the inclusion of a number of conditions to ensure that noise generated by the operation of the restaurants does not cause undue harm to neighbouring residential amenity. Specifically, conditions are recommended to be attached to the planning permission, requiring the following:
- the submission of full particulars and details of a scheme for sound insulation between the restaurant and residential users above, for approval prior to the first occupation of the development (Condition 6);
  - the commissioning of a report (Condition 7) to assess the acoustic performance of the sound insulation scheme as approved. The report shall be submitted to and approved in writing by the Local Planning Authority within three months of the approval of sound installation and noise control measures approved as part of condition 6 being installed),
  - limits to the operative cumulative noise level LAeq Tr arising from the proposed plant, which when measured or predicted at 1m from the façade of the nearest noise sensitive premises, shall be a rating of at least 10dB(A) below the background noise level LAF90 Tbg (Condition 8). Officers note that this condition is 5dB more stringent than the Council's usual requirement, taking into account the existing elevated noise background sound levels with other plant in the vicinity; and
  - the submission of a report (Condition 9) for the approval of the Local Planning Authority. to assess the noise from the proposed mechanical plant to demonstrate compliance with the noise level restrictions set out in condition 8.
- 10.78 As discussed previously, there are a number of internal mitigation measures proposed to be implemented in order to reduce noise transfer between the restaurant units and the nearby sensitive uses, including the re-installation of ceilings and walls; removal of the rear atrium; an overall reduction in restaurant covers; and the removal of the large banqueting area. Overall, this would lead to a reduction in comings and goings during the operational hours of the restaurants.

10.79 Taking into consideration the information submitted, and subject to the recommended conditions, Officers consider that it has been adequately demonstrated that the proposal would not cause undue harm to the neighbouring amenity with regard to noise disturbance.

Odour and fumes

10.80 Officers note that the extraction equipment has the potential to affect the amenity of nearby residential units as a result of cooking smells. However, the extractor units proposed would terminate at least 1m above the rear windows of the dwellings above. It is considered that any adverse impacts of the extractors on amenity could be successfully mitigated, subject to the detailed design of the extractors.

10.81 Therefore, a condition has been recommended for the planning permission (Condition 11), requiring that the flues are fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with a 0.4-0.8 second residence time, or alternatively fine filtration followed by carbon filtration and by counteractant/neutralising system to achieve the same level as above.

10.82 Subject to the above condition, it is considered that the proposal would not cause undue harm to neighbouring residential amenity with regard to odour pollution.

Night time disturbance and late night economy

10.83 Appendix 10, table 10.2 of the Development Management Policies 2013 provides guidance and standards for reducing impacts of noise generating entertainment uses, including façade treatments and the location of likely noisy sources.

10.84 Notwithstanding the noise survey result discussed above, in order to ensure that the proposed development does not have an adverse impact on neighbouring residential amenity, including cumulative impacts given the location of the site within a high concentration of night-time uses, a condition (Condition 12) requiring the submission and approval of a Scheme of Management prior to the first occupation of the new A3 restaurant unit at nos. 12-14 has been recommended for the planning permission. This condition does not cover the units at nos. 10 and 16, as it is noted that these are already subject to a lawful A3 use. The scheme of management would include details of mitigation measures in order to protect residential amenity with regard to noise, waste and anti-social behaviour, notably:

- covers numbers and method of dispersion of covers within the restaurant;
- a full dispersal policy and procedure;
- signs to request patrons to leave in a quiet manner;
- bottling out and waste management noise and times;
- control and levels of noise from amplified music;
- control and noise from any designated smoking area;
- close down policy; and
- private hire facilities/functions.

10.85 Further, a condition has been recommended (Condition 5) limiting the hours of operation of the new A3 unit at Nos. 12 and 14 to between 07:00 and 23:00 Monday to Thursday and Midnight Friday and Saturday, and 08:00 and 22:00 on Sundays and Bank Holidays.

### Other amenity matters

- 10.86 The proposed extraction and intake ducts would run along the rear (north) elevation of the building, and would not cause undue harm with regard to overshadowing, access to sunlight and daylight, over-dominance, sense of enclosure or outlook. The proposal does not involve the erection of any structures, or the creation of new window openings. It would therefore not cause undue harm with regard to increased overlooking and loss of privacy.

### Conclusion

- 10.87 Following the assessment of the proposal, officers have recommended that a number of conditions are attached to the planning permission in order to ensure that the operation of the units does not cause undue harm to neighbouring amenity. This includes conditions setting out noise limits for extraction flues (and the submission of a noise compliance report); requiring details for internal insulation schemes (and the submission of a compliance report); the provision of odour filtration measures within the flues; restrictions to hours of operation; and the provision of a scheme of operational management.
- 10.88 Overall, subject to the recommended conditions, the proposed separated A3 restaurant uses and associated extraction and intake ducts are not considered to result in undue harm to the levels of amenity afforded to nearby residential occupiers. The application is therefore considered to be acceptable with regard to neighbouring amenity, and accords with Policy 7.6 of the London Plan 2016 and Policy DM2.1 of the Development Management Policies 2013.

### Highways and Transportation

- 10.89 The site is located within the Angel Town Centre, and is easily accessible by public transport including the Angel Underground Station (approx. 600m away) and local bus stops (approx. 30m away), with 24-hour transport connections at the weekend. The site has a PTAL rating of '6a', which is the second-highest and indicates that it has excellent accessibility to public transport. Furthermore, Theberton Street is a restricted parking area, with 1 hour paid parking limits. It is therefore considered unlikely that patrons would arrive via private vehicle. Overall, it is considered that the operation of the restaurants not cause undue harm to the functioning of the public highway with regard to customer comings and goings. To ensure that the dispersion of patrons entering and exiting the unit is managed effectively, it is recommended that a full dispersal policy and procedure is provided as part of the Scheme of Management (Condition 12) to be submitted for approval by the Local Planning Authority prior to the first occupation of the approved A3 unit at Nos. 12-14.

### Servicing and Delivery

- 10.90 Policy DM8.6 of the Development Management Policies states that delivery and servicing should be provided off-street, particularly for commercial developments over 200 sqm gross floor area, that details of the delivery and servicing needs for the development should be submitted, and that delivery and servicing bays should be strictly controlled. Owing to the constraints of the site, an appropriate off street location for deliveries is not available.

- 10.91 The A3 'Restaurant 2' unit at nos. 12-14, the last lawful known use of which is as A2, would cover an area in excess of 200 sqm. It is therefore considered necessary to ensure that the delivery and servicing arrangements for the unit are suitable. Given the constraints of the site, off-street servicing would not be possible, and on-street servicing would therefore be required. This is consistent with the operations of the other commercial units along Theberton Street. Deliveries must not conflict with the servicing arrangements of neighbouring users, and it must be demonstrated that there would be minimal disruption to the local highway network, and to ensure that the process is effectively managed to ensure safe manoeuvres.
- 10.92 Therefore, a condition (Condition 13) has been recommended requiring that details of delivery and servicing for the A3 'Restaurant 3' unit at nos. 12-14 are submitted and approved by the Local Planning Authority prior to the first occupation of the unit. A condition (Condition 14) limiting deliveries, collections unloading and loading between the hours of 08:00-20:00 Monday to Saturday, and not at all on Sundays, is also recommended.

#### Cycling

- 10.93 Policy DM8.4 (Walking and cycling) Part C of the Development Management Policies 2013 requires the provision of secure, sheltered, integrated, conveniently located, adequately lit, step-free and accessible cycle parking. Additionally, Policy CS10 (Sustainable design) Part H of the Core Strategy 2011 seeks to maximise opportunities for cycling. The expected provision of cycle parking is outlined within Appendix 6 of the Development Management Policies 2013, which identifies the need for 1 cycle parking space for each 60 sqm of A3 floorspace. In this instance, this would be applicable to the uplift of lawful A3 floorspace only, and therefore 5no. cycle parking spaces are required to be provided for the unit at nos. 12-14.
- 10.94 At present, no cycle parking is provided within the existing site, and none is shown on the proposed plans. However, officers note that the constraints of the site as a Grade II listed building reduce the scope for provision of cycle parking spaces internally. It is also noted that the site is located within the Angel Town Centre and with excellent accessibility to public transport (with a PTAL rating of '6a'). Therefore, whilst the omission of cycle parking provision for the A3 unit is undesirable, it is not considered to warrant a reason for the refusal of the application.

#### Pedestrian safety

- 10.95 Concern has been raised by residents that the pavement at this location is insufficient in width to accommodate tables and chairs and A-frame boards, and noting that when the restaurants are full there is often little room for pedestrians including wheelchair users. Officers note that the pavement at this location is approximately 3.2m in width. Whilst the concerns regarding pavement dining and the use of A-frame boards is noted, these do not form part of the application currently under consideration. The placement of tables and chairs upon the pavement requires a separate Tables and Chairs license, which is only issued following an assessment of the capacity of the pavement to accommodate such items.

#### Accessibility

- 10.96 Policy DM2.2 seeks to ensure that all developments demonstrate that they provide ease of and versatility in use, and deliver safe, legible and logical environments. In this instance, it is acknowledged that the units are positioned over two floors with the only access to basement level being made via internal staircases. The proposal would therefore not comply with the Council's Inclusive Design requirements. However, the lack

of compliance is not considered to warrant refusal given the application relates to an existing statutorily listed building of restricted size and layout.

### **Refuse and Recycling**

- 10.97 The application does not provide details of refuse and recycling storage for the units. However, officers note that there is sufficient space shown on the plans to provide the required storage. Therefore, a condition (Condition 15) has been recommended requiring details of the proposed refuse and recycling facilities to be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the new A3 'Restaurant 2' unit at nos. 12-14. This does not apply to the existing lawful A3 units at nos. 10 and 16.

### **Other Matters**

- 10.98 Concerns have been raised by some neighbouring residents with regard to the applicant's history of non-compliance with building regulations, alcohol licenses and a disregard for regulations. It has been stated that some residents do not have confidence that the recommended conditions would be complied with. Whilst Officers have considered these concerns, it is important to note that each application is assessed on its own merit; any failure to comply with the conditions attached to either the planning permission or listed building consent would be a planning enforcement matter. This is outside of the scope of the applications at hand.
- 10.99 Concerns have also been raised with regard to the noise impacts of the existing extraction equipment, noting that the current systems are noisy and cause harm to the amenities afforded to residents at properties on the eastern side of Studd Street. Officers note that the scope of the assessment under these applications is limited to the proposal under consideration, which incorporates the installation of 2no. extraction flues at the rear of nos. 10 and 12. Several conditions have been recommended in order to control the design and operation of these flues. Any concerns relating to the lawfulness of existing equipment is a planning enforcement matter.

## **11. SUMMARY AND CONCLUSION**

### **Summary**

- 11.1 A summary of the proposal is set out at section 4 of this report.

### **Conclusion**

- 11.2 It is recommended that planning permission be granted subject to conditions and planning obligations as set out in Appendix 1 – RECOMMENDATIONS.

## APPENDIX 1 – RECOMMENDATIONS

### RECOMMENDATION A – FULL PLANNING APPLICATION

That the grant of planning permission be subject to **conditions** to secure the following:

#### List of Conditions:

<b>1</b>	<b>Commencement</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Re-instatement works</b>
	<p>CONDITION: Notwithstanding Condition 1, the re-instatement of internal walls, doors and floors hereby permitted shall be completed in their entirety in accordance with the approved plans and particulars within 6 months of this permission and thereafter shall be so maintained,</p> <p>REASON: To ensure that the unauthorised operations cease within a reasonable timeframe and replaced by the development hereby approved, and in the interest of the character, appearance and setting of the heritage assets.</p>
<b>3</b>	<b>Approved plans list</b>
	<p>CONDITION: The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Acoustic impact of proposed change of use to A3 restaurant 180802-R001 dated 10/09/2018; Acoustic Design Note 180802-R002 dated 03/01/2019; Acoustic Design Note 180802-R004 dated 19/05/2019; Acoustic Design Note 180802-R005 dated 10/09/2019; Site Location Plan 18028; and drawing numbers: 522. (1).1.001 Rev D, 522. (1).1.002 Rev D, 522. (1).1.003 Rev A, 522(1).1.101 Rev C, 522. (1).1.102 Rev B, 522. (1).2.001, 522. (1).2.002 Rev C, and 522. (1).5.001.</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Planning Act 1990 as amended and also for the avoidance of doubt and in the interest of proper planning.</p>
<b>4</b>	<b>Materials (Compliance)</b>
	<p>MATERIALS (COMPLIANCE): The development shall be constructed in accordance with the schedule of materials noted on the plans and within the Design and Access Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard.</p>

<b>5</b>	<b>Hours of Operation</b>
	<p>HOURS OF OPERATION: The A3 unit at Nos. 12-14 Theberton Street shall not operate outside the hours of:</p> <p>Monday to Thursday – 07:00am to 11.00pm  Friday to Saturday – 07.00am to Midnight  Sunday and Bank Holidays – 08:00am to 10.00pm</p> <p>REASON: To ensure that the proposed development does not have an unacceptable adverse impact on neighbouring residential amenity.</p>
<b>6</b>	<b>Noise Insulation Measures</b>
	<p>NOISE INSULATION MEASURES: Notwithstanding Condition 1, full particulars and details of a scheme for sound insulation between the ground and basement floor restaurant use and upper floors residential of the buildings at Nos. 12-14 Theberton Street shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the decision notice date. The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be implemented and shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.</p> <p>REASON: To address potential sound transmission from the basement and ground floor operation to residential uses above given the juxtaposition of noise generating uses and noise sensitive residential properties.</p>
<b>7</b>	<b>Operational Noise Compliance</b>
	<p>OPERATIONAL NOISE COMPLIANCE CONDITION: Notwithstanding Condition 1, a report is to be commissioned by the applicant, using an appropriately experienced &amp; competent person, to assess the noise from the restaurant use to demonstrate compliance with Islington's Technical Advice For Consultants On Sound Insulation And Noise Control Criteria For Entertainment Licensed Premises. The report shall include site measurements following completion of the sound insulation. The report shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the sound installation and noise control measures approved as part of Condition 6 being installed.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>8</b>	<b>Mechanical Plant Noise</b>
	<p>CONDITION: The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level <math>L_{Aeq Tr}</math> arising from the proposed plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 10dB(A) below the background noise level <math>L_{AF90 Tbg}</math>. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142: 2014.</p> <p>REASON: To control plant noise from kitchen extracts.</p>

<b>9</b>	<b>Mechanical Plant Compliance Report</b>
	<p>MECHANICAL PLANT COMPLIANCE REPORT: Notwithstanding Condition 1, a report is to be commissioned by the applicant, using an appropriately experienced &amp; competent person, to assess the noise from the proposed mechanical plant to demonstrate compliance with condition 8. The report shall include site measurements of the plant insitu. The report shall be submitted to and approved in writing by the Local Planning Authority with 3 months of the installation of the plant hereby approved. REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>10</b>	<b>Hours of operation (plant and extract)</b>
	<p>CONDITION: Prior to the hereby approved plant equipment being used, a timer shall be installed and thereafter shall be so maintained limiting the operation of the/any mechanical plant to between the hours of:</p> <p>Monday to Thursday - 07:00am to 11.00pm  Friday to Saturday - 07.00am to Midnight  Sunday and Bank Holidays - 08:00am to 10.00pm</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>11</b>	<b>Flues/Extraction Systems:</b>
	<p>FLUES/EXTRACTION SYSTEMS (DETAILS) CONDITION: Notwithstanding the hereby approved plans and documents, detailed drawings of the design of the kitchen extraction flues and intake duct shall be submitted to the Local Planning Authority within 2 months of the decision notice date. Details provided shall include treatment, materiality and colour.</p> <p>The kitchen extraction flues and intake duct shall be carried out strictly in accordance with the details so approved and shall be so maintained thereafter.</p> <p>The flues shall be fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with a 0.4-0.8 second residence time) or alternatively fine filtration followed by carbon filtration and by counteractant/neutralising system to achieve the same level as above.</p> <p>The filter systems of the approved flue / extraction units shall be regularly maintained and cleaned; and any filters and parts requiring cleaning or replacement shall be easily accessible.</p> <p>REASON: To ensure that the resulting appearance and construction of the development is of a high standard, and in the interest of protecting future residential amenity.</p>

<b>12</b>	<b>Scheme of Management</b>
	<p>SCHEME OF MANAGEMENT CONDITION: A scheme of management for the A3 (restaurant) unit at Nos. 12-14 Theberton Street hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the unit. The Scheme of Management shall include:</p> <ul style="list-style-type: none"> <li>a) covers numbers and method of dispersion of covers within the restaurant;</li> <li>b) a full dispersal policy and procedure;</li> <li>c) signs to request patrons to leave in a quiet manner;</li> <li>d) bottling out and waste management noise and times;</li> <li>e) control and levels of noise from amplified music;</li> <li>f) control of any noise from any designated smoking area; and</li> <li>g) close down policy.</li> </ul> <p>The operation of the unit shall at all times be carried out in accordance with the approved Scheme of Management.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring amenity, including cumulative impacts given the location of the site within close proximity to residential uses.</p>
<b>13</b>	<b>Delivery and Servicing</b>
	<p>CONDITION: Details of delivery and servicing of the hereby approved A3 unit at Nos. 12-14 Theberton Street shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the units.</p> <p>The servicing arrangements shall be operated strictly in accordance with the details so approved, shall be maintained as such thereafter and no change there from shall take place without the prior written consent of the Local Planning Authority.</p> <p>REASON: To ensure that the resulting servicing arrangements are satisfactory in terms of their impact on highway safety and the free-flow of traffic.</p>
<b>14</b>	<b>Hours of Delivery and Servicing</b>
	<p>CONDITION: Deliveries, collections, unloading, loading for the hereby approved A3 unit at Nos. 12-14 Theberton Street shall only be carried out between the following hours:</p> <p>Monday to Saturday – 08.00am to 08.00pm Sundays/Bank Holidays – not at all.</p> <p>REASON: To minimise the impact of deliveries and servicing on neighbour amenity.</p>
<b>15</b>	<b>Details of refuse and recycling</b>
	<p>CONDITION: Prior to the first use of the hereby approved A3 unit at Nos. 12-14 Theberton Street, details of refuse and recycling storage and management shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and retained thereafter into perpetuity.</p> <p>REASON: To ensure the proposal benefits from adequate refuse and recycling facilities.</p>

<b>16</b>	<b>Condition</b>
	<p>CONDITION: For the avoidance of doubt and notwithstanding the details shown on the hereby approved drawing number 522.(1).2.002 Rev, no permission is granted for the use of brick pier downstands between unit nos. 12 and 14 within the rear extension at basement or ground floor levels. The demarcation of the units at both basement and ground floor levels shall be undertaken via the re-insertion of new spine walls, in accordance with the hereby approved drawing numbers 522.(1).1.001 Rev D and 522.(1).1.002 Rev D.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring amenity, including cumulative impacts given the location of the site within close proximity to residential uses.</p>

**List of Informatives:**

<b>2</b>	<b>Other Legislation</b>
	You are advised that the planning permission hereby approved would be subject to fully complying with other legislation outside the realms of the planning regulations including licensing, environmental acts, building control and fire safety regulations.

**RECOMMENDATION B – LISTED BUILDING CONSENT**

That the grant of listed building consent be subject to **conditions** to secure the following:

**List of Conditions:**

<b>1</b>	<b>Commencement</b>
	<p>3 YEAR CONSENT PERIOD FOR LBC: The works hereby permitted shall be begun not later than three years from the date of this consent.</p> <p>REASON: To comply with the provisions of Section 18(1)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Re-instatement of internal walls, doors and floors</b>
	<p>CONDITION: Notwithstanding Condition 1, the re-instatement of internal walls, doors and floors hereby permitted shall be completed in their entirety in accordance with the approved plans and particulars within 6 months of this permission and thereafter shall be so maintained,</p> <p>REASON: In order to safeguard and enhance the special architectural or historic interest of the heritage asset.</p>
<b>3</b>	<b>Internal doors</b>
	<p>CONDITION: The new doors shall be six panelled timber doors with mouldings to the ground floor, and four panelled doors without mouldings to the basement floor. The doors shall be recessed panelled doors and not raised and fielded panelled doors and shall be retained as such thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the</p>

	heritage asset.
<b>4</b>	<b>All external and internal works to match (compliance)</b>
	<p>CONDITION: All new external and internal works and finishes and works of making good to the retained fabric shall match the existing adjacent work with regard to the methods used and to material, colour, texture and profile. All such works and finishes shall be maintained as such thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the heritage asset.</p>
<b>5</b>	<b>Flues/Extraction Systems</b>
	<p>FLUES/EXTRACTION SYSTEMS (DETAILS) CONDITION: Notwithstanding the hereby approved plans and documents, detailed drawings of the design of the kitchen extraction flues and intake duct shall be submitted to the Local Planning Authority within 2 months of the decision notice date. Details provided shall include treatment, materiality and colour.</p> <p>The kitchen extraction flues and intake duct shall be carried out in accordance with the details subsequently so approved and shall be so maintained thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the heritage asset</p>

**List of Informatives:**

<b>2</b>	<b>Other Legislation</b>
	You are advised that the planning permission hereby approved would be subject to fully complying with other legislation outside the realms of the planning regulations including licensing, environmental acts, building control and fire safety regulations.

## **APPENDIX 2: RELEVANT POLICIES**

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

### **1. National Guidance**

The National Planning Policy Framework 2019 and Planning Policy Guidance (PPG) seek to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF and PPG are material considerations and have been taken into account as part of the assessment of these proposals.

### **2. Development Plan**

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

- a. **The London Plan 2016** - Spatial Development Strategy for Greater London
    - Policy 4.1 – Developing London’s economy
    - Policy 4.4 – Promoting Town Centres
    - Policy 4.6 – Support for and enhancement of arts, culture, sport and entertainment
    - Policy 5.3 – Sustainable design and construction
    - Policy 6.9 – Cycling
    - Policy 6.10 – Walking
    - Policy 7.2 – An inclusive environment
    - Policy 7.4 – Local Character
    - Policy 7.6 – Architecture
    - Policy 7.8 – Heritage assets and archaeology
  - b. **Islington Core Strategy 2011**
    - Policy CS5 – Angel and Upper Street
    - Policy CS9 – Protecting and enhancing Islington’s built and historic environment
    - Policy CS14 – Retail and services
  - c. **Development Management Policies June 2013**
    - Policy DM2.1 – Design
    - Policy DM2.2 – Inclusive design
    - Policy DM2.3 – Heritage
    - Policy DM3.7 – Noise and vibration (residential uses)
    - Policy DM4.2 – Entertainment and the night-time economy
    - Policy DM4.3 – Location and concentration of uses
    - Policy DM6.5 – Landscaping, trees and biodiversity
    - Policy DM7.1 – Sustainable design and construction
    - Policy DM8.2 – Managing transport impacts
    - Policy DM8.3 – Public transport
    - Policy DM8.4 – Walking and cycling
    - Policy DM8.5 – Vehicle parking
    - Policy DM8.6 - Delivery and servicing for new developments
    - Appendix 6 – Cycling
- ### **3. Designations**
- Grade II listed buildings
  - Barnsbury Conservation Area (and Article 4 Direction)
  - Archaeological Priority Area – Islington Village
  - Within 50m of boundaries of the Angel and Upper Street North conservation areas
  - Core Strategy Key Area – Angel & Upper Street
  - Angel Town Centre
  - Article 4 Direction (A1-A2 Town Centres)
  - Within 100m of TLRN

- Cycle Route (Local)
- Cycle Route (Strategic)
- Site within 100m of Transport for London Road Network

#### **4. SPD/SPGS**

- Urban Design Guide 2017
- Conservation Area Design Guidelines



---

## Appeal Decisions

Site visit made on 24 June 2015

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 16 July 2015**

---

### **Appeal A – Notice LBEN 1 - Ref: APP/V5570/F/14/2220714 4 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mehmet Kocakerim against a Listed Building Enforcement Notice (LBEN 1) issued by the London Borough of Islington (the LPA).
  - The Council's reference is E/2014/0347.
  - The notice was issued on 15 May 2014.
  - The alleged contraventions (numbered 1 to 11) of listed building control are set out in Appendix 1 attached to and forming part of the notice.
  - The various requirements of the notice, in relation to each of the 11 alleged contraventions, are also set out Appendix 1.
  - The differing periods for compliance with the requirements are also set out in Appendix 1.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 

### **Appeal B – Notice LBEN 2 - Ref: APP/V5570/F/14/2220716 8 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mehmet Kocakerim against a Listed Building Enforcement Notice (LBEN 2) issued by the London Borough of Islington (the LPA).
  - The Council's reference is E/2014/0348.
  - The notice was issued on 15 May 2014.
  - The alleged contraventions (numbered 1 to 9) of listed building control notice are set out in Appendix 1 attached to and forming part of the Notice.
  - The requirements of the notice, in relation to each of the 9 alleged contraventions, are also set out in Appendix 1.
  - The differing periods for compliance with the requirements are also set out in Appendix 1.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 

### **Appeal C – Notice LBEN 3 - Ref: APP/V5570/F/14/2220720 10, 12, 14 & 16 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mehmet Kocakerim against a listed building enforcement notice issued by the London Borough of Islington (the LPA).
- The Council's reference is E08/03958.
- The notice was issued on 15 May 2014.
- The alleged contraventions (numbered 1 to 29) of listed building control are set out in

Appendix 1 attached to and forming part of the notice.

- The requirements of the notice, in relation to each of the 29 alleged contraventions are also set out in Appendix 1.
  - The differing periods for compliance with the requirements are also set out in Appendix 1.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 

**Appeal D - Notice PEN 1 – Ref: APP/V5570/C/14/2225985  
10, 12, 14 & 16 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mehmet Kocakerim against an enforcement notice issued by the London Borough of Islington (the LPA).
  - The Council's reference is E/2014/0369.
  - The notice was issued on 15 August 2014.
  - The breach of planning control as alleged in the notice is: the amalgamation of the basement and ground floors of four individual properties (10, 12, 14 & 16) Theberton Street and their use as a single restaurant unit (A3).
  - The requirement of the notice is to cease the use of the ground floors and combined basement area of four individual properties (10, 12, 14 & 16 Theberton Street N1 0QX) as a single restaurant unit (A3).
  - The period for compliance with the requirements is three (3) months.
  - The appeal is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
- 

**Decisions**

1. **Appeal A:** The appeal is allowed in part and dismissed in part. The LBEN 1 is varied but otherwise upheld as varied (see formal decision below).
2. **Appeal B:** The appeal is allowed in part and dismissed in part. The LBEN 2 is varied but otherwise upheld as varied (see formal decision below).
3. **Appeal C:** The appeal is allowed in part and dismissed in part. The LBEN 3 is varied but otherwise upheld as varied (see formal decision below).
4. **Appeal D:** The appeal is dismissed; the enforcement notice PEN1 is upheld and planning permission on the deemed application is refused (see formal decision below).

**The Notices and matters of clarification**

5. There are 3 Listed Building Enforcement Notices (LBENs 1, 2 & 3) and one Planning Enforcement Notice (PEN 1). The allegations, requirements and compliance periods are set out in Appendices to each notice (Appendix 1) under Schedules 2, 4 and 5 attached to the notices. These are summarised below for each of the decisions relating to LBEN 1 (Appeal A), LBEN 2 (Appeal B) and LBEN 3 (Appeal C). The breach of control, requirements and compliance period for PEN 1 (Appeal D) are set out above.
6. LBEN 1 (Appeal A) relates to No 4 Theberton Street; LBEN 2 (Appeal B) to No 8; and LBEN 3 (Appeal C) and PEN 1 (Appeal D) to Nos 10 to 16 inclusive. There is a detailed planning history relating to all properties (for part see below). I am only empowered to deal with these four notices and the allegations, requirements and compliance periods therein. In Appeal D there was no appeal under ground (c) although on behalf of the appellant it is contended that planning permission for the amalgamated restaurant use is not required. I deal with this matter below under Appeal D.

### **Background information and relevant policy**

7. All of the six late Georgian, terraced, appeals properties are listed in Grade II and comprise three stories with basements. They date back to around the 1830s. They are located on the east side of Theberton Street and within the Barnsbury Conservation Area (BCA). All of the ground floors are presently used as restaurants, although one unit (No 14) is part retail to the front. The various properties are all owned by the Appellant. There are links at basement level between Nos 10 to 16. The initial alleged contraventions of listed building control date back to November 2008 and these are set out in the detailed planning history submitted by the Council. Some works were stated to be '*permitted*' by the conservation officer via an e-mail of February 2009. These works related to '*like for like repairs*'; '*minimum works*' to keep the buildings watertight and '*minimum works to maintain the structural stability*' of the buildings. There was also enforcement action taken in relation to retractable canopies in August 2010 but, following approvals and consents, these enforcement files were closed.

### **Appeals A, B and C**

8. In March 2013 the LPA wrote to the appellant referring to a total of 98 alleged contraventions of listed building control. Since 2008 over 60 various applications for planning permission (PP); Listed Building Consent (LBC) and Advertisement Consent (AC) have been dealt with by the LPA. Most were approved but the creation of rear basement extensions and some conversion works for the upper floors to create flats were, amongst others, refused permission and consent. A change of use from office to restaurant was allowed on appeal in 2009 at No 16. These and the rest of the applications are all set out in Table A attached to the LPA delegated report dated 14 May 2014.

9. Some of the alleged contraventions of listed building control relate to non-compliance with some of these earlier planning permissions (PP) and listed building consents (LBC). These contraventions are all set out in the various 'Appendix 1' details below. There is an 'Appendix 1' attached to all three LBEN notices. With regard to what has already been granted permission and/or consent, the Appellant specifically refers to LBC (P110482) and AC (P110687) for the erection of the retractable canvas canopy and the discharge of Condition No 4 (P110482C4) attached to the LBC.

### **Appeal D**

10. The four ground floors and basements at Nos 10, 12, 14 and 16 are all connected and, at the time of my visit, appeared to be operating as one planning unit in A3 use (though with the part retail element to the front of No 14). Numbers 8 and 10 ('Mem and Laz') operate as two restaurants with only one kitchen in No 8. Number 10 is linked at basement level to Nos 12, 14 and 16. There are no approvals in place for the linked use. The LPA also indicates that there is no PP in place for A3 use at No 12, yet this is currently being used in association with No 14 ('Biskuvi Café'). This also does not have an authorised A3 use. At the time of my visit this unit was partly in use as retail (A1). It is contended on behalf of the appellant that PP is not required for the amalgamation of the individual premises into a combined A3 uses. However, an appeal under ground (c) has not been made and I must base my decisions on all of the submissions. I deal with this particular matter in detail below under Appeal D.

11. At No 16 (known as 'La Vita e bella') the LPA noted that the basement and ground floor were operating as a restaurant. The use of the basement, ground and first floor for restaurant use was granted on appeal in 2009. However, various conditions attached to the permission/consent have not been discharged. These include

conditions relating to refuse storage; extract system; the shopfront; doors and secondary glazing; noise attenuation and ventilation. On this basis the LPA contends that the use of No 16, as a restaurant, is in breach of planning control. In July 2012 the Council's Licensing Team issued a 'Closure Notice' pursuant to Section 19 of the Criminal Justice and Police Act 2001. On 5 June 2013 planning permission was refused for the amalgamation of the units at 10, 12, 14 and 16 to a single A3 restaurant use. Nos 12 and 14 had also previously been in use as a A2 office.

12. During my visit I inspected all of the frontages to the premises and specifically noted each and every one of the matters alleged to be contraventions of listed building control. I also inspected the interior of the premises and noted in particular the rear and basement areas to Nos 10 to 16 which had been amalgamated into one large restaurant area with some storage use in one of centrally located units. However, the storage was for typical restaurant furniture and the space was still capable of being used as part of the combined basement restaurant area.

### **Relevant Policies**

13. The relevant policies for Appeals A, B and C are Core Strategy Policy CS9 (Protecting and enhancing Islington's built and historic heritage) and Policy DM 2.3 of Development Management Policies (Conserving and enhancing the historic environment). These are up to date and accord with national policy in the National Planning Policy Framework (NPPF) which also seeks to conserve and enhance the historic environment. The NPPF seeks to ensure that when considering the impact of development (or works) great weight is given to the asset's conservation and that where any loss or harm would lead to less than substantial harm to significance, then the harm should be weighed against the public benefits of the proposals including securing its optimum viable use.

14. The relevant policies for Appeal D are DM2.1 (Protecting Amenity); DM4.1 (Maintaining and promoting small independent shops); DM4.2 (Entertaining and the night-time economy); DM4.3 (Location and concentration of uses) and DM4.4 (Promoting Islington's Town Centres).

15. In reaching my decisions in these appeals I have taken into account all of the relevant NPPF policies and the guidance set out in Planning Practice Guidance (PPG). I have had special regard to sections 16 (2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) and have paid special attention to section 72 of the same Act. Other material considerations in these appeals include the English Heritage (EH), Historic Environment Good Practice Guide in Planning, Notes 2 and 3 and Islington's SPG (Conservation Area Design Guidelines) Barnsbury Conservation Area. The former replace earlier EH conservation advice and PPS 5.

### **Main issues**

16. The main issues in Appeals A, B and C are the effects that the various works have had on the listed buildings, their settings and their features of architectural and historic interest and on the character and appearance of the conservation area. For each of the appeals I have set out an introduction and then considered each of the alleged numbered contraventions separately. I have also considered the cumulative impact in relation to each notice.

17. The main issues in Appeal D relate to the effects of the alleged change of use on the living conditions of nearby residents with particular reference to noise and disturbance caused by the cumulative effect of the combined uses of the properties for A3 purposes (see Appeal D below).

## **Appeal A on ground (e) No 4, LBEN1**

### ***Introduction***

18. It is difficult to envisage that any co-ordinated thought, (in terms of the effect on the listed building), went into the design of the frontage to No 4 (or the other frontages). The overall 'hotchpotch' (or mismatching nature) of fixtures and fittings detracts markedly from the character of the listed building. Most of the various unauthorised works carried out are harmful to the listed building. Each element of the works is perceived as being randomly chosen to suit some immediate need based on a particular situation at any one time. Some light fittings are black, some are chrome finished and others are clearly neither modern, nor based on any appropriate historic type fitting. Most are also inappropriately and seemingly randomly positioned on the historic shop frontage without any consideration whatsoever for either their individual or cumulative effect on the architectural detailing of the building.

19. The overall result, in my view, is that most of the unauthorised works (items 1 to 11), as carried out, has resulted in harm being caused to the integrity of the building, to its setting and to its architectural and historic features. I do not accept that the shop fronts are basically modern and, therefore that the works have not impacted upon the architectural and historic interest. The underlying historic frontages are still distinctly noticeable and although some of the timber work might have a modern appearance the basic architectural features of pilasters, heads to pilasters, bracketed fascia stops and timber cornicing are all still recognisable. Having reached this conclusion on the majority of the allegations, however, I do find that some of the elements are acceptable in their own right and I now turn to each of the allegations.

### ***Assessment of each of the alleged contraventions (11 No)***

#### ***1. Installation of three external spotlights to illuminate the fascia sign***

20. The black spotlights are fixed at a high level on the fascia and, although small in themselves, they are inappropriate for this historic frontage. Due to their basic size, colour and modern appearance, they detract markedly from the character of the listed building and are perceived as obtrusive and harmful elements attached to the building. They have not been positioned in any logical position; they contribute to the negative 'hotchpotch' of harmful fittings and I do not consider that LBC should be granted for their retention.

#### ***2. Installation of three upward facing Ansell spotlights at first floor level***

21. The upward facing spotlights, on the other hand, are not attached to the timber fascia of the shop frontage and are positioned above the top of the timber shop front. This means that they line through with the bottom of the brickwork. I consider that these elements are appropriate and that they are not visually harmful to the building. Even when their cumulative effect is taken into account, they are not perceived as part of the harmful clutter or 'hotchpotch' of fittings attached to the frontage. I consider, therefore, that LBC should be granted for these Ansell spotlights.

#### ***3. Installation of two small lights on the pilasters of the shop front***

22. These two lights are also small but add to the un-coordinated visual clutter to the frontage of the listed building. Like item 1 above, I consider that they detract from the appearance of the building and, for the same reasons; I do not consider that they should be granted LBC.

**4. Incorporation of wrought iron detailing to the shop front stall riser**

23. The modern wrought iron detailing to the shop front stallriser looks distinctly incongruous when seen against the basic timber detailing of the pilasters and the rest of the shop front. The black painted metalwork is more akin to some form of internal decorative feature and looks distinctly out of character. In my view, it should play no part in the design of a historic frontage of this date and age. I find it harmful to the building, to its setting and to the architectural and historic lower part of the frontage/stallriser. For these reasons, I do not consider that LBC should be granted for the retention of this part of the unauthorised works.

**5. Installation of an alarm box to front elevation at first floor level**

24. I do not consider that the alarm box looks incongruous. It is not overly large and is the sort of fitting one would expect, and indeed need, on a building such as this. I noted other alarm boxes in the vicinity and I find this one to be acceptable. LBC will be granted for this item.

**6. Display of a hanging sign to the front elevation at first floor level**

25. There are many hanging signs in the vicinity and I noted their detailing. The one attached to No 4, despite the wrought iron frame and hanging fixture is not in itself discordant. I do not consider that its design or detailing detracts from the design qualities of the listed building. However, I find that due to its modern design and its position at such a high level, it detracts markedly from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural and historic terms. I do not consider that LBC should be granted for this sign.

**7. Installation of a CCTV camera on right hand side of pilaster**

26. Whilst accepting the need for CCTV installations, I consider that this particular fixture, albeit small, is incongruous when seen in the context of the overall frontage and the other inappropriate fixtures. Within a short space of each other there are modern black spotlights, shiny chrome spotlights (with ill-fitting round brackets) and the CCTV camera. Again I find that the overall visual clutter is harmful to the integrity of the listed building, its setting and its features or architectural and historic interest: namely the pilasters and framework to timber shop front. It follows that I do not consider that LBC should be granted for this item.

**8. Installation of two external lights and a lantern above front door**

27. These two lights and the black lantern are another example of a complete mismatch in design which detracts from the appearance of the listed building. In particular the two lights are fixed with a round bracket fixing to a smaller section of the upper timber frame. Because the fixings are larger than the part of the timber framing, they look completely out of place and are crudely fixed. The black lantern light also looks incongruous with its inappropriate ornate detailing. It exacerbates the overall negative appearance of the fixtures to this part of the building. These two elements clearly add to the visual harm to this part of the listed building and, again, I do not consider that LBC should be granted for their retention.

**9. Application of weather-struck pointing, front elevation first and second floor levels**

28. Having seen the weather-struck pointing, I share the Council's concerns about the effect on the listed building. I acknowledge that the pointing is not all that pronounced and that the Flemish Bond yellow brickwork is still distinctly recognisable. However, when seen from across the road the resulting appearance is one which

results in an unacceptable 'patchwork type' looking façade. The lines of the pointing, rather than the subtlety of the brickwork colour, dominates and detracts from the architecturally and historically interesting Georgian elevations.

29. I also agree with the Council that the use of 'cement mortar' compromises the integrity of the brickwork. I have noted the agent's and the contractor's comments on weather-struck pointing and accept the arguments regarding the inconvenience and expense that would be caused if the works carried out were considered to be unacceptable. I also noted other nearby examples of such pointing. However, the arguments put forward cannot be justification to retain further inappropriate pointing that, in my view, has affected the integrity of the building, its setting and the features of architectural and historic importance (the brickwork façades)

**10. Application of valence to awning not in accordance with drawing Ref 238. (1) 4-001 of LBC P110482 dated 01 July 2011.**

30. I find this item to be insignificant and I do not consider that the small valence to the approved awning causes any noticeable visual harm to the building. I saw other valences in the locality and consider that this particular one does not harm the building; its setting or any of its architectural or historic features. Nor does it significantly contribute to the cumulative effect of the other unauthorised works. I conclude, therefore, that LBC should be granted for this item.

**11. Internal cladding with cobble / rubble stone and tile to walls and ceiling**

31. There is nothing before me to indicate the state or condition of the interior to No 4 prior to works commencing and the Council accepts that there is no evidence to indicate any loss of any historic fabric. The Council also acknowledges that there must be some scope to alter the interior of listed premises and indeed, such works can be reversed at a future date. Having seen these works as carried out I find them somewhat bizarre and extreme in design terms for a Georgian property of this age. However, the plan form to No 4 was still recognisable and the finishes appeared to be mainly applied rather than structural. The list description does not detail any specific internal areas and thus, overall, I do not consider the principle of such decoration to be a significant issue with regard to the effect on the listed building.

**Overall conclusion**

32. I have found that the majority of the items above have harmed the listed building, its setting and some of its features of architectural and historic interest. It follows that these unauthorised works neither preserve nor enhance the character or appearance of the Barnsbury Conservation Area.

33. But, for the reasons set out above I have concluded that items 2, 10 and 11 are acceptable and Appeal A succeeds in relation to these matters. LBC will be granted for these items and LBEN 1 will be varied to remove the requirements relating to these works.

34. However, Appeal A fails in relation to items 2, 3, 4, 5, 6, 7, 8 and 9. LBC will not be granted for the works which have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA)

**Appeal B on ground (e) No 8, LBEN 2  
Introduction**

35. Many of the items dealt with under Appeal A above are the same as for Appeal B. I have not, therefore, repeated the reasoning in full where the items are the same or

similar. Again I have considered the cumulative impact and have found some items to be acceptable.

**Assessment of each of the alleged contraventions (9 No)**

**1. Installation of three external spot lights that illuminate the fascia sign**

36. For the same reasons as set out in Appeal A (item 1, paragraph 20) above, I do not consider that LBC should be granted for these particular spotlights which appear to be the same as those fixed to the No 4 frontage.

**2. Installation of three upward facing Ansell spotlights at first floor level**

37. For the same reasons as set out in Appeal A (item 2, paragraph 21) above, I consider that LBC should be granted for these upward facing spotlights. I do not find them to be harmful to the listed building in any way.

**3. Installation of an alarm box to the front of the building at first floor level**

38. For the same reason as set out in Appeal A (item 5, paragraph 25) above, I consider that LBC ought to be granted for the alarm box. In my view this is 'diminimis' in terms of its impact on the listed building and should be allowed to remain in place.

**4. Installation of two small lantern lights on the pilasters of the shop front**

39. Having seen these two lights attached to the pilasters I consider that they are inappropriate and harmful fixtures. Again the style and detailing detracts from the pilasters and the fittings contribute to the negative effect on the character of the building, its setting and its features of architectural and historic interest. I do not consider that LBC should be granted for these fittings.

**5. Installation of a CCTV camera on the right hand pilaster when viewed facing front**

40. This is yet another case whereby a random fitting has been attached to the frontage, seemingly without any thought about its specific visual effect on the building. The CCTV camera does not match others that have been used and again contributes to the insensitive and inappropriate hotchpotch of inappropriate works to the building. I accept that it is not large and that some form of security is needed. However, due to its specific design and its cumulative visual impact, I find that it is harmful to the building and to its setting. I do not consider that LBC should be granted for this particular fixture.

**6. Installation of two external lights and a lantern above the front door**

41. For the same reasons set out in Appeal A (item 8, paragraph 27) above, I do not consider that LBC ought to be granted for these harm external lights and the lantern light above the front door to the premises.

**7. Display of a hanging sign to the front elevation at first floor level**

42. This particular sign is attached to a wrought iron bracket. Again it is at a high level between two of the windows and I find that its position and modern bracket detailing detract from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural or historic terms. I do not consider that LBC should be granted for this particular sign.

**8. Application of weatherstruck pointing to the front elevation**

43. For the reasons set out in Appeal A (item 9, paragraphs 28 & 29) above, I do not consider that LBC ought to be granted for the pointing as carried out.

**9. Incorporation of valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001 of LBC dated 30 June 2011)**

44. For the reasons set out in Appeal A (item 10, paragraph 30) above I consider that LBC ought to be granted for the incorporation of the valence.

**Overall conclusion**

45. In this appeal, again I have found that the majority of the items above have harmed the listed building, its setting and some of its features of architectural and historic interest. It follows that these unauthorised works neither preserve nor enhance the character or appearance of the Barnsbury Conservation Area.

46. But, for the reasons set out above, I have concluded that items 2, 3, and 9 are acceptable and Appeal B succeeds on ground (e) in relation to these matters. LBC will be granted for these items and LBEN 2 will be varied to remove the requirements relating to these works.

47. However, Appeal B fails in relation to items 1, 4, 5, 6, 7 and 8. LBC will not be granted for the works which have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

**APPEAL C on ground (e) Nos 10 to 16 LBEN3 (29 Allegations)  
No 10 Theberton Street (Mem and Laz)**

**Introduction**

48. Again some of the items dealt with under Appeal A and/or B above are the same as for Appeal C. I have not, therefore, repeated the reasoning in full where the items are the same or similar. Again I have considered the cumulative impact and have found some items to be acceptable.

**1. Installation of an alarm box to the front elevation at first floor level**

49. With regard to this item, as for similar items in Appeals A and B (items 5 and 3, paragraphs 24 & 38 respectively), I find that the alarm box is acceptable and that LBC should be granted.

**2. Installation of a brass and black door handles to the front door**

50. I acknowledge that these two items in themselves could be considered to be 'de-minimis' and that, under any normal situation it might not necessarily be considered expedient to issue a LBEN notice. However, when seen in the context of all of the other harmful additions/accretions to the front of this listed building I agree with the Council that the door handles jar with and detract from what should simply be a door with an appropriate Georgian door knob. Thus, in the overall circumstances, I find these to be harmful to the listed building and I do not consider that these two items should be granted LBC.

**3. Removal of boundary wall between No 10 and 12 Theberton Street to rear**

51. I have noted that the original boundary wall was to have been dealt with to match approved drawings (Ref TS2) of the LBC (Ref P081570). This was clearly to ensure that the historic plan form of the building could still be read and understood. By removing the wall the definition of the historic boundary has been lost and I agree

with the Council that this has caused harm to the integrity of the listed building. I do not consider, therefore, that LBC should be granted for the works as carried out and the appeal fails on this point.

52. I have noted, however, that the requirement of the notice LBEN 3 (iii), gives an alternative to reinstating the original wall. This requires a downstand at ceiling level in the same position as the former wall. In my view this would be adequate to ensure that the plan form could be understood but it would still be for the appellant to decide which alternative form of this requirement was to be carried out.

**4. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level**

53. The doors are of an elaborate design and, like the wall and ceiling finishes in other parts of the properties they do not possess any particular design links to a Georgian terraced property of this age. Again there is nothing before me to indicate the state or condition of the interior prior to the doors being installed. There is no evidence to indicate any loss of any historic fabric and from my inspection it would appear that the square openings have remained behind the formed curved heads of the doors.

54. The Council has previously acknowledged that there must be some scope to alter the interior of listed premises and again, these works can be reversed at a future date. The plan form to No 10 is still recognisable and the doors are applied decorative materials and do not affect the historic structure of the building. The list description does not detail any specific internal areas and thus, overall, I do not consider that the principle of the door installations to be an issue with regard to the effect on the listed building. I consider, therefore that LBC should be granted for their retention.

**5. Installation of a CCTV Camera on the left hand pilaster**

55. Again, although this is a small item, no thought seems to have been given to any co-ordinated appearance of the CCTV cameras on the frontage of the buildings. This results in further visual clutter to the frontage of No 10 and so for the same reasons as set out in Appeal A (item 7, paragraph 26) and Appeal B (item 5, paragraph 40), I do not consider that LBC should be granted for this particular fixture.

**6. Installation of lantern light on pilaster between Nos 10 and 12**

56. In my view this is another example of an inappropriate and visually obtrusive light fitting which adds to the unacceptable cumulative harmful effect on the listed building. For similar reasons set out in Appeal A (item 8, paragraph 27 – lantern) and Appeal B (item 4, paragraph 39), I find that the fitting is harmful to the building, to its setting and to its features of architectural and historic interest. LBC will not be granted for this item.

**No 12 Theberton Street (Daphne Room)**

**7. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level**

57. For the same reasons as those given in item 4 above (paragraphs 53 and 54), relating to No 10, I find that these doors and surrounds are acceptable and LBC will be granted.

**8. Creation of a 4 x double door openings between Nos 10 and 12 basement**

58. Again, for the reasons set out in item 4 above (paragraphs 53 and 54) I do not consider that any significant harm has been caused by these openings to the integrity of the listed building or to its features of architectural and historic interest. In my view the plan forms of the respective properties are still be recognisable and this will be more so if the former boundary walls or downstands required are reinstated. I consider that LBC ought to be granted for these double door openings.

**9. Insertion of suspended barrelled ceilings at ground floor level**

59. For the reasons set out in Appeal A (item 11, paragraph 31), I consider that LBC ought to be granted for the barrel ceiling. It is evident from the detailing and the internal height that the structural elements are still in place and that the works are, in my view, reversible.

**10. Incorporation of modern wrought iron detailing to the shopfront**

60. I find this to be most inappropriate and for the same reasons as set out in Appeal A (item 4, paragraph 23) I do not consider that LBC should be granted for the retention of this wrought iron decorative feature.

**No 14 Theberton Street (Biskuvi Café)**

**11. Insertion of elaborate timber doors and door surrounds into the rounded arch openings within original rear wall at basement level**

61. For the same reasons as set out in item 4 above (paragraphs 53 and 54) I do not consider that these doors and surrounds have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

**12. Creation of a 4 x double door width openings between Nos 12 and 14**

62. Again For the same reasons as set out in item 4 above (paragraphs 63 and 54) I do not consider that these double door width openings have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

**13. Removal of boundary wall between No 14 and 16 Theberton Street rear**

63. This is a similar situation to item 3 above (paragraph 51) and again I have noted that the original boundary wall was to have been re-built. This was again to ensure that the historic plan form of the building could still be read and understood. By removing the wall the definition of the historic boundary between the two properties has been lost and I agree with the Council that this has caused harm to the integrity of the listed buildings. I do not consider, therefore, that LBC should be granted for the works as carried out and the appeal fails on this point.

64. I have noted, however, that the requirement of the notice again gives an alternative to reinstating the original wall. This requires a downstand at ceiling level in the same position as the former wall. In my view this would be adequate to ensure that the plan form could be understood but it would still be for the appellant to decide which alternative form of this requirement was to be carried out.

**14. Installation of light on pilaster of the shopfront between Nos 12 & 14**

65. For the same reasons given for item 6 above (paragraph 56) I find that this fitting is harmful to the integrity of the listed buildings to their setting and to their historical and architectural features. The appeal fails on this item and LBC will not be granted.

**15. Incorporation of modern wrought iron detailing to the shopfront**

66. The modern wrought iron detailing to the shop front stallriser has the same detrimental effect as on the other units. It looks distinctly incongruous when seen against the basic timber detailing of shop front. The black painted metalwork looks distinctly out of character. As indicated above, in my view, such inappropriate decorative features should play no part in the design of a historic frontage of this date and age. I find it harmful to the building, to its setting and to the architectural and historic lower part of the frontage/stallriser. For these reasons, I do not consider that LBC should be granted for the retention of this part of the unauthorised works.

**16. Insertion of suspended barrelled ceilings at ground floor level**

67. For the same reasons as set out above in paragraph 59, I consider that these works are acceptable and that LBC should be granted.

**No 16 Theberton Street (La Vita e bella)**

**17. Removal of a stud wall and insertion of a waterfall feature**

68. At the time of my visit the waterfall feature was not in operation. However, it was clear how it would have operated and how it would visually affect this partition wall in the listed building. In my view the feature has resulted in another bizarre and harmful effect on the listed building. By replacing the partition wall the perceived plan form has been detrimentally affected and the feature wall has affected the integrity of the building as well as one of its defining architectural features: that is, the wall between the unit and the staircase entrance to the floors above. I do not consider that it should be allowed to remain and LBC will not be granted for its retention

**18. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level**

69. For the reasons set out paragraphs 53 and 54 above I consider that these timber doors and surrounds are acceptable and that LBC ought to be granted for their retention.

**19. Incorporation of modern wrought iron detailing to the shopfront**

70. For the reasons set out in paragraphs 23, 60 and 66 above, I do not consider that LBC should be granted for this inappropriate wrought iron decorative feature.

**20. Creation of a 4 x double door width openings between Nos 14 and 16**

71. Again For the same reasons as set out in item 4 above (paragraphs 53 and 54) I do not consider that these double door width openings have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

**21. Insertion of suspended barrelled ceilings at ground floor level**

72. Again, for the reasons set out in Appeal A (item 11, paragraph 31), I consider that LBC ought to be granted for the barrel ceiling. It is again evident from the detailing and the internal height that the structural elements are still in place and that the works are, in my view, reversible.

**Nos 10, 12, 14 and 16 Theberton Street**

**22. Installation of three external spotlights to fascia sign**

73. For the same reasons as set out in Appeal A (item 1, paragraph 20) above, I do not consider that LBC should be granted for these particular spotlights which are the same as those fixed to the No 4 frontage.

**23. Installation of three upward facing Ansell spotlights at first floor level**

74. For the same reasons as set out in Appeal A (item 2, paragraph 21) above, I consider that LBC should be granted for these upward facing spotlights. I do not find them to be harmful to the listed building in any way.

**24. Display of a hanging sign to front elevation at first floor level**

75. This is yet another different sign but it is still mounted at a high level. I find that due to its modern design and its position at such a high level, like the others, it detracts markedly from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural and historic terms. I do not consider that LBC should be granted for this sign.

**25. Installation of a lantern above the front entrance door**

76. For the same reasons set out in paragraph 56 above, I find that this particular light fitting is harmful to the listed building and that LBC should not be granted.

**26. Application of weatherstruck pointing to the front elevation first and second floor**

77. Having seen these sections of pointing from the other side of the street I consider that they are the most untidy and visual harmful sections of the works carried out. Therefore, for the reasons set out in paragraphs 28 and 29 above, I do not consider that LBC ought to be granted for the works.

**27. Valence to awning not in accordance with drawing (Ref 238.(1)4-001**

78. For similar reasons set out in paragraph 30 above, I find this item to be acceptable and LBC will be granted for its retention.

**28. Internal cladding with cobble/rubble stone and tile to walls ground floor**

79. For the same reasons as set out under Appeal A, (item 11, paragraph 31) I find these works to be acceptable and LBC will be granted for their retention.

**29. Creation of wide rounded arch openings within rear wall at basement**

80. For the same reasons as set out above for similar works in other properties (items 4, 8 and 12, paragraphs 53, 54 58 and 62 above) I conclude that this item of work does not cause harm to the integrity of the building, or to any of its architectural and historic features. I consider therefore that LBC should be granted for this item.

**Overall conclusions on Appeals A, B and C (LBEN1, LBEN2 and LBEN3)**

81. Where I have concluded above that that LBC ought not to be granted for the relevant items/allegations, I consider that all of these works are contrary to Core Strategy Policy CS9 (Protecting and enhancing Islington's built and historic heritage) and Policy DM 2.3 of Development Management Policies (Conserving and enhancing the historic environment). I also consider that they are contrary to NPPF policies relating to the requirement for good design (section 7) and conserving and enhancing the historic environment (section 12).

82. As indicated above, the NPPF seeks to ensure that when considering the impact of development (or works) great weight is given to the asset's conservation and that where any loss or harm would lead to less than substantial harm to significance, then the harm should be weighed against the public benefits of the proposals including securing its optimum viable use. Clearly the harm is less than substantial and the assets are not under any threat of loss. However, the cumulative effect has had a significant and harmful impact on the integrity of the listed buildings, their settings and their architectural and historic features. There are no public benefits which outweigh the harm caused.

83. With regard to the external elements of the works which I have found harmful, it follows that these have neither preserved nor enhanced the character or appearance of the Barnsbury Conservation Area. Prior to my visit I walked around the conservation area and also took into account the physical matters brought to my attention during the site visit. These included nearby examples of similar uses, signage and fixtures/works on other listed buildings.

84. Where I have found elements of the works to be satisfactory in listed building terms I will vary the notices accordingly and I also conclude that the acceptable external items preserve the character and appearance of the conservation area. However, any LBC for works in the amalgamated basement area does not preclude the need for planning permission for the combined A3 use (see Appeal D below).

85. In reaching my conclusions on appeals A, B and C, I have taken into account all other matters raised by the Council; those made on behalf of the appellant and those made by interested persons. The matters include the detailed and complex planning history relating to all properties; the details set out in the initial grounds of appeal; the report from the Building Restoration Specialist relating to pointing; the planning and heritage considerations; all planning and heritage policy matters raised; the general assessment; the appendices submitted and the final comments dated 21 August 2014.

86. However, none of these factors carries sufficient weight to alter my conclusions on the main issues and the specific allegations set out in the three LBEN notices. Nor is any other matter of such significance so as to change my decisions in Appeals A, B and C. The formal decisions for Appeals A, B and C are set out below. I now turn to Appeal D.

#### **Appeal D: The appeal on ground (a)**

87. In this appeal and in considering whether or not planning permission should be granted, I have had special regard to the duty under s66 of the PLBCAA. In Appeals A, B and C above I have discharged that duty under s16 in relation to each of the allegations. In this appeal I have also considered the duty in relation to the specific effect on the listed buildings with regard to the alleged breach being the amalgamation of the four basements and their use as a single restaurant. With regard to the various works carried out and which have enabled the alleged use to take place, the issues and my conclusions are obviously the same as set out in Appeals A, B and C.

88. In planning terms there are other main issues resulting from the amalgamation of the four units (basements and ground floors) into a single restaurant. The first is the effect of the loss of any retail unit in this part of Islington and the second, but most critical in my view, is the effect on the living conditions of nearby neighbours with particular reference to noise and disturbance.

89. Prior to my formal site visit I inspected the surrounding area and in particular noted the proximity of residential uses above the premises along this part of Theberton

Street and others in the locality. I also noted the dwellings in Studd Street which are closest to the rear of Nos 10 to 16 and others in Moon Street. There are significant representations from residents and Residents' Associations in the immediate area.

90. The Council contends that the amalgamated use is contrary to Development Management Policies, DM2 (Protecting Amenity), DM4.1 (Maintaining and promoting small and independent shops), DM4.2 (entertaining and the night time economy), and DM4.3 (Location and concentration of uses).

*The enforcement notice and the existing uses*

91. On behalf of the appellant it is contended that planning permission for the amalgamation of the units is not required. However, I disagree. According to the Council's records there are no formal permissions in place for A3 use of Nos 12 and 14 and it would appear that No 14 has been used latterly for a mixed use of retail and restaurant. Furthermore, I agree with the Council that, despite the authorised restaurant uses for the other parts of 10 to 16, any individual restaurant use (for separate units) will have a significantly different character of usage than one large restaurant.

92. Having inspected all of the premises I consider that, as a matter of fact and degree, the use of the cavernous basement area, currently used as a restaurant, will have significantly different characteristics of use than separate restaurants in adjoining premises. In the particular, I agree with the Council that the potential for the creation of noise and disturbance is far higher from the one large volume than from four separate spaces divided by party walls. I note that the covers are restricted to 150 due to licensing requirements but, nevertheless, this is significantly higher than any figure relating to the individual use of restaurants in this part of Theberton Street.

*The principle of A3 uses in this part of Theberton Street*

93. The Council's appeal statement refers to policy DM4.1 which seeks to maintain and promote small independent shops and to policy DM4.3 which seeks to resist restaurants where they would result in cumulative impacts due to unacceptable concentrations of noise and disturbance. However, the report dealing with the application to amalgamate the premises (P2013/1041/FUL) refers to the last lawful use of Nos 12 and 14 as being in A2 office use. If that is the case then, what in effect is sought is the change of use of Nos 12 and 14 to A3 use together with their amalgamation with the A3 uses in Nos 10 and 16.

94. Whilst accepting the aims and objectives of policy DM4.1, it would appear that the actual loss of a lawful use would be that of A2 offices. In this part of Islington, with its high concentration of retail and restaurant uses, I do not consider that the principle of separate A3 uses for Nos 12 and 14 would be significantly harmful. I acknowledge that this in theory would result in a concentration of restaurant uses along this part of the Street but the separate uses of these premises would not, in my view, be significantly and cumulatively different from the other separate lawful nearby A3 uses in Theberton Street and Upper Street.

*The amalgamated use of Nos 10, 12, 14 & 16*

95. However, whilst finding that separate uses could be acceptable, I share the concerns of the Council and others about the premises being used for one very large restaurant venue. Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller and more intimate restaurants next to each other and in separate premises.

There have been no noise mitigation measures put forward by the appellant and from what I saw I consider that the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.

95. My concerns in this respect are reinforced by the representations from people living close to the premises and the fact that the large basement area backs on to the residential properties in Studd Street and indeed, once formed a rear yard or open area. In addition it would appear that residents are also concerned about the combined use of the restaurants and the manner in which the pavement is used for eating, drinking and smoking.

97. The evidence is quite clear that the living conditions of residents who live some distance away (for example at Nos 26 and 34) are clearly affected. Having noted the locations of nearby residential properties and the relationships of some windows to the rear of the appeal premises, I consider that such a large restaurant in this mixed residential commercial area is unacceptable due to the levels of noise and disturbance already caused.

98. I note that the Theberton Street Residents' Association has consistently objected to the creation of a single restaurant at Nos 10 to 16 and objected to the application which was refused planning permission in June 2013. The evidence from Moon Street and Studd Street Residents' Associations also reinforces my view that the amalgamated use has significantly affected the living conditions of nearby residents. As well as evidence about the levels of noise and disturbance to the rear of the building, there are also written submissions from those living further up Theberton Street (Nos 26 and 34 for instance). It is clear that the noise carries for some distance and that the undue disturbance is caused by the use of the appeal premises for residents who live some distance away.

99. From the submissions before me and from noting the proximity of the A3 uses to nearby residential accommodation, I can only conclude that the quality of life for residents has been detrimentally and significantly harmed by this unauthorised amalgamated use of the appeal premises. I find that this is contrary to policies DM2, DM4.1, DM4.2 and DM4.3. It is also contrary to the policies of the NPPF which seek to ensure positive improvements in peoples' quality of life; a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings. To allow this particular change of use would have the opposite effect of these fundamental aims and objectives of the NPPF.

100. I do not consider that planning permission should be granted for the amalgamated use currently being carried out at Nos 10, 12, 14 & 16 and Appeal D therefore fails on ground (a) and the deemed application also fails.

#### **Other Matters**

101. In reaching my conclusions on Appeal D, I have taken into account all other matters raised by the Council, by interested persons and on behalf of the appellant. These include the considerable planning history, consents and permissions already granted; the detailed grounds of appeal; the general assessment; comments on the reasons for issuing the enforcement notice; all references to local and national policy; the impact on residential amenity; the various appendices submitted and the final comments dated 2 December 2014.

102. However, none of these alters my conclusions on the main points at issue and particularly on the effect on residents' living conditions. Nor is any other matter of such significance to change my decision that the appeal should be dismissed and

planning permission refused under the deemed application. The formal decision is set out below.

### **FORMAL DECISION**

#### **APPEAL A: Notice LBEN1: See also amended Appendix 1 below**

103. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 2, 5, 10 and 11. I also direct that the times for compliance in schedule 5 of Appendix 1, for items 2, 5, 10, and 11 be deleted.

104. The appeal succeeds in part under ground (e) in relation to items numbered 2, 5, 10 and 11 as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 4 Theberton Street, London N1 0QX.

105. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 1, 3, 4, 6, 7, 8, and 9 as set out in Appendix 1, Schedule 2 to the notice and LBEN 1 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas ) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

#### **106. APPENDIX 1 – To Notice LBEN 1 Appeal A: Ref: APP/V5570/F/14/2220714**

#### ***4 Theberton Street ('Kilis Kitchen')***

##### ***The alleged contraventions of listed building control***

1. Installation of three external spotlights to illuminate the fascia sign.
2. Installation of three upward facing Ansell spotlights at first floor level.
3. Installation of two small lights on the pilasters of the shop front.
4. Incorporation of modern wrought iron detailing to the shop front stall riser
5. Installation of an alarm box to front elevation at first floor level.
6. Display of a hanging sign to the front elevation at first floor level.
7. Installation of a CCTV camera on right hand side of pilaster viewed from front.
8. Installation of two external lights and a lantern above front entrance door ground floor.
9. Application of weatherstruck pointing, front elevation first and second floor levels.
10. Application of valence to awning not in accordance with drawing Ref 238.(1) 4-001 of Listed Building Consent (LBC) P110482 dated 01 July 2011.
11. Internal cladding with cobble /rubble stone and tile to walls and ceiling at ground floor level.

##### ***For the avoidance of doubt the amended requirements of the notice LBEN1 following the variations are as follows:***

- (i) Remove all of items numbered 1, 3, 4, 6, 7, 8 and see (iii) below for item 9.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the alleged contraventions numbered 1, 3, 4, 6, 7, 8, and 9 above.
- (iii) Carefully remove the weatherstruck pointing (item 9) using hand held tools taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar.

### ***The times for compliance***

The times for compliance are as follows:

- (i) For allegations numbered 1, 3, 4, 6, 7, and 8 Three (3) months.
- (ii) For allegation numbered 9 Five (5) months.

### **FORMAL DECISION**

#### **APPEAL B: LBEN 2 See also amended Appendix 1 below**

107. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 2, 3 and 9. I also direct that the times for compliance in schedule 5 of Appendix 1, for items 2, 3 and 9 be deleted.

108. The appeal succeeds in part under ground (e) in relation to items numbered 2, 3 and 9 as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 8 Theberton Street, London N1 0QX.

109. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 1, 4, 5, 6, 7, and 8 as set out in Appendix 1, Schedule 2 to the notice and LBEN 2 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas ) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

#### **110. APPENDIX 1 - To Notice LBEN 2**

#### **Appeal B: Ref: APP/V5570/F/14/2220716**

#### ***8 Theberton Street (Mem & Laz)***

#### ***The alleged contraventions of listed building control***

1. Installation of three external spot lights that illuminate the fascia sign at ground floor level.
2. Installation of three upward facing Ansell spotlights at first floor level.
3. Installation of an alarm box to the front of the building at first floor level
4. Installation of two small lantern lights on the pilasters of the shop front.
5. Installation of a CCTV camera on the right hand pilaster when viewed facing shopfront.
6. Installation of two external lights and a lantern above the front entrance door of the shopfront at ground floor level.
7. Display of a hanging sign to the front elevation at first floor level.
8. Application of weatherstruck pointing to the front elevation of the property at first and second floor levels.
9. Incorporation of a valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001 of Listed Building Consent dated 30 June 2011.

#### ***For the avoidance of doubt the revised requirements of the notice LBEN 2 following the variations are as follows:***

The requirements of the notice are to:

- (i) Remove all items numbered 1, 4, 5, 6, 7 and see (iii) below for item 8.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the alleged contraventions 1, 4, 5, 6, 7 and 8 above.
- (iii) Carefully remove the weatherstruck pointing using hand held tools taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or

slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar.

***The times for compliance***

The times for compliance are as follows:

- (i) For allegations numbered 1, 4, 5, 6, and 7, Three (3) months.
- (ii) For allegation numbered 8 Five (5) months.

**FORMAL DECISION**

**APPEAL C: LBEN 3 See also Appendix 1 to notice below**

111. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 1, 4, 7, 8, 9, 11, 12, 16, 18, 20, 21, 23, 27, 28 and 29. I also direct that the times for compliance in schedule 5 of Appendix 1, for the same numbered items be deleted.

112. The appeal succeeds in part under ground (e) in relation to items numbered 1, 4, 7, 8, 9, 11, 12, 16, 18, 20, 21, 23, 27, 28 and 29. as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 10 to 16 Theberton Street, London N1 0QX.

113. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 2, 3, 5, 6, 10, 13, 14, 15, 17, 19, 22, 24, 25, and 26, as set out in Appendix 1, Schedule 2 to the notice and LBEN 3 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

**114. APPENDIX 1 – To Notice LBEN 3**

**Appeal C: Ref APP/V5570/F/14/2220720**

***The alleged contraventions of listed building control***

***No 10 Theberton Street ('Mem and Laz')***

1. Installation of an alarm box to the front elevation at first floor level
2. Installation of a brass and black door handles to the front door of the shop.
3. Removal of boundary wall between No 10 and 12 Theberton Street to the former rear yard.
4. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix C and forming part of the notice.
5. Installation of a CCTV Camera on the left hand pilaster when viewed facing the shopfront.
6. Installation of a lantern light on the pilaster of the shopfront between Nos 10 and 12 Theberton Street.

***No 12 Theberton Street ('Daphne Room')***

7. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix C and forming part of the notice.
8. Creation of a 4 x double door width openings between Nos 10 and 12 at basement level as depicted on the attached photograph, headed

Appendix E and forming part of the notice.

9. Insertion of suspended barrelled ceilings at ground floor level.
10. Incorporation of modern wrought iron detailing to the shopfront stall riser.

**No 14 Theberton Street ('Biskuvi Café')**

11. Insertion of elaborate timber doors and door surrounds inserted into the Rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix F and forming part of the notice.
12. Creation of a 4 x double door width openings between Nos 12 and 14 at basement level as depicted on the attached photograph, headed Appendix G and forming part of the notice.
13. Removal of boundary wall between No 14 and 16 Theberton Street to the former rear yard.
14. Installation of a small light on the pilaster of the shopfront between Nos 12 and 14 Theberton Street.
15. Incorporation of modern wrought iron detailing to the shopfront stall Riser.
16. Insertion of suspended barrelled ceilings at ground floor level.

**No 16 Theberton Street ('La Vita e bella')**

17. Removal of a stud wall and insertion of a waterfall feature within the restaurant at ground floor level as depicted on the attached photograph headed Appendix I and forming part of the notice.
18. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix K and forming part of the notice.
19. Incorporation of modern wrought iron detailing to the shopfront stall riser.
20. Creation of a 4 x double door width openings between Nos 14 and 16 at basement level as depicted on the attached photograph, headed Appendix L and forming part of the notice.
21. Insertion of suspended barrelled ceilings at ground floor level.

**Nos 10, 12, 14 and 16 Theberton Street**

22. Installation of three external spotlights to fascia sign.
23. Installation of three upward facing Ansell spotlights at first floor level.
24. Display of a hanging sign to front elevation at first floor level.
25. Installation of a lantern above the front entrance door of the restaurant at ground floor level.
26. Application of weatherstruck pointing to the front elevation of the property at first and second floor levels.
27. Incorporation of a valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001.
28. Internal cladding with cobble/rubble stone and tile to walls at ground floor level.
29. Creation of wide rounded arch openings within original rear wall at basement level.

**For the avoidance of doubt the revised requirements of the notice LBEN 3 following variation are as follows:**

The requirements of the notice (LBEN3) are as follows:

- (i) Remove items 2, 5, 6, 10, 13, 14, 15, 17, 19, 22, 24, 25, 26, and 28 above. For item 26 see also (v) below.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the numbered items above.
- (iii) Reinstate original boundary wall (item 3) to define the historic boundary wall between Nos 10 and 12 Theberton Street to match the approved drawings (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008. The parts of the walls to be reinstated are high-lighted in blue on the attached Appendix B: OR Install a downstand at ceiling level measured 400mm (wide) x 300mm (high) in the same location as the original boundary wall indicated on the approved drawing (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008 (item 3).
- (iv) Reinstate original boundary wall (item 13) to define the historic boundary wall between Nos 14 and 16 Theberton Street to match the approved drawings (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008. The parts of the walls to be reinstated are high-lighted in blue on the attached Appendix H: OR Install a downstand at ceiling level measured 400mm (wide) x 300mm (high) in the same location as the original boundary wall indicated on the approved drawing (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008 (item 13).
- (v) Carefully remove the weatherstruck pointing (item 26) using hand held taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar (item 26)

**The times for compliance**

The times for compliance are as follows:

- (i) For allegations Nos 3, 13, 16, 17, and 26, - Five (5) months.
- (ii) For all other remaining numbered allegations/items (2, 5, 6, 19, 14, 15, 19, 22, 24 & 25) which have not been granted listed building consent, - Three (3) months.

**FORMAL DECISION**

**APPEAL D: PEN 1**

115. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

*Anthony J Wharton*

Inspector



---

## Appeal Decision

Site visit made on 31 October 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 20<sup>th</sup> November 2017.

---

**Appeal Ref: APP/V5570/W/16/3165702**

**10-16 Theberton Street, Islington, London N1 0QX**

- 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 Mehmet Kocakerim against the decision of the Council of the London Borough of Islington.
  - The application Ref: P2015/4037/FUL, dated 28 September 2015, was refused by notice dated 17 November 2016.
  - The development proposed is the conversion and reconfiguration of the ground floor and basement of 10-16 Theberton Street to form three restaurants (Use Class A3) comprising the following: restaurant 1, No. 16 (ground floor and basement level); restaurant 2, front part of Nos. 12 and 14 (ground floor and basement level); restaurant 3, No. 10 and rear part of Nos. 12 and 14 (ground floor and basement level and part basement level of No. 16).
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. As the proposal is in a conservation area and relates to a listed building I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. The Council and the appellant have changed the description of development. As this more accurately reflects the proposal and is not disputed I have used it for the purposes of this appeal.

### Main Issue

4. The main issue is the effect of the proposed change of use on the living conditions of the existing and future occupants of nearby residential dwellings with regard to noise.

### Reasons

5. The appeal relates to four, Grade II listed, mid-terrace Georgian buildings situated on the north side of Theberton Street within the Barnsbury Conservation Area (CA). Residential accommodation is present on the upper floors of the terrace and above the commercial frontages of the facing terrace. These frontages give way to a residential area a short distance to the west.
6. The ground floors and basements of the appeal premises have already been converted to serve an A3 use. The layout is such that they are interconnected

---

<https://www.gov.uk/planning-inspectorate>

and have the potential to operate as a single restaurant, despite being individually branded. This is especially the case at the basement level where wide openings have been created in the walls of the adjoining properties which has led to the creation of what has been described as a 'vast restaurant complex'. The works and use associated with the conversion were unlawful and have been subject to enforcement notices which have been largely upheld at appeal<sup>1</sup>. Two of the properties, Nos 12 and 14, only have a lawful A2 use at the current time.

7. The proposal is seeking to permanently close the majority of the openings that connect each property and establish a lawful A3 use in three separate restaurants. Restaurant 1 (No 16) would have 30 covers and a total area of approximately 102 m<sup>2</sup>. Restaurant 2 (Nos 12-14) would have 60 covers and a total area of approximately 151 m<sup>2</sup>. Restaurant 3 (No 10) would have 85 covers and a total area of approximately 188 m<sup>2</sup>. These areas include the cumulative floorspace rather than just the 'usable space', as indicated on the submitted plans (Ref: 434.(1).1.001 B and 434.(1).1.002 B).
8. Notwithstanding any enforcement action on matters relating to the harm that has already been caused to the listed building, I find that the proposed use of the ground floor and basement would not be detrimental to the special interest of the listed building or the significance of the CA. This is because the proposal only relates to internal alterations that would reinforce the original, compartmented plan form of the listed building. Furthermore, any other alterations associated with the proposed use that may further affect the historic building fabric or layout would require listed building consent and are thus controlled.
9. I observe from the plans and my site visit that all three restaurants would still be capable of accommodating large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings. I accept that the operation of separate restaurants would reduce the previously documented harm through a more staggered pattern of bookings. However, this would be counter-balanced by the increase in the number of covers and the fact that very large groups would still be able to book Restaurants 2 and 3. Consequently, an increase from the 150 covers noted by the previous Inspector would lead to an unacceptable, cumulative impact from the comings and goings of customers and their congregation on nearby pavements.
10. I acknowledge the previous Inspectors comments in relation to the proposed A3 use at this location and the attempt that has been made to overcome the Council's concerns. Whilst I have given the relevant decision<sup>2</sup> careful consideration I do not find it similar in all respects. This is because I do not have any evidence before me that establishes the capacity of similar, nearby restaurants on Therberton Street or Upper Street. The previous Inspector noted that the number of covers were significantly higher than other nearby restaurants but did not provide any numerical comparisons. Consequently, I do not find the separate A3 use of the different appeal properties directly comparable. Furthermore, the context of the residential properties above the premises on Upper Street is not the same given the greater levels of general activity along this busy, arterial route.

---

<sup>1</sup> APP/V5570/F/14/2220714, APP/V5570/F/14/2220716, APP/V5570/F/14/2220720, APP/V5570/C/14/2225985

<sup>2</sup> APP/V5570/C/14/2225985

11. Given the high acoustic reflectivity of the hard surfaces that characterise the interior, I also find that there would be significant potential for airborne noise transmission from within the building, especially from the double height dining area associated with Restaurant 3. Customers would inevitably raise their voices when the restaurant is full in order to be heard above the general clamour that is typically associated with such spaces in my experience. This would not only affect nearby residents, who may be using outside areas during the summer, but also the occupiers of the closely situated, first floor flats. The first impact has already been documented by one nearby resident despite a lack of windows on the rear elevation of the restaurants.
12. Turning to the second impact, I note from the sound insulation report<sup>3</sup> that potential impacts were only measured in the residential dwellings directly above Nos 14 and 16. Whilst the effect of a restaurant at No 12 was clearly considered, this was based on opinion rather than any quantitative measurement. As such, the potential for significant noise impact cannot be ruled out. I acknowledge that there were no objections from the residents directly above the restaurants but find this only carries limited weight because these properties are owned by the appellant. Consequently, any objection is unlikely to be forthcoming. Given the above, I find the assessment inadequate and that the potential harm could not be controlled through a suitable condition under such circumstances.
13. This is also the case for the proposed extraction equipment. The noise assessment<sup>4</sup> for the latter indicates that the measurement of ambient background noise was only carried out over a limited period of time between 20:43 and 22:17. As such, the extent to which the extraction equipment might exceed the ambient background noise levels was only partially assessed. This is because the opening times extend beyond these hours and includes a significant period of time when nearby residents are more likely to be at home and thus exposed to potential noise impacts that could be influenced by a more variable, ambient background. I also note that measurements were only taken at two locations and excluded the nearest receptors, i.e. residential properties immediately above the restaurants. Although the assessment states that one of the positions was on the restaurant roof, figure 1 clearly shows that this was not well related to the position of the rear extensions of the first floor, residential units which would be closer to the proposed plant. Consequently, I find the results unrepresentative and an unsound basis for informed decision-making. To this end, the evidence before me does not support the restriction of opening hours via a suitably worded condition as I have no informed basis upon which to determine the effectiveness of any specific opening restriction.
14. Given the above, I conclude that the proposal would cause significant harm to the living conditions of existing and future occupants of nearby residential dwellings with regard to noise. This would be contrary to policies DM4.2, DM4.3 and DM4.4 within *Islington's Local Plan: Development Management Policies 2013* that seek, among other things, to ensure that proposals relating to entertainment and the night-time economy do not lead to significant adverse impacts on residential amenity and that the densities of restaurants and other similar uses do not lead to significant, negative cumulative impacts or cause

---

<sup>3</sup> 10-16 Theberton Street, UKAS Accredited Sound Insulation Test Report (Ref: 8028-SI-01). February 2013.

<sup>4</sup> Noise Assessment of Kitchen Extract Plant (Ref: 5278). January 2016.

unacceptable disturbance. Consequently, the development would not be in accordance with the development plan.

**Conclusions**

15. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Roger Catchpole*

INSPECTOR

This page is intentionally left blank

# Islington SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.  
P2018/3913/FUL

This page is intentionally left blank

## PLANNING COMMITTEE REPORT

Development Management Service  
 Planning and Development Division  
 Environment and Regeneration Department

<b>PLANNING SUB-COMMITTEE A</b>		<b>AGENDA ITEM NO:B2</b>
Date:	17 March 2020	NON-EXEMPT

Application number	P2018/3973/LBC
Application type	Listed Building Consent
Ward	St. Marys
Listed building	Grade II Listed Building
Conservation area	Barnsbury Conservation Area (and Article 4 Direction)
Development Plan Context	Core Strategy Key Area – Angel & Upper Street Archaeological Priority Area – Islington Village Within 50m of boundaries of the Angel and Upper Street North conservation areas Angel Town Centre Article 4 Direction (A1-A2 Town Centres) Cycle Route (Local) Cycle Route (Strategic) Site within 100m of Transport for London Road Network Article 4 Direction (A1 to A2)
Licensing Implications	No licensing details submitted
Site Address	10-16 Theberton Street N1 0QX
Proposal	Re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, 10 and 12 Theberton Street and partially separate 12 & 14 Theberton Street; install a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations.

Case Officer	Nathan Stringer
Applicant	Mr Mehmet Kocakerim
Agent	First Plan – Mark Shearman

### 1. RECOMMENDATION

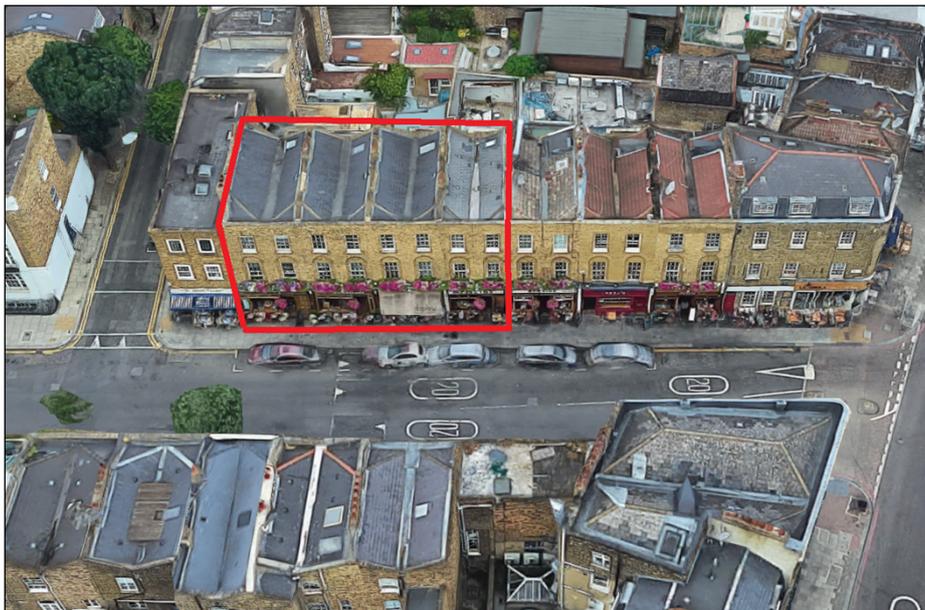
The Committee is asked to resolve to **GRANT** planning permission subject to:

- 1.1 the conditions set out in **Appendix 1** (Recommendation B).

## 2. SITE PLAN



## 3. PHOTOS OF SITE/STREET



**Image 1:** Aerial view of site (highlighted in red)



**Image 2:** The front elevation of the site as viewed from Theberton Street



**Image 3:** Taken at the junction with Upper St with site is shown on the right



**Image 4:** Rear elevation (site shown in centre)

#### **4. SUMMARY**

- 4.1 The applications seek full planning permission and listed building consent for the change of use of the basement and ground floors of Nos. 12 and 14 Theberton Street to a restaurant (A3 Use Class), which lie adjacent on either side to 2no. existing lawful restaurant units at Nos. 10 and 16. The proposal also includes internal and external alterations across all four units, including re-instatement of walls and the installation of external extraction flues. These applications represent amended resubmissions of previously refused schemes which have been subject to planning enforcement action.
- 4.2 The units at Nos. 10-16 Theberton Street have previously been subject to extensive enforcement action due to the amalgamation of the building into one large restaurant, which could be used to host large groups and banquets. As such, the combined comings and goings were considered to have considerable potential to cause significant disturbance to nearby residents. The enforcement notice was upheld at appeal and further planning applications were refused. With regard to the principle of the proposed A3 uses at this location, the previous Inspectorate appeal decisions noted that the operation of separate restaurants at the site could be acceptable, subject to operational details. However, the internal layout and amalgamation of the A3 units led to concerns that the unit would be used as one very large restaurant venue, resulting in an unacceptable, cumulative impact from comings and goings of customers and their congregation on nearby pavements.
- 4.3 As part of the proposed scheme, there are significant internal alterations which include the partial reinstatement of the plan form of the units associated with the historic listed building. The ceilings within the units would also be reinstated, and the large rear atrium banqueting area that was previously associated with the larger restaurant would be removed and the ceilings and walls reinstated. The positioning of the historic stairs at No. 14 has been reinstated. All of these changes have been welcomed by the Design and Conservation Officer. It has been noted that the restoration of the historic form reverses some of the previous harm caused, which goes some way in addressing the previous enforcement matters. Whilst the flues installed to the rear of the property would impact the external fabric and setting to the rear, it is noted that several flues already exist on the

terrace. Given the benefits created by the internal reinstatement works, officers consider that on balance, the works proposed to the listed building would have a neutral impact.

- 4.4 Further benefit from the internal reinstatement of the ceiling and walls would ensure that the large amalgamated restaurant unit is subdivided into 3 smaller restaurants, which would be more akin to others located within the surrounding setting and within the wider Angel Town Centre. It is also noted that the overall number of covers across the units has been reduced from 181 to 150 (a reduction of 31) following the most recent planning application refusal; and that the largest open seating area at any of the units would be reduced from approximately 85 sqm to 31 sqm as a result of the reinstatement of the internal walls which brings the terrace as a whole closer to mirroring its historic plan form. This would ensure that the comings and goings from each individual restaurant would be further reduced, and the loss of the banquet area in the basement further ensures that the cumulative impact of the restaurant operations on the adjoining residents can be mitigated.
- 4.5 An up to date Acoustic Report and associated Acoustic Notes also accompanied the application. Public Protection have been consulted and are satisfied that the proposal is acceptable, subject to conditions providing limits to operational cumulative noise of the extractor flues, covering permitted operating hours, the monitoring of the noise survey details and timers on the flues, and internal insulation details.
- 4.6 The proposal is considered finely balanced bearing in mind the accumulation of restaurants in this section of the Angel Town Centre. On balance, given the remedial works proposed which would ensure that the existing larger restaurant across Nos. 10-16 Theberton Street would be incorporated into 3 intimate restaurants by removing the larger banquet area in the basement section; together with the reinstatement of historic plan form of the listed buildings; and given the results of the revised noise report which confirms that the restaurant would now comply with Council's noise standards, the proposal is considered acceptable subject to conditions.

## **5. SITE AND SURROUNDING**

- 5.1 The application site is a three storey mid-terrace building (plus basement) located on the northern side of Theberton Street at nos. 10-16 Theberton Street and comprises commercial units at basement and ground floor with residential accommodation on the upper floors. The subject site has a significant planning history including enforcement investigations and action on the unauthorised amalgamation of the ground and basement level units to form a large single restaurant.
- 5.2 The site is occupied by four Grade II listed, three storey over basement, mid-terrace Georgian buildings. The site is located within the Barnsbury Conservation Area, the Angel and Upper Street Core Strategy Key Area, the Angel Business Improvement District (BID), the Angel Town Centre, and the (Licensing) Angel and Upper Street Cumulative Impact Area.
- 5.3 Adjoining the east of the site are three similar listed Georgian terraced properties (Nos. 4, 6 and 8 Theberton Street), each comprised of A3 restaurants at ground floor level with residential accommodation above. Beyond these properties, to the east of the site, is the junction of Theberton Street with Upper Street, both sides of which are lined by retail and commercial properties. Adjoining the west of the site is a three storey end-of terrace building (No. 18 Theberton Street) that comprises an A3 restaurant at ground floor level with residential accommodation above. Beyond this property, to the west, is the junction of Theberton Street with Studd Street. This is the boundary of the Angel Town Centre, beyond which point Theberton Street becomes a purely residential street. Studd Street

and Moon Street are also residential streets. To the south of the site, on the opposite side of Theberton Street, is a three storey terrace of Grade II listed Georgian buildings, which comprise commercial units at ground floor level with residential accommodation on the upper floors.

## **6. PROPOSAL (IN DETAIL)**

- 6.1 The applications seek permission for the re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, and 10 and 12 Theberton Street and partially separate 12 and 14 Theberton Street; installation of a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of 2no. extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations.
- 6.2 The proposal is brought to the committee because the application has received 20 objections from neighbouring residents, generating interest in the development. The main concerns from objectors include the impact of the proposed use on neighbouring amenity with regard to noise, odour, and disturbance.

### **Revisions and additional information**

- 6.3 The applicant submitted revised drawings and additional acoustic information throughout the course of the officer assessment, to address officer comments and concerns. This includes the provision of acoustic notes outlining additional noise surveys undertaken, corrections to the rear elevation drawings, and further re-instatement of the internal plan form. Given the provision of the additional information, the application was re-consulted.

## **7. RELEVANT HISTORY**

### **Planning applications**

- 7.1 **P2015/4037/FUL:** Conversion and reconfiguration of the ground floor and basement of 10-16 Theberton Street to form three restaurants (Use Class A3) comprising the following restaurant 1, No.16 (ground floor and basement level); restaurant 2, front part of Nos. 12 and 14 (ground floor and basement level); restaurant 3, No.10 and rear part of Nos.12, 14 (ground floor and basement level and part basement level of No.16). **Refused 13/12/2019.**

**REASON:** The proposal, by reason of the large floor area and number of covers in restaurant No.3, would give rise to potential hosting and catering for large parties (such as weddings or business functions) or large numbers of smaller groups (standard restaurant diners). It is considered that the operating of such a large singular A3 unit would have the potential to result in unacceptable increases in the level of noise and disturbance experienced by adjoining neighbouring residential occupants and the wider neighbourhood. The potential for noise and disturbance is exacerbated by the presence of a banqueting scale facility at basement level, lack of noise mitigation measures to address noise transfer (such as additional insulation measures between restaurant and residential floors) and the absence of measures to control numbers of people arriving/leaving at the same time and large groups of people congregating outside of the premises to smoke. Therefore, the proposal is considered to be contrary to policies DM4.2 (Entertainment and the night-time economy), DM4.3 (Location and concentration of uses) and DM4.4 (promoting Islington's Town Centres) of the Islington Development Management Policies.

**Appeal (APP/V5570/W/16/3165702)** was dismissed for the reason below:

**REASON:** The proposal would cause significant harm to the living conditions of existing and future occupants of nearby residential dwellings with regard to noise. This would be contrary to policies DM4.2, DM4.3 and DM4.4 within Islington's Local Plan: Development Management Policies 2013 that seek, among other things, to ensure that proposals relating to entertainment and the night-time economy do not lead to significant adverse impacts on residential amenity and that the densities of restaurants and other similar uses do not lead to significant, negative cumulative impacts or cause unacceptable disturbance. Consequently, the development would not be in accordance with the development plan

- 7.2 **P2013/1041/FUL** – Basement & Ground Floors, 10-16 Theberton Street, London N1 0QX: Amalgamation of the ground floor and basement of the four individual properties (10, 12, 14 & 16 Theberton Street) and their use as a single A3 restaurant unit. **Refused 05/06/2013.**

**REASON:** The proposal would result in the creation of a large 'destination venue' restaurant capable of catering for either large parties of people (such as wedding or business functions) or a large number of smaller groups of people (standard restaurant dinners). As such, it is considered that the cumulative impact of the operation of such a large A3 unit, with banqueting scale facilities, would have the potential to result in an unacceptable increase in the level of noise and disturbance experienced by neighbouring residential occupiers, caused as a result of large numbers of people arriving / leaving at the same time and large groups of people congregating outside of the premises to smoke. Therefore, the proposal is considered to be contrary to policy Env17 (Protecting Amenity) of the Islington Unitary Development Plan 2002 and emerging policies DM18 (Maintaining and promoting small and independent shops), DM19 (Entertaining and the night-time economy), DM20 (Location and concentration of uses), and DM21 (Promoting Islington's Town Centres) of the Islington Development Management Policies (EiP Submission 2012)

- 7.3 **P112589** – 10 Theberton Street: Listed Building Consent application in connection with the conversion of the upper floors into two self-contained flats and the erection of a first floor rear extension. **Approved with conditions 20/07/2012.**
- 7.4 **P092209** – 16 Theberton Street: Listed building consent for formation of new basement under the rear of number 16 Theberton Street. (Full Planning Application P092208 also submitted) **Approved with conditions 04/01/2010.**
- 7.5 **P090256** – 12-16 Theberton Street: Listed building consent for conversion of upper floors to create 6x one-bedroom flats, together with erection of first floor rear extensions at 12 & 16 Theberton Street and general internal and external refurbishment (Full Planning Application P090255 also submitted) **Approved 06/08/2009.**
- 7.6 **P090273** -10 Theberton Street: Demolition of single storey rear extension, erection of new single storey full width, full length rear extension, excavation to create full width, full length rear basement extension, replacement of front uPVC windows on upper floors with traditional timber sash windows and internal alterations (Listed Building Application P090274 also submitted) **Approved with conditions 14/05/2009.**
- 7.7 **P090257** – 12-14 Theberton Street: Demolition of existing single storey rear extensions at 12 & 14 Theberton Street, erection of new double width single storey rear extension across 12 & 14 Theberton Street, excavation to create double width rear basement extension across 12 & 14 Theberton Street and installation of new shopfront at 12 Theberton Street (Listed Building Consent Application P090258 also submitted) **Approved with conditions 05/05/2009.**

- 7.8 **P081568** – 10-14 Theberton Street: Excavation and creation of rear basement extensions at properties 10, 12 and 14 Theberton Street, erection of ground floor extension at 12 Theberton Street and rebuilding of ground floor extension at 10 Theberton Street together with internal works in association with a lateral conversion of properties 12 and 14 Theberton Street comprising partial demolition of the party wall at ground floor level. **Refused 11/11/2008.**

**REASON:** The associated listed building consent application has been refused and it would therefore be premature to grant planning permission without the associated listed building consent.

- 7.9 **P081571** – 10-14 Theberton Street: Listed Building Consent application in connection with excavation and creation of rear basement extensions at properties 10, 12 and 14 Theberton Street, erection of ground floor extension at 12 Theberton Street and rebuilding of ground floor extension at 10 Theberton Street together with internal works in association with a lateral conversion of properties 12 and 14 Theberton Street comprising partial demolition of the party wall at ground floor level. **Refused 11/11/2008.**

**REASON:** The proposed internal alterations would have a detrimental effect on the architectural and historic interest of the Grade II listed buildings due to loss of the remaining original plan form of the buildings and loss of historic fabric within the buildings. Therefore, the proposal would be contrary to the guidance set out in PPG15

- 7.10 **880833** – 14 Theberton Street: Change of use of the ground floor from shop to estate agents (Class A2). **Approved with conditions 31/10/1988.**

#### **Enforcement History**

- 7.11 **APP/V5570/F/14/2225985:** Planning Enforcement appeal made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

**The breach of planning control as alleged in the notice was:** the amalgamation of the basement and ground floors of four individual properties (10,12,14 & 16) Theberton Street and their use as a single restaurant unit (A3).

**Decision:** Appeal dismissed; the enforcement notice is upheld and planning permission on the deemed application is refused.

#### **Pre-applications**

- 7.12 **Q2018/1437/MIN** – Pre-application for conversion from A2 to A3 for nos 12 and 14 at ground floor and basement levels, internal alterations.

### **8. CONSULTATION**

#### **Public Consultation**

- 8.1 Letters were sent to occupants of 39 adjoining and nearby properties on 31 January 2019. A site notice and press advert were also displayed. Following the submission of revised plans and documents, the applications were re-consulted on 19 December 2019; they were again re-consulted on 23 January 2020 following a correction to the description of the proposed development. The public consultation of the application therefore expired on 6 February 2020, however it is the Council's practice to consider representations made up until the date of a decision.

8.2 At the time of the writing of this report, 20 objections had been received from the public with regard to the application, including a letter of objection from the Moon Street and Studd Street Residents' Association. The concerns raised are summarised below:

- size of the proposed restaurant at Nos. 12-14 is excessive, noting it would have the ability to cater for up to 70 covers on one floor, with potential operation as a destination venue (see **paragraphs 10.15-10.31**);
- the impact of a restaurant of such a scale on the wider amenity of neighbours given the size and number of covers (from 60 to 80 covers), including from noise, disturbance, and comings and goings (see **paragraphs 10.61-10.88**);
- concern that the pavement is too narrow for tables and chairs, A-frame boards, noting that when the restaurants are full there is often no room for pedestrians (see **paragraph 10.95**);
- impact of additional highway movements upon residents, including increased noise, rubbish and traffic (see **paragraphs 10.89-10.95**);
- detrimental impact of the development upon the character and appearance of the listed buildings and the wider conservation area (see **paragraphs 10.32-10.60**);
- concern regarding noise and odour impacts from proposed extraction equipment (see **paragraphs 10.65-10.85**);
- concern that the applicant has a significant history of non-compliance with building regulations/alcohol license and a disregard for regulations, and no confidence that conditions would be complied with (see **paragraphs 10.98-10.99**). (*Officer note: failure to comply with the conditions attached to either the planning permission or listed building consent would be a planning enforcement matter*); and
- concern regarding noise from existing extraction equipment (which were installed without planning permission and operate continuously), noting that the current systems are noisy and impact homes on the eastern side of Studd Street. Request that should permission be granted; the extractors are required to be upgraded using low sound emitting systems (see **paragraphs 10.98-10.99**). (*Officer note: the scope of this report is limited to the proposal under consideration, which does incorporate the installation of 2no. extraction flues (see paragraphs 10.65-10.85). Any concerns relating to the lawfulness of existing equipment is a planning enforcement matter and any noise nuisance would be dealt with under the Environmental Protection Act 1990*).

#### **Internal Consultees**

8.3 **Design and Conservation Officer:** the unsympathetic design of the rear extraction flues would be balanced by the greater reinstatement of the historic separation between the properties. On balance, subject to conditions requiring the submission and approval of design details for internal works, the proposal would create a neutral impact on the significance of the heritage assets.

8.4 **Public Protection (Noise) Officer:** raises no objections to the proposal, subject to a number of conditions to ensure that noise generated by the operation of the restaurants does not cause undue harm to neighbouring residential amenity (outlined in **paragraph 10.80**).

#### **External Consultees**

8.5 None.

## **9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATION & POLICIES**

- 9.1 Islington Council (Planning Sub-Committee A), in determining the planning application has the following main statutory duties to perform:
- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990);
  - To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance.)
  - As the development affects the setting of listed buildings, Islington Council (Planning Committee) is required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses (S66 (1) Planning (Listed Buildings and Conservation Areas) Act 1990) and;
  - As the development is within or adjacent to a conservation area(s), the Council also has a statutory duty in that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area (s72(1)).
- 9.2 National Planning Policy Framework 2019 (NPPF): Paragraph 10 states: "at the heart of the NPPF is a presumption in favour of sustainable development."
- 9.3 At paragraph 8 the NPPF states that the planning system has three overarching objectives in achieving sustainable development, being an economic objective, a social objective and an environmental objective.
- 9.4 The NPPF seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.
- 9.5 Since March 2014 Planning Practice Guidance for England has been published online.
- 9.6 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.
- 9.7 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:
- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

9.8 Members of the Planning Sub-Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.

9.9 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

### **Development Plan**

9.10 The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The policies of the Development Plan that are considered relevant to this application are listed at Appendix 2 to this report.

9.11 Weight is attributable to the Draft London Plan.

9.12 The site has the following designations under the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and the Finsbury Local Plan 2013:

- Grade II listed buildings
- Barnsbury Conservation Area (and Article 4 Direction)
- Archaeological Priority Area – Islington Village
- Within 50m of boundaries of the Angel and Upper Street North conservation areas
- Core Strategy Key Area – Angel & Upper Street
- Angel Town Centre
- Article 4 Direction (A1-A2 Town Centres)
- Within 100m of TLRN
- Cycle Route (Local)
- Cycle Route (Strategic)
- Site within 100m of Transport for London Road Network

### **Supplementary Planning Guidance (SPG) / Document (SPD)**

9.13 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

## 10. ASSESSMENT

10.1 The main issues arising from this proposal relate to:

- Land Use
- Design and Conservation
- Neighbouring Amenity
- Highways and Transportation
- Accessibility
- Refuse and Recycling

### **Land Use**

#### Existing lawful use

- 10.2 The last known lawful use of the properties at nos. 12 and 14 was as A2 (professional services); whilst the last known lawful use of at properties at nos. 10 and 16 was as A3 (restaurant). Notwithstanding the lawful use of the units, the properties have been amalgamated and operated as a single A3 restaurant unit. This combined use has been the subject of extensive planning enforcement history, including the issuing of an enforcement notice on 15 August 2014 requiring the cessation of the combined use. A subsequent appeal against this enforcement notice was dismissed dated 15 July 2015 and prosecuting proceedings for non-compliance of the Notice has resulted in a successful conviction.
- 10.3 In terms of the principle of the use, it must be noted that no permission has been granted for the A3 use of the units at nos. 12 and 14. As noted above, these have been operated unlawfully under the A3 use class. When taking into consideration the lawful use of unit nos. 12 and 14, the proposal would result in the loss of approximately 275 sqm of A2 commercial floorspace within the Angel Town Centre.
- 10.4 As noted above, the ground floors and basements of all of the units have previously been converted to serve as A3, and the interconnected layout of the units allows for their operation as a single restaurant. Specifically, at basement level wide openings have been created, resulting in a vast restaurant complex. These works and the associated A3 use were considered to be unlawful, and have been subject to enforcement notices. Albeit, the openings associated with the basement were granted (with alterations) listed building consent on appeal.
- 10.5 Policy DM4.4 of the Development Management Policies 2013 seeks to maintain and enhance the retail and service function of Islington's town centres, including the Angel Town Centre. However, there is no specific policy protection for A2 uses. Part A of the policy requires that application for more than 80 sqm of floorspace within the A Use Classes (including both A2 and A3 uses) should be located within designated Town Centres. Therefore, the replacement of the existing A2 use class with an A3 use, both within the A Use Classes, is acceptable in principle subject to the relevant considerations discussed further within the report below.

Principle of A3 uses in this part of Theberton Street

- 10.6 The application site is subject to a number of policy constraints relating to the A Use class function of the host building within the Angel Town Centre. Therefore, in terms of this proposal, it is important to consider the requirements of policies DM4.3 and DM4.4 of the Development Management Policies 2013.
- 10.7 Policy DM4.3, Part A states:
- 'A. Proposals for cafes, restaurants, drinking establishments, off licences, hot food takeaways, lap dancing clubs, nightclubs, casinos, betting shops, amusement centres and other similar uses will be resisted where they:*
- i. would result in negative cumulative impacts due to an unacceptable concentration of such uses in one area; or*
  - ii. would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area.'*
- 10.8 Due to the borough's densely developed, mixed-use nature, a range of main Town Centre uses occur in close proximity to places where people live; therefore, it is important to ensure a mix and balance of complementary day and night-time uses that creates an attractive and vibrant area that co-exists successfully with neighbouring residential areas. Certain types of use can cause detrimental cumulative impacts as a result of their concentration or location. The Council will therefore resist applications for such uses where they would cause harm to the character, function and amenity of an area or negatively impact on the health and wellbeing of the borough's residents.
- 10.9 Specifically with regard to the Angel Town Centre, paragraph 2.6.9 of the Core Strategy 2011 outlines the area's role as a focus for Islington's evening economy, which includes internationally renowned theatres as well as restaurants. It advises that these uses benefit from being located near each other and the council wishes to build on this cluster and so strengthen the Angel as a cultural destination. However, the council will be robust in using its powers to ensure that the quality of life for residents in the area is not undermined by these activities.
- 10.10 Policy DM4.4, Part C states:
- 'C. Development within designated Town Centres is required to:*
- i. be appropriate to the scale, character and function of the centre;*
  - ii. contribute positively to the vitality and viability of the centre;*
  - iii. promote a vibrant and attractive place;*
  - iv. respect and enhance the heritage, character and local distinctiveness of the centre;*
  - v. provide a variety of different sized units;*
  - vi. meet the council's policies on Inclusive Design; and*
  - vii. will not cause detrimental disturbance from noise, odour, fumes or other environmental harm.'*
- 10.11 There are a significant number of A3 restaurant and café units within the immediate surrounds of the application site at Theberton Street (including lawful A3 uses at nos. 10 and 16), and within the Angel Town Centre in general. Noting that the proposed A3 use is not out of character with the surrounds, officers consider that the principle of the proposed A3 uses would meet criteria i), ii), and iii) as listed above. However, whilst the Council notes that the Angel area is a focus for Islington's evening economy, consideration must

be given any harmful impacts of the proposed increase in lawful A3 restaurant units within the vicinity.

- 10.12 With regard to the acceptability of separated A3 uses at the site, it must be noted that the principle of such uses was previously considered to be acceptable by the Planning Inspectorate under appeal reference APP/V5570/C/14/2225985 (appeal dismissed 24/06/2015) (Decision attached at **Appendix 3**). This is a significant material consideration in the assessment of the proposal. Specifically, with regard to the introduction of a restaurant uses at the site, paragraph 94 of the decision states:

***“In this part of Islington, with its high concentration of retail and restaurant uses, I do not consider that the principle of separate A3 uses for Nos 12 and 14 would be significantly harmful. I acknowledge that this in theory would result in a concentration of restaurant uses along this part of the Street but the separate uses of these premises would not, in my view, be significantly and cumulatively different from the other separate lawful nearby A3 uses in Theberton Street and Upper Street.”***

- 10.13 It is also noted that the principle of separate A3 uses did not warrant a reason for the refusal of the most recent planning application (ref: P2015/4037/FUL); rather, that application was refused as a result of the excessive size of the proposed floor area and number of covers in restaurant No.3, which was considered to have the potential to result in unacceptable increases in the level of noise and disturbance experienced by adjoining neighbouring residential occupants and the wider neighbourhood.
- 10.14 Overall, the principle of the proposed A3 uses at the site is acceptable, subject to further consideration with regard to the size of the proposed units and the resulting potential impacts upon neighbouring residential amenity.

#### Proposed unit sizes and potential operational impacts

- 10.15 This application, and the previously refused applications, relate to three restaurants across the properties known as ‘Restaurant 1’ (at No. 16), ‘Restaurant 2’ (No. 12-14) and ‘Restaurant 3’ (No. 10).
- 10.16 Under the previously refused planning applications refs: P2013/1043/FUL and P2015/4037/FUL (dismissed at appeal ref: APP/V5570/W/16/3165702), significant concerns were raised with regard the layout and capacity of the proposed restaurant/s. Each of these applications proposed the provision of large opening dining areas at both ground and basement levels with a double height atrium spanning across the rear of the units which could be used for banqueting spaces. As such, the combined comings and goings would have considerable potential to cause significant disturbance to nearby residents. Furthermore, the double height atrium space at the rear exasperated the levels of noise transfer from the basement space to nearby sensitive uses.
- 10.17 The continued A3 use of the site is subject to a number of previous planning and enforcement appeals, the most relevant to the application currently under consideration being:

- APP/V5570/C/14/2225985 (Appeal D) (attached at **Appendix 3**), dismissed and enforcement notice upheld 24/07/2015. The appeal was against an enforcement notice requiring the cessation of the use of the ground floors and combined basement area of nos. 10-16 as a single restaurant unit); and
- APP/V5570/W/16/3165702, dismissed 20/11/2017 (attached at **Appendix 4**). The appeal was against the Council's refusal to grant permission for the conversion and reconfiguration of the ground and basement levels of nos.10-16 to form three restaurants (P2013/1043/FUL).

10.18 Previous key findings from the above Planning Inspectorate decisions include:

***“However, whilst finding that separate uses could be acceptable, I share the concerns of the Council and others about the premises being used for one very large restaurant venue. Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller premises. There have been no noise mitigation measures put forward by the appellant and from what I saw I consider that the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.”*** (Par. 95 of Appeal Decision APP/V5570/C/14/2225985 dated 24/07/2015).

***“I observe from the plans and my site visit that all three restaurants would still be capable of accommodating large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings. I accept that the operation of separate restaurants would reduce the previously documented harm through a more staggered pattern of bookings. However, this would be counter-balanced by the increase in the number of covers and the fact that very large groups would still be able to book Restaurants 2 and 3. Consequently, an increase from the 150 covers noted by the previous Inspector would lead to an unacceptable, cumulative impact from the comings and goings of customers and their congregation on nearby pavements.”*** (Par. 9 of Appeal Decision APP/V5570/W/16/3165702 dated 31/10/2017).

10.19 Significant weight is attributed to the previous planning refusals, as well as the associated Planning Inspectorate appeal decisions. It is therefore important to outline what revisions have been made as part of this application to seek to overcome the previous reasons for refusal, specifically with regard to the most recently refused scheme (ref: P2015/4037/FUL).

#### Covers/Seating Area

10.20 Under the previously refused applications, the Council held concern that the significant expanse of proposed seating areas (notably at basement level) and the resulting customer covers would afford the capability for the restaurants to hold large ‘banqueting’ style events, which would have far greater potential for noise and disturbance than four smaller and more intimate restaurants next to each other. Specifically, the failure to reinstate the original basement form was considered to be unacceptable. Within the delegated report for the most recently refused 2015 application (the plans for which incorporated the use of a significant portion of the basement as a large open seating area associated with Restaurant 3), paragraph 20 states:

*“It is officers’ view that the extension of restaurant 3 across the entire basement floor would not materially change the existing unauthorised arrangement sufficiently to be classed as an intimate small scale restaurant. It would have a similar operation to the existing arrangement with the banquet style area maintained at basement level. Such a size would not be characteristic within the area and the location of several units adjacent to each other and would therefore be contrary to policy DM4.3 of the Development Management Plan.”*

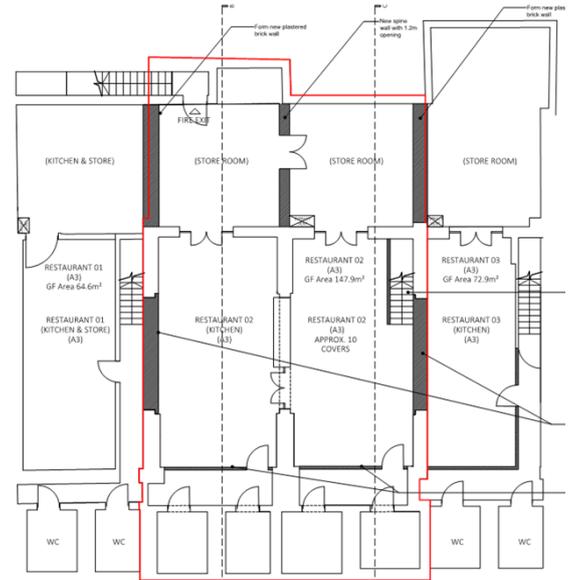
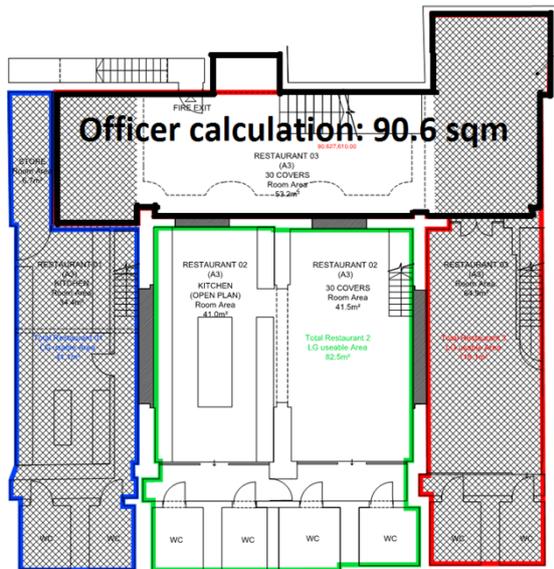
- 10.21 The proposal currently under consideration seeks to permanently close the majority of the openings at ground and basement floor levels, as well as infill the double storey atrium at the rear of the units to separate ground and basement levels in this location. These openings and atrium currently act to connect each of the restaurant units, and have led to the establishment of substantial open seating areas capable of hosting large banqueting groups.
- 10.22 Following the closure of openings and the infilling of the atrium, this application seeks permission to establish a lawful A3 use across three separate restaurants. Each of the proposed restaurants would cover both ground and basement floor levels, however only Restaurant 2 would include customer seating at basement level (approximately 10 covers). The remainder of the basement floorspace across the site would be used as kitchens and store rooms. Most of the existing openings between the units at basement level would be infilled, with the exception of two openings between unit nos. 12 and 14. Importantly, the large banqueting spaces (comprised of open seating areas at basement level across the units) associated with the previously refused applications have been removed.
- 10.23 A comparative analysis of the details of operation for each restaurant proposed under the current application, compared to those proposed under the most recently refused application (ref: P2015/4037/FUL), is shown in the tables below.

Property	Proposed Floorspace	Proposed covers	Previously refused	Difference +/-
Restaurant 1	GIA: 110 sqm Seating Areas: 45 sqm	30 covers	36 covers	-6 covers
Restaurant 2	GIA: 269 sqm Seating Areas: 140 sqm	80 covers	60 covers	+20 covers
Restaurant 3	GIA: 134 sqm Seating Areas: 59 sqm	40 covers	85 covers	-45 covers
<b>TOTAL:</b>	<b>GIA: 513 sqm Seating Areas: 259 sqm</b>	<b>150 covers</b>	<b>181 covers</b>	<b>-31 covers</b>

**Table 1:** Restaurant covers, proposed vs. previously refused

Property	Largest proposed open seating area	Previously refused largest open seating area	Difference +/-
Restaurant 1	Approx. 26 sqm	Approx 29 sqm	-3 sqm
Restaurant 2	Approx. 31 sqm	Approx. 41 sqm	-10 sqm
Restaurant 3	Approx. 30 sqm	Approx. 91 sqm	-61 sqm

**Table 2:** Largest open seating areas per restaurant, proposed vs. previously refused



*NB: whilst the labels on the plans submitted for the previously refused 2015 application indicate that the largest open seating area for restaurant 3 at basement level was 53.2 sqm, scaled measurements of the plans indicated that the open area would, in fact, have covered 90.6 sqm. This exacerbated officer concerns with the proposal and contributed to the refusal of the application. For the table above, the floorspace figure as measured on the plans is used; however, for the avoidance of doubt, it is important to note that the current proposal represents a significant reduction in open seating floorspace when compared to either scenario. The previously refused basement plan (officers calculations shown) and proposed basement floorplan are shown in Images 1 and 2 below.*

**Image 1:** previously refused basement plan

**Image 2:** proposed basement plan

- 10.25 The proposal represents a decrease in both overall capacity and open seating areas when compared to the most recently refused scheme. In total, across the three restaurants there would be 25 less covers, including 45 less covers at Restaurant 3 and 6 less in Restaurant 1. Whilst Restaurant 2 would see an increase in 20 covers, this is a result of the additional internal ground floor area created following the infilling of the rear double-storey atrium which previously acted to increase capacity for large banqueting style events. The increase of 20 covers for a total of 80 covers given its overall size and the mitigation measures with re-instatement of ceilings and walls is considered to be acceptable. Furthermore, the total number of covers at the three restaurants would be 31 less than previously refused; paragraphs 10.26-10.30 outline the justification of these covers.
- 10.26 Importantly, the proposed restaurants have been subject to significant internal reconfigurations when compared to the previously refused schemes. As noted above, the refused schemes included large expanses of open seating areas, including a very significant space within Restaurant 3 of 91 sqm at basement level spread across the rear of nos. 10-14 and below the double-height atrium space. The proposed partitions at both ground and basement levels, as well as the infilling of the atrium, would not only ensure that the restaurants are self-contained, but would also significantly reduce the size of the largest open seating areas at each restaurant. As outlined in the table above, the largest open seating area at any of the restaurants would not exceed approximately 31 sqm, significantly reducing the capacity for the venues to host larger group gatherings. This amount of open floor area, and the resulting customer capacity, is not considered to be excessive for a restaurant unit.

- 10.27 It must be noted that the previous Inspectorate appeal decision (ref: APP/V5570/C/14/2225985) makes specific reference to the likely acceptability of the separation of the properties into “*four smaller premises*”; and that the refused 2015 application was upheld at appeal (ref: APP/V5570/W/16/3165702) partly because the proposed separation of the site into three (rather than four) restaurants ensured that it would still be capable of accommodating large groups (as outlined at paragraph 9.17 of this report). However, the second appeal was largely upheld due to operational harm caused by an increase in restaurant covers and the fact that very large groups would still be able to gather in Restaurants 2 and 3. Whilst the proposal currently under consideration includes the provision of three (rather than four) separate restaurants, it differs from the previous schemes as it would no longer offer the opportunity for very large groups to gather for ‘banquet’ style functions, as a result of the:
- reduction in overall covers across the site; and
  - significant reduction in open seating area floor spaces following the re-instatement of walls
- 10.28 As noted above, the property at no. 12-14 Theberton Street would be operated as a single restaurant (Restaurant 2), rather than two separate units; and the restaurant would also allow for a greater number of covers (+20) than under the previously refused schemes. However, the layout of the restaurant has been revised throughout the course of the application at the request of officers to ensure that, despite the increase in covers, the resulting space does not afford an opportunity for large group gatherings. The resulting restaurant would operate across two frontages, and the units would largely be divided by internal partitions save for 2no. small doorway openings at each ground and basement floor levels. At ground floor, the resulting restaurant would be separated into four individual seating areas (each with a maximum cover of 20), with one seating area at basement level with a cover of 10. Therefore, whilst the overall cover numbers represents an increase upon the previous scheme, the layout and partitioning of the restaurant ensures that its operating impact would be more akin to two separate units with a shared kitchen rather than one large open-plan restaurant.
- 10.29 As discussed, the proposal includes important variations to the previously refused schemes, including the infilling of the double height atrium within the rear extension (resulting in significantly smaller spaces with lowered ceilings); the installation of separating walls; and the removal of the ground floor level barrelled ceilings at nos. 12, 14 and 16, and their replacement with insulated ceilings between the units and the flats above. The sound insulation measures proposed are discussed in greater detail within the neighbouring amenity section of this report at paragraphs 10.61-10.88.
- 10.30 Furthermore, officers note that the number of covers capable of being accommodated at the site is an important additional consideration in assessing the acceptability of the scheme. Therefore, a condition (Condition 12) has been recommended requiring the provision of detailed cover numbers the new A3 restaurant at Nos. 12-14 as part of a wider Scheme of Management Plan, which is to be submitted and approved by the Local Planning Authority prior to the first occupation of the unit.

10.31 It is therefore considered that the potential operational impacts of the proposed restaurant units would be acceptable, subject to the inclusion of appropriate conditions. This is discussed further within the neighbouring amenity section at paragraphs 9.62-9.89 of this report. Overall, officers consider that the proposed self-contained A3 restaurant units at nos. 10, 12-14 and 16 Theberton Street are acceptable in principle, subject to conditions, and the application therefore accords with policies DM4.3 and DM4.4 of the Development Management Policies 2013.

### **Design and Conservation**

- 10.32 The application site comprises 4no. adjoining three-storey (plus basement) properties which form part of a Grade II listed early C19th terrace on the northern side of Theberton Street and within the Barnsbury Conservation Area. The significance of the buildings includes their architectural design and materials, evidence of the original plan-form and their own townscape contribution including their contribution to the character and appearance of the conservation area. It is also noted that there are a number of other Grade II listed building within proximity to the site, including at nos. 4-8 Theberton Street (adjoining), nos. 20-44 Theberton Street to the west and nos. 3-5 Theberton Street opposite.
- 10.33 Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 10.34 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 10.35 Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 10.36 The application site is located within the Barnsbury Conservation Area, which is the largest in Islington and is of outstanding importance. The area contains a wide variety of architectural styles with distinctive detailing, with a number of historic shopfronts which are critical to the character and historic charm of the area. It also contains many of the best examples of late-Georgian/early-Victorian residential developments in London, including some of the finest sequences of squares and terraces in London, such as Gibson Square (approximately 100m to the west of the site).
- 10.37 Policy CS9 of Islington's Core Strategy 2011 and Policy DM2.1 of Islington's Development Management Policies 2013 accord with the National Planning Policy Framework (NPPF) in seeking to sustain and enhance Islington's built environment. Taken together, they seek to ensure that proposed development responds positively to existing buildings, the streetscape and the wider context, including local architecture and character, surrounding heritage assets, and locally distinctive patterns of development.

- 10.38 Policy DM2.3 states that Islington's historic environment is an irreplaceable resource and the council will ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance.
- 10.39 As discussed within the land use section of this report, the site is the subject of significant planning, listed building, and enforcement history. It is noted that a number of internal works had been undertaken without Listed Building Consent. An Enforcement Notice relating to internal and external alterations to the heritage assets (ref: E08/03958) was therefore issued in 2014. This was the subject of appeal ref: APP/V5570/F/14/2220720 (see **Appendix 3**), in which the Inspectorate dealt specifically with each individual fixture/fitting subject to the Notice. In the case of the properties at Nos. 10-16 Theberton Street, there were 29 contraventions subject to the Notice, most of which were deemed unacceptable and dismissed. The works dismissed have now been removed/altered and the Notice complied with to the satisfaction of the Council. However, the Inspector did allow the retention of a number of the Items, including:
- the insertion of elaborate timber doors and door surrounds into the rounded arch openings within the original real wall/s at basement level across all four units;
  - the installation of alarm boxes to the front elevation;
  - the insertion of barrelled ceilings at ground floor level of nos. 12, 14 and 16;
  - the creation of 4no. double door width openings between Nos. 10 and 12 at basement level;
  - the creation of 4no. double door width openings between Nos. 12 and 14;
  - the creation of 4no. double door width openings between Nos. 14 and 16;
  - the installation of valences to awnings;
  - the installation of internal cladding with cobble-rubble stone and tile to walls at ground floor; and
  - the creation of wide rounded arch openings with rear basement walls.
- the retention of rear openings between 10-12 and 14-16 subject to a downstand at ceiling level being inserted.
- 10.40 Whilst the Items outlined above were allowed at appeal, the associated appeal relating to the use of the properties as a single amalgamated A3 unit was dismissed (as were each of the subsequent planning appeals, as discussed previously within the land use section of this report). The applications under consideration therefore include additional internal and external alterations in order to ensure the demarcation of the units and therefore the acceptability of the use in both planning and listed building terms. The proposed internal works include: re-instatement and installation of previously removed party walls in the basement and ground floor between nos. 14 and 16 and nos. 10 and 12, re-instatement of a timber staircase and door, installation of a ground floor to remove the double height atrium, and removal of modern doors. The proposed external works include the installation of 2no. kitchen extract ducts at the rear.

#### Internal works

- 10.41 It is proposed to reinstate party walls in the basement and ground floor between nos. 14 and 16 and nos. 10 and 12, to match those previously removed. The proposed walls will be constructed of reclaimed brick and plastered to match the surviving walls. This work re-introduces previously demolished elements of the original plan-form and is therefore supported.

- 10.42 The proposal also includes the formation of new partitions between the basement WCs and the restaurant spaces, with traditional timber panel doors to match those previously removed. It is also proposed re-instate a timber door in the opening between the entrance hall and ground floor front room of no. 12. These works are supported in principle, subject to a condition on the Listed Building Consent (Condition 3) requiring that the re-instated doors shall be six panelled timber doors with mouldings to the ground floor, and four panelled doors with moulding to the basement floor.
- 10.43 It is also proposed to reinstate a timber staircase to match that previously removed between ground and basement floor levels at no. 12. This work re-introduces a staircase in the position of the removed original and is therefore welcomed.
- 10.44 The application also proposes the installation of a ground floor in the double-height atrium to the rear of nos. 12 and 14, including the removal of the modern staircase and all balustrades. The existing atrium occupies a modern extension to the building which is not of historic or architectural interest. The works are supported as they ensure that the internal spaces of the rear extension align to the vertical floor hierarchy of the host buildings, and reduce the harmful impact which a large double-height addition has had on the character and plan-form of the listed buildings.
- 10.45 It is also proposed to remove the modern doors between the rear extension and nos. 12 and 14. This is acceptable as one of the openings is not of historic interest and the other two historically relate to rear windows, not doorways.
- 10.46 Following the submission of the applications, the applicant has revised the proposal to enable more of the internal historic plan form to be reinstated. This includes the insertion of separating party walls between Nos. 12 and 14 within the rear extension at both ground and basement floor levels, to ensure that a level of delineation between the two units is created at rear. Although the ground and basement floor levels of these buildings have lost the vast majority of their historic detailing and finishes, there is clearly a benefit to reinstating the original cellular plan-form, and of reinstating more of the historic separation between the properties including the extension of this separation to within the two storey rear extension. The greater reinstatement of the historic separation between the properties is welcomed.
- 10.47 Overall, the proposed internal works aim to revert the interior of the listed buildings closer to their original plan form, and are considered to be acceptable in principle.

#### External works

- 10.48 The applications also propose the installation of 2no. kitchen extracts at the rear, one each at nos. 10 and 12, and the installation of an intake duct at the rear of no. 12. Both of the extracts would run along the rear elevation of the buildings (between closet additions at first floor level), and would terminate at the line of the butterfly parapet, approximately 2 metres above the top of the second floor window openings.
- 10.49 The Barnsbury Conservation Area Design Guidelines state:

*“10.16. The Council is opposed to the erection of large vent pipes on the rear elevation of commercial properties where this is harmful to amenity. Where possible existing chimney flues should be used. Any new flues should be modest in size, and painted a dark colour.”*

*10.17. Large flues and vent pipes can often detract from the visual amenity of the area. The Council will therefore seek to ensure that these are appropriately located and are of a suitable size and design.”*

- 10.50 The proposed kitchen extraction ducts, and in particular the entirely new duct, would compound the existing harm that has been caused to the rear of the terrace by cumulative mechanical plant. The extraction ducts and intake would be placed on some of the few rear elevations which retain something close to their historic appearance above ground level. They would cause harm to the historic and architectural interest of a designated heritage asset by reason of their unsympathetic design. Although the rear elevation of a terraced building is often one of the more appropriate locations for such plant, a listed building is subject to specific policies which mean that any interventions need to conserve or better reveal its special historic and architectural character. The proposed ducts would cause harm to the special historic and architectural character of the heritage asset, including to the setting of neighbouring heritage assets. This harm would be less than substantial.

Impact of the proposal upon significance of designated heritage assets, and Balance of harm

- 10.51 As noted above, the application properties are Grade II listed and are located within the Barnsbury Conservation Area. The site is also within proximity to, and adjoins, other Grade II listed buildings.
- 10.52 Therefore, in the determination of the applications, the assessment of the proposal must consider the impact on these heritage assets in accordance with the legislation set out in Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which is outlined below.
- Section 66(1) provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
  - Section 72(1) provides that in the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of (amongst others) the planning Acts, special attention shall be paid to the desirability of preserving or enhancing the character.
- 10.53 The South Lakeland District Council v Secretary of State for the Environment case and the Barnwell Manor case (East Northamptonshire DC v SSCLG) establish that “preserving” means “doing no harm”.
- 10.54 The decision of the Court of Appeal in Barnwell Manor confirms that the assessment of the degree of harm to the heritage asset is a matter for the planning judgement of the decision-maker. However, where the decision-maker concludes that there would be some harm to the heritage asset, in deciding whether that harm would be outweighed by the advantages of the proposed development, the decision-maker is not free to give the harm such weight as the decision-maker thinks appropriate. Rather, Barnwell Manor establishes that a finding of harm to a heritage asset is a consideration to which the decision maker must give considerable importance and weight in carrying out the balancing exercise.

- 10.55 There is therefore a “strong presumption” against granting planning permission for development which would harm a heritage asset. In the Forge Field case the High Court explained that the presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. Paragraph 196 of the NPPF provides that where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. A local planning authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.
- 10.56 The case-law also establishes that even where the harm identified is less than substantial (i.e. falls within paragraph 196 of the NPPF), that harm must still be given considerable importance and weight.
- 10.57 When more than one heritage asset would be harmed by the proposed development, the decision-maker also needs to ensure that when the balancing exercise is undertaken, the cumulative effect of those several harms to individual assets is properly considered. Historic England does not suggest that the cumulative effect of the individual instances of harm identified amounts to substantial harm and officers do not consider that the total harm (i.e. the cumulative effect of the several instances of harm identified) amounts to substantial harm.
- 10.58 In assessing the proposals hereby under consideration, special regard has been had to the desirability of preserving the listed buildings, their setting, and any features of special architectural interest which they possess; as well as the setting of the adjoining and adjacent listed buildings. Whilst the proposed extraction ducts at the rear elevation are clearly not desirable and would cause less than substantial harm to the heritage assets, the proposal would enable more of the internal historic planform to be reinstated. Although the ground and basement floors of these buildings have lost the majority of their historic detailing and finishes there is clearly a benefit to reinstating the original cellular plan-form, and of reinstating more of the historic separation between the properties including the extension of this separation to within the two storey rear extension.
- 10.59 Therefore, the unsympathetic design of the rear extractions would be balanced by the greater reinstatement of the historic separation between the properties. On balance, with the abovementioned revisions to the scheme, the works would create a neutral impact on the significance of the heritage assets. To ensure that the resulting impact of the rear extractors is minimised, a condition has been attached to both the planning permission (Condition 11) and Listed Building Consent (Condition 5) requiring the submission of detailed design drawings for the approval of the Local Planning Authority within 2 months of the decision notice date.
- 10.60 In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special attention has been paid to the desirability of preserving or enhancing the character and appearance of the Barnsbury Conservation Areas. In accordance with Section 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been had to the desirability of preserving the listed buildings, their settings and any features of special architectural interest which they possess. Overall, subject to the recommended conditions, the proposal is considered to bring benefits in the form of greater reinstatement of the historic plan-form of the properties, which is considered to neutralise the less than substantial harm caused to the heritage assets by the introduction of the extraction ducts at the rear elevation. The

proposal therefore accords with the NPPF 2019, policies 7.4, 7.6 and 7.8 of the London Plan 2016, policy CS9 of the Islington Core Strategy 2011, and policies DM2.1 and DM2.3 of the Islington Development Management Policies (2013) and the guidance contained within the Urban Design Guide 2017 and the Conservation Area Design Guidelines.

### **Neighbouring Amenity**

- 10.61 Policy DM2.1 of the Development Management Policies 2013 states that development should not have an adverse impact on neighbouring amenity in terms of noise, overshadowing, overlooking, privacy, sunlight and daylight receipt, over-dominance, sense of enclosure and outlook.
- 10.62 Policy DM6.1 Part G states that noise generating uses should, where possible, be sited away from noise sensitive uses.
- 10.63 Paragraph 6.19 of the Development Management Policies advises that the Council will expect noise generating uses and sources to be adequately separated from established residential areas and other noise sensitive uses (such as care homes, school and hospitals). However, given the borough's density and character it is acknowledged that noise generating uses cannot always be sited away from residential areas. Where potentially noisy developments (such as entertainment venues) are proposed within residential areas, the council will expect the use not to give rise to noise disturbance.
- 10.64 Policy 7.6 of the London Plan 2016 requires buildings and structures not to cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy and overshadowing, in particular. Policy DM2.1 of the Development Management Policies 2013 states that development should not have an adverse impact on neighbouring amenity in terms of noise disturbance, overshadowing, overlooking, privacy, sunlight and day light receipt, over-dominance, sense of enclosure and outlook.

### **Noise Pollution**

#### *Operational Noise*

- 10.65 The amenity impacts relating to the A3 units primarily relate to noise and potential anti-social behaviour late at night.
- 10.66 The site has been subject to significant enforcement history with regard to its operation as a single restaurant unit. Subsequent planning applications have been refused (and upheld at appeal) due to concerns regarding the layout and capacity of the unit/s, each of which provided large open dining areas at both ground and basement levels which could be used for banqueting spaces. As such, the combined comings and goings were considered to have considerable potential to cause significance disturbance to nearby residents. Key findings by the Inspectorate with regard to the use include:

***“[...] Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller premises... the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.”*** (Par. 95 of Appeal Decision APP/V5570/C/14/2225985 dated 24/07/2015) (See **Appendix 3**).

***“I observe from the plans and my site visit that all three restaurants would still be capable of accompanying large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings.”*** (Par. 9 of Appeal Decision APP/V5570/W/16/3165702 dated 31/10/2017) (See **Appendix 4**).

- 10.67 As discussed within the land use section of this report at paragraphs 10.2-10.31, the proposal differs from the previously refused schemes in that it would result in the creation of three separate restaurants with reduced overall covers. The capacity of the units to host large banqueting spaces has also been removed as a result of the re-instatement of ceilings and walls as well as reconfiguration of the internal layout with storage spaces and kitchens situated within the previous banqueting space. Therefore, the potential operational impacts of the proposed restaurant units would be acceptable, subject to the inclusion of appropriate conditions to protect neighbouring amenity levels.
- 10.68 Upon submission, the applicant provided an Acoustic Report and Acoustic Design Note in support of the application. These were reviewed by the Council’s Public Protection (Noise) officer, who requested that the Acoustic Report be updated to include details regarding the noise from patrons outside affecting nearby residents inside (internal  $L_{Amax}$ s from outdoor activity); as well as clarification regarding the relatively low quoted representative sound levels within the premises; and details of measures and controls proposed to ensure that the quoted levels are representative, do not rise, and impacts minimised (i.e. layout changes will not mean larger groups/functions, isolation of speakers from structure, controls of amplified music, smoking areas/patrons arriving or leaving etc.).
- 10.69 The applicant subsequently submitted a revised Acoustic Note to cover the requested additional items. Measurements of the sound transmission between the restaurant and the residences above were undertaken on a Friday night at 21:00. The results demonstrate noise levels 5dB more than the figure previously quoted. However, the revised document failed to provide adequate detail with regard to the restaurant conditions during the survey (no notes were provided regarding measurement position, number of diners, whether music was playing etc.)
- 10.70 Subsequently, the applicant submitted a further Acoustic Note which provides details of two additional acoustic surveys undertaken on both a quiet weekday evening (Tuesday) and on a busy Friday evening between 19:30-21:00. For these surveys, measurements were taken within the front seating area of no. 10 and the rear ground floor mezzanine and rear basement area of no. 14. The Tuesday evening acoustic survey was undertaken while the restaurant was at around one-third full capacity, whereas the Friday evening survey was undertaken while the restaurant was at full capacity with all tables occupied.
- 10.71 The noise limit criteria as set out within the submitted Noise Report are set out in Table 3 below. The Council’s Public Protection (noise) officer has raised no concerns with regard to the proposed criteria.

Source	Criteria
Operational noise emissions to adjoining properties	Operation noise shall not exceed a level of LAeq,5min 30dB within adjoining premises to 23:00 hours and LAeq,5min 25dB beyond this time.
Mechanical services plant and equipment	The rating level of the new equipment shall be at least 5dBA below the prevailing background level at 1m from the most-affected residential property, when assessed in accordance with BS 4142:2014.
Patron noise to the front façade	Noise from patrons to not increase the pre-existing ambient sound level by more than 2.9dBA, equating to a “none/not significant” effect description, as defined by IEMA Guidelines. Individual LAfmax values from patrons should not exceed the 10 <sup>th</sup> highest measured existing LAfmax level to outside of 1 <sup>st</sup> floor façade during the late evening period.

**Table 3:** Acoustic criteria

10.72 The results of the internal sound level surveys, measured in LAeq, are shown in Table 4 below.

Internal sound level measurements (LAeq)			
Survey Date	Measured levels (front seating area at No. 10)	Measured levels (rear ground floor mezzanine at No. 12)	Measured levels (rear basement at No. 12)
Friday 15 <sup>th</sup> March 2019	80dB	–	–
Tuesday 27 <sup>th</sup> August 2019	71bD	70dB	69dB
Friday 30 <sup>th</sup> August 2019	78dB	78dB	75dB

**Table 4:** internal sound level measurement survey results

10.73 The results indicate that the acoustic levels at the rear seating areas are generally lower than those at the front, due to less patrons per unit area. Measured sound levels over the course of the March survey were LAeq 80dB. The measured spectral data in octave bands, and calculated operational sound transmission into the bedroom of Flat 12A (directly above the rear of the unit at no. 12), are shown in Table 5 below (LAeq 80dB).

Calculated operational sound transmission into Flat 12A Bedroom (LAeq 80dB)									
Description	63	125	250	500	1k	2k	4k	8kHz	
Measured source sound level Leq dB	64	67	74	79	77	70	63	54dB	80dBA
Measured sound insulation of separating floor	22	34	38	45	50	57	62	68dB	Dw(+C'tr) 49(-5)
<b>Calculated sound level</b>	<b>42</b>	<b>33</b>	<b>36</b>	<b>34</b>	<b>27</b>	<b>13</b>	<b>1</b>	<b>0dB</b>	<b>34dBA</b>

**Table 5:** calculated operational sound transmission into Flat 12A Bedroom

10.74 These results demonstrate that the calculated noise levels into the adjoining habitable rooms are up to 9dBA above the sound level criteria of LAeq 25dB beyond 23:00 and

4dBA above the criteria of LAeq 30dB up to this time. The information provided recommends that in order to meet the above criteria, the sound insulation performance of the separating floor (between the restaurant units and the flats above) is to be improved by at least 9dB. Works to achieve this would likely include the removal of the (non-original) barrelled ceiling to the front of the restaurants at nos. 12-14, and the removal of existing ceilings to the rear (within the modern extension). The applicant's acoustic consultant recommends that once the ceilings have been removed and separating walls constructed, a primary ceiling of two layers 15mm SoundBloc plasterboard is affixed to the joists of the separating floor with mineral wool insulation between joists.

The applicant has also undertaken two external sound level surveys, taken at nominally 1m from a first floor window overlooking Theberton Street using a microphone on a telescopic pole arrangement between 21:30-00:00 hours. During the course of the survey, the area was witnessed as being busy (even into the later periods) with actively high traffic. The results of both surveys indicate that the measured LAFmax levels were dominated by traffic sources. During the course of the first survey, the author noted that the noise levels from patrons was at a "very low level". During the second noise survey, undertaken on Tuesday 27<sup>th</sup> August, it was noted that the measured noise levels reduced past 23:00 hours, and that overall the figures were generally lower than those measured on the Friday. The noise events were logged throughout the survey and related closely with observed traffic activity, along with non-associated pedestrians and other street activity. The levels measured reflect the noise consultant's opinion that "people leaving the restaurant generally did not wait outside to talk but moved down the street." Therefore, the results indicate that noise from patrons entering and leaving the premises did not impact the measured levels.

*Extracts/Intake*

- 10.75 The proposed extraction/intake equipment to be installed at the rear nos. 10 and 12 will provide supply and extract ventilation to the kitchen. The fans are to be installed internally, ducted at first-floor roof level and the kitchen extract ducts will rise up the rear of the building and terminate at the eaves. The information submitted provides details of computer modelling used to calculate the noise contribution from the plant to outside the nearest noise sensitive windows (the windows to the flats immediately adjacent to the ductwork). The cumulative calculated specific sound levels, calculated in accordance with BS 4142:2014, are shown below in Table 6.

<b>Description</b>	
Calculated specific sound level at first floor flats overlooking rear façade	LAeq 47dB
Background sound level	LA90 57dB
Acoustic feature correction	0dB
Rating level	Lar 47dB
<b>Excess of rating level over background sound level</b>	<b>-10dB</b>

**Table 6:** assessment for equipment during operational hours

- 10.76 The installation of duct-mounted attenuators on the atmospheric side of each of the extraction fans has been incorporated into the above calculations. Officers note that there are a number of existing extraction ducts and equipment at the rear of the site (associated with adjoining restaurants), and the resulting background noise is elevated as existing. Therefore, any increase in sound level, even marginal, has the potential to cause an adverse impact upon amenity. Whilst the Council's standard criteria is for such equipment to achieve a level of 5dBA below the background LA90 sound level, taking into consideration the existing elevated sound level, the extraction plant has been designed to ensure that the specific noise level is 10dBA below the current background sound level. This is to ensure that the proposal does not result in an increase to the overall cumulative sound.
- 10.77 The Council's Public Protection (Noise) officer has reviewed the submitted acoustic notes, paying close attention to the result of the surveys as outlined above. Following the submission of the additional information requested, the officer raises no objections to the proposal, subject to the inclusion of a number of conditions to ensure that noise generated by the operation of the restaurants does not cause undue harm to neighbouring residential amenity. Specifically, conditions are recommended to be attached to the planning permission, requiring the following:
- the submission of full particulars and details of a scheme for sound insulation between the restaurant and residential users above, for approval prior to the first occupation of the development (Condition 6);
  - the commissioning of a report (Condition 7) to assess the acoustic performance of the sound insulation scheme as approved. The report shall be submitted to and approved in writing by the Local Planning Authority within three months of the approval of sound installation and noise control measures approved as part of condition 6 being installed),
  - limits to the operative cumulative noise level LAeq Tr arising from the proposed plant, which when measured or predicted at 1m from the façade of the nearest noise sensitive premises, shall be a rating of at least 10dB(A) below the background noise level LAF90 Tbg (Condition 8). Officers note that this condition is 5dB more stringent than the Council's usual requirement, taking into account the existing elevated noise background sound levels with other plant in the vicinity; and
  - the submission of a report (Condition 9) for the approval of the Local Planning Authority. to assess the noise from the proposed mechanical plant to demonstrate compliance with the noise level restrictions set out in condition 8.
- 10.78 As discussed previously, there are a number of internal mitigation measures proposed to be implemented in order to reduce noise transfer between the restaurant units and the nearby sensitive uses, including the re-installation of ceilings and walls; removal of the rear atrium; an overall reduction in restaurant covers; and the removal of the large banqueting area. Overall, this would lead to a reduction in comings and goings during the operational hours of the restaurants.

10.79 Taking into consideration the information submitted, and subject to the recommended conditions, Officers consider that it has been adequately demonstrated that the proposal would not cause undue harm to the neighbouring amenity with regard to noise disturbance.

#### Odour and fumes

10.80 Officers note that the extraction equipment has the potential to affect the amenity of nearby residential units as a result of cooking smells. However, the extractor units proposed would terminate at least 1m above the rear windows of the dwellings above. It is considered that any adverse impacts of the extractors on amenity could be successfully mitigated, subject to the detailed design of the extractors.

10.81 Therefore, a condition has been recommended for the planning permission (Condition 11), requiring that the flues are fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with a 0.4-0.8 second residence time, or alternatively fine filtration followed by carbon filtration and by counteractant/neutralising system to achieve the same level as above.

10.82 Subject to the above condition, it is considered that the proposal would not cause undue harm to neighbouring residential amenity with regard to odour pollution.

#### Night time disturbance and late night economy

10.83 Appendix 10, table 10.2 of the Development Management Policies 2013 provides guidance and standards for reducing impacts of noise generating entertainment uses, including façade treatments and the location of likely noisy sources.

10.84 Notwithstanding the noise survey result discussed above, in order to ensure that the proposed development does not have an adverse impact on neighbouring residential amenity, including cumulative impacts given the location of the site within a high concentration of night-time uses, a condition (Condition 12) requiring the submission and approval of a Scheme of Management prior to the first occupation of the new A3 restaurant unit at nos. 12-14 has been recommended for the planning permission. This condition does not cover the units at nos. 10 and 16, as it is noted that these are already subject to a lawful A3 use. The scheme of management would include details of mitigation measures in order to protect residential amenity with regard to noise, waste and anti-social behaviour, notably:

- covers numbers and method of dispersion of covers within the restaurant;
- a full dispersal policy and procedure;
- signs to request patrons to leave in a quiet manner;
- bottling out and waste management noise and times;
- control and levels of noise from amplified music;
- control and noise from any designated smoking area;
- close down policy; and
- private hire facilities/functions.

10.85 Further, a condition has been recommended (Condition 5) limiting the hours of operation of the new A3 unit at Nos. 12 and 14 to between 07:00 and 23:00 Monday to Thursday and Midnight Friday and Saturday, and 08:00 and 22:00 on Sundays and Bank Holidays.

### Other amenity matters

- 10.86 The proposed extraction and intake ducts would run along the rear (north) elevation of the building, and would not cause undue harm with regard to overshadowing, access to sunlight and daylight, over-dominance, sense of enclosure or outlook. The proposal does not involve the erection of any structures, or the creation of new window openings. It would therefore not cause undue harm with regard to increased overlooking and loss of privacy.

### Conclusion

- 10.87 Following the assessment of the proposal, officers have recommended that a number of conditions are attached to the planning permission in order to ensure that the operation of the units does not cause undue harm to neighbouring amenity. This includes conditions setting out noise limits for extraction flues (and the submission of a noise compliance report); requiring details for internal insulation schemes (and the submission of a compliance report); the provision of odour filtration measures within the flues; restrictions to hours of operation; and the provision of a scheme of operational management.
- 10.88 Overall, subject to the recommended conditions, the proposed separated A3 restaurant uses and associated extraction and intake ducts are not considered to result in undue harm to the levels of amenity afforded to nearby residential occupiers. The application is therefore considered to be acceptable with regard to neighbouring amenity, and accords with Policy 7.6 of the London Plan 2016 and Policy DM2.1 of the Development Management Policies 2013.

### Highways and Transportation

- 10.89 The site is located within the Angel Town Centre, and is easily accessible by public transport including the Angel Underground Station (approx. 600m away) and local bus stops (approx. 30m away), with 24-hour transport connections at the weekend. The site has a PTAL rating of '6a', which is the second-highest and indicates that it has excellent accessibility to public transport. Furthermore, Theberton Street is a restricted parking area, with 1 hour paid parking limits. It is therefore considered unlikely that patrons would arrive via private vehicle. Overall, it is considered that the operation of the restaurants not cause undue harm to the functioning of the public highway with regard to customer comings and goings. To ensure that the dispersion of patrons entering and exiting the unit is managed effectively, it is recommended that a full dispersal policy and procedure is provided as part of the Scheme of Management (Condition 12) to be submitted for approval by the Local Planning Authority prior to the first occupation of the approved A3 unit at Nos. 12-14.

### Servicing and Delivery

- 10.90 Policy DM8.6 of the Development Management Policies states that delivery and servicing should be provided off-street, particularly for commercial developments over 200 sqm gross floor area, that details of the delivery and servicing needs for the development should be submitted, and that delivery and servicing bays should be strictly controlled. Owing to the constraints of the site, an appropriate off street location for deliveries is not available.

- 10.91 The A3 'Restaurant 2' unit at nos. 12-14, the last lawful known use of which is as A2, would cover an area in excess of 200 sqm. It is therefore considered necessary to ensure that the delivery and servicing arrangements for the unit are suitable. Given the constraints of the site, off-street servicing would not be possible, and on-street servicing would therefore be required. This is consistent with the operations of the other commercial units along Theberton Street. Deliveries must not conflict with the servicing arrangements of neighbouring users, and it must be demonstrated that there would be minimal disruption to the local highway network, and to ensure that the process is effectively managed to ensure safe manoeuvres.
- 10.92 Therefore, a condition (Condition 13) has been recommended requiring that details of delivery and servicing for the A3 'Restaurant 3' unit at nos. 12-14 are submitted and approved by the Local Planning Authority prior to the first occupation of the unit. A condition (Condition 14) limiting deliveries, collections unloading and loading between the hours of 08:00-20:00 Monday to Saturday, and not at all on Sundays, is also recommended.

#### Cycling

- 10.93 Policy DM8.4 (Walking and cycling) Part C of the Development Management Policies 2013 requires the provision of secure, sheltered, integrated, conveniently located, adequately lit, step-free and accessible cycle parking. Additionally, Policy CS10 (Sustainable design) Part H of the Core Strategy 2011 seeks to maximise opportunities for cycling. The expected provision of cycle parking is outlined within Appendix 6 of the Development Management Policies 2013, which identifies the need for 1 cycle parking space for each 60 sqm of A3 floorspace. In this instance, this would be applicable to the uplift of lawful A3 floorspace only, and therefore 5no. cycle parking spaces are required to be provided for the unit at nos. 12-14.
- 10.94 At present, no cycle parking is provided within the existing site, and none is shown on the proposed plans. However, officers note that the constraints of the site as a Grade II listed building reduce the scope for provision of cycle parking spaces internally. It is also noted that the site is located within the Angel Town Centre and with excellent accessibility to public transport (with a PTAL rating of '6a'). Therefore, whilst the omission of cycle parking provision for the A3 unit is undesirable, it is not considered to warrant a reason for the refusal of the application.

#### Pedestrian safety

- 10.95 Concern has been raised by residents that the pavement at this location is insufficient in width to accommodate tables and chairs and A-frame boards, and noting that when the restaurants are full there is often little room for pedestrians including wheelchair users. Officers note that the pavement at this location is approximately 3.2m in width. Whilst the concerns regarding pavement dining and the use of A-frame boards is noted, these do not form part of the application currently under consideration. The placement of tables and chairs upon the pavement requires a separate Tables and Chairs license, which is only issued following an assessment of the capacity of the pavement to accommodate such items.

#### Accessibility

- 10.96 Policy DM2.2 seeks to ensure that all developments demonstrate that they provide ease of and versatility in use, and deliver safe, legible and logical environments. In this instance, it is acknowledged that the units are positioned over two floors with the only access to basement level being made via internal staircases. The proposal would therefore not comply with the Council's Inclusive Design requirements. However, the lack

of compliance is not considered to warrant refusal given the application relates to an existing statutorily listed building of restricted size and layout.

### **Refuse and Recycling**

- 10.97 The application does not provide details of refuse and recycling storage for the units. However, officers note that there is sufficient space shown on the plans to provide the required storage. Therefore, a condition (Condition 15) has been recommended requiring details of the proposed refuse and recycling facilities to be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the new A3 'Restaurant 2' unit at nos. 12-14. This does not apply to the existing lawful A3 units at nos. 10 and 16.

### **Other Matters**

- 10.98 Concerns have been raised by some neighbouring residents with regard to the applicant's history of non-compliance with building regulations, alcohol licenses and a disregard for regulations. It has been stated that some residents do not have confidence that the recommended conditions would be complied with. Whilst Officers have considered these concerns, it is important to note that each application is assessed on its own merit; any failure to comply with the conditions attached to either the planning permission or listed building consent would be a planning enforcement matter. This is outside of the scope of the applications at hand.
- 10.99 Concerns have also been raised with regard to the noise impacts of the existing extraction equipment, noting that the current systems are noisy and cause harm to the amenities afforded to residents at properties on the eastern side of Studd Street. Officers note that the scope of the assessment under these applications is limited to the proposal under consideration, which incorporates the installation of 2no. extraction flues at the rear of nos. 10 and 12. Several conditions have been recommended in order to control the design and operation of these flues. Any concerns relating to the lawfulness of existing equipment is a planning enforcement matter.

## **11. SUMMARY AND CONCLUSION**

### **Summary**

- 11.1 A summary of the proposal is set out at section 4 of this report.

### **Conclusion**

- 11.2 It is recommended that planning permission be granted subject to conditions and planning obligations as set out in Appendix 1 – RECOMMENDATIONS.

## APPENDIX 1 – RECOMMENDATIONS

### RECOMMENDATION A – FULL PLANNING APPLICATION

That the grant of planning permission be subject to **conditions** to secure the following:

#### List of Conditions:

<b>1</b>	<b>Commencement</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Re-instatement works</b>
	<p>CONDITION: Notwithstanding Condition 1, the re-instatement of internal walls, doors and floors hereby permitted shall be completed in their entirety in accordance with the approved plans and particulars within 6 months of this permission and thereafter shall be so maintained,</p> <p>REASON: To ensure that the unauthorised operations cease within a reasonable timeframe and replaced by the development hereby approved, and in the interest of the character, appearance and setting of the heritage assets.</p>
<b>3</b>	<b>Approved plans list</b>
	<p>CONDITION: The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Acoustic impact of proposed change of use to A3 restaurant 180802-R001 dated 10/09/2018; Acoustic Design Note 180802-R002 dated 03/01/2019; Acoustic Design Note 180802-R004 dated 19/05/2019; Acoustic Design Note 180802-R005 dated 10/09/2019; Site Location Plan 18028; and drawing numbers: 522. (1).1.001 Rev D, 522. (1).1.002 Rev D, 522. (1).1.003 Rev A, 522(1).1.101 Rev C, 522. (1).1.102 Rev B, 522. (1).2.001, 522. (1).2.002 Rev C, and 522. (1).5.001.</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Planning Act 1990 as amended and also for the avoidance of doubt and in the interest of proper planning.</p>
<b>4</b>	<b>Materials (Compliance)</b>
	<p>MATERIALS (COMPLIANCE): The development shall be constructed in accordance with the schedule of materials noted on the plans and within the Design and Access Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard.</p>

<b>5</b>	<b>Hours of Operation</b>
	<p>HOURS OF OPERATION: The A3 unit at Nos. 12-14 Theberton Street shall not operate outside the hours of:</p> <p>Monday to Thursday – 07:00am to 11.00pm  Friday to Saturday – 07.00am to Midnight  Sunday and Bank Holidays – 08:00am to 10.00pm</p> <p>REASON: To ensure that the proposed development does not have an unacceptable adverse impact on neighbouring residential amenity.</p>
<b>6</b>	<b>Noise Insulation Measures</b>
	<p>NOISE INSULATION MEASURES: Notwithstanding Condition 1, full particulars and details of a scheme for sound insulation between the ground and basement floor restaurant use and upper floors residential of the buildings at Nos. 12-14 Theberton Street shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the decision notice date. The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be implemented and shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.</p> <p>REASON: To address potential sound transmission from the basement and ground floor operation to residential uses above given the juxtaposition of noise generating uses and noise sensitive residential properties.</p>
<b>7</b>	<b>Operational Noise Compliance</b>
	<p>OPERATIONAL NOISE COMPLIANCE CONDITION: Notwithstanding Condition 1, a report is to be commissioned by the applicant, using an appropriately experienced &amp; competent person, to assess the noise from the restaurant use to demonstrate compliance with Islington's Technical Advice For Consultants On Sound Insulation And Noise Control Criteria For Entertainment Licensed Premises. The report shall include site measurements following completion of the sound insulation. The report shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the sound installation and noise control measures approved as part of Condition 6 being installed.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>8</b>	<b>Mechanical Plant Noise</b>
	<p>CONDITION: The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level <math>L_{Aeq Tr}</math> arising from the proposed plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 10dB(A) below the background noise level <math>L_{AF90 Tbg}</math>. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142: 2014.</p> <p>REASON: To control plant noise from kitchen extracts.</p>

<b>9</b>	<b>Mechanical Plant Compliance Report</b>
	<p>MECHANICAL PLANT COMPLIANCE REPORT: Notwithstanding Condition 1, a report is to be commissioned by the applicant, using an appropriately experienced &amp; competent person, to assess the noise from the proposed mechanical plant to demonstrate compliance with condition 8. The report shall include site measurements of the plant insitu. The report shall be submitted to and approved in writing by the Local Planning Authority with 3 months of the installation of the plant hereby approved. REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>10</b>	<b>Hours of operation (plant and extract)</b>
	<p>CONDITION: Prior to the hereby approved plant equipment being used, a timer shall be installed and thereafter shall be so maintained limiting the operation of the/any mechanical plant to between the hours of:</p> <p>Monday to Thursday - 07:00am to 11.00pm  Friday to Saturday - 07.00am to Midnight  Sunday and Bank Holidays - 08:00am to 10.00pm</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>11</b>	<b>Flues/Extraction Systems:</b>
	<p>FLUES/EXTRACTION SYSTEMS (DETAILS) CONDITION: Notwithstanding the hereby approved plans and documents, detailed drawings of the design of the kitchen extraction flues and intake duct shall be submitted to the Local Planning Authority within 2 months of the decision notice date. Details provided shall include treatment, materiality and colour.</p> <p>The kitchen extraction flues and intake duct shall be carried out strictly in accordance with the details so approved and shall be so maintained thereafter.</p> <p>The flues shall be fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with a 0.4-0.8 second residence time) or alternatively fine filtration followed by carbon filtration and by counteractant/neutralising system to achieve the same level as above.</p> <p>The filter systems of the approved flue / extraction units shall be regularly maintained and cleaned; and any filters and parts requiring cleaning or replacement shall be easily accessible.</p> <p>REASON: To ensure that the resulting appearance and construction of the development is of a high standard, and in the interest of protecting future residential amenity.</p>

<b>12</b>	<b>Scheme of Management</b>
	<p>SCHEME OF MANAGEMENT CONDITION: A scheme of management for the A3 (restaurant) unit at Nos. 12-14 Theberton Street hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the unit. The Scheme of Management shall include:</p> <ul style="list-style-type: none"> <li>a) covers numbers and method of dispersion of covers within the restaurant;</li> <li>b) a full dispersal policy and procedure;</li> <li>c) signs to request patrons to leave in a quiet manner;</li> <li>d) bottling out and waste management noise and times;</li> <li>e) control and levels of noise from amplified music;</li> <li>f) control of any noise from any designated smoking area; and</li> <li>g) close down policy.</li> </ul> <p>The operation of the unit shall at all times be carried out in accordance with the approved Scheme of Management.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring amenity, including cumulative impacts given the location of the site within close proximity to residential uses.</p>
<b>13</b>	<b>Delivery and Servicing</b>
	<p>CONDITION: Details of delivery and servicing of the hereby approved A3 unit at Nos. 12-14 Theberton Street shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the units.</p> <p>The servicing arrangements shall be operated strictly in accordance with the details so approved, shall be maintained as such thereafter and no change there from shall take place without the prior written consent of the Local Planning Authority.</p> <p>REASON: To ensure that the resulting servicing arrangements are satisfactory in terms of their impact on highway safety and the free-flow of traffic.</p>
<b>14</b>	<b>Hours of Delivery and Servicing</b>
	<p>CONDITION: Deliveries, collections, unloading, loading for the hereby approved A3 unit at Nos. 12-14 Theberton Street shall only be carried out between the following hours:</p> <p>Monday to Saturday – 08.00am to 08.00pm Sundays/Bank Holidays – not at all.</p> <p>REASON: To minimise the impact of deliveries and servicing on neighbour amenity.</p>
<b>15</b>	<b>Details of refuse and recycling</b>
	<p>CONDITION: Prior to the first use of the hereby approved A3 unit at Nos. 12-14 Theberton Street, details of refuse and recycling storage and management shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and retained thereafter into perpetuity.</p> <p>REASON: To ensure the proposal benefits from adequate refuse and recycling facilities.</p>

<b>16</b>	<b>Condition</b>
	<p>CONDITION: For the avoidance of doubt and notwithstanding the details shown on the hereby approved drawing number 522.(1).2.002 Rev, no permission is granted for the use of brick pier downstands between unit nos. 12 and 14 within the rear extension at basement or ground floor levels. The demarcation of the units at both basement and ground floor levels shall be undertaken via the re-insertion of new spine walls, in accordance with the hereby approved drawing numbers 522.(1).1.001 Rev D and 522.(1).1.002 Rev D.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring amenity, including cumulative impacts given the location of the site within close proximity to residential uses.</p>

**List of Informatives:**

<b>2</b>	<b>Other Legislation</b>
	You are advised that the planning permission hereby approved would be subject to fully complying with other legislation outside the realms of the planning regulations including licensing, environmental acts, building control and fire safety regulations.

**RECOMMENDATION B – LISTED BUILDING CONSENT**

That the grant of listed building consent be subject to **conditions** to secure the following:

**List of Conditions:**

<b>1</b>	<b>Commencement</b>
	<p>3 YEAR CONSENT PERIOD FOR LBC: The works hereby permitted shall be begun not later than three years from the date of this consent.</p> <p>REASON: To comply with the provisions of Section 18(1)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Re-instatement of internal walls, doors and floors</b>
	<p>CONDITION: Notwithstanding Condition 1, the re-instatement of internal walls, doors and floors hereby permitted shall be completed in their entirety in accordance with the approved plans and particulars within 6 months of this permission and thereafter shall be so maintained,</p> <p>REASON: In order to safeguard and enhance the special architectural or historic interest of the heritage asset.</p>
<b>3</b>	<b>Internal doors</b>
	<p>CONDITION: The new doors shall be six panelled timber doors with mouldings to the ground floor, and four panelled doors without mouldings to the basement floor. The doors shall be recessed panelled doors and not raised and fielded panelled doors and shall be retained as such thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the</p>

	heritage asset.
<b>4</b>	<b>All external and internal works to match (compliance)</b>
	<p>CONDITION: All new external and internal works and finishes and works of making good to the retained fabric shall match the existing adjacent work with regard to the methods used and to material, colour, texture and profile. All such works and finishes shall be maintained as such thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the heritage asset.</p>
<b>5</b>	<b>Flues/Extraction Systems</b>
	<p>FLUES/EXTRACTION SYSTEMS (DETAILS) CONDITION: Notwithstanding the hereby approved plans and documents, detailed drawings of the design of the kitchen extraction flues and intake duct shall be submitted to the Local Planning Authority within 2 months of the decision notice date. Details provided shall include treatment, materiality and colour.</p> <p>The kitchen extraction flues and intake duct shall be carried out in accordance with the details subsequently so approved and shall be so maintained thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the heritage asset</p>

**List of Informatives:**

<b>2</b>	<b>Other Legislation</b>
	You are advised that the planning permission hereby approved would be subject to fully complying with other legislation outside the realms of the planning regulations including licensing, environmental acts, building control and fire safety regulations.

## **APPENDIX 2: RELEVANT POLICIES**

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

### **1. National Guidance**

The National Planning Policy Framework 2019 and Planning Policy Guidance (PPG) seek to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF and PPG are material considerations and have been taken into account as part of the assessment of these proposals.

### **2. Development Plan**

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

- a. **The London Plan 2016** - Spatial Development Strategy for Greater London
    - Policy 4.1 – Developing London’s economy
    - Policy 4.4 – Promoting Town Centres
    - Policy 4.6 – Support for and enhancement of arts, culture, sport and entertainment
    - Policy 5.3 – Sustainable design and construction
    - Policy 6.9 – Cycling
    - Policy 6.10 – Walking
    - Policy 7.2 – An inclusive environment
    - Policy 7.4 – Local Character
    - Policy 7.6 – Architecture
    - Policy 7.8 – Heritage assets and archaeology
  - b. **Islington Core Strategy 2011**
    - Policy CS5 – Angel and Upper Street
    - Policy CS9 – Protecting and enhancing Islington’s built and historic environment
    - Policy CS14 – Retail and services
  - c. **Development Management Policies June 2013**
    - Policy DM2.1 – Design
    - Policy DM2.2 – Inclusive design
    - Policy DM2.3 – Heritage
    - Policy DM3.7 – Noise and vibration (residential uses)
    - Policy DM4.2 – Entertainment and the night-time economy
    - Policy DM4.3 – Location and concentration of uses
    - Policy DM6.5 – Landscaping, trees and biodiversity
    - Policy DM7.1 – Sustainable design and construction
    - Policy DM8.2 – Managing transport impacts
    - Policy DM8.3 – Public transport
    - Policy DM8.4 – Walking and cycling
    - Policy DM8.5 – Vehicle parking
    - Policy DM8.6 - Delivery and servicing for new developments
    - Appendix 6 – Cycling
- ### **3. Designations**
- Grade II listed buildings
  - Barnsbury Conservation Area (and Article 4 Direction)
  - Archaeological Priority Area – Islington Village
  - Within 50m of boundaries of the Angel and Upper Street North conservation areas
  - Core Strategy Key Area – Angel & Upper Street
  - Angel Town Centre
  - Article 4 Direction (A1-A2 Town Centres)
  - Within 100m of TLRN

- Cycle Route (Local)
- Cycle Route (Strategic)
- Site within 100m of Transport for London Road Network

#### **4. SPD/SPGS**

- Urban Design Guide 2017
- Conservation Area Design Guidelines



---

## Appeal Decisions

Site visit made on 24 June 2015

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 16 July 2015**

---

### **Appeal A – Notice LBEN 1 - Ref: APP/V5570/F/14/2220714 4 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mehmet Kocakerim against a Listed Building Enforcement Notice (LBEN 1) issued by the London Borough of Islington (the LPA).
  - The Council's reference is E/2014/0347.
  - The notice was issued on 15 May 2014.
  - The alleged contraventions (numbered 1 to 11) of listed building control are set out in Appendix 1 attached to and forming part of the notice.
  - The various requirements of the notice, in relation to each of the 11 alleged contraventions, are also set out Appendix 1.
  - The differing periods for compliance with the requirements are also set out in Appendix 1.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 

### **Appeal B – Notice LBEN 2 - Ref: APP/V5570/F/14/2220716 8 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mehmet Kocakerim against a Listed Building Enforcement Notice (LBEN 2) issued by the London Borough of Islington (the LPA).
  - The Council's reference is E/2014/0348.
  - The notice was issued on 15 May 2014.
  - The alleged contraventions (numbered 1 to 9) of listed building control notice are set out in Appendix 1 attached to and forming part of the Notice.
  - The requirements of the notice, in relation to each of the 9 alleged contraventions, are also set out in Appendix 1.
  - The differing periods for compliance with the requirements are also set out in Appendix 1.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 

### **Appeal C – Notice LBEN 3 - Ref: APP/V5570/F/14/2220720 10, 12, 14 & 16 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mehmet Kocakerim against a listed building enforcement notice issued by the London Borough of Islington (the LPA).
- The Council's reference is E08/03958.
- The notice was issued on 15 May 2014.
- The alleged contraventions (numbered 1 to 29) of listed building control are set out in

Appendix 1 attached to and forming part of the notice.

- The requirements of the notice, in relation to each of the 29 alleged contraventions are also set out in Appendix 1.
  - The differing periods for compliance with the requirements are also set out in Appendix 1.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 

**Appeal D - Notice PEN 1 – Ref: APP/V5570/C/14/2225985  
10, 12, 14 & 16 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mehmet Kocakerim against an enforcement notice issued by the London Borough of Islington (the LPA).
  - The Council's reference is E/2014/0369.
  - The notice was issued on 15 August 2014.
  - The breach of planning control as alleged in the notice is: the amalgamation of the basement and ground floors of four individual properties (10, 12, 14 & 16) Theberton Street and their use as a single restaurant unit (A3).
  - The requirement of the notice is to cease the use of the ground floors and combined basement area of four individual properties (10, 12, 14 & 16 Theberton Street N1 0QX) as a single restaurant unit (A3).
  - The period for compliance with the requirements is three (3) months.
  - The appeal is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
- 

**Decisions**

1. **Appeal A:** The appeal is allowed in part and dismissed in part. The LBEN 1 is varied but otherwise upheld as varied (see formal decision below).
2. **Appeal B:** The appeal is allowed in part and dismissed in part. The LBEN 2 is varied but otherwise upheld as varied (see formal decision below).
3. **Appeal C:** The appeal is allowed in part and dismissed in part. The LBEN 3 is varied but otherwise upheld as varied (see formal decision below).
4. **Appeal D:** The appeal is dismissed; the enforcement notice PEN1 is upheld and planning permission on the deemed application is refused (see formal decision below).

**The Notices and matters of clarification**

5. There are 3 Listed Building Enforcement Notices (LBENs 1, 2 & 3) and one Planning Enforcement Notice (PEN 1). The allegations, requirements and compliance periods are set out in Appendices to each notice (Appendix 1) under Schedules 2, 4 and 5 attached to the notices. These are summarised below for each of the decisions relating to LBEN 1 (Appeal A), LBEN 2 (Appeal B) and LBEN 3 (Appeal C). The breach of control, requirements and compliance period for PEN 1 (Appeal D) are set out above.
6. LBEN 1 (Appeal A) relates to No 4 Theberton Street; LBEN 2 (Appeal B) to No 8; and LBEN 3 (Appeal C) and PEN 1 (Appeal D) to Nos 10 to 16 inclusive. There is a detailed planning history relating to all properties (for part see below). I am only empowered to deal with these four notices and the allegations, requirements and compliance periods therein. In Appeal D there was no appeal under ground (c) although on behalf of the appellant it is contended that planning permission for the amalgamated restaurant use is not required. I deal with this matter below under Appeal D.

### **Background information and relevant policy**

7. All of the six late Georgian, terraced, appeals properties are listed in Grade II and comprise three stories with basements. They date back to around the 1830s. They are located on the east side of Theberton Street and within the Barnsbury Conservation Area (BCA). All of the ground floors are presently used as restaurants, although one unit (No 14) is part retail to the front. The various properties are all owned by the Appellant. There are links at basement level between Nos 10 to 16. The initial alleged contraventions of listed building control date back to November 2008 and these are set out in the detailed planning history submitted by the Council. Some works were stated to be 'permitted' by the conservation officer via an e-mail of February 2009. These works related to 'like for like repairs'; 'minimum works' to keep the buildings watertight and 'minimum works to maintain the structural stability' of the buildings. There was also enforcement action taken in relation to retractable canopies in August 2010 but, following approvals and consents, these enforcement files were closed.

### **Appeals A, B and C**

8. In March 2013 the LPA wrote to the appellant referring to a total of 98 alleged contraventions of listed building control. Since 2008 over 60 various applications for planning permission (PP); Listed Building Consent (LBC) and Advertisement Consent (AC) have been dealt with by the LPA. Most were approved but the creation of rear basement extensions and some conversion works for the upper floors to create flats were, amongst others, refused permission and consent. A change of use from office to restaurant was allowed on appeal in 2009 at No 16. These and the rest of the applications are all set out in Table A attached to the LPA delegated report dated 14 May 2014.

9. Some of the alleged contraventions of listed building control relate to non-compliance with some of these earlier planning permissions (PP) and listed building consents (LBC). These contraventions are all set out in the various 'Appendix 1' details below. There is an 'Appendix 1' attached to all three LBEN notices. With regard to what has already been granted permission and/or consent, the Appellant specifically refers to LBC (P110482) and AC (P110687) for the erection of the retractable canvas canopy and the discharge of Condition No 4 (P110482C4) attached to the LBC.

### **Appeal D**

10. The four ground floors and basements at Nos 10, 12, 14 and 16 are all connected and, at the time of my visit, appeared to be operating as one planning unit in A3 use (though with the part retail element to the front of No 14). Numbers 8 and 10 ('Mem and Laz') operate as two restaurants with only one kitchen in No 8. Number 10 is linked at basement level to Nos 12, 14 and 16. There are no approvals in place for the linked use. The LPA also indicates that there is no PP in place for A3 use at No 12, yet this is currently being used in association with No 14 ('Biskuvi Café'). This also does not have an authorised A3 use. At the time of my visit this unit was partly in use as retail (A1). It is contended on behalf of the appellant that PP is not required for the amalgamation of the individual premises into a combined A3 uses. However, an appeal under ground (c) has not been made and I must base my decisions on all of the submissions. I deal with this particular matter in detail below under Appeal D.

11. At No 16 (known as 'La Vita e bella') the LPA noted that the basement and ground floor were operating as a restaurant. The use of the basement, ground and first floor for restaurant use was granted on appeal in 2009. However, various conditions attached to the permission/consent have not been discharged. These include

conditions relating to refuse storage; extract system; the shopfront; doors and secondary glazing; noise attenuation and ventilation. On this basis the LPA contends that the use of No 16, as a restaurant, is in breach of planning control. In July 2012 the Council's Licensing Team issued a 'Closure Notice' pursuant to Section 19 of the Criminal Justice and Police Act 2001. On 5 June 2013 planning permission was refused for the amalgamation of the units at 10, 12, 14 and 16 to a single A3 restaurant use. Nos 12 and 14 had also previously been in use as a A2 office.

12. During my visit I inspected all of the frontages to the premises and specifically noted each and every one of the matters alleged to be contraventions of listed building control. I also inspected the interior of the premises and noted in particular the rear and basement areas to Nos 10 to 16 which had been amalgamated into one large restaurant area with some storage use in one of centrally located units. However, the storage was for typical restaurant furniture and the space was still capable of being used as part of the combined basement restaurant area.

### **Relevant Policies**

13. The relevant policies for Appeals A, B and C are Core Strategy Policy CS9 (Protecting and enhancing Islington's built and historic heritage) and Policy DM 2.3 of Development Management Policies (Conserving and enhancing the historic environment). These are up to date and accord with national policy in the National Planning Policy Framework (NPPF) which also seeks to conserve and enhance the historic environment. The NPPF seeks to ensure that when considering the impact of development (or works) great weight is given to the asset's conservation and that where any loss or harm would lead to less than substantial harm to significance, then the harm should be weighed against the public benefits of the proposals including securing its optimum viable use.

14. The relevant policies for Appeal D are DM2.1 (Protecting Amenity); DM4.1 (Maintaining and promoting small independent shops); DM4.2 (Entertaining and the night-time economy); DM4.3 (Location and concentration of uses) and DM4.4 (Promoting Islington's Town Centres).

15. In reaching my decisions in these appeals I have taken into account all of the relevant NPPF policies and the guidance set out in Planning Practice Guidance (PPG). I have had special regard to sections 16 (2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) and have paid special attention to section 72 of the same Act. Other material considerations in these appeals include the English Heritage (EH), Historic Environment Good Practice Guide in Planning, Notes 2 and 3 and Islington's SPG (Conservation Area Design Guidelines) Barnsbury Conservation Area. The former replace earlier EH conservation advice and PPS 5.

### **Main issues**

16. The main issues in Appeals A, B and C are the effects that the various works have had on the listed buildings, their settings and their features of architectural and historic interest and on the character and appearance of the conservation area. For each of the appeals I have set out an introduction and then considered each of the alleged numbered contraventions separately. I have also considered the cumulative impact in relation to each notice.

17. The main issues in Appeal D relate to the effects of the alleged change of use on the living conditions of nearby residents with particular reference to noise and disturbance caused by the cumulative effect of the combined uses of the properties for A3 purposes (see Appeal D below).

## **Appeal A on ground (e) No 4, LBEN1**

### ***Introduction***

18. It is difficult to envisage that any co-ordinated thought, (in terms of the effect on the listed building), went into the design of the frontage to No 4 (or the other frontages). The overall 'hotchpotch' (or mismatching nature) of fixtures and fittings detracts markedly from the character of the listed building. Most of the various unauthorised works carried out are harmful to the listed building. Each element of the works is perceived as being randomly chosen to suit some immediate need based on a particular situation at any one time. Some light fittings are black, some are chrome finished and others are clearly neither modern, nor based on any appropriate historic type fitting. Most are also inappropriately and seemingly randomly positioned on the historic shop frontage without any consideration whatsoever for either their individual or cumulative effect on the architectural detailing of the building.

19. The overall result, in my view, is that most of the unauthorised works (items 1 to 11), as carried out, has resulted in harm being caused to the integrity of the building, to its setting and to its architectural and historic features. I do not accept that the shop fronts are basically modern and, therefore that the works have not impacted upon the architectural and historic interest. The underlying historic frontages are still distinctly noticeable and although some of the timber work might have a modern appearance the basic architectural features of pilasters, heads to pilasters, bracketed fascia stops and timber cornicing are all still recognisable. Having reached this conclusion on the majority of the allegations, however, I do find that some of the elements are acceptable in their own right and I now turn to each of the allegations.

### ***Assessment of each of the alleged contraventions (11 No)***

#### ***1. Installation of three external spotlights to illuminate the fascia sign***

20. The black spotlights are fixed at a high level on the fascia and, although small in themselves, they are inappropriate for this historic frontage. Due to their basic size, colour and modern appearance, they detract markedly from the character of the listed building and are perceived as obtrusive and harmful elements attached to the building. They have not been positioned in any logical position; they contribute to the negative 'hotchpotch' of harmful fittings and I do not consider that LBC should be granted for their retention.

#### ***2. Installation of three upward facing Ansell spotlights at first floor level***

21. The upward facing spotlights, on the other hand, are not attached to the timber fascia of the shop frontage and are positioned above the top of the timber shop front. This means that they line through with the bottom of the brickwork. I consider that these elements are appropriate and that they are not visually harmful to the building. Even when their cumulative effect is taken into account, they are not perceived as part of the harmful clutter or 'hotchpotch' of fittings attached to the frontage. I consider, therefore, that LBC should be granted for these Ansell spotlights.

#### ***3. Installation of two small lights on the pilasters of the shop front***

22. These two lights are also small but add to the un-coordinated visual clutter to the frontage of the listed building. Like item 1 above, I consider that they detract from the appearance of the building and, for the same reasons; I do not consider that they should be granted LBC.

#### **4. Incorporation of wrought iron detailing to the shop front stall riser**

23. The modern wrought iron detailing to the shop front stallriser looks distinctly incongruous when seen against the basic timber detailing of the pilasters and the rest of the shop front. The black painted metalwork is more akin to some form of internal decorative feature and looks distinctly out of character. In my view, it should play no part in the design of a historic frontage of this date and age. I find it harmful to the building, to its setting and to the architectural and historic lower part of the frontage/stallriser. For these reasons, I do not consider that LBC should be granted for the retention of this part of the unauthorised works.

#### **5. Installation of an alarm box to front elevation at first floor level**

24. I do not consider that the alarm box looks incongruous. It is not overly large and is the sort of fitting one would expect, and indeed need, on a building such as this. I noted other alarm boxes in the vicinity and I find this one to be acceptable. LBC will be granted for this item.

#### **6. Display of a hanging sign to the front elevation at first floor level**

25. There are many hanging signs in the vicinity and I noted their detailing. The one attached to No 4, despite the wrought iron frame and hanging fixture is not in itself discordant. I do not consider that its design or detailing detracts from the design qualities of the listed building. However, I find that due to its modern design and its position at such a high level, it detracts markedly from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural and historic terms. I do not consider that LBC should be granted for this sign.

#### **7. Installation of a CCTV camera on right hand side of pilaster**

26. Whilst accepting the need for CCTV installations, I consider that this particular fixture, albeit small, is incongruous when seen in the context of the overall frontage and the other inappropriate fixtures. Within a short space of each other there are modern black spotlights, shiny chrome spotlights (with ill-fitting round brackets) and the CCTV camera. Again I find that the overall visual clutter is harmful to the integrity of the listed building, its setting and its features or architectural and historic interest: namely the pilasters and framework to timber shop front. It follows that I do not consider that LBC should be granted for this item.

#### **8. Installation of two external lights and a lantern above front door**

27. These two lights and the black lantern are another example of a complete mismatch in design which detracts from the appearance of the listed building. In particular the two lights are fixed with a round bracket fixing to a smaller section of the upper timber frame. Because the fixings are larger than the part of the timber framing, they look completely out of place and are crudely fixed. The black lantern light also looks incongruous with its inappropriate ornate detailing. It exacerbates the overall negative appearance of the fixtures to this part of the building. These two elements clearly add to the visual harm to this part of the listed building and, again, I do not consider that LBC should be granted for their retention.

#### **9. Application of weather-struck pointing, front elevation first and second floor levels**

28. Having seen the weather-struck pointing, I share the Council's concerns about the effect on the listed building. I acknowledge that the pointing is not all that pronounced and that the Flemish Bond yellow brickwork is still distinctly recognisable. However, when seen from across the road the resulting appearance is one which

results in an unacceptable 'patchwork type' looking façade. The lines of the pointing, rather than the subtlety of the brickwork colour, dominates and detracts from the architecturally and historically interesting Georgian elevations.

29. I also agree with the Council that the use of 'cement mortar' compromises the integrity of the brickwork. I have noted the agent's and the contractor's comments on weather-struck pointing and accept the arguments regarding the inconvenience and expense that would be caused if the works carried out were considered to be unacceptable. I also noted other nearby examples of such pointing. However, the arguments put forward cannot be justification to retain further inappropriate pointing that, in my view, has affected the integrity of the building, its setting and the features of architectural and historic importance (the brickwork façades)

**10. Application of valence to awning not in accordance with drawing Ref 238. (1) 4-001 of LBC P110482 dated 01 July 2011.**

30. I find this item to be insignificant and I do not consider that the small valence to the approved awning causes any noticeable visual harm to the building. I saw other valences in the locality and consider that this particular one does not harm the building; its setting or any of its architectural or historic features. Nor does it significantly contribute to the cumulative effect of the other unauthorised works. I conclude, therefore, that LBC should be granted for this item.

**11. Internal cladding with cobble / rubble stone and tile to walls and ceiling**

31. There is nothing before me to indicate the state or condition of the interior to No 4 prior to works commencing and the Council accepts that there is no evidence to indicate any loss of any historic fabric. The Council also acknowledges that there must be some scope to alter the interior of listed premises and indeed, such works can be reversed at a future date. Having seen these works as carried out I find them somewhat bizarre and extreme in design terms for a Georgian property of this age. However, the plan form to No 4 was still recognisable and the finishes appeared to be mainly applied rather than structural. The list description does not detail any specific internal areas and thus, overall, I do not consider the principle of such decoration to be a significant issue with regard to the effect on the listed building.

**Overall conclusion**

32. I have found that the majority of the items above have harmed the listed building, its setting and some of its features of architectural and historic interest. It follows that these unauthorised works neither preserve nor enhance the character or appearance of the Barnsbury Conservation Area.

33. But, for the reasons set out above I have concluded that items 2, 10 and 11 are acceptable and Appeal A succeeds in relation to these matters. LBC will be granted for these items and LBEN 1 will be varied to remove the requirements relating to these works.

34. However, Appeal A fails in relation to items 2, 3, 4, 5, 6, 7, 8 and 9. LBC will not be granted for the works which have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA)

**Appeal B on ground (e) No 8, LBEN 2  
Introduction**

35. Many of the items dealt with under Appeal A above are the same as for Appeal B. I have not, therefore, repeated the reasoning in full where the items are the same or

similar. Again I have considered the cumulative impact and have found some items to be acceptable.

**Assessment of each of the alleged contraventions (9 No)**

**1. Installation of three external spot lights that illuminate the fascia sign**

36. For the same reasons as set out in Appeal A (item 1, paragraph 20) above, I do not consider that LBC should be granted for these particular spotlights which appear to be the same as those fixed to the No 4 frontage.

**2. Installation of three upward facing Ansell spotlights at first floor level**

37. For the same reasons as set out in Appeal A (item 2, paragraph 21) above, I consider that LBC should be granted for these upward facing spotlights. I do not find them to be harmful to the listed building in any way.

**3. Installation of an alarm box to the front of the building at first floor level**

38. For the same reason as set out in Appeal A (item 5, paragraph 25) above, I consider that LBC ought to be granted for the alarm box. In my view this is 'diminimis' in terms of its impact on the listed building and should be allowed to remain in place.

**4. Installation of two small lantern lights on the pilasters of the shop front**

39. Having seen these two lights attached to the pilasters I consider that they are inappropriate and harmful fixtures. Again the style and detailing detracts from the pilasters and the fittings contribute to the negative effect on the character of the building, its setting and its features of architectural and historic interest. I do not consider that LBC should be granted for these fittings.

**5. Installation of a CCTV camera on the right hand pilaster when viewed facing front**

40. This is yet another case whereby a random fitting has been attached to the frontage, seemingly without any thought about its specific visual effect on the building. The CCTV camera does not match others that have been used and again contributes to the insensitive and inappropriate hotchpotch of inappropriate works to the building. I accept that it is not large and that some form of security is needed. However, due to its specific design and its cumulative visual impact, I find that it is harmful to the building and to its setting. I do not consider that LBC should be granted for this particular fixture.

**6. Installation of two external lights and a lantern above the front door**

41. For the same reasons set out in Appeal A (item 8, paragraph 27) above, I do not consider that LBC ought to be granted for these harm external lights and the lantern light above the front door to the premises.

**7. Display of a hanging sign to the front elevation at first floor level**

42. This particular sign is attached to a wrought iron bracket. Again it is at a high level between two of the windows and I find that its position and modern bracket detailing detract from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural or historic terms. I do not consider that LBC should be granted for this particular sign.

**8. Application of weatherstruck pointing to the front elevation**

43. For the reasons set out in Appeal A (item 9, paragraphs 28 & 29) above, I do not consider that LBC ought to be granted for the pointing as carried out.

**9. Incorporation of valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001 of LBC dated 30 June 2011)**

44. For the reasons set out in Appeal A (item 10, paragraph 30) above I consider that LBC ought to be granted for the incorporation of the valence.

**Overall conclusion**

45. In this appeal, again I have found that the majority of the items above have harmed the listed building, its setting and some of its features of architectural and historic interest. It follows that these unauthorised works neither preserve nor enhance the character or appearance of the Barnsbury Conservation Area.

46. But, for the reasons set out above, I have concluded that items 2, 3, and 9 are acceptable and Appeal B succeeds on ground (e) in relation to these matters. LBC will be granted for these items and LBEN 2 will be varied to remove the requirements relating to these works.

47. However, Appeal B fails in relation to items 1, 4, 5, 6, 7 and 8. LBC will not be granted for the works which have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

**APPEAL C on ground (e) Nos 10 to 16 LBEN3 (29 Allegations)  
No 10 Theberton Street (Mem and Laz)**

**Introduction**

48. Again some of the items dealt with under Appeal A and/or B above are the same as for Appeal C. I have not, therefore, repeated the reasoning in full where the items are the same or similar. Again I have considered the cumulative impact and have found some items to be acceptable.

**1. Installation of an alarm box to the front elevation at first floor level**

49. With regard to this item, as for similar items in Appeals A and B (items 5 and 3, paragraphs 24 & 38 respectively), I find that the alarm box is acceptable and that LBC should be granted.

**2. Installation of a brass and black door handles to the front door**

50. I acknowledge that these two items in themselves could be considered to be 'de-minimis' and that, under any normal situation it might not necessarily be considered expedient to issue a LBEN notice. However, when seen in the context of all of the other harmful additions/accretions to the front of this listed building I agree with the Council that the door handles jar with and detract from what should simply be a door with an appropriate Georgian door knob. Thus, in the overall circumstances, I find these to be harmful to the listed building and I do not consider that these two items should be granted LBC.

**3. Removal of boundary wall between No 10 and 12 Theberton Street to rear**

51. I have noted that the original boundary wall was to have been dealt with to match approved drawings (Ref TS2) of the LBC (Ref P081570). This was clearly to ensure that the historic plan form of the building could still be read and understood. By removing the wall the definition of the historic boundary has been lost and I agree

with the Council that this has caused harm to the integrity of the listed building. I do not consider, therefore, that LBC should be granted for the works as carried out and the appeal fails on this point.

52. I have noted, however, that the requirement of the notice LBEN 3 (iii), gives an alternative to reinstating the original wall. This requires a downstand at ceiling level in the same position as the former wall. In my view this would be adequate to ensure that the plan form could be understood but it would still be for the appellant to decide which alternative form of this requirement was to be carried out.

**4. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level**

53. The doors are of an elaborate design and, like the wall and ceiling finishes in other parts of the properties they do not possess any particular design links to a Georgian terraced property of this age. Again there is nothing before me to indicate the state or condition of the interior prior to the doors being installed. There is no evidence to indicate any loss of any historic fabric and from my inspection it would appear that the square openings have remained behind the formed curved heads of the doors.

54. The Council has previously acknowledged that there must be some scope to alter the interior of listed premises and again, these works can be reversed at a future date. The plan form to No 10 is still recognisable and the doors are applied decorative materials and do not affect the historic structure of the building. The list description does not detail any specific internal areas and thus, overall, I do not consider that the principle of the door installations to be an issue with regard to the effect on the listed building. I consider, therefore that LBC should be granted for their retention.

**5. Installation of a CCTV Camera on the left hand pilaster**

55. Again, although this is a small item, no thought seems to have been given to any co-ordinated appearance of the CCTV cameras on the frontage of the buildings. This results in further visual clutter to the frontage of No 10 and so for the same reasons as set out in Appeal A (item 7, paragraph 26) and Appeal B (item 5, paragraph 40), I do not consider that LBC should be granted for this particular fixture.

**6. Installation of lantern light on pilaster between Nos 10 and 12**

56. In my view this is another example of an inappropriate and visually obtrusive light fitting which adds to the unacceptable cumulative harmful effect on the listed building. For similar reasons set out in Appeal A (item 8, paragraph 27 – lantern) and Appeal B (item 4, paragraph 39), I find that the fitting is harmful to the building, to its setting and to its features of architectural and historic interest. LBC will not be granted for this item.

**No 12 Theberton Street (Daphne Room)**

**7. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level**

57. For the same reasons as those given in item 4 above (paragraphs 53 and 54), relating to No 10, I find that these doors and surrounds are acceptable and LBC will be granted.

**8. Creation of a 4 x double door openings between Nos 10 and 12 basement**

58. Again, for the reasons set out in item 4 above (paragraphs 53 and 54) I do not consider that any significant harm has been caused by these openings to the integrity of the listed building or to its features of architectural and historic interest. In my view the plan forms of the respective properties are still be recognisable and this will be more so if the former boundary walls or downstands required are reinstated. I consider that LBC ought to be granted for these double door openings.

**9. Insertion of suspended barrelled ceilings at ground floor level**

59. For the reasons set out in Appeal A (item 11, paragraph 31), I consider that LBC ought to be granted for the barrel ceiling. It is evident from the detailing and the internal height that the structural elements are still in place and that the works are, in my view, reversible.

**10. Incorporation of modern wrought iron detailing to the shopfront**

60. I find this to be most inappropriate and for the same reasons as set out in Appeal A (item 4, paragraph 23) I do not consider that LBC should be granted for the retention of this wrought iron decorative feature.

**No 14 Theberton Street (Biskuvi Café)**

**11. Insertion of elaborate timber doors and door surrounds into the rounded arch openings within original rear wall at basement level**

61. For the same reasons as set out in item 4 above (paragraphs 53 and 54) I do not consider that these doors and surrounds have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

**12. Creation of a 4 x double door width openings between Nos 12 and 14**

62. Again For the same reasons as set out in item 4 above (paragraphs 63 and 54) I do not consider that these double door width openings have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

**13. Removal of boundary wall between No 14 and 16 Theberton Street rear**

63. This is a similar situation to item 3 above (paragraph 51) and again I have noted that the original boundary wall was to have been re-built. This was again to ensure that the historic plan form of the building could still be read and understood. By removing the wall the definition of the historic boundary between the two properties has been lost and I agree with the Council that this has caused harm to the integrity of the listed buildings. I do not consider, therefore, that LBC should be granted for the works as carried out and the appeal fails on this point.

64. I have noted, however, that the requirement of the notice again gives an alternative to reinstating the original wall. This requires a downstand at ceiling level in the same position as the former wall. In my view this would be adequate to ensure that the plan form could be understood but it would still be for the appellant to decide which alternative form of this requirement was to be carried out.

**14. Installation of light on pilaster of the shopfront between Nos 12 & 14**

65. For the same reasons given for item 6 above (paragraph 56) I find that this fitting is harmful to the integrity of the listed buildings to their setting and to their historical and architectural features. The appeal fails on this item and LBC will not be granted.

**15. Incorporation of modern wrought iron detailing to the shopfront**

66. The modern wrought iron detailing to the shop front stallriser has the same detrimental effect as on the other units. It looks distinctly incongruous when seen against the basic timber detailing of shop front. The black painted metalwork looks distinctly out of character. As indicated above, in my view, such inappropriate decorative features should play no part in the design of a historic frontage of this date and age. I find it harmful to the building, to its setting and to the architectural and historic lower part of the frontage/stallriser. For these reasons, I do not consider that LBC should be granted for the retention of this part of the unauthorised works.

**16. Insertion of suspended barrelled ceilings at ground floor level**

67. For the same reasons as set out above in paragraph 59, I consider that these works are acceptable and that LBC should be granted.

**No 16 Theberton Street (La Vita e bella)**

**17. Removal of a stud wall and insertion of a waterfall feature**

68. At the time of my visit the waterfall feature was not in operation. However, it was clear how it would have operated and how it would visually affect this partition wall in the listed building. In my view the feature has resulted in another bizarre and harmful effect on the listed building. By replacing the partition wall the perceived plan form has been detrimentally affected and the feature wall has affected the integrity of the building as well as one of its defining architectural features: that is, the wall between the unit and the staircase entrance to the floors above. I do not consider that it should be allowed to remain and LBC will not be granted for its retention

**18. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level**

69. For the reasons set out paragraphs 53 and 54 above I consider that these timber doors and surrounds are acceptable and that LBC ought to be granted for their retention.

**19. Incorporation of modern wrought iron detailing to the shopfront**

70. For the reasons set out in paragraphs 23, 60 and 66 above, I do not consider that LBC should be granted for this inappropriate wrought iron decorative feature.

**20. Creation of a 4 x double door width openings between Nos 14 and 16**

71. Again For the same reasons as set out in item 4 above (paragraphs 53 and 54) I do not consider that these double door width openings have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

**21. Insertion of suspended barrelled ceilings at ground floor level**

72. Again, for the reasons set out in Appeal A (item 11, paragraph 31), I consider that LBC ought to be granted for the barrel ceiling. It is again evident from the detailing and the internal height that the structural elements are still in place and that the works are, in my view, reversible.

**Nos 10, 12, 14 and 16 Theberton Street**

**22. Installation of three external spotlights to fascia sign**

73. For the same reasons as set out in Appeal A (item 1, paragraph 20) above, I do not consider that LBC should be granted for these particular spotlights which are the same as those fixed to the No 4 frontage.

**23. Installation of three upward facing Ansell spotlights at first floor level**

74. For the same reasons as set out in Appeal A (item 2, paragraph 21) above, I consider that LBC should be granted for these upward facing spotlights. I do not find them to be harmful to the listed building in any way.

**24. Display of a hanging sign to front elevation at first floor level**

75. This is yet another different sign but it is still mounted at a high level. I find that due to its modern design and its position at such a high level, like the others, it detracts markedly from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural and historic terms. I do not consider that LBC should be granted for this sign.

**25. Installation of a lantern above the front entrance door**

76. For the same reasons set out in paragraph 56 above, I find that this particular light fitting is harmful to the listed building and that LBC should not be granted.

**26. Application of weatherstruck pointing to the front elevation first and second floor**

77. Having seen these sections of pointing from the other side of the street I consider that they are the most untidy and visual harmful sections of the works carried out. Therefore, for the reasons set out in paragraphs 28 and 29 above, I do not consider that LBC ought to be granted for the works.

**27. Valence to awning not in accordance with drawing (Ref 238.(1)4-001**

78. For similar reasons set out in paragraph 30 above, I find this item to be acceptable and LBC will be granted for its retention.

**28. Internal cladding with cobble/rubble stone and tile to walls ground floor**

79. For the same reasons as set out under Appeal A, (item 11, paragraph 31) I find these works to be acceptable and LBC will be granted for their retention.

**29. Creation of wide rounded arch openings within rear wall at basement**

80. For the same reasons as set out above for similar works in other properties (items 4, 8 and 12, paragraphs 53, 54 58 and 62 above) I conclude that this item of work does not cause harm to the integrity of the building, or to any of its architectural and historic features. I consider therefore that LBC should be granted for this item.

**Overall conclusions on Appeals A, B and C (LBEN1, LBEN2 and LBEN3)**

81. Where I have concluded above that that LBC ought not to be granted for the relevant items/allegations, I consider that all of these works are contrary to Core Strategy Policy CS9 (Protecting and enhancing Islington's built and historic heritage) and Policy DM 2.3 of Development Management Policies (Conserving and enhancing the historic environment). I also consider that they are contrary to NPPF policies relating to the requirement for good design (section 7) and conserving and enhancing the historic environment (section 12).

82. As indicated above, the NPPF seeks to ensure that when considering the impact of development (or works) great weight is given to the asset's conservation and that where any loss or harm would lead to less than substantial harm to significance, then the harm should be weighed against the public benefits of the proposals including securing its optimum viable use. Clearly the harm is less than substantial and the assets are not under any threat of loss. However, the cumulative effect has had a significant and harmful impact on the integrity of the listed buildings, their settings and their architectural and historic features. There are no public benefits which outweigh the harm caused.

83. With regard to the external elements of the works which I have found harmful, it follows that these have neither preserved nor enhanced the character or appearance of the Barnsbury Conservation Area. Prior to my visit I walked around the conservation area and also took into account the physical matters brought to my attention during the site visit. These included nearby examples of similar uses, signage and fixtures/works on other listed buildings.

84. Where I have found elements of the works to be satisfactory in listed building terms I will vary the notices accordingly and I also conclude that the acceptable external items preserve the character and appearance of the conservation area. However, any LBC for works in the amalgamated basement area does not preclude the need for planning permission for the combined A3 use (see Appeal D below).

85. In reaching my conclusions on appeals A, B and C, I have taken into account all other matters raised by the Council; those made on behalf of the appellant and those made by interested persons. The matters include the detailed and complex planning history relating to all properties; the details set out in the initial grounds of appeal; the report from the Building Restoration Specialist relating to pointing; the planning and heritage considerations; all planning and heritage policy matters raised; the general assessment; the appendices submitted and the final comments dated 21 August 2014.

86. However, none of these factors carries sufficient weight to alter my conclusions on the main issues and the specific allegations set out in the three LBEN notices. Nor is any other matter of such significance so as to change my decisions in Appeals A, B and C. The formal decisions for Appeals A, B and C are set out below. I now turn to Appeal D.

#### **Appeal D: The appeal on ground (a)**

87. In this appeal and in considering whether or not planning permission should be granted, I have had special regard to the duty under s66 of the PLBCAA. In Appeals A, B and C above I have discharged that duty under s16 in relation to each of the allegations. In this appeal I have also considered the duty in relation to the specific effect on the listed buildings with regard to the alleged breach being the amalgamation of the four basements and their use as a single restaurant. With regard to the various works carried out and which have enabled the alleged use to take place, the issues and my conclusions are obviously the same as set out in Appeals A, B and C.

88. In planning terms there are other main issues resulting from the amalgamation of the four units (basements and ground floors) into a single restaurant. The first is the effect of the loss of any retail unit in this part of Islington and the second, but most critical in my view, is the effect on the living conditions of nearby neighbours with particular reference to noise and disturbance.

89. Prior to my formal site visit I inspected the surrounding area and in particular noted the proximity of residential uses above the premises along this part of Theberton

Street and others in the locality. I also noted the dwellings in Studd Street which are closest to the rear of Nos 10 to 16 and others in Moon Street. There are significant representations from residents and Residents' Associations in the immediate area.

90. The Council contends that the amalgamated use is contrary to Development Management Policies, DM2 (Protecting Amenity), DM4.1 (Maintaining and promoting small and independent shops), DM4.2 (entertaining and the night time economy), and DM4.3 (Location and concentration of uses).

*The enforcement notice and the existing uses*

91. On behalf of the appellant it is contended that planning permission for the amalgamation of the units is not required. However, I disagree. According to the Council's records there are no formal permissions in place for A3 use of Nos 12 and 14 and it would appear that No 14 has been used latterly for a mixed use of retail and restaurant. Furthermore, I agree with the Council that, despite the authorised restaurant uses for the other parts of 10 to 16, any individual restaurant use (for separate units) will have a significantly different character of usage than one large restaurant.

92. Having inspected all of the premises I consider that, as a matter of fact and degree, the use of the cavernous basement area, currently used as a restaurant, will have significantly different characteristics of use than separate restaurants in adjoining premises. In the particular, I agree with the Council that the potential for the creation of noise and disturbance is far higher from the one large volume than from four separate spaces divided by party walls. I note that the covers are restricted to 150 due to licensing requirements but, nevertheless, this is significantly higher than any figure relating to the individual use of restaurants in this part of Theberton Street.

*The principle of A3 uses in this part of Theberton Street*

93. The Council's appeal statement refers to policy DM4.1 which seeks to maintain and promote small independent shops and to policy DM4.3 which seeks to resist restaurants where they would result in cumulative impacts due to unacceptable concentrations of noise and disturbance. However, the report dealing with the application to amalgamate the premises (P2013/1041/FUL) refers to the last lawful use of Nos 12 and 14 as being in A2 office use. If that is the case then, what in effect is sought is the change of use of Nos 12 and 14 to A3 use together with their amalgamation with the A3 uses in Nos 10 and 16.

94. Whilst accepting the aims and objectives of policy DM4.1, it would appear that the actual loss of a lawful use would be that of A2 offices. In this part of Islington, with its high concentration of retail and restaurant uses, I do not consider that the principle of separate A3 uses for Nos 12 and 14 would be significantly harmful. I acknowledge that this in theory would result in a concentration of restaurant uses along this part of the Street but the separate uses of these premises would not, in my view, be significantly and cumulatively different from the other separate lawful nearby A3 uses in Theberton Street and Upper Street.

*The amalgamated use of Nos 10, 12, 14 & 16*

95. However, whilst finding that separate uses could be acceptable, I share the concerns of the Council and others about the premises being used for one very large restaurant venue. Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller and more intimate restaurants next to each other and in separate premises.

There have been no noise mitigation measures put forward by the appellant and from what I saw I consider that the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.

95. My concerns in this respect are reinforced by the representations from people living close to the premises and the fact that the large basement area backs on to the residential properties in Studd Street and indeed, once formed a rear yard or open area. In addition it would appear that residents are also concerned about the combined use of the restaurants and the manner in which the pavement is used for eating, drinking and smoking.

97. The evidence is quite clear that the living conditions of residents who live some distance away (for example at Nos 26 and 34) are clearly affected. Having noted the locations of nearby residential properties and the relationships of some windows to the rear of the appeal premises, I consider that such a large restaurant in this mixed residential commercial area is unacceptable due to the levels of noise and disturbance already caused.

98. I note that the Theberton Street Residents' Association has consistently objected to the creation of a single restaurant at Nos 10 to 16 and objected to the application which was refused planning permission in June 2013. The evidence from Moon Street and Studd Street Residents' Associations also reinforces my view that the amalgamated use has significantly affected the living conditions of nearby residents. As well as evidence about the levels of noise and disturbance to the rear of the building, there are also written submissions from those living further up Theberton Street (Nos 26 and 34 for instance). It is clear that the noise carries for some distance and that the undue disturbance is caused by the use of the appeal premises for residents who live some distance away.

99. From the submissions before me and from noting the proximity of the A3 uses to nearby residential accommodation, I can only conclude that the quality of life for residents has been detrimentally and significantly harmed by this unauthorised amalgamated use of the appeal premises. I find that this is contrary to policies DM2, DM4.1, DM4.2 and DM4.3. It is also contrary to the policies of the NPPF which seek to ensure positive improvements in peoples' quality of life; a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings. To allow this particular change of use would have the opposite effect of these fundamental aims and objectives of the NPPF.

100. I do not consider that planning permission should be granted for the amalgamated use currently being carried out at Nos 10, 12, 14 & 16 and Appeal D therefore fails on ground (a) and the deemed application also fails.

#### **Other Matters**

101. In reaching my conclusions on Appeal D, I have taken into account all other matters raised by the Council, by interested persons and on behalf of the appellant. These include the considerable planning history, consents and permissions already granted; the detailed grounds of appeal; the general assessment; comments on the reasons for issuing the enforcement notice; all references to local and national policy; the impact on residential amenity; the various appendices submitted and the final comments dated 2 December 2014.

102. However, none of these alters my conclusions on the main points at issue and particularly on the effect on residents' living conditions. Nor is any other matter of such significance to change my decision that the appeal should be dismissed and

planning permission refused under the deemed application. The formal decision is set out below.

#### **FORMAL DECISION**

##### **APPEAL A: Notice LBEN1: See also amended Appendix 1 below**

103. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 2, 5, 10 and 11. I also direct that the times for compliance in schedule 5 of Appendix 1, for items 2, 5, 10, and 11 be deleted.

104. The appeal succeeds in part under ground (e) in relation to items numbered 2, 5, 10 and 11 as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 4 Theberton Street, London N1 0QX.

105. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 1, 3, 4, 6, 7, 8, and 9 as set out in Appendix 1, Schedule 2 to the notice and LBEN 1 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas ) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

##### **106. APPENDIX 1 – To Notice LBEN 1**

##### **Appeal A: Ref: APP/V5570/F/14/2220714**

#### ***4 Theberton Street ('Kilis Kitchen')***

##### ***The alleged contraventions of listed building control***

1. Installation of three external spotlights to illuminate the fascia sign.
2. Installation of three upward facing Ansell spotlights at first floor level.
3. Installation of two small lights on the pilasters of the shop front.
4. Incorporation of modern wrought iron detailing to the shop front stall riser
5. Installation of an alarm box to front elevation at first floor level.
6. Display of a hanging sign to the front elevation at first floor level.
7. Installation of a CCTV camera on right hand side of pilaster viewed from front.
8. Installation of two external lights and a lantern above front entrance door ground floor.
9. Application of weatherstruck pointing, front elevation first and second floor levels.
10. Application of valence to awning not in accordance with drawing Ref 238.(1) 4-001 of Listed Building Consent (LBC) P110482 dated 01 July 2011.
11. Internal cladding with cobble /rubble stone and tile to walls and ceiling at ground floor level.

##### ***For the avoidance of doubt the amended requirements of the notice LBEN1 following the variations are as follows:***

- (i) Remove all of items numbered 1, 3, 4, 6, 7, 8 and see (iii) below for item 9.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the alleged contraventions numbered 1, 3, 4, 6, 7, 8, and 9 above.
- (iii) Carefully remove the weatherstruck pointing (item 9) using hand held tools taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar.

### ***The times for compliance***

The times for compliance are as follows:

- (i) For allegations numbered 1, 3, 4, 6, 7, and 8 Three (3) months.
- (ii) For allegation numbered 9 Five (5) months.

### **FORMAL DECISION**

#### **APPEAL B: LBEN 2 See also amended Appendix 1 below**

107. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 2, 3 and 9. I also direct that the times for compliance in schedule 5 of Appendix 1, for items 2, 3 and 9 be deleted.

108. The appeal succeeds in part under ground (e) in relation to items numbered 2, 3 and 9 as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 8 Theberton Street, London N1 0QX.

109. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 1, 4, 5, 6, 7, and 8 as set out in Appendix 1, Schedule 2 to the notice and LBEN 2 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas ) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

#### **110. APPENDIX 1 - To Notice LBEN 2**

#### **Appeal B: Ref: APP/V5570/F/14/2220716**

### ***8 Theberton Street (Mem & Laz)***

#### ***The alleged contraventions of listed building control***

1. Installation of three external spot lights that illuminate the fascia sign at ground floor level.
2. Installation of three upward facing Ansell spotlights at first floor level.
3. Installation of an alarm box to the front of the building at first floor level
4. Installation of two small lantern lights on the pilasters of the shop front.
5. Installation of a CCTV camera on the right hand pilaster when viewed facing shopfront.
6. Installation of two external lights and a lantern above the front entrance door of the shopfront at ground floor level.
7. Display of a hanging sign to the front elevation at first floor level.
8. Application of weatherstruck pointing to the front elevation of the property at first and second floor levels.
9. Incorporation of a valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001 of Listed Building Consent dated 30 June 2011.

#### ***For the avoidance of doubt the revised requirements of the notice LBEN 2 following the variations are as follows:***

The requirements of the notice are to:

- (i) Remove all items numbered 1, 4, 5, 6, 7 and see (iii) below for item 8.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the alleged contraventions 1, 4, 5, 6, 7 and 8 above.
- (iii) Carefully remove the weatherstruck pointing using hand held tools taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or

slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar.

***The times for compliance***

The times for compliance are as follows:

- (i) For allegations numbered 1, 4, 5, 6, and 7, Three (3) months.
- (ii) For allegation numbered 8 Five (5) months.

**FORMAL DECISION**

**APPEAL C: LBEN 3 See also Appendix 1 to notice below**

111. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 1, 4, 7, 8, 9, 11, 12, 16, 18, 20, 21, 23, 27, 28 and 29. I also direct that the times for compliance in schedule 5 of Appendix 1, for the same numbered items be deleted.

112. The appeal succeeds in part under ground (e) in relation to items numbered 1, 4, 7, 8, 9, 11, 12, 16, 18, 20, 21, 23, 27, 28 and 29. as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 10 to 16 Theberton Street, London N1 0QX.

113. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 2, 3, 5, 6, 10, 13, 14, 15, 17, 19, 22, 24, 25, and 26, as set out in Appendix 1, Schedule 2 to the notice and LBEN 3 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

**114. APPENDIX 1 – To Notice LBEN 3**

**Appeal C: Ref APP/V5570/F/14/2220720**

***The alleged contraventions of listed building control***

***No 10 Theberton Street ('Mem and Laz')***

1. Installation of an alarm box to the front elevation at first floor level
2. Installation of a brass and black door handles to the front door of the shop.
3. Removal of boundary wall between No 10 and 12 Theberton Street to the former rear yard.
4. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix C and forming part of the notice.
5. Installation of a CCTV Camera on the left hand pilaster when viewed facing the shopfront.
6. Installation of a lantern light on the pilaster of the shopfront between Nos 10 and 12 Theberton Street.

***No 12 Theberton Street ('Daphne Room')***

7. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix C and forming part of the notice.
8. Creation of a 4 x double door width openings between Nos 10 and 12 at basement level as depicted on the attached photograph, headed

Appendix E and forming part of the notice.

9. Insertion of suspended barrelled ceilings at ground floor level.
10. Incorporation of modern wrought iron detailing to the shopfront stall riser.

**No 14 Theberton Street ('Biskuvi Café')**

11. Insertion of elaborate timber doors and door surrounds inserted into the Rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix F and forming part of the notice.
12. Creation of a 4 x double door width openings between Nos 12 and 14 at basement level as depicted on the attached photograph, headed Appendix G and forming part of the notice.
13. Removal of boundary wall between No 14 and 16 Theberton Street to the former rear yard.
14. Installation of a small light on the pilaster of the shopfront between Nos 12 and 14 Theberton Street.
15. Incorporation of modern wrought iron detailing to the shopfront stall Riser.
16. Insertion of suspended barrelled ceilings at ground floor level.

**No 16 Theberton Street ('La Vita e bella')**

17. Removal of a stud wall and insertion of a waterfall feature within the restaurant at ground floor level as depicted on the attached photograph headed Appendix I and forming part of the notice.
18. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix K and forming part of the notice.
19. Incorporation of modern wrought iron detailing to the shopfront stall riser.
20. Creation of a 4 x double door width openings between Nos 14 and 16 at basement level as depicted on the attached photograph, headed Appendix L and forming part of the notice.
21. Insertion of suspended barrelled ceilings at ground floor level.

**Nos 10, 12, 14 and 16 Theberton Street**

22. Installation of three external spotlights to fascia sign.
23. Installation of three upward facing Ansell spotlights at first floor level.
24. Display of a hanging sign to front elevation at first floor level.
25. Installation of a lantern above the front entrance door of the restaurant at ground floor level.
26. Application of weatherstruck pointing to the front elevation of the property at first and second floor levels.
27. Incorporation of a valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001.
28. Internal cladding with cobble/rubble stone and tile to walls at ground floor level.
29. Creation of wide rounded arch openings within original rear wall at basement level.

**For the avoidance of doubt the revised requirements of the notice LBEN 3 following variation are as follows:**

The requirements of the notice (LBEN3) are as follows:

- (i) Remove items 2, 5, 6, 10, 13, 14, 15, 17, 19, 22, 24, 25, 26, and 28 above. For item 26 see also (v) below.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the numbered items above.
- (iii) Reinstate original boundary wall (item 3) to define the historic boundary wall between Nos 10 and 12 Theberton Street to match the approved drawings (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008. The parts of the walls to be reinstated are high-lighted in blue on the attached Appendix B: OR Install a downstand at ceiling level measured 400mm (wide) x 300mm (high) in the same location as the original boundary wall indicated on the approved drawing (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008 (item 3).
- (iv) Reinstate original boundary wall (item 13) to define the historic boundary wall between Nos 14 and 16 Theberton Street to match the approved drawings (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008. The parts of the walls to be reinstated are high-lighted in blue on the attached Appendix H: OR Install a downstand at ceiling level measured 400mm (wide) x 300mm (high) in the same location as the original boundary wall indicated on the approved drawing (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008 (item 13).
- (v) Carefully remove the weatherstruck pointing (item 26) using hand held taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar (item 26)

**The times for compliance**

The times for compliance are as follows:

- (i) For allegations Nos 3, 13, 16, 17, and 26, - Five (5) months.
- (ii) For all other remaining numbered allegations/items (2, 5, 6, 19, 14, 15, 19, 22, 24 & 25) which have not been granted listed building consent, - Three (3) months.

**FORMAL DECISION**

**APPEAL D: PEN 1**

115. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

*Anthony J Wharton*

Inspector



---

## Appeal Decision

Site visit made on 31 October 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 20<sup>th</sup> November 2017.

---

**Appeal Ref: APP/V5570/W/16/3165702**

**10-16 Theberton Street, Islington, London N1 0QX**

- 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 Mehmet Kocakerim against the decision of the Council of the London Borough of Islington.
  - The application Ref: P2015/4037/FUL, dated 28 September 2015, was refused by notice dated 17 November 2016.
  - The development proposed is the conversion and reconfiguration of the ground floor and basement of 10-16 Theberton Street to form three restaurants (Use Class A3) comprising the following: restaurant 1, No. 16 (ground floor and basement level); restaurant 2, front part of Nos. 12 and 14 (ground floor and basement level); restaurant 3, No. 10 and rear part of Nos. 12 and 14 (ground floor and basement level and part basement level of No. 16).
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. As the proposal is in a conservation area and relates to a listed building I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. The Council and the appellant have changed the description of development. As this more accurately reflects the proposal and is not disputed I have used it for the purposes of this appeal.

### Main Issue

4. The main issue is the effect of the proposed change of use on the living conditions of the existing and future occupants of nearby residential dwellings with regard to noise.

### Reasons

5. The appeal relates to four, Grade II listed, mid-terrace Georgian buildings situated on the north side of Theberton Street within the Barnsbury Conservation Area (CA). Residential accommodation is present on the upper floors of the terrace and above the commercial frontages of the facing terrace. These frontages give way to a residential area a short distance to the west.
6. The ground floors and basements of the appeal premises have already been converted to serve an A3 use. The layout is such that they are interconnected

---

<https://www.gov.uk/planning-inspectorate>

and have the potential to operate as a single restaurant, despite being individually branded. This is especially the case at the basement level where wide openings have been created in the walls of the adjoining properties which has led to the creation of what has been described as a 'vast restaurant complex'. The works and use associated with the conversion were unlawful and have been subject to enforcement notices which have been largely upheld at appeal<sup>1</sup>. Two of the properties, Nos 12 and 14, only have a lawful A2 use at the current time.

7. The proposal is seeking to permanently close the majority of the openings that connect each property and establish a lawful A3 use in three separate restaurants. Restaurant 1 (No 16) would have 30 covers and a total area of approximately 102 m<sup>2</sup>. Restaurant 2 (Nos 12-14) would have 60 covers and a total area of approximately 151 m<sup>2</sup>. Restaurant 3 (No 10) would have 85 covers and a total area of approximately 188 m<sup>2</sup>. These areas include the cumulative floorspace rather than just the 'usable space', as indicated on the submitted plans (Ref: 434.(1).1.001 B and 434.(1).1.002 B).
8. Notwithstanding any enforcement action on matters relating to the harm that has already been caused to the listed building, I find that the proposed use of the ground floor and basement would not be detrimental to the special interest of the listed building or the significance of the CA. This is because the proposal only relates to internal alterations that would reinforce the original, compartmented plan form of the listed building. Furthermore, any other alterations associated with the proposed use that may further affect the historic building fabric or layout would require listed building consent and are thus controlled.
9. I observe from the plans and my site visit that all three restaurants would still be capable of accommodating large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings. I accept that the operation of separate restaurants would reduce the previously documented harm through a more staggered pattern of bookings. However, this would be counter-balanced by the increase in the number of covers and the fact that very large groups would still be able to book Restaurants 2 and 3. Consequently, an increase from the 150 covers noted by the previous Inspector would lead to an unacceptable, cumulative impact from the comings and goings of customers and their congregation on nearby pavements.
10. I acknowledge the previous Inspectors comments in relation to the proposed A3 use at this location and the attempt that has been made to overcome the Council's concerns. Whilst I have given the relevant decision<sup>2</sup> careful consideration I do not find it similar in all respects. This is because I do not have any evidence before me that establishes the capacity of similar, nearby restaurants on Therberton Street or Upper Street. The previous Inspector noted that the number of covers were significantly higher than other nearby restaurants but did not provide any numerical comparisons. Consequently, I do not find the separate A3 use of the different appeal properties directly comparable. Furthermore, the context of the residential properties above the premises on Upper Street is not the same given the greater levels of general activity along this busy, arterial route.

---

<sup>1</sup> APP/V5570/F/14/2220714, APP/V5570/F/14/2220716, APP/V5570/F/14/2220720, APP/V5570/C/14/2225985

<sup>2</sup> APP/V5570/C/14/2225985

11. Given the high acoustic reflectivity of the hard surfaces that characterise the interior, I also find that there would be significant potential for airborne noise transmission from within the building, especially from the double height dining area associated with Restaurant 3. Customers would inevitably raise their voices when the restaurant is full in order to be heard above the general clamour that is typically associated with such spaces in my experience. This would not only affect nearby residents, who may be using outside areas during the summer, but also the occupiers of the closely situated, first floor flats. The first impact has already been documented by one nearby resident despite a lack of windows on the rear elevation of the restaurants.
12. Turning to the second impact, I note from the sound insulation report<sup>3</sup> that potential impacts were only measured in the residential dwellings directly above Nos 14 and 16. Whilst the effect of a restaurant at No 12 was clearly considered, this was based on opinion rather than any quantitative measurement. As such, the potential for significant noise impact cannot be ruled out. I acknowledge that there were no objections from the residents directly above the restaurants but find this only carries limited weight because these properties are owned by the appellant. Consequently, any objection is unlikely to be forthcoming. Given the above, I find the assessment inadequate and that the potential harm could not be controlled through a suitable condition under such circumstances.
13. This is also the case for the proposed extraction equipment. The noise assessment<sup>4</sup> for the latter indicates that the measurement of ambient background noise was only carried out over a limited period of time between 20:43 and 22:17. As such, the extent to which the extraction equipment might exceed the ambient background noise levels was only partially assessed. This is because the opening times extend beyond these hours and includes a significant period of time when nearby residents are more likely to be at home and thus exposed to potential noise impacts that could be influenced by a more variable, ambient background. I also note that measurements were only taken at two locations and excluded the nearest receptors, i.e. residential properties immediately above the restaurants. Although the assessment states that one of the positions was on the restaurant roof, figure 1 clearly shows that this was not well related to the position of the rear extensions of the first floor, residential units which would be closer to the proposed plant. Consequently, I find the results unrepresentative and an unsound basis for informed decision-making. To this end, the evidence before me does not support the restriction of opening hours via a suitably worded condition as I have no informed basis upon which to determine the effectiveness of any specific opening restriction.
14. Given the above, I conclude that the proposal would cause significant harm to the living conditions of existing and future occupants of nearby residential dwellings with regard to noise. This would be contrary to policies DM4.2, DM4.3 and DM4.4 within *Islington's Local Plan: Development Management Policies 2013* that seek, among other things, to ensure that proposals relating to entertainment and the night-time economy do not lead to significant adverse impacts on residential amenity and that the densities of restaurants and other similar uses do not lead to significant, negative cumulative impacts or cause

---

<sup>3</sup> 10-16 Theberton Street, UKAS Accredited Sound Insulation Test Report (Ref: 8028-SI-01). February 2013.

<sup>4</sup> Noise Assessment of Kitchen Extract Plant (Ref: 5278). January 2016.

unacceptable disturbance. Consequently, the development would not be in accordance with the development plan.

**Conclusions**

15. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Roger Catchpole*

INSPECTOR

This page is intentionally left blank

# Islington SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. P2018/3973/LBC

This page is intentionally left blank

## ADDENDUM TO PLANNING COMMITTEE REPORT

Development Management Service  
 Planning and Development Division  
 Environment and Regeneration Department

<b>PLANNING SUB-COMMITTEE A</b>		<b>AGENDA ITEM NO:</b>	<b>B3</b>
<b>Date:</b>	17 <sup>th</sup> March 2019	<b>NON-EXEMPT</b>	

Application number	P2018/4159/FUL
Application type	Full Planning Application
Ward	St. Mary's
Listed building	No
Conservation area	Within 50m of Conservation Area (Canonbury)
Development Plan Context	Town Centre (Angel) Secondary Retail Frontage (Angel) Article 4 Direction A1-A2 (Town Centres)
Licensing Implications	None
Site Address	137 - 139 Essex Road, N1 2NR
Proposal	Demolition and replacement of front and rear facades (including roofing) and additions to the roof, to include a one-storey extension fronting Essex Road, and two-storey extension fronting Astey's Row (with glass box above) to accommodate 5x (1 no. 1-bedroom unit [2 person] x 2no. 2-bedroom units [3 person] x 1no. 2-bedroom units [4 person] x 1no. 3-bedroom [5 person unit) residential units; refurbishment of existing ground and first floor and creation of part basement level Class B1 office space (166sqm) and retention of ground floor (150sqm) Class A1 retail unit fronting Essex Road.

Case Officer	Mr Jake Shiels
Applicant	c/o Savills (UK) Limited
Agent	Ms Mia Scaggiante

### 1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission:

1. for the reasons for approval;
2. subject to the conditions set out in Appendix 1;
3. conditional upon the prior completion of a Deed of Planning Obligation made under section 106 of the Town and Country Planning Act 1990 securing the heads of terms as set out in Appendix 1;

## **2. REASON FOR DEFERAL**

2.1 This application was previously heard at Planning Sub-Committee A on 7<sup>th</sup> November 2019.

2.2 At the Planning Sub-Committee meeting the following points were made:

- Planning Officers acknowledged that although views looking south will be interrupted, the general outlook towards Astey's Garden will still be retained. With regards to daylight and sunlight loss, the meeting was informed that assessment had been carried out and although there were some breaches, it is considered acceptable and in line with BRE guidelines.
- In response to the applicant's commitment to reduce Co2 emission by 19%, the Planning Officer informed members that the scheme is a significant revision and not a total demolition especially as some of the floors will remain. Members were reminded that considering this scheme is a mixed use development, different standards and requirements about CO2 emissions requirements.
- On the question of whether the committee could take into consideration the Council's emerging policy on carbon emission which is more stringent, members were advised that presently this is not a material consideration until it has been approved.
- Members heard evidence from an objector. She was concerned with the erection of a high wall which is overbearing and blocks out her view. She also highlighted the loss of both sunlight and daylight and the lack of consultation following the subsequent revision to the scheme by the applicant.
- The objector indicated that although in principle she was not against the scheme. she recommended the removal of the top floor at Astey's road and had concerns of how the hours of use of the terrace would be monitored.
- In response to the objections raised above, the agent informed the meeting that this scheme was an opportunity to bring back into use a derelict and abandoned building and importantly being able to provide a mixed use scheme comprising high quality retail space, office space and residential development.
- With regard to the loss of sunlight and daylight, the consultant reminded members that BRE assessment are guidelines and not the minimal expected, with an expectation that it should be applied in a flexible manner. Meeting was informed that the amendment to the scheme had taken into consideration the objectors concerns.

- On the question of any possible alterations to the scheme which would mitigate the impact of the scheme in particular to the top flat on the north west corner top floor, the consultant reiterated that the amendments to the scheme had taken into consideration objectors concerns having had a meeting with them.
  - During deliberation members noted objections from the Canonbury Society and amplified at the meeting by the objector; the sunlight and daylight loss although some flexibility could be applied in this instance. The Chair also noted committee's concern about the sense of enclosure experienced by neighbouring residents and the loss of retail space.
  - In response to Members suggestion about mitigating the impact of the scheme on the amenity of neighbouring residents, the applicant requested for the item to be deferred for further discussions with both the objector and planning officers.
- 2.3 Councillors proposed a motion to Defer the item to enable the applicants to work further on some of the key concerns including the retail frontage and quantum issues, sustainability credentials of the proposal, sunlight/daylight impacts and to address the potential adverse impact of the top floor of the proposal on the adjoining neighbours roof terrace and habitable windows in relation to increased enclosure levels, loss of outlook and dominance.

### **3. ASSESSMENT ON NEIGHBOURING AMENITY (IMPACT ON 11-13 ASTEY'S ROW)**

- 3.1 Further information has been submitted by the applicant seeking to note of the impacts of the amendment made, more specifically to the 3<sup>rd</sup> floor of the proposed extension facing Astey's Row, to the northern end closest to 11-13 Astey's Row, Flat 6 which is the adjoining residential property at this location. The amended plans submitted include a revised proposed north elevation (450-PT-20-ELE-PL-2002 **PL3**), proposed second floor plan (450-PT-20-L02-PL-2001 **PL3**) and a proposed third floor plan (450-PT-20-L03-PL-2001 **PL3**). In addition to the above, the applicant has provided a Sunlight and Daylight analysis in respect of the impact of the revised proposal on the windows of Flat 6, which serve the living room, kitchen (3<sup>rd</sup> floor) and bedroom (2<sup>nd</sup> floor). A technical note on updated sustainability details was also submitted of which is addressed within section 5.0 of the report.
- 3.2 A further consultation of neighbouring properties took place from the 19<sup>th</sup> December 2019, the consultation period ended on 12<sup>th</sup> January 2020. A total 10 objections were made; 1 objection was also received from the Canonbury Society. For clarity, the issues raised within the most recent correspondence are summarised below:

#### **Access**

- Existing Astey's row is narrow with poor vehicle access, any further development would worsen situation
- Disturbance from demolition and works would be high and if the council are minded to approve the application a Construction Management Plan should be created to ensure safety

#### **Design**

- The large modern building would appear incongruous with the surrounding properties and Conservation Area
- Revised plans show minimal change in response to visual impact on Conservation Area

- Light pollution would impact on Astey's row neighbourhood on Rock Garden and potentially the New River path area
- Additional height above the existing structure to the Astey's Row side would harm the current flora by loss of daylight

**Neighbouring Amenity**

- No impact on daylight and sunlight.
- Disappointed that no other options have been explored to reduce impact .
- Proposed extension/building would be 1m higher than top floor flat at 11-13 Astey's Row and therefore the 45 degree line would be impacted conflicting with the guidance.
- Overshadowing to nearby flat windows and terrace area would still have adverse impact.
- Revised plans would still negatively impact outlook.

**Other**

- Lack of direct consultation with affected neighbour.
- Little change made to the proposal to appease residents.
- Existing building is not derelict and not abandoned as per description within committee minutes and submitted documents.
- Residents health during construction may be affected if windows are required to be closed to mitigate noise.

**The Canonbury Society:** Objection, based on the following:

- In relation to the consideration of having the entrance to the flats/duplexes from Astey's Row rather than Essex Road, the applicant, in its Design Addendum dated December 2019, has dismissed the idea concluding that 'this design solution that has been explored represents an inefficient use of land in comparison to the currently proposed design'. In other words, on purely economic grounds, the enticing prospect of increasing neighbourly footfall and generating more social activity which we think would make Astey's Row and the Gardens of New River Walk, safer and more attractive, has been lost.
- The proposed building fronting Astey's Row and the public gardens will now be four storeys high, with a large roof terrace on top. The proposed glass box (which is not transparent) will effectively create a fifth storey This extra height will cast longer shadows over Astey's Row and the public gardens especially during the morning. In addition, the large roof terrace which may well be used for social gatherings could potentially disturb the quiet enjoyment of the gardens. Image provided to show increase in height.

- In our view, the proposed height and massing of the proposed scheme affects adversely the character and setting of Astey's Row and the public gardens as well as the character of the Canonbury Conservation Area.
- On this point, we respectfully urge the applicant to eliminate the proposed 4<sup>th</sup> floor and glass box from the proposals since this would reduce the height of the proposed building and largely solve the problem of loss of sunlight and the problem of overlooking which we believe are fundamental considerations in such a scheme.
- Full support of objection raised from the resident living in 11-13 Astey's Row, immediately adjoining the proposed scheme.
- It should be noted that neither this resident nor the Canonbury Society has been consulted by the applicant which we understand was a clear condition of the deferral of the case by the planning sub-committee when it met on the 7th November 2019.

3.3 A number of points were raised at consultation which have been raised already a. For clarity, the issues raised are summarised below:

***Access and Parking***

- Heavy usage of parking in the road behind the building for existing building, further development would worsen situation
- Extension involving rear lightwell would make it impossible for two vehicles to pass
- Development is described as car free, but the development is likely to create causing parking issues
- Unclear as to how construction vehicles would access and leave the site given the constraints of the site
- Concern with Highway safety and vehicle and pedestrian access
- Emergency access impacted
- Access blocked off during construction affecting residents movement.

**(paragraphs 10.65-10.70 of Committee Report).**

***Design and character***

- Proposed glass box for the roof terrace would appear incongruous with the surrounding properties
- Roof extension seems much higher than neighbouring dwellings and is unsympathetic to character of the area
- Design impact on Canonbury Conservation Area should be considered.

**(paragraphs 10.9-10.22 of Committee Report).**

## ***Neighbouring amenity***

### *Loss of daylight/sunlight*

- Loss of natural sunlight to flat living space
- Loss of natural light to terrace area
- Loss of sunlight to rear of property from Essex Road from Astey's Row extension
- Overshadowing from additional height would impact public gardens, omitting the 5<sup>th</sup> floor access room would help in mitigating this loss of sunlight
- Insufficient alteration to alleviate impact on adjacent neighbours
- Calculation on how BRE is derived is queried.

**(paragraphs 10.36-10.45 of Committee Report)**

### *Privacy*

- Concern with numbers using second terrace
- 4<sup>th</sup> floor terrace would cause unacceptable overlooking to neighbouring flat.

**(paragraphs 10.24-10.28 of Committee Report)**

### *Noise*

- A terrace of the size proposed could be used for larger gatherings, and due to it's exposure would increase impact in terms of noise and disturbance
- Workers using office space creates disturbance as existing.

**(paragraph 10.29 of Committee Report)**

### *Outlook and enclosure*

- Impact on outlook from neighbouring living room area, kitchen and existing terrace would feel enclosed
- View from second floor bedroom would be blocked on one side.

**(paragraphs 10.30-10.35 of Committee Report)**

### ***Ecology***

- Enquiry in to whether a consultant ecologist should conduct a wildlife assessment to assess impact on local conservation area from new development.

### ***Other***

- Consultation between neighbours and applicant concerning.

**No comments made regarding the above objections.**

## ASSESSMENT

### *Outlook and enclosure*

- 3.4 An objection is again received to the amended plans in regards to the loss of outlook and adverse impacts from the enclosure of the development and its prominence in relation to the living space of the flat at 11-13 Astey's Row, Flat 6. The proposal has been amended following the previous Committee and following the previous amendment (Image 2 below) to the proposal resulting in an I-shaped cut back to reduce the proximity of the extension at 3<sup>rd</sup> floor to the living space at this level. The deepest part of the extension is set back from the neighbour's boundary by approximately 2.5m, extending eastwards by 2.7m, before extending northwards by 3m towards the boundary. The evolution of the changes from the originally submitted plans for the 3<sup>rd</sup> floor is shown below:

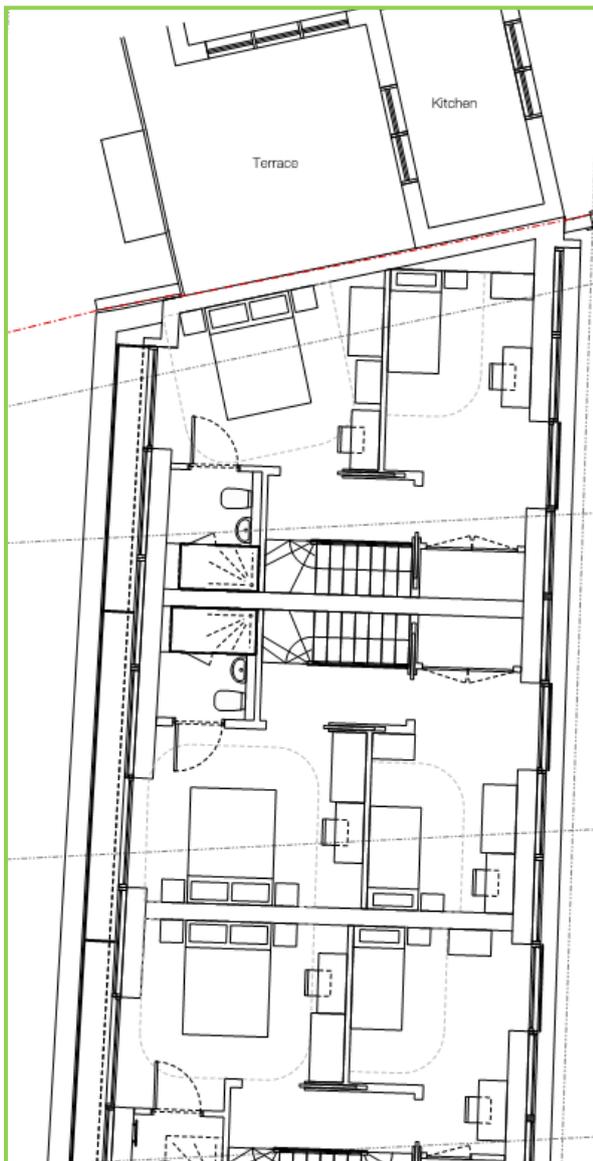


Image 1: 450-PT-20-L03-PL-2001 **PL1**

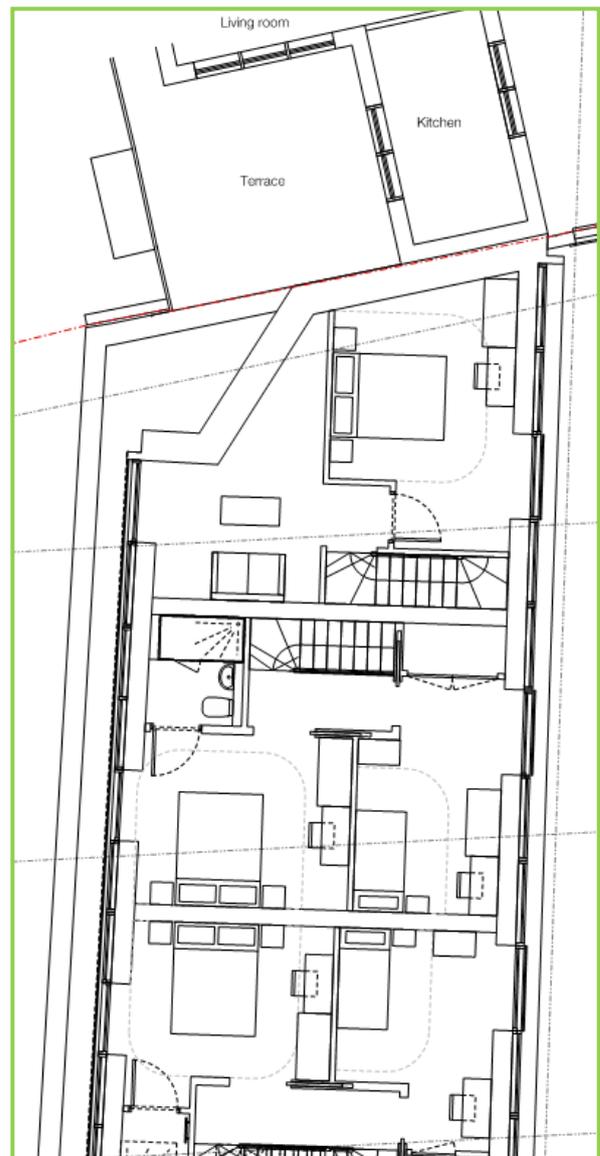
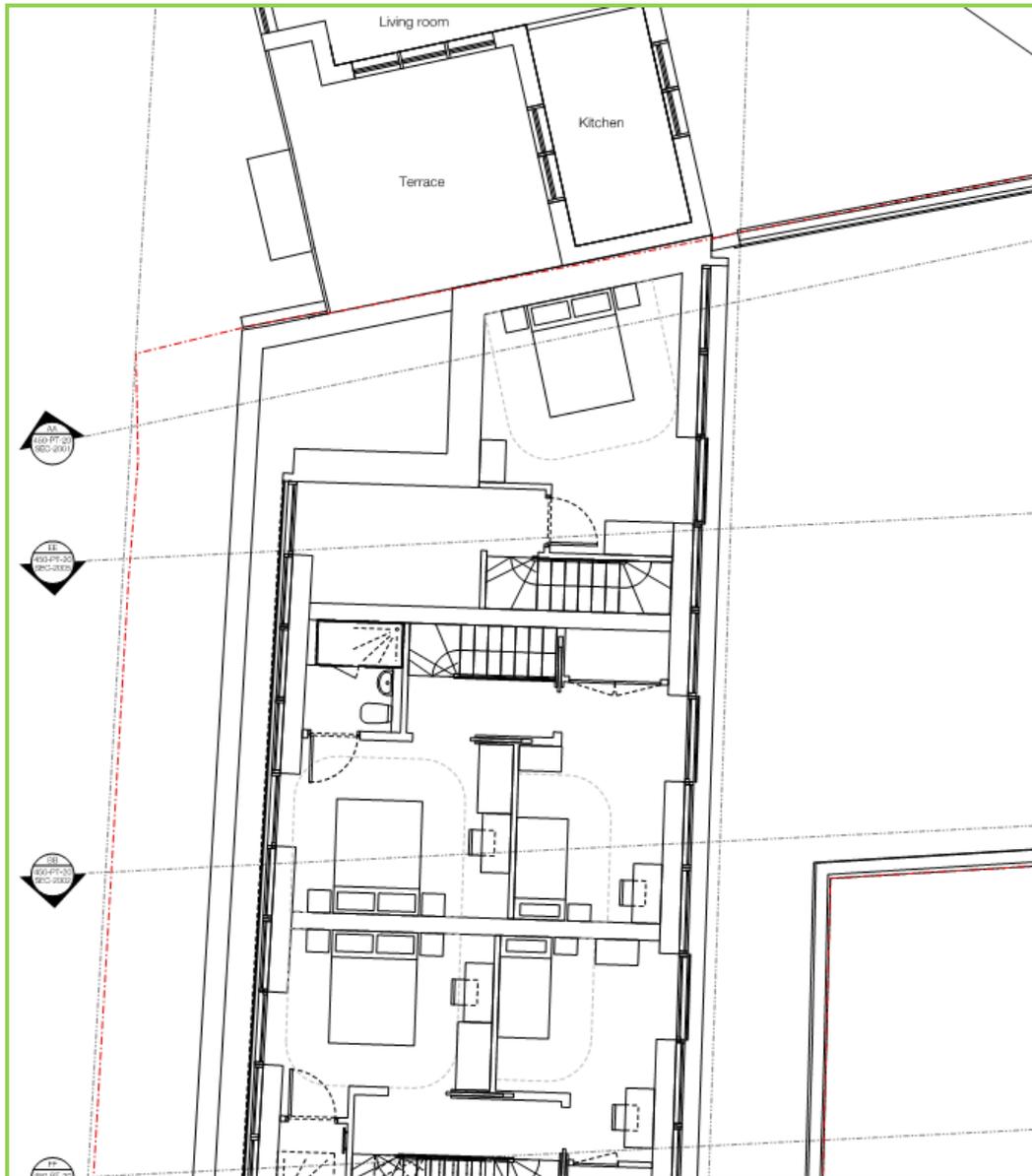


Image 2: 450-PT-20-L03-PL-2001

**PL2**



**Image 3: 450-PT-20-L03-PL-2001 PL3**

- 3.5 The amendment (Image 3) would reduce the sense of enclosure and outlook loss to this neighbour further with a true cutback moving the northern flank of the extension from the neighbouring boundary by between 2.5m-2.9m due to the splayed boundary. Notwithstanding the above, officers consider that the amenity of this property in any case would not be adversely affected, when considering the kitchen window (a non-habitable room) would not be obstructed in views towards the park, whilst the living room is dual aspect with bay windows overlooking the park. Officers understand that an objection is again raised to the amended proposal on grounds of outlook and enclosure, but are of the view that whilst the outlook is affected, it is not considered materially harmful and a reason to refuse this application. Whilst the view is partially obstructed to the south, the terrace and habitable space would still have a good level of outlook west and south west especially following the latest amendment. Officers would also acknowledge the relationship the terrace at Flat 5 (11-13 Astey's Row) has with Flat 6 in its enclosure, and the similarities the development would have, although bettered now by the cutback of the extension. The application site does not conform with the architectural character of the surrounding area by virtue of the dip in built form

given its two storey stature amongst the taller buildings. Therefore, whilst the terrace and lounge view would be partially obstructed to the south by virtue of the proposed development, the proposal would be consistent with the architectural form of the surrounding area and the mentioned flat would retain a good level of outlook to justify support of the application on these grounds.

#### *Daylight and Sunlight*

- 3.6 The applicant has submitted an updated Daylight and Sunlight assessment to assess the impacts that the amended 4<sup>th</sup> floor extension would have upon the 3<sup>rd</sup> floor neighbouring windows of 11-13, Flat 6 Astey's Row. In relation to this flat the below impacts are shown in tables 1-4.

#### *Daylight Assessment*

<b>Daylight Assessment (VSC)</b>	VSC – Existing	VSC – Proposed / Amended		PR/EX / Amended		Meets BRE Guidance
<i>Bedroom</i>						
R1-W1(Second)	19.1	19.1	<b>19.1</b>	1.0	<b>1.0</b>	YES
R1-W2	37.2	36.3	<b>36.3</b>	1.0	<b>1.0</b>	YES
R1-W3	23.7	7.1	<b>7.1</b>	0.3	<b>0.3</b>	NO
<i>Kitchen</i>						
R1-W4 (Third)	32.4	29.5	<b>29.8</b>	0.9	<b>0.9</b>	YES
R1-W5 (Third)	35.0	30.5	<b>30.7</b>	0.9	<b>0.9</b>	YES
R1-W6 (Third)	32.2	29.1	<b>29.1</b>	0.9	<b>0.9</b>	YES
R1-W7 (Third)	31.8	29.1	<b>29.1</b>	0.9	<b>0.9</b>	YES
<i>Living Room</i>						
R2-W1-L R2-W1-U (Third)	39.2	39.2	<b>39.2</b>	1.0	<b>1.0</b>	YES
R2-W2-L R2-W2-U (Third)	33.5	26.5	<b>27.2</b>	0.8	<b>0.8</b>	YES
R2-W3-L R2-W3-U (Third)	28.2	21.6	<b>22.2</b>	0.8	<b>0.8</b>	YES
W8 (Third)	30.4	28.7	<b>28.7</b>	0.9	<b>0.9</b>	YES

Table 1: Original and updated results (VSC)

<b>Daylight Assessment (NSC)</b>	NSC – Existing	NSC – Proposed / Amended		PR/EX / Amended		Meets BRE Guidance
<i>Bedroom</i>						
R1-W1, W2 and W3	159.0	153.1	<b>153.1</b>	1.0	<b>1.0</b>	YES
<i>Kitchen</i>						
R1-W4, W5, W6 and W7 (Third)	83.4	83.4	<b>83.4</b>	1.0	<b>1.0</b>	YES
<i>Living Room</i>						
R2-W1, W2, W3 - L-U and W8 (Third)	207.2	207.2	<b>206.9</b>	1.0	<b>1.0</b>	YES

Table 2: Original and updated results (NSC)

- 3.7 The assessment shows slight improvements in VSC and as per the last assessment, the kitchen and living room upon the 3<sup>rd</sup> floor would retain adequate levels of daylight in line with BRE guidance.

*Sunlight assessment*

<b>Sunlight Assessment (APSH)</b>	ANNUAL – Existing	ANNUAL – Proposed / Amended		PR/EX / Amended		Meets BRE Guidance
<i>Bedroom</i>						
R1-W1, W2 and W3	39	21	<b>21</b>	0.5	<b>0.5</b>	NO
<i>Kitchen</i>						
R1-W4, W5, W6 and W7 (Third)	90	75	<b>76</b>	0.8	<b>0.8</b>	YES
<i>Living Room</i>						
R2-W1, W2, W3 - L-U and W8	91	87	<b>87</b>	1.0	<b>1.0</b>	YES

Table 3: Original and updated results (Annual APSH)

<b>Sunlight Assessment (APSH)</b>	WINTER – Existing	WINTER – Proposed / Amended		PR/EX / Amended		Meets BRE Guidance
<i>Bedroom</i>						
R1-W1, W2 and W3	10	3	<b>3</b>	0.3	<b>0.3</b>	NO
<i>Kitchen</i>						
R1-W4, W5, W6 and W7 (Third)	26	16	<b>16</b>	0.6	<b>0.6</b>	YES
<i>Living Room</i>						
R2-W1, W2, W3 - L-U and W8	26	22	<b>22</b>	0.8	<b>0.8</b>	YES

Table 4: Original and updated results (Winter APSH)

3.8 As per the last assessment, the kitchen and living room upon the 3<sup>rd</sup> floor would retain adequate levels of sunlight in line with BRE guidance. The loss of bedroom daylight and sunlight to bedroom windows is as per the last assessment. Officers would again note that in line with BRE guidance, sunlight to bedrooms is less important than other habitable spaces. The kitchen windows and a living room providing light from bi-fold doors all comply with both the daylight and sunlight tests and officers consider that this assessment indicates no adverse impacts to this neighbouring flat to justify refusal of permission.

#### 4. GROUND FLOOR RETAIL RETENTION

4.1 Concern was raised by members that the loss of retail space to B1 office space may harm the retail function of the Angel Town Centre.

4.2 The proposal now results in the retention of a further 50sq.m A1 (Retail) space, ensuring a total of 150sq.m A1 (100sq.m originally proposed) space is retained at ground floor within the development. This space now includes bathroom and storage facilities. The proposal is supported by drawing no. 450-PT-20-L00-PL-2001 **PL3** to support this change. The difference between the originally submitted ground floor and amendment is shown below.

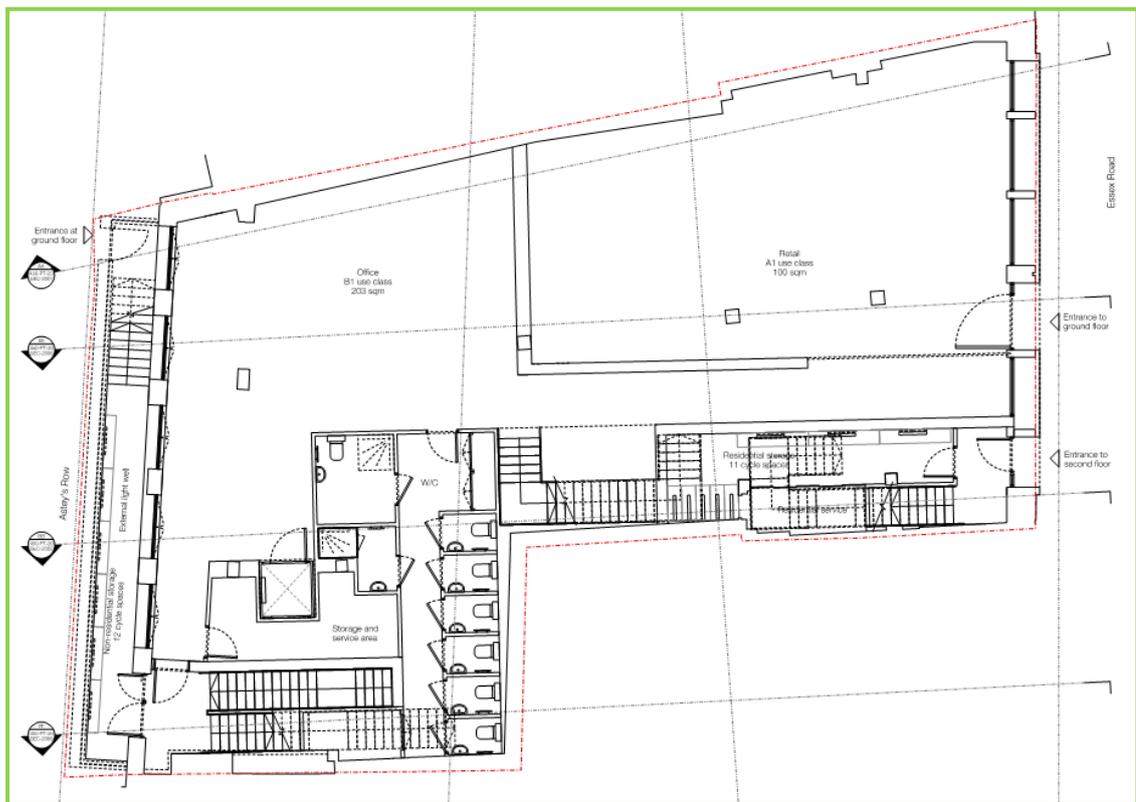


Image 4: 450-PT-20-L00-PL-2001 PL2

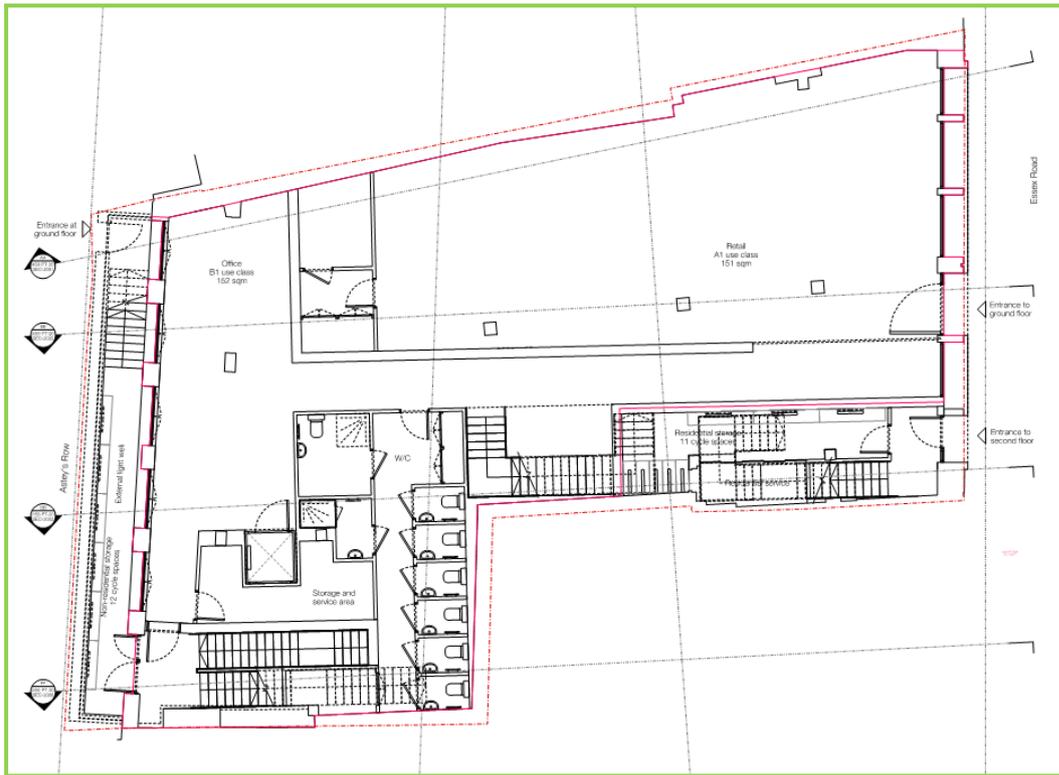


Image 5: 450-PT-20-L00-PL-2001 PL3

- 4.3 The proposed retail space extends deeper to the rear of the site than the originally proposed which is as per the unusually deep existing A1 layout, whilst continuing to retain its visible frontage facing Essex Road. As per the last assessment, officers do not consider the loss of the rear and side part of the retail area to be harmful to the character of the Town Centre given a space of 150sq.m is retained facing Essex Road, whilst improving and enhancing the B1 space, creating a high-quality building internally and externally whilst making a contribution towards affordable housing objectives.

## 5. SUSTAINABILITY

- 5.1 Members raised concern over the originally submitted documentation on sustainability measures that the development seeks to adopt.
- 5.2 In response to this, the application is supported by a Technical Note by building, energy and sustainability specialists 'Thornton Reynolds'. The building services as detailed within the note are to be designed in accordance with the Be Lean, Be Clean and Be Green energy measures as set out within Policy 5.2 of The Development Management Policies Document (2013) which requires development proposals to make the fullest contribution to minimising carbon dioxide emissions. As part of the Technical Note, the document stresses that all new fittings and building fabric as part of the development will be provided to meet or improve on the U-values and air tightness as detailed within Table 2.1 of the Islington Environmental SPD (2012).
- 5.3 The submitted document, seeks to ensure that measures regarding the existing retail & office refurbishment, residential unit services (including hot and cold water), ventilation, overheating, rainwater and lighting are compliant with Approved Document L2B: Conservation of fuel and power in existing buildings other than dwellings (2010 edition incorporating 2010, 2011, 2013 and 2016 amendments), L1A, Approved Document F (Ventilation) and other associated documentation/guidance.

5.4 Notable measures within the document note that:

- A central boiler will not be provided for all the building users, and that the commercial uses will be served by a refrigerant based air source heat pumps where required for heating and cooling. This is given they will have limited heat requirements, whilst the residential units would not achieve any energy benefit by a central boiler system
- Gas pipework will be provided to each residential unit via a ventilated route and each unit will be provided with high efficiency gas fired condensing boiler
- Existing utility services will be upgraded to include new provisions for the residential units and separate more accessible meters for the 3 different use classes
- Overheating within the residential units will be managed through a combination of solar control and good ventilation
- All fans will be provided with low specific fan powers
- All ductwork will be well insulated to prevent heat losses
- The common areas will be provided with presence detection to ensure lighting does not remain on continuously.

5.5 As per the meeting minutes of the Planning Sub-Committee (07.11.19) the scheme is a re-development and not a total demolition especially as the floors will remain. Officers note the Council's emerging policy on carbon emission that has not been approved is more stringent. Islington's Local Plan was submitted to the Secretary of State for examination on 12 February 2020. The Examination commences on 23 June 2020. Therefore, at this point in time the starting point is that the emerging policies have limited weight.

5.6 The measures now proposed are considered acceptable with a condition as per the last committee report to ensure achievement of a 19% reduction in regulated CO2 emissions, compared to compliance with the Building Regulations 2015 and an on-site reduction in regulated CO2 emissions of at least 25% in comparison with regulated emissions from a building which complies with *Building Regulations Part L 2010* (equivalent to Code for Sustainable Homes level 4).

## 6. OTHER MATTERS

6.1 The Design Addendum submitted has explored a potential residential access from Astey's Row in response to comments received at consultation on whether this could be possible to provide an active frontage on Astey's Row with residential footfall. There are a number of undesirable results of a potential access on the scheme's layout, usability of office space and ultimately the utilisation of the space as a whole from the exploration of this idea. The loss of office space, re-modelling of residential spaces (loss of 1 dwelling), risk of overlooking at podium level, additional staircases to achieve full accessibility and alterations to the proposed frontages to both the commercial and residential aspects for the scheme which would not appear to integrate successfully with the proposal. Officers deem this a reasonable assessment, and as per the previous assessment do not object to the currently proposed access.

6.2 As part of the cut back to the northern end of the 4<sup>th</sup> floor extension, Home 3 has been reduced to measure 66.6sq.m. The reduction by just under 4sq.m does not impact the quality of the dwelling and it's floorspace to remain compliant with space standards.

## **7. SUMMARY AND CONCLUSION**

7.1 As considered with the original report (Appended), the principle of the development is considered acceptable and would provide a mixed use scheme of high quality, retaining retail space within the Angel Town Centre and Secondary Frontage, additional office floorspace and refurbishment of the existing building for local business use, and residential development at the proposed 3<sup>rd</sup> and 4<sup>th</sup> floors that have a good level of amenity for future occupiers, whilst the scale and design of the external development would not appear out of character within the streetscene, nor would the development harm the adjacent Canonbury Conservation Area and is considered to integrate with the surrounding character and use which is varied in character.

7.2 It is considered that the development would not result in unacceptable loss of daylight or sunlight to the occupiers of adjoining residential properties having regard to the daylight and sunlight assessment and BRE guidelines. The proposal would not cause an unacceptable increase in enclosure, loss of outlook nor direct overlooking and would not have a detrimental impact upon nearby amenity levels taken as a whole, it therefore accords with Policy DM2.1.

7.3 The proposed further cutback of the 4<sup>th</sup> floor extension further mitigates harm by way of outlook, enclosure and a loss of daylight and sunlight to the neighbouring windows.

7.4 The retention of an additional 50sq.m of retail space is considered to further enhance the proposal and the building's role within Angel Town Centre.

7.5 The proposal seeks to provide an exemplary building with an environmentally responsible design that conserves energy and enhances the environment which has been supported by an additional Technical Note which endeavours to make sure the building will achieve best practice sustainability standards.

7.6 In accordance with the above assessment, it is considered that the proposed development is consistent with the policies of the London Plan (2016), the Islington Core Strategy (2011), the Islington Development Management Policies (2013) and associated Supplementary Planning Documents and should be approved accordingly as per the reasons within the original report.

### **Conclusion**

7.7 It is recommended that planning permission is granted subject to conditions.

## APPENDIX 1 – RECOMMENDATIONS

### RECOMMENDATION A

That planning permission be granted subject to the prior completion of a Deed of Planning Obligation made under section 106 of the Town and Country Planning Act 1990 between the Council and all persons with an interest in the land (including mortgagees) in order to secure the following planning obligations to the satisfaction of the Head of Law and Public Services and the Service Director, Planning and Development / Head of Service – Development Management or, in their absence, the Deputy Head of Service:

- Contribution of £250,000 towards affordable housing within the borough.
- Contribution of £1,500 towards carbon off-setting

ALTERNATIVELY, should this application be refused (including refusals on the direction of The Secretary of State or The Mayor) and appealed to the Secretary of State, the Service Director, Planning and Development / Head of Service – Development Management or, in their absence, the Deputy Head of Service be authorised to enter into a Deed of Planning Obligation under section 106 of the Town and Country Planning Act 1990 to secure to the heads of terms as set out in this report to Committee.

### RECOMMENDATION B

That the grant of planning permission be subject to conditions to secure the following:

<b>1</b>	<b>Commencement</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Approved plans list</b>
	<p>CONDITION: The development hereby approved shall be carried out in accordance with the following approved plans:</p> <p>450-PT-10-ELE-PL-1001 PL1, 450-PT-10-ELE-PL-1002 PL1, 450-PT-10-L00-PL-1001 PL1, 450-PT-10-L01-PL-1001 PL1, 450-PT-10-L02-PL-1001 PL1, 450-PT-10-SEC-PL-1001 PL1, 450-PT-10-SEC-PL-1002 PL1, 450-PT-10-SEC-PL-1003 PL1, 450-PT-20-ELE-PL-2001 PL2, 450-PT-20-ELE-PL-2002 PL3, 450-PT-20-L00-PL-2001 PL3, 450-PT-20-L02-PL-2001 PL3, 450-PT-20-L03-PL-2001 PL3, 450-PT-20-L04-PL-2001 PL3, 450-PT-20-LRF-PL-2001 PL3, 450-PT-20-SEC-PL-2001 PL3, 450-PT-20-SEC-PL-2002 PL2, 450-PT-20-SEC-PL-2003 PL2, 450-PT-20-SEC-PL-2004 PL2, 450-PT-20-SEC-PL-2005 PL2, Daylight and sunlight by eb7 (September 2019), Daylight and Sunlight addendum by eb7 (February 2020) Design addendum (September 2019), Design Addendum (December 2019), Design and Access Statement including Landscape and ecology report, Heritage statement, Noise report, Tree report (December 2018), Archaeological Desk Based Assessment by cgms Heritage (November 2018), Planning Statement (December 2018), Sustainable design and construction statement (December 2018), Sustainability Technical Note by Thornton Reynolds (December 2019), Structural method statement by conisbee (December 2018) including: Suggested Basement Construction Sequence</p>

	<p>(Appendix A), associated Trial Pit Locations &amp; Logs (Appendix B) and Geotechnical Investigation by Aviron (Appendix C).</p> <p>REASON: To comply with Section 70(1) (a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.</p>
<b>3</b>	<b>Materials (Details)</b>
	<p>CONDITION: Details and samples of all facing materials shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commencing on site. The details and samples shall include:</p> <ul style="list-style-type: none"> <li>a) Final colour, type and sample panel of brickwork for the main elevations</li> <li>b) window and door treatment (including sections and reveals);</li> <li>c) terrace glazing;</li> <li>d) balustrading;</li> <li>e) All boundary treatments and screens including podium level boundary treatments</li> <li>f) any other materials to be used.</li> </ul> <p>The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter into perpetuity.</p> <p>REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard and preserves the character and appearance of the Canonbury Conservation Area.</p>
<b>4</b>	<b>Flat roof not used as amenity space (Compliance)</b>
	<p>The flat roof area at 3<sup>rd</sup> floor level hereby approved shall not be used as an amenity or sitting out space of any kind whatsoever and shall not be used other than for essential maintenance or repair, or escape in case of emergency.</p> <p>REASON: To prevent the undue overlooking of neighbouring habitable room windows.</p>
<b>5</b>	<b>Opaque Screening</b>
	<p>CONDITION: The extent and final details regarding opaque glazing for the residential units and within the development shall be submitted prior to commencement of development.</p> <p>REASON: To protect the amenity of neighbouring properties and future occupiers.</p>
<b>6</b>	<b>Construction and Environmental Management Plan</b>
	<p>CONDITION: Notwithstanding the details submitted with the application, a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The CEMP shall include details and arrangements regarding:</p> <ul style="list-style-type: none"> <li>a) The notification of neighbours with regard to specific works;</li> <li>b) Advance notification of any access way, pavement, or road closures;</li> </ul>

- c) Details regarding parking, deliveries and storage including details of the routing, loading, off-loading, parking and turning of delivery and construction vehicles and the accommodation of all site operatives', visitors' and construction vehicles during the construction period;
- d) Details regarding the planned demolition and construction vehicle routes and access to the site;
- e) Details regarding dust mitigation and measures to prevent the deposit of mud and debris on the public highway. No vehicles shall leave the site until their wheels, chassis and external bodywork have been effectively cleaned and washed free of earth, mud, clay, gravel, stones or any other similar substance;
- f) Details of waste storage within the site to prevent debris on the surrounding estate and the highway and a scheme for recycling/disposing of waste resulting from demolition and construction works;
- g) The proposed hours and days of work (with reference to the limitations of noisy work which shall not take place outside the hours of 08.00-18.00 Monday to Friday, 08.00-13.00 on Saturdays, and none on Sundays or Bank Holidays.)
- h) Details of any proposed external illumination and/or floodlighting during construction, including positions and hours of lighting;
- i) Details of measures taken to prevent noise disturbance to surrounding residents;
- j) Information on access and security measures proposed to prevent security breaches at the existing entrances to the site, to prevent danger or harm to the neighbouring residents, and to avoid harm to neighbour amenity caused by site workers at the entrances to the site;
- k) Details addressing environmental and amenity impacts (including (but not limited to) noise, air quality, smoke and odour, vibration and TV reception)
- l) Details as to how safe and convenient vehicle access will be maintained for all existing vehicle traffic at all times, including emergency service vehicles;
- m) Details of any construction compound including the siting of any temporary site office, toilets, skips or any other structure; and
- n) Details of any further measures taken to limit and mitigate the impact of construction upon the operation of the highway and the amenity of the area.
- o) Details of measures taken to minimise the impacts of the construction process on air quality, including NRMM registration.

The report shall assess the impacts during the preparation/demolition, excavation and construction phases of the development on the surrounding roads, together with means of mitigating any identified impacts. The report shall also identify other local developments and highways works, and demonstrate how vehicle movements would be planned to avoid clashes and/or highway obstruction on the surrounding roads.

The demolition and development shall thereafter be carried out in accordance with the approved details and measures.

The development shall be carried out strictly in accordance with the details so approved and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

	<p>REASON: In order to secure the safe and efficient operation of the highway network, local residential amenity and to mitigate the impacts of the development.</p>
<b>7</b>	<p><b>Refuse/Recycling</b></p> <p>CONDITION: Details of refuse / recycling storage and collection arrangements shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development.</p> <p>The refuse / recycling storage and collection arrangements shall ensure that storage bins do not obstruct the public highway. The dedicated refuse / recycling enclosure(s) approved shall be provided prior to the first occupation of the development hereby approved and shall be maintained as such thereafter in perpetuity.</p> <p>REASON: To secure the necessary physical waste enclosures to support the development and to ensure that responsible waste management practices are adhered to.</p>
<b>8</b>	<p><b>Cycle parking</b></p> <p>CYCLE PARKING PROVISION (DETAILS): Details of the layout, design and appearance (shown in context) of the bicycle storage area(s) for the site shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the residential units approved under this consent. The storage area(s) shall be secure and provide for no less than 11 cycle spaces for the proposed residential units and 12 spaces for the commercial uses hereby approved.</p> <p>The bicycle storage area(s) shall be provided strictly in accordance with the details so approved, provided/erected prior to the first occupation of the development, and maintained as such thereafter.</p> <p>REASON: To ensure adequate cycle parking is available and easily accessible on site and to promote sustainable modes of transport.</p>
<b>9</b>	<p><b>Acoustic Design Statement</b></p> <p>An Acoustic Design Statement following the guidelines of PPG24 and a scheme for sound insulation and noise control measures shall be submitted to and approved in writing by; and implemented to the satisfaction of the Local Planning Authority prior to the first occupation of the rooms hereby approved. The sound insulation and noise control measures shall achieve the following internal noise targets:</p> <p>Bedrooms (23.00-07.00 hrs) 30 dB LAeq,8 hour and 45 dB Lmax (fast)  Living Rooms (07.00-23.00 hrs) 35 dB LAeq, 16 hour  Dining rooms (07.00 -23.00 hrs) 40 dB LAeq, 16 hour</p> <p>The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.</p> <p>The development would require mechanical ventilation and the report should pay reference to the AVO guidance on ventilation and overheating and the ProPG Planning and Noise guidance.</p>

	<p>REASON: To protect the amenity of neighbouring properties and future occupiers.</p>
<b>10</b>	<p><b>Air Quality Report</b></p> <p>CONDITION: Before commencement of the development, an air quality report shall be submitted to and agreed by the Local Planning Authority. The report shall detail:</p> <ul style="list-style-type: none"> <li>· the area within the boundary of the site, which may exceed relevant national air quality objectives.</li> <li>· specify how the detailed application will address any potential to cause relevant exposure to air pollution levels exceeding the national air quality objectives.</li> <li>· identify areas of potential exposure.</li> <li>· detail how the development will reduce its impact on local air pollution.</li> </ul> <p>Regard shall be had to the guidance from the Association of London Government "Air quality assessment for planning applications - Technical Guidance Note", the GLA's Air Quality Neutral policy and EP-UK &amp; IAQM's "Planning For Air Quality" in the compilation of the report.</p> <p>REASON: To protect the amenity of neighbouring properties and future occupiers.</p>
<b>11</b>	<p><b>Secured by Design accreditation</b></p> <p>SECURED BY DESIGN: Prior to commencement of the development hereby approved, details of how the development achieves Secured by Design accreditation shall be submitted to and approved in writing by the Local Planning Authority.</p> <p>The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interests of safety and security.</p>
<b>12</b>	<p><b>Basement Development Monitoring</b></p> <p>BASEMENT DEVELOPMENT MONITORING: The Chartered Structural Engineer (MI Struct.E) certifying the Structural Method Statement (SMS) dated December 2018 submitted to support the hereby approved development shall be retained (or a replacement person holding equivalent qualifications shall be appointed and retained) for the duration of the development to monitor the safety of the construction stages and to ensure that the long term structural stability of the existing buildings and other nearby buildings are safeguarded, in line with the supporting Structural Method Statement. At no time shall any construction work take place unless a qualified engineer is appointed and retained in accordance with this condition.</p> <p>REASON: To ensure that the construction work carried out is in accordance to the submitted Structural Method Statement for the duration of the construction and maintain compliance with the Islington Basement Development SPD (2016).</p>

<b>13</b>	<b>Water efficiency requirements</b>
	<p>CONDITION: Prior to the occupation of the hereby approved development, details shall be submitted and approved in writing, demonstrating compliance with the water efficiency requirements of Part G of Policy 7.4 of Development Management Policies (2013) and Environmental Design SPD. The approved measures shall be implemented in full and retained thereafter.</p> <p>REASON: To ensure the water efficiency of the development.</p>
<b>14</b>	<b>Carbon efficiency</b>
	<p>CONDITION: The development hereby permitted shall be constructed to achieve a 19% reduction in regulated CO2 emissions, compared to compliance with the Building Regulations 2015 and an on-site reduction in regulated CO2 emissions of at least 25% in comparison with regulated emissions from a building which complies with <i>Building Regulations Part L</i> 2010 (equivalent to Code for Sustainable Homes level 4), unless such provision is not feasible.</p> <p>REASON: In the interest of securing sustainable development.</p>
<b>15</b>	<b>Landscaping</b>
	<p>CONDITION: A landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commencing on site. The landscaping scheme shall include the following details:</p> <ul style="list-style-type: none"> <li>a) a biodiversity statement detailing how the landscaping scheme maximises biodiversity;</li> <li>b) existing and proposed underground services and their relationship to both hard and soft landscaping;</li> <li>c) soft plantings: including grass and turf areas, shrub and herbaceous areas;</li> <li>d) topographical survey: including earthworks, ground finishes, top soiling with both conserved and imported topsoil(s), levels, drainage and fall in drain types;</li> <li>e) enclosures: including types, dimensions and treatments of walls, fences, screen walls, barriers, rails, retaining walls and hedges;</li> <li>f) hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible pavings, unit paving, furniture, steps and if applicable synthetic surfaces; and</li> <li>g) any other landscaping feature(s) forming part of the scheme. All landscaping in accordance with the approved scheme shall be completed / planted during the first planting season following practical completion of the development hereby approved.</li> </ul> <p>The landscaping and tree planting shall have a two-year maintenance / watering provision following planting and any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of completion of the development shall be replaced with the same species or an approved alternative to the satisfaction of the Local Planning Authority within the next planting season. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interest of biodiversity, sustainability, and to ensure that a satisfactory standard of visual amenity is provided and maintained.</p>

<b>16</b>	<b>Green Roof</b>
	<p>CONDITION: The biodiversity green roof as indicated on Drawing No. 450-PT-20-LRF-PL-2001 PL3 shall be:</p> <ul style="list-style-type: none"> <li>a) biodiversity based with extensive substrate base (depth 80-150mm);</li> <li>b) laid out in accordance with plan number 450-PT-20-LRF-PL-2001 PL3 hereby approved; and</li> <li>c) planted/seeded with a mix of species within the first planting season following the practical completion of the building works (the seed mix shall be focused on wildflower planting, and shall contain no more than a maximum of 25% sedum).</li> </ul> <p>The biodiversity green roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair, or escape in case of emergency.</p> <p>The biodiversity roof shall be carried out strictly in accordance with the details specified and shall be maintained as such thereafter into perpetuity.</p> <p>REASON: To ensure the development provides the maximum possible provision towards creation of habitats and valuable areas for biodiversity.</p>
<b>17</b>	<b>Ecology protection</b>
	<p>CONDITION: Prior to the commencement of the hereby approved development details of the bat and bird boxes shall be submitted and approved. The details shall include information an investigation of the most suitable location and shall include nesting location and boxes for swifts. The approved details shall be implemented in full and retained thereafter.</p> <p>REASON: To provide suitable nesting locations in accordance with the Council's biodiversity objectives.</p>
<b>18</b>	<b>Accessible Homes Standards</b>
	<p>ACCESSIBLE HOMES STANDARDS - (COMPLIANCE): The residential dwellings, in accordance with the Access Statement and plans hereby approved, shall be constructed to the standards for flexible homes in Islington ('Accessible Housing in Islington' SPD) and incorporating all Lifetime Homes Standards and be Part M 4(2) Building Regulations compliant.</p> <p>REASON: To secure the provision of flexible, visitable and adaptable homes appropriate to diverse and changing needs.</p>

**List of Informatives:**

<b>1</b>	<b>Construction works</b>
	<p>Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Pollution Team, Islington Council, 222 Upper Street London N1 1XR (Tel. No. 020 7527 3258 or by email <a href="mailto:pollution@islington.gov.uk">pollution@islington.gov.uk</a>) or seek prior approval under Section 61 of the Act if</p>

	you anticipate any difficulty in carrying out construction other than within the hours stated above.
<b>2</b>	<b>Highways Requirements</b>
	<p>Compliance with sections 168 to 175 and of the Highways Act, 1980, relating to “Precautions to be taken in doing certain works in or near streets or highways”. This relates, to scaffolding, hoarding and so on. All licenses can be acquired through <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>. <u>All agreements relating to the above need to be in place prior to works commencing.</u></p> <p>Compliance with section 174 of the Highways Act, 1980 - “Precautions to be taken by persons executing works in streets.” Should a company/individual request to work on the public highway a Section 50 license is required. Can be gained through <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>. <u>Section 50 license must be agreed prior to any works commencing.</u></p> <p>Compliance with section 140A of the Highways Act, 1980 – “Builders skips: charge for occupation of highway. Licenses can be gained through <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>.</p> <p>Compliance with sections 59 and 60 of the Highway Act, 1980 – “Recovery by highways authorities etc. of certain expenses incurred in maintaining highways”. Haulage route to be agreed with streetworks officer. Contact <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>.</p> <p>Joint condition survey required between Islington Council Highways and interested parties before commencement of building works to catalogue condition of streets and drainage gullies. Contact <a href="mailto:highways.maintenance@islington.gov.uk">highways.maintenance@islington.gov.uk</a>.</p>
	<p><b>SECTION 106 AGREEMENT</b></p> <p>You are advised that this permission has been granted subject to a legal agreement under Section 106 of the Town and Country Planning Act 1990.</p>

**Appendix 1**

<b>PLANNING SUB-COMMITTEE A</b>		<b>AGENDA ITEM NO:</b>
<b>Date:</b>	7 <sup>th</sup> November 2019	<b>NON-EXEMPT</b>

**PLANNING COMMITTEE REPORT**

Application number	P2018/4159/FUL
Application type	Full Planning Application
Ward	St. Mary's
Listed building	No
Conservation area	Within 50m of Conservation Area (Canonbury)
Development Plan Context	Town Centre (Angel) Secondary Retail Frontage (Angel) Article 4 Direction A1-A2 (Town Centres)
Licensing Implications	None
Site Address	137 - 139 Essex Road, N1 2NR
Proposal	Demolition and replacement of front and rear facades (including roofing) and additions to the roof, to include a one-storey extension fronting Essex Road, and two-storey extension fronting Astey's Row (with glass box above) to accommodate 5x (1 no. 1-bedroom unit [2 person] x 2no. 2-bedroom units [3 person] x 1no. 2-bedroom units [4 person] x 1no. 3-bedroom [5 person unit) residential units; refurbishment of existing ground and first floor and creation of part basement level Class B1 office space (166sqm) and retention of ground floor (100sqm) Class A1 retail unit fronting Essex Road.

**1. RECOMMENDATION**

The Committee is asked to resolve to **GRANT** planning permission:





**Image 1:** Aerial view of the site



**Image 2:** View of frontage

existing Essex Road



**Image 3:** View of existing Astey's Row frontage



**Image 4:** View of existing 2<sup>nd</sup> floor flat roof of application building facing southwards towards 7 Astey's Row



**Image 5:** View over existing 2<sup>nd</sup> floor flat roof of application building facing northwards towards 11-13 Astey's Row.



**Image**  
View over  
flat roof of  
building facing  
inbetween 7  
131, 133 and 135

**6:**  
existing 2<sup>nd</sup> floor  
application  
northwards  
Astey's Row and  
Essex Road.

**Image 7:** View over existing 2<sup>nd</sup> floor flat roof of application building facing northwards inbetween 11-13 Astey's Row and Anson House

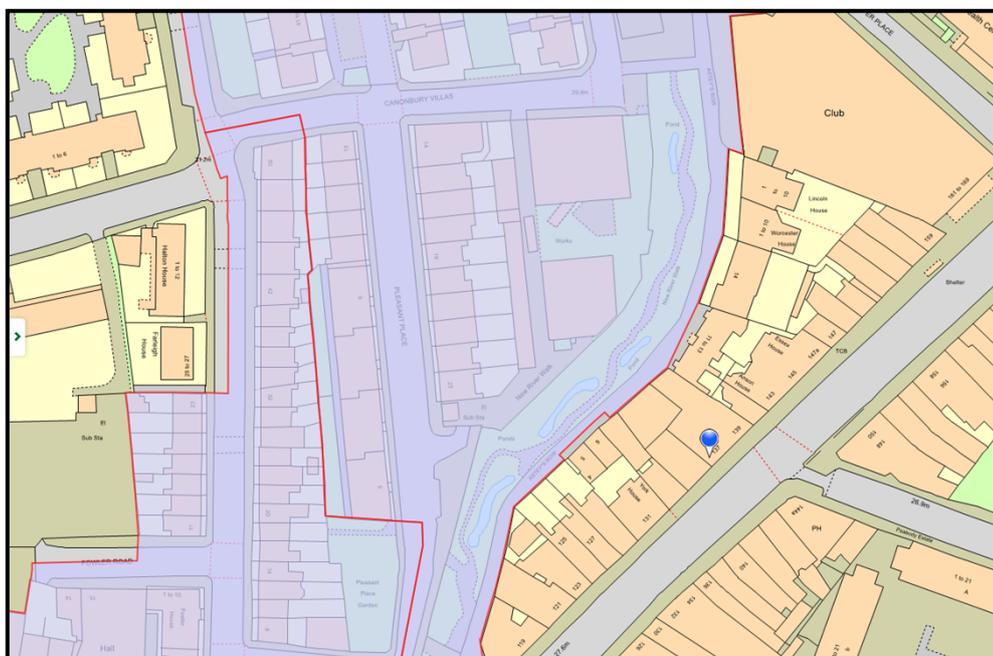
#### **4. SUMMARY**

- 4.1 The application proposes the demolition and replacement of front and rear facades (including roofing) and additions to the roof, to include a one-storey extension fronting Essex Road, and two-storey extension fronting Astey's Row to accommodate to accommodate 5x residential units; refurbishment of existing ground and first floor and creation of part basement level Class B1 office space and retention of ground floor Class A1 retail unit fronting Essex Road.
- 4.2 The site as existing is made up of ground floor (A1) retail space, accomodating an area of 322sq.m from front to rear, whilst the first and second floor (fronting Essex Road only) comprises an area of 462.5sq.m office (B1) floor space.
- 4.3 The proposed extension to the Essex Road frontage, would result in an additional storey which would house 1 x no. 2 bed (4 person) unit and 1 x no. 3 bed (5 person) unit and would include a ballustrated private terrace space for Home 5. The proposed extension to the Astey's Row frontage would result in an additional two storeys which would house 1 x no. 1 bed (2 person) unit and 2 x no. 2 bed (3 person) unit and a ballustrated private terrace space with glass box enclosure for Home 1. The residential floorspace proposed is approximately 484sq.m taking into account the amendment to the 3<sup>rd</sup> floor of the Astey's Row extension.
- 4.4 The proposal involoes the retention of ground floor (100sqm) Class A1 retail fronting Essex Road that would span 8.2m across the ground floor front elevation with new step free access.

- 4.5 The proposal includes a basement excavation to create office/storage space to the rear of the site. A rear lightwell is proposed towards the rear boundary with associated hedging providing rear access to the proposed office space with internal refurbishment at ground and first floor creating an overall total of 629.30sq.m office space.
- 4.6 The design, layout, scale and massing of the proposed development is considered acceptable. The Design and Conservation Team have been consulted during the application process and are satisfied that the proposed external alterations would preserve the character and appearance of the host building and the adjacent Conservation Area.
- 4.7 The proposed extensions and newly formed terrace areas are considered to be of an appropriate scale, and the proposal is not considered to prejudice the residential amenity of neighbouring properties insofar of loss of sunlight and daylight, increased sense of enclosure, overlooking, overshadowing or loss of privacy. The proposal therefore accords with policy DM2.1 of the Development Management Policies 2013.
- 4.8 The application is referred to committee given the number of objections received (14).
- 4.9 The proposal is considered to cause no harm to the character and appearance of the surrounding area, and to accord with the Development Plan.

**5. SITE AND SURROUNDINGS**

- 5.1 The site is located on the north western side of Essex Road, opposite the junction with Greenman Street. The site has two frontages, one onto Essex Road comprising 3 storeys and one onto Astey’s Row comprising 2 storeys. The site falls within the Angel Town Centre and within the Angel Secondary Retail Frontage.



- 5.2 The application site is not listed and not within a Conservation Area however, it is in close proximity to the Canonbury Conservation Area (CA08) which is located to the north and west of the site. Astey’s Row Rock Garden is located directly to the rear of the site and is a designated open space. The site is also located in an Archaeological Priority Area.

- 5.3 The building is post WW2 comprising brickwork to the front and rear elevation, and features a rendered ground floor frontage and metal entrance up to the first floor.
- 5.4 The site internally is made up of ground floor (A1) retail space, accommodating an area of 322sq.m from front to rear, whilst the first and second floor (fronting Essex Road only) comprises an area of 462.5sq.m office (B1) floor space.
- 5.5 This area is characterised as dense urban containing a mix of uses with commercial and retail spaces at ground floor with some office and residential units upon the upper floors to the Essex Road frontage, whilst Astey's row comprises residential properties with a range of architectural styles. To the Essex Road frontage, the site is adjoined to the east flank by Anson House a 5 storey mixed use brick built building, to the west flank is 135 Essex Road a 4 storey commercial building. To Astey's Row the building to the rear is flanked by 11-13 Astey's Row to the east, this is a 4 storey residential building with roof terrace. To the west flank is 7 Astey's Row a 4 storey residential building.

## **6. PROPOSAL (in Detail)**

- 6.1 The application seeks permission for the demolition and replacement of front and rear facades (including roofing) and additions to the roof, to include a one-storey extension fronting Essex Road, and two-storey extension fronting Astey's Row to accommodate 5x (1 no. 1-bedroom unit [2 person] x 2no. 2-bedroom units [3 person] x 1no. 2-bedroom units [4 person] x 1no. 3-bedroom [5 person unit) residential units; refurbishment of existing ground and first floor and creation of part basement level Class B1 office space (166sqm) and retention of ground floor (100sqm) Class A1 retail unit fronting Essex Road.
- 6.2 The proposed extension to the Essex Road frontage, would result in an additional storey creating a front façade height of 15.1m. The frontage would consist of new brickwork, inward opening juliet balconies from the 1<sup>st</sup> to the 3<sup>rd</sup> floor, with dark coloured piers including stone and metal at ground floor supporting the ground floor retail frontage and office space upon the upper floors. Upon the roof of the extension is a ballustraded private terrace space of 23sq.m for Home 5 (as detailed within the submitted plans). This extension would house 1 x no. 2 bed (4 person) unit and 1 x no. 3 bed (5 person) unit.
- 6.3 The proposed extension to the Astey's Row frontage would result in an additional two storeys, resulting in an overall height of 13.8m (from ground level of new lightwell below Astey's row). The frontage would also consist of new brickwork matching the front, inward opening juliet balconies from the 1<sup>st</sup> to the 2<sup>rd</sup> floor, with single windows at ground floor above the proposed rear lightwell. Upon the roof of the extension is a ballustraded private terrace space of 21sq.m with glass box enclosure for Home 1 (as detailed within the submitted plans). This extension would house 1 x no. 1 bed (2 person) unit and 2 x no. 2 bed (3 person) unit.
- 6.4 The existing roof of the building at second floor level between the two proposed extensions would become a landscaped walkway/podium to allow for access from Essex Road and up from the associated internal staircase to Home 1, 2 and 3 on the Astey's Row frontage. A rooflight is also proposed and the area is screened by planters with railings accompanying them.

- 6.5 The proposal includes excavation to create 109sq.m of basement office/storage space to the rear of the site closest to Astey's Row. A rear lightwell is proposed extending by approximately 1m towards the rear boundary with associated hedging providing rear access to the proposed office space. There is currently no basement on site.
- 6.6 Amended plans were received, to include a reduction to the massing of the two storey extension fronting Astey's Row, alterations to front facade, reductions to 2no. roof terraces, amendments to podium screening including landscaping and walkways and amendment to dwelling mix including removal of 2no. 1-bedroom studios and addition of 1no. 2-bedroom 4 person unit.
- 6.7 The application has been referred to the planning sub-committee due to the number of objections received.

## 7. RELEVANT HISTORY

- 7.1 881930: Part second floor and part third floor extension to existing building for B1 purposes. Approved on 25/03/1989.
- 7.2 920978: Retention of ground floor for showroom/retail use and change of use of upper floors to residential entailing conversion to form 3 x 1-bedroom and 4 x 2-bedroom flats. **Refused** on 20/10/1992; **appeal allowed for retail use but dismissed in relation to residential use** on 17/03/93.
- 7.3 P2014/1816/PRA: Prior approval for change of use of first and second floors (B1a) to 4 residential units. **Approved with conditions** on 03/07/14.
- 7.4 P2014/1817/PRA: Change of use of rear ground floor from A1 to C3. **Prior approval not required** on 03/07/14.
- 7.5 P2015/0364/PRA: Prior Approval application for change of use of first and second floors of existing B1[a] office to four residential units Class C3 [2 X 3-bedroom units and one floor of 2 X 2-bedroom maisonettes]. **Prior approval required – refused** on 13/04/2015.

### *Pre-application*

- 7.6 Q2018/1540/MIN: Erection of two-storey rear extension on Essex Road and two-storey extension on Astey's Row to accommodate 7 new residential dwellings (4 x 2 beds & 3 x 1 beds). Refurbishment of existing ground and first floor to provide upgraded office space for Patel Taylor Architects and a retail unit fronting Essex Road. **Completed** on 5<sup>th</sup> October 2019.

## 8. CONSULTATION

### Public Consultation

- 8.1 Letters were sent to occupants of adjoining and nearby properties on 19<sup>th</sup> December 2018, and closed on 4<sup>th</sup> February 2019, a total of **8** objections were received (including an objection from the Canonbury Society).
- 8.2 Following the submission of amended plans, additional letters were sent to occupants of adjoining and nearby properties on 19<sup>th</sup> September 2019, a total of 8 objections were received from the latest round of consultation, 5 of these are new objectors to the proposal. Therefore, at the time of the writing of this report a total of **14** objections

have been received from the public with regard to the application. The issues raised can be summarised as follows (with the paragraph that provides responses to each issue indicated within brackets).

### ***Access and Parking***

- Heavy usage of parking in the road behind the building for existing building, further development would worsen situation
- Existing Astey's row is narrow with poor vehicle access, any further development would worsen situation
- Extension involving rear lightwell would make it impossible for two vehicles to pass
- Development is described as car free, but the development is likely to create causing parking issues
- Unclear as to how construction vehicles would access and leave the site given the constraints of the site
- Concern with Highway safety and vehicle and pedestrian access
- Disturbance from demolition and works would be high and if the council are minded to approve the application a Construction Management Plan should be created to ensure safety
- Safety issues with walking through park at night during construction if road blocked off
- Emergency access impacted
- Access blocked off during construction affecting residents movement.

(paragraphs 10.65-10.70).

### ***Design and character***

- Proposed glass box for the roof terrace would appear incongruous with the surrounding properties in particular 7 Astey's row
- Roof extension seems much higher than neighbouring dwellings and is unsympathetic to character of the area
- Design impact on Canonbury Conservation Area should be considered.
- Scheme is totally out of character with both Essex Road and Astey's row
- Design, scale and character of the building would be incongruous with the character of area
- External lightwell with storage and bicycle area would be an eyesore from flats
- Development contrasts with rest of street
- Light pollution would impact on Astey's row neighbourhood on Rock Garden and potentially the New River path area
- Revised plans show minimal change in response to visual impact on Conservation Area.

(paragraphs 10.9-10.22).

### ***Neighbouring amenity***

#### *Loss of daylight/sunlight*

- Loss of natural sunlight to flat living space
- Loss of sunlight to rear of property from Essex Road from Astey's Row extension

- Additional height above the existing structure to the Astey's Row side would harm the current flora by loss of daylight
- Overshadowing from additional height would impact public gardens, omitting the 5<sup>th</sup> floor access room would help in mitigating this loss of sunlight
- Overshadowing to nearby flat windows and terrace area
- Calculation on how BRE is derived is queried
- No access to neighbouring flat and so assessment questioned
- Depth of Astey's row extension would be on boundary with terrace and would block light
- Impact much greater than assessment shows
- 45 degree line impacted from Astey's row extension to neighbouring kitchen window conflicting with the guidance
- Revised Daylight and Sunlight Assessment report refers to a different number of windows labelled at odds with the original submission creating confusion
- 'Marginal deviations' as noted in D&S Report are clearly significant proportions of the original minimum targets.

**(paragraphs 10.36-10.45)**

#### *Privacy*

- Objection based on overlooking to office space on Essex Road from proposed communal area (2<sup>nd</sup> floor podium), any mitigation via screening should be ensured by a condition if application acceptable.
- Existing overlooking stated within the submitted Planning Statement as an incidental sitting area is far removed from the new intensive residential use and the statement is misleading
- Concern with numbers using second floor terrace
- Internal 'courtyard' (2<sup>nd</sup> floor podium) most likely be more intensive than described, potentially being used for sitting area/barbeques that would affect noise and overlooking
- No details on screening and planting buffer to avoid loss of privacy to nearby residential unit. A physical barrier is therefore requested to avoid overlooking
- 4<sup>th</sup> floor terrace would cause unacceptable overlooking to neighbouring flat

**(paragraphs 10.24-10.28).**

#### *Noise*

- Noise impact on Astey's Row neighbourhood
- A terrace of the size proposed could be used for larger gatherings, and due to its exposure would increase impact in terms of noise and disturbance
- Revised terrace still large enough to hold high numbers of persons
- Existing noise from building from music and loud noises impacting mental health
- Building as existing not sound proofed

**(paragraph 10.29).**

#### *Outlook and enclosure*

- Astey's row would appear obtrusive, overbearing and create a strong sense of enclosure to third floor living area of adjacent flat
- Impact on outlook from neighbouring living room area, kitchen and existing terrace would feel enclosed

- View from second floor bedroom would be blocked on one side
- Revised plans to show extension angled away this would still negatively impact outlook.

(paragraphs 10.30-10.35).

### **Ecology**

- The building is close to areas where swifts are nesting and will potentially nest, so a request is made that a significant number of integrated swift nest boxes are installed near the highest level of brickwork. Integrated bricks for bats, would be welcome to further enhance local biodiversity. An ecology survey could identify the best location in the building for these installments (Islington Swifts Group)
- Enquiry in to whether a consultant ecologist should conduct a wildlife assessment to assess impact on local conservation area from new development.

(paragraph 10.74).

### **Other**

- Total lack of care of existing building, including rubbish left out
- Current relationship between owner of site and neighbours not good
- Revised plans show bare minimum made, applicant therefore driven by maximumising commercial benefit regardless of detrimental impact development will have on community amenity
- Consultation between neighbours and applicant concerning.

**No comments made regarding the above objections.**

## 8.2 **The Canonbury Society:** Objection, based on the following:

- Would neither generate more useful activity in Astey's Row, nor make Astey's Row, nor the Gardens of New River Walk, safer and more attractive (**paragraph 10.21**)
- Access of residential units from Astey's Row would have provided neighbourly footfall (**paragraph 10.21**)
- Both entrances for office on Astey's Row are in same position, no improvement here. From a commercial view access from Essex Road may be better (**paragraphs 10.61-10.70**).
- Loss of sunlight and overshadowing to Astey's row would have a harmful impact on Conservation Area, omitting the 5<sup>th</sup> floor access/room would help in mitigating against loss of sunlight. (**paragraphs 10.9-10.22**).
- The basement excavation could result in the temporary closure of Astey's Row, in circumstance should the gardens be closed to the public. (**paragraphs 10.65-10.70**).

### **Internal Consultees**

## 8.3 **Acoustics Officer:** No objection subject to conditions if permission is granted.

## 8.4 **Design and Conservation officer:** No objection, their comments read:

*'The revisions to the south façade, including the vertical subdivision of the ground floor glazing, the removal of the plaster quoins between the application site and 141 Essex Road and the internal rearrangement of the third floor flat to avoid producing a partially blank window on the principle elevation, have produced an acceptable scheme. The*

*scheme under consideration sits more successfully in the surrounding Essex Road streetscape than the initial scheme, particularly at ground floor level. The scheme is not considered to cause harm to the setting of the neighbouring Canonbury conservation area (a designated heritage asset).'*

8.5 **Planning Policy Officer:** Concern raised, their comments read:

*'As discussed it retains a retail frontage. Also worth considering is the size of the retained retail space. Is it of sufficient size to be considered desirable for future occupiers and not compromise the future operation of the retail unit. With regards the office floorspace, I note the proposal results in an uplift of 167sqm, however there is also an uplift in residential floorspace of 494sqm/6 units. In line with DM5.1 we need to be satisfied that the maximum amount of business floorspace is being provided. Whilst the planning statement identifies that the total office floorspace of 629sqm makes up more than 50% of total floorspace this is only a little over half the total floorspace. As noted in the planning statement CS5 also resists any significant introduction of residential.'*

8.6 **Inclusive Design Officer:** Objection, their comments read following submission of amended plans:

- *Only 2 of the studio flats have been removed. Justification is requested about the remaining 4 studio flats.*
- *The initial suggestion of a shared entrance has not been taken on board.*
- *Winding treads are inaccessible and not considered inclusive*
- *There is no private amenity space for a majority of future occupants, which is against our policies.*
- *Limited provision of accessible cycle parking, in line with Appendix 6, Local Plan review. The cycle storage space for the office is also completely substandard in terms of circulation space.*
- *Door swings across landings – this is unacceptable (landings must be clear, 1200mm deep).*

Officers would like to comment that no studio flats are proposed as indicated on the first bullet point.

### **External Consultees**

8.7 **Crime Prevention Officer (MPS):** No objection, but concern raised with rear lightwell space, recommended that passageway is fully enclosed to access the rear of the premises, in order to deter anti-social behaviour, crime issues or attacks to the vulnerable rear of the premises. Request made for the inclusion of a planning condition to achieve Secured by Design accreditation.

8.8 **Historic England (GLASS):** Recommend No Archaeological Requirement, which reads:

*'Although within an archaeological priority area, archaeological survival within this site is likely to be poor. Additionally the submitted archaeological assessment shows that the site falls just outside the historic settlement. Given the limited archaeological potential and the relatively small scale development it is unlikely that there would be an archaeological impact at this location. Having considered the proposals with reference to information held in the Greater London Historic Environment Record*

*and/or made available in connection with this application, I conclude that the proposal is unlikely to have a significant effect on heritage assets of archaeological interest.*

*No further assessment or conditions are therefore necessary'*

**8.9 London Fire & Emergency Planning Authority:** Comments read:

*'The Commissioner has been consulted with regard to the above-mentioned premises and makes the following observations:*

*Other comments: There should be fire brigade vehicle access to the perimeter of the building and sufficient hydrants and water mains in the vicinity which should comply with Approved Document – B (AD-B) and maintained at all times.*

*The Commissioner strongly recommends that sprinklers are considered for new developments and major alterations to existing premises, particularly where the proposals relate to schools and care homes. Sprinkler systems installed in buildings can significantly reduce the damage caused by fire and the consequential cost to businesses and housing providers, and can reduce the risk to life.*

*The Commissioner's opinion is that there are opportunities for developers and building owners to install sprinkler systems in order to save money, save property and protect the lives of occupier.'*

**8.10 TfL (Road Network Development):** No objection, which reads:

*'Having assessed the proposals, I can confirm that TfL Spatial Planning has no strategic transport comments to make on this planning application other than to emphasise the development should comply with the transport policies set out in the draft London Plan.*

*The footway and carriageway must not be blocked during the development. All vehicles associated with the development must only park / stop at permitted locations and within the time periods permitted by existing on-street restrictions.'*

**9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATION & POLICIES**

**9.1** Islington Council (Planning Sub-Committee A), in determining the planning application has the following main statutory duties to perform:

- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990);
- To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance.)

**9.2** National Planning Policy Framework 2019 (NPPF): Paragraph 10 states: "at the heart of the NPPF is a presumption in favour of sustainable development.

- 9.3 The National Planning Policy Framework 2019 seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.
- 9.4 Since March 2014 Planning Practice Guidance for England has been published online
- 9.5 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.
- 9.6 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:
- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
  - Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.
- 9.7 Members of the Planning Sub-Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.
- 9.8 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it
- 9.9 In line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been given to the desirability of preserving the Conservation Area, its setting and any of its features of special architectural or historic interest.

### **Development Plan**

- 9.10 The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and Site Allocations 2013. The policies of the Development Plan that are considered relevant to this application are listed at Appendix 2 to this report.

9.11 Some weight is attributable to the Draft London Plan.

**Supplementary Planning Guidance (SPG) / Document (SPD)**

9.12 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

**10. ASSESSMENT**

10.1 The main issues arising from this proposal relate to:

- Land use
- Design and assessment of any heritage impacts
- Impact on the amenity of neighbouring residents.
- Accessibility
- Noise implications
- Landscaping
- Highways and delivery and servicing
- Refuse facilities
- Archaeology
- Small sites and affordable housing
- Quality of accommodation and residential mix
- Other areas

**Land Use**

10.2 The site is not within an Employment Growth Area, Employment designated area or within the Central Activities Zone (CAZ). The site is however within the Angel Town Centre. Policy CS13 of the Core Strategy encourages the location of business floorspace within town centres, and there is a need for business space within the borough generally. Consequently, there is no objection to the provision of additional office space at the site and for the use of this in an open plan layout for Patel Taylor Architects, the applicant, whom are currently based within the southern part of Islington on Rawthorne Street. It should be stressed that the site has a long term plan in being a base for the Architects firm in order to accommodate their expanding operations which would contribute to the economy of the local area with the creation of jobs, whilst providing a mixed use building with retail at ground floor and residential at upper floors.

10.3 Policy CS5 (Part D) of the Core Strategy provides that any significant introduction of residential uses in Angel Town Centre will be resisted, but that retail-led mixed use development with an element of conventional residential use which makes a significant contribution towards meeting affordable housing objectives may be acceptable.

10.4 Whilst the Council notes that the scheme as proposed is not primarily 'retail-led', the proposal would be a significant improvement visually over the existing building which would have a material townscape benefit, in addition to contributing towards meeting housing needs and involves a substantial financial contribution towards affordable housing in the borough. It also offers other benefits, such as an uplift of approximately 166.8m<sup>2</sup> of office space and the creation of a high-quality building internally and externally to replace one which currently is of limited architectural merit in visual terms. It is therefore considered that, on balance, the introduction of residential use in this

instance, which is an integral part of the scheme's viability is considered to be acceptable based on the existing site specifics, unusual depth and double frontage of the site onto Essex Road and Astey's Row. These site specific factors and townscape attributes are considered to weigh in favour of the application in planning terms.

- 10.5 The existing retail (A1) floor space at the site totals 322.8m<sup>2</sup>, and the proposed scheme seeks to re-provide 100m<sup>2</sup> of retail space on Essex Road. The scheme would therefore result in a net loss of retail space of 222.8m<sup>2</sup>. Policy DM4.5 of the Development Management Policies provides that, within secondary retail frontages, proposals to change the use of existing retail premises will not be permitted unless a number of criteria are satisfied. These are:
- i) The resulting proportion of retail units would not fall below 50% in the secondary frontage;
  - ii) The proposed change of use would not result in a break in continuity of retail frontage of more than two non-retail units;
  - iii) The premises have been vacant for two years and continuous marketing evidence for this period is provided to demonstrate that there is no realistic prospect of the unit being used for retail (A1) purposes;
  - iv) The proposed use would not have a harmful effect on the retail function and character of the town centre; and
  - v) The proposed use on the ground floor would provide an active frontage.
- 10.6 In this instance, the desktop study submitted (Pg.23 of the Planning Statement) has indicated that criteria i) is satisfied and, given that the scheme seeks to retain a retail unit across the majority of the frontage on Essex Road, criteria ii), iv) and v) are also

broadly satisfied. However, the requirement to submit marketing evidence demonstrating a two-year vacancy period cannot be complied with, as the property is currently occupied by a retail business.

- 10.7 The proposal has not provided any market demand analysis provided for the reduction in retail floorspace, which would help to justify the loss of ancillary space as detailed by the Planning Policy Officer. Whilst this is acknowledged, regard is had to the active frontage and this being retained. The existing unit as shown in the image

below is a narrow strip lengthways of the active frontage, beyond and walled off from the frontage is a larger area of retail that drops down to the rear of the building. The rear area is not part of the frontage nor visible, and appears very much underutilised. Officers are therefore of the view that this would not harm the retail function of the Town Centre due to the fact that the majority of the 'lost' retail space is located towards the rear of the site (Astey's Row is not a retail frontage), and a retail presence is still being maintained on Essex Road which is the key frontage, the proposal would have very little impact on the retail character of the street or the wider town centre. Therefore, whilst a technical breach of Policy DM4.5 exists, the proposal is not considered to compromise the objectives of the Local Plan when considering the site specifics, Townscape improvement and is considered a material planning consideration that outweighs the conflict with Policy DM4.5.

- 10.8 Regard is also had to emerging Draft Local Plan, more specifically R3 (Islington's Town Centre) and R6 (Maintaining and enhancing Islington's unique retail character) in particular, the latter of which states that the provision of small shop units are generally considered to be of around 80sq.m, the re-provision of 100sq.m of active frontage is therefore acceptable, and the proposal seeks to address the emerging policies that do gather weight, and are relevant in regards to this proposal.

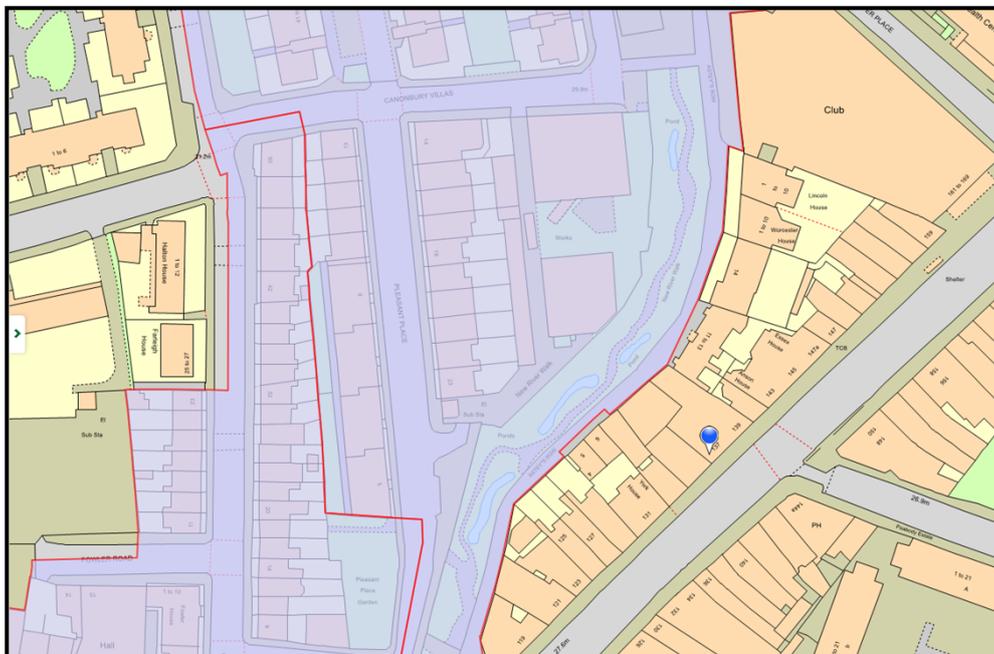


**Image 8:** Existing ground floor retail frontage

## Design

- 10.9 The National Planning Policy Framework (NPPF) confirms that the Government attaches great importance to the design of the built environment, and notes that good design is a key aspect of sustainable development and should contribute positively to making places better for people.

- 10.10 Paragraph 131 of the NPPF (2019) states that in determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.
- 10.11 Policy CS8 of Islington's Core Strategy sets out the general principles to be followed by new development in the Borough. Policy CS9 and Policy DM2.1 of Islington's Development Management Policies 2013 accord with the National Planning Policy Framework (NPPF) in seeking to sustain and enhance Islington's built environment. Taken together, they seek to ensure that proposed development responds positively to existing buildings, the streetscape and the wider context, including local architecture and character, surrounding heritage assets, and locally distinctive patterns of development.
- 10.12 Policy DM2.3 states that Islington's historic environment is an irreplaceable resource and the council will ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance. The proposal is located south of the Canonbury.



**Image 9:** Application site (blue marker) in context of Canonbury Conservation Area (blue shading).

- 10.13 The proposal is broken up into 3 main visual components, that would have an impact on the character of the Conservation area and surrounding area.

Essex Road Frontage

- 10.14 The proposed extension to the Essex Road frontage would result in an additional storey creating a front façade height of 15.1m. The existing character along the Essex Road frontage includes primarily a range of 3-4 storey building heights, to the east is Anson House a 5 storey mixed use brick built building, to the west flank is 135 Essex

Road a 4 storey commercial building. The proposed scale is therefore considered acceptable aligning roughly in height with 141 Essex Road (Anson House). Additionally, officers note that the extension massing follows the existing building lines to either flank and would therefore not appear prominent or out of character within the existing streetscape.

- 10.15 The frontage would consist of new red brickwork that has been formed following pre-application process and in comparison to the other brick colours and textures explored, reads well within the immediate streetscape. The façade also includes inward opening juliet balconies from the 1<sup>st</sup> to the 3<sup>rd</sup> floor, with dark coloured piers including stone and metal at ground floor supporting the ground floor retail frontage and office space upon the upper floors (as detailed in the image below). Officers consider following pre-application discussions that the fenestration, proportions and detailing of the proposed scheme were of a very high quality and officers consider the lighter red brick work would fit its context more appropriately. The proposed frontage and façade would be contemporary in appearance, at odds with the existing building, however, the existing building in appearance appears tired and does not conserve the character of the area or hold architectural merit, and the façade following the submission of amended plans is considered acceptable in line with the comments of the Conservation Officer.

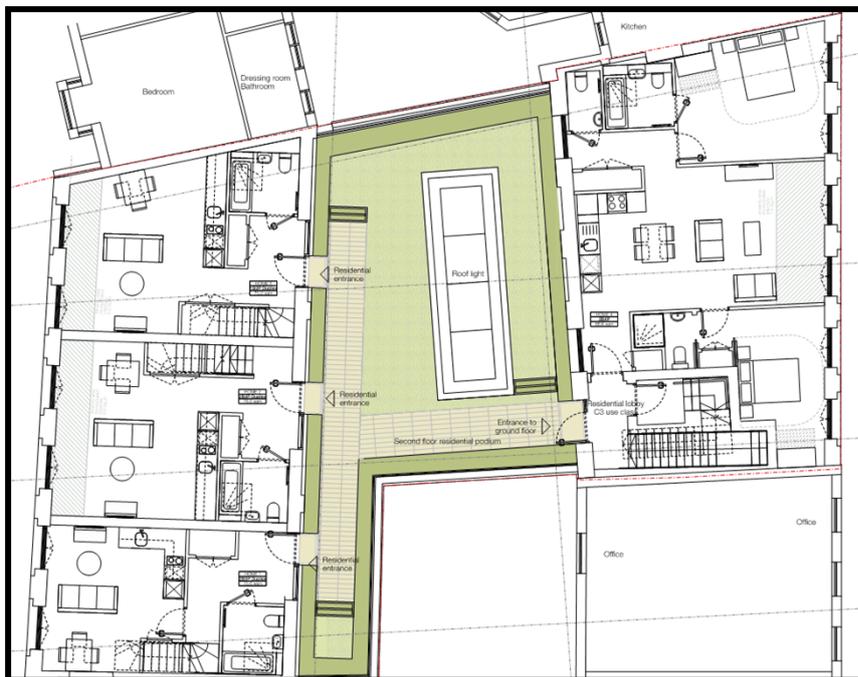


**Drawing 1: Proposed Essex Road elevation**

- 10.16 Upon the roof of the extension is a ballustrated private terrace space of 23sq.m for Home 5 (as detailed within the submitted plans). Concern was originally raised by Officers in regards to the visibility of the terrace area and it's impact on the streetscape. Following further assessment of photo montages and visual images that were provided by the applicant, officers consider that the front terrace would have very limited visibility from Essex Road and Greenman Road to the south and would not have an adverse impact on the character of the area, and is therefore acceptable.



**Image 10:** Photomontage of proposed Essex Road elevation



**Drawing 2:** Second floor Podium level.

10.17 The site would contain a podium level upon the second floor upon what is the existing roof of the building behind the principal elevation of the building. This area would be for access to residential units on Astey's Row only, and would be characterised by

planters, a central rooflight and boundary screening consisting of hedging with railings internally, which would all not be considered large scale nor significantly visible from the public realm to cause harm to the character of the area.

### Astey's Row Frontage

- 10.18 The proposed extension to the Astey's Row frontage would result in an additional two storeys, resulting in an overall height of 13.8m which would be in close proximity to the Canonbury Conservation Area. The building to the rear is flanked by 11-13 Astey's Row to the east which is a 4 storey residential building with roof terrace. To the west flank is 7 Astey's Row a 4 storey residential building, both of which vary architecturally to each other and the application building. The two storey development would infill an area of space that as existing contains an open flat roof area and would not extend deeper than the rear elevation of both neighbouring properties. The development in scale is therefore consistent with the neighbouring residential buildings.
- 10.19 The frontage would also consist of red brickwork matching the Essex Road elevation featuring inward opening juliet balconies from the 1<sup>st</sup> to the 2<sup>nd</sup> floor, metallic roof extension with larger panes of glazing and single windows at ground floor above the proposed rear lightwell. As detailed within the analysis of the materials fronting Essex Road, the façade would read well with the primarily red brick of the adjacent properties at 7 and 11-13 Astey's Row and overall reflects positively to the surrounding area. Paragraph 5.156 of the Urban Design Guide states that "Contemporary roof extensions, with a lightweight appearance such as glass and steel, comprise a vertical frontage and flat roof that is usually well set back behind the front parapet. They are most appropriate on relatively modern buildings." The 4<sup>th</sup> floor extension in this regard is therefore acceptable given the overall modernisation of the building, and updating of the appearance of this elevation as a whole in comparison with the existing elevation that currently features security grills over windows, alarms, signage, vents and fading brickwork. Officers consider the proposed extension and new façade to be an improvement to the townscape and would comply with the requirements of DM2.3.



**Drawing 3:** Proposed Astey's Row elevation

- 10.20 Upon the roof of the extension is a ballustrated private terrace space of 21sq.m with glass box enclosure for Home 1 (as detailed within the submitted plans). Concern was originally raised by Officers in regards to the visibility of the terrace area and its impact on the Canonbury Conservation Area.

**Image 11:**  
proposed Astey's Row



Photomontage of  
elevation

10.21 The scheme has include a length of the including the balustrade area (3.4m addition to the glazed glass reduction) that access up from residential the terrace further photo montages that were applicant, that the rear significantly from Astey's Row

been amended to reduction in the amenity space, length of the metal housing the terrace reduction), this in length of the over panel box (1.94 would provide the 3<sup>rd</sup> floor property to access space. Following assessment of and visual images provided by the officers consider terrace would not be visible in short views given the setback

and the reduction would result in a reduction in the bulk to this level and would not have an adverse impact on the character of the Conservation area, and is therefore acceptable. Officers also consider, that the greater height proposed overlooking the

park would add greater natural surveillance which is welcomed in urban design terms and crime prevention.

- 10.22 In line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been given to the desirability of preserving the Conservation Area, its setting and any of its features of special architectural or historic interest. Officers consider that the proposed development positively reflects the character of the existing building and character of the Conservation Area and would not harm the character of the Conservation Area.

### **Neighbouring Amenity**

- 10.23 All new development is subject to an assessment of their impact on neighbouring amenity in terms of loss of daylight, sunlight, privacy and an increased sense of enclosure. A development's likely impact in terms of air quality, dust, safety, security, noise and disturbance is also assessed. The proposal is subject to London Plan Policy 7.14 and 7.15 as well as Development Management Policies DM2.1 and DM6.1 which requires for all developments to be safe and inclusive and to maintain a good level of amenity, mitigating impacts such as noise and air quality. Moreover, London Plan Policy 7.6 requires for buildings in residential environments to pay particular attention to privacy, amenity and overshadowing.

### Overlooking and Loss of Privacy

- 10.24 Paragraph 2.14 of the Development Management Policies 2013 states that '*there should be a minimum distance of 18 metres between windows of habitable rooms. This does not apply across the public highway; overlooking across a public highway does not constitute an unacceptable loss of privacy.*'
- 10.25 In this instance, both proposed elevations facing Essex Road and Astey's Row respectively do not overlook neighbouring amenity to an unacceptable degree given the spacing to neighbouring properties, whilst there are no flank windows proposed that would cause issues of overlooking.
- 10.26 The podium level which provides access to the Astey's Row residential properties, is a communal area to the centre of the site in-between the two extensions. This element has been amended since the submission of the originally submitted plans following concerns regarding overlooking to the office space (135 Essex Road) to the south and residential space to the north (11-13 Astey's Row and 141 Essex Road) and south (7 Astey's Row). Specific concern was raised in regards to the access of the space for 4no. units and disturbance created, no screening along the perimeter, proximity of residential accesses to adjacent properties and the use of the podium area space beyond access purposes. Objections were received with concern with the podium proposed from neighbouring properties also. The following changes were proposed following further discussion between the applicant and Council:
- Home 1. Front door moved away from podium edge. Internal layout adjacent accordingly.
  - Home 4. Front door moved away from podium edge. Internal layout adjacent accordingly.

- Inclusion of larger zones of defensible planting along podium edges. Increased width from 100mm to 550mm and increased height to 1700mm. Planting to consist of low maintenance hedges which are fast growing and evergreen.
- New position of planters at ends of walkways restricting access.
- Reduced length and reduced width of residential walkways. Walkways moved away from podium edges.
- Low maintenance soft landscaping on podium with ground cover, low level grasses and low level perennials to reduce opportunities to dwell and limit spaces to sit.

10.27 The amended layout satisfies the concerns raised in regards to overlooking and privacy, by reducing the number of units accessing the podium, screening adjacent properties from 3no. flats users on the podium by virtue of hedging with railings, restricting access on the central part of podium by creating a landscaped area, reducing the length and width of the walkways to ensure the area's primary use is access only.

10.28 A number of objections have been raised in regards to overlooking and disturbance by virtue of noise from the two no. roof terraces on both extensions. The proposed roof terrace to the Essex Road frontage would serve Home 5 only and given its siting above neighbouring properties would not result in direct overlooking to neighbouring windows, and the area is primarily set off from the perimeter, and set back from the north and south of the adjacent properties. The proposed roof terrace to the Astey's Row side has been reduced in lengths away from 11-13 Astey's Row, more specifically the top floor flat (No.6) whereby the proposed terrace was originally in close proximity. The reduction, is considered to overcome the concerns originally raised, again this terrace would be above the adjacent properties and away from the perimeter of the proposed extension, meaning there would be no direct overlooking of neighbouring windows with views over residential properties and towards Astey's Row park.

10.29 A number of objections have been raised in regards to both terraces, and access for large gatherings, creating noise and disturbance. Whilst this objection is acknowledged, terraces (Approx. 17sq.m in total) are noted at both flats at 11-13 Astey's Row upon the third floors. The proposed terraces would serve one private unit each, and given the site's dense urban location within the Angel Town Centre, the development is on balance considered acceptable, in the context of the site surroundings, and the setbacks and amendments made.

#### Outlook and enclosure

10.30 The proposed one storey extension fronting Essex Road would align with the flank wall with 141 Essex Road (Anson Road) and be higher than 135 Essex Road, officers note that the extension massing follows the existing building lines to either flank and rear, whilst there are no flank windows that would be enclosed to an unacceptable degree, additionally.

- 10.31 The Astey's row two storey extension would span the full width of the rear part of the building. It would not extend deeper beyond the rear elevation of the neighbouring building lines, there are no flank windows at 7 Astey's Row and would not impact on the residential amenity of this neighbour by virtue of its siting. To the opposing side, the extension would extend up to northern boundary with 11-13 Astey's Row, whereby there is a roof terrace area, and to the right hand side the fourth floor of the building that contains the kitchen area north east of the extension and living room due north of the development.
- 10.32 Officers acknowledge that the outlook from the terrace and kitchen area is that of Astey's Row tree line and public park to the west, whilst the flat roof 2<sup>nd</sup> floor of the application building is directly below to the south affording views in this direction unobstructed. The living room is setback from the proposed development by 4.2m, and at present would also looks out over the open area of the flat roof.
- 10.33 An objection has been received in regards to the loss of outlook and adverse impacts from the enclosure of the development and its prominence in relation to the living space of the flat at this level. The applicant has since amended the plans to reduce the proximity of the extension at 4<sup>th</sup> floor to the living space at this level, resulting in an angled cutback, meaning a cutback closes to the boundary by approximately 2.7m, the extension then extends 3m south before jutting out by approximately 0.9m, with a clear 1m setback from the rear elevation. The amendment would reduce the sense of enclosure to this neighbour, however, the amenity of this property in any case would remain adequate, when considering the kitchen window (a non-habitable room) would not be obstructed in views towards the park, whilst the living room is dual aspect with bay windows overlooking the park. Therefore, whilst the view is obstructed directly south, the terrace and habitable space would still have a good level of outlook west and south west following the amendment. Officers would also acknowledge the relationship the terrace at Flat 5 (11-13 Astey's Row) has with Flat 6 in its enclosure, and the similarities the development would have, although bettered now by the amended angle of the extension. The application site does not conform with the architectural character of the surrounding area by virtue of the dip in built form given its two storey stature amongst the taller buildings. Therefore, whilst the terrace and lounge view would be partially obstructed to the south by virtue of the proposed development, on balance, the proposal would be consistent with the architectural form of the surrounding area and the affected flat would retain a good level of outlook to justify support of the application on these grounds.
- 10.34 The podium area to the centre of the proposed development would include 1m high railings and internal hedging 1.7m high around the perimeter, the adjacent office windows to the south and residential to the north and south (as shown on the proposed 2<sup>nd</sup> floor plan) would be in view of this. This development would however not be considered prominent to neighbouring properties when considering the existing layouts and outlook that properties have either facing the rear wall of the Essex Road rear elevation or the rear elevation of the Astey's row development.
- 10.35 Overall, the proposal would not have a detrimental impact, outlook, privacy and overlooking and would therefore be in compliance with policies DM2.1 of the

Development Management Policies 2013 and the guidance set out in the Urban Design Guide 2017.

Daylight and Sunlight

10.36 In general, for assessing the sunlight and daylight impact of new development on existing buildings, Building Research Establishment (BRE) criteria is adopted. In accordance with both local and national policies, consideration has to be given to the context of the site, the more efficient and effective use of valuable urban land and the degree of material impact on neighbours. A number of objections have been raised with regard to the impact of the proposed structure upon the levels of sunlight and daylight provided to neighbouring properties. The applicant has provided a Sunlight and Daylight analysis, which has assessed the impact of the proposal on the windows that could potentially be affected of the adjoining properties on:

- 4-7 Astey's Row (south-west),
- 11-13 Astey's Row (north),
- 141-143 Essex Road: Anson House (north-east),
- 131 Essex Road (south),
- 133 Essex Road (south),
- 144 Essex Road (east),
- 144a/b Essex Road (east),
- 148-150 Essex Road (east),

10.37 **Daylight:** the BRE Guidelines stipulate that there should be no noticeable loss of daylight provided that either:

- the Vertical Sky Component (VSC) as measured at the centre point of a window is greater than 27%; or the VSC is not reduced by greater than 20% of its original value (Skylight); or
- the daylight distribution, as measured by the No Sky Line Contour (NSC) test where the percentage of working plane area receiving light is measured, is not reduced by greater than 20% of its original value.

10.38 The results from both the VSC test and daylight distribution show that all windows tested at all tested properties (except for 11-13 Astey's Row and 141 Essex Road - Anson House) are not reduced by greater than 20% of its original value (Skylight) nor are they reduced by greater than 20% of their original value in regards to daylight distribution. Therefore, the impact of the proposal upon access to daylight at the neighbouring properties is considered to be acceptable in line with BRE Guidelines and recommended target values. Neither test is failed by any window or room other than singular cases noted at the properties in brackets.

*11-13 Astey's Row (north)*

10.39 The results from the VSC test show that 2 windows fail out of the 49 assessed, with the other 47 showing no noticeable change meeting BRE guideline criteria. Those failing are W3 on the first and second floor serving the flank of the 3no. bay window for one property each, indicted on the table below. The main windows of the bay serving the rooms would experience no noticeable change in daylight levels and, in addition,

the mean VSC reduction across all or the windows is at or within 0.8 times the former value. The results are therefore compliant with the BRE criteria.

<b>Daylight Assessment (VSC)</b>	W3-L (First)	W3-L (Second)
VSC – Existing	8.7	23.7
VSC – Proposed	6.0	7.1
PR/EX	0.7	0.3
Meets BRE Guidance	NO	NO

10.40 The results of the of NSC, show that 3 windows fail out of the 22 rooms assessed (indicated on the table below), with the other 19 showing no noticeable change meeting BRE guideline criteria. Those failing are rooms identified as R3 (served by W6) on the ground floor, together with R2 (served by W4 and W5) and R3 (served by W6) on the first floor serving one residential property. These rooms back on to the rear of the Astey’s Row elevation which face the yard immediately adjacent to the lower level. As existing the outlook and daylight is constrained, and therefore the losses are assessed to be exacerbated by the existing low level of which the values start at, and fall to 0.7 its former value, below the 0.8 requirement. Whilst this is acknowledged, the decrease is marginally below 0.8 and would retain an acceptable level of compliance with the VSC assessment, to not result in such demonstrable harm to loss of daylight.

<b>Daylight Assessment (NSC)</b>	R3-W6 (Ground)	R2-W4 & W5 (Ground)	R3-W6 (First)
VSC – Existing	17.4	56.2	21.2
VSC – Proposed	12.7	41.7	14.3
PR/EX	0.7	0.7	0.7
Meets BRE Guidance	NO	NO	NO

*141-143 Essex Road: Anson House (north-east)*

10.40 The results from the VSC test show that 1 window fails out of the 28 assessed, with the other 27 showing no noticeable change meeting BRE guideline criteria. The window failing is W2 on the second floor of the building showing a marginal reduction below the BRE targets (indicated on the table below). The room is however served by an additional window to the that would remain unaffected in daylight levels. The results are therefore compliant with the BRE criteria. All windows would pass the daylight distribution test (NSC).

<b>Daylight Assessment (VSC)</b>	W2-L (Second)
VSC – Existing	23.9
VSC – Proposed	17.6
PR/EX	0.7
Meets BRE Guidance	NO

10.41 **Sunlight:** the criteria within the BRE Guidelines advise that calculation of the annual probable sunlight hours (the amount of sun available in both the summer and winter for each given window) should be calculated for all windows which face within 90° of due south. In existing buildings, the BRE guide suggests that; *‘if a living room or an existing dwelling has a main window facing 90° of due south, and any part of a new development subtends an angle of more than 25° to the horizontal measured from the*

centre of the window in a vertical section perpendicular to the window, then the sunlighting to the existing dwelling may be adversely affected. This will be the case if the centre of the window;

- receives less than 25% of annual probable sunlight hours, or less than 5% of annual probable sunlight hours between 21st September and 21st March and;
- receives less than 0.8 times its former sunlight hours during either period and;
- has a reduction in sunlight received over the whole year greater than 4% or annual probable sunlight hours.

10.42 All windows within 4-7 Astey's Row (south-west), 131 Essex Road (south), 133 Essex Road (south), 144 Essex Road (east), 144a/b Essex Road (east) and 148-150 Essex Road (east) would meet the BRE guidelines.

*11-13 Astey's Row (north)*

10.43 The results from Sunlight tests show that 1 of the 17 rooms assessed would not retain APSH levels in excess of the targets. The room affected is a bedroom on the second floor served by Windows W1-W3 (Bay window) that faces Astey's Row and the public park/garden. The APSH level would go down to 21% in annual sunlight, which is below the suggested 25% target, whilst winter daylight will go down to 3% APSH in the winter months.

<b>Sunlight Assessment</b>	<b>R1 W1-W3 (Second floor)</b>
ANNUAL – Existing	39
ANNUAL – Proposed	21
PR/EX	0.5
Meets BRE Guidance	NO
WINTER – Existing	10
WINTER – Proposed	3
PR/EX	0.3
Meets BRE Guidance	NO

10.44 The affected windows W1, W2 and W3 would have a reduction in sunlight received over the whole year greater than 4% of APSH from existing to proposed APSH, although the reduction to 21% would only be marginally shorter than the 25% required figure. When considering general compliance with BRE guidance in regards to VSC and daylight distribution, and marginal deviations below the sunlight requirements within this urban location it is not considered that the proposal would cause unacceptable harm to the level of daylight and sunlight received by the windows of the existing property on 11-13 Astey's Row, identified to justify refusal of permission in line with BRE Guidance. In addition to this, in line with BRE guidance, sunlight to bedrooms is less important than other habitable spaces. It is worth noting additionally, that the windows adjacent to the top floor of the amended setback extension are kitchen windows and a living room providing light from bi-fold doors, these all comply with both the daylight and sunlight tests and officers consider that this assessment indicates no adverse impacts to this neighbouring flat.

*141-143 Essex Road: Anson House (north-east)*

10.45 The results from the sunlight assessment show that five of the six rooms assessed retain sunlight in excess of the BRE targets. The remaining room (bedroom) can be

identified as R2 (W2 and W3) on the second floor and with the proposal in place, the results show total sunlight levels of 21%, and winter levels of 2% which is below the BRE targets. This room within the residential property would however retain a good level of daylight, retaining adequate levels of daylight (VSC and NSC), and given the marginal reduction below 0.8 in annual sunlight to 0.6, it is not considered justifiable to refuse the application on this basis given the marginal deviations and existing site constraints.

<b>Sunlight Assessment</b>	<b>R1 W1-W3</b>
ANNUAL – Existing	34
ANNUAL – Proposed	21
PR/EX	0.6
Meets BRE Guidance	NO
WINTER – Existing	6
WINTER – Proposed	2
PR/EX	0.3
Meets BRE Guidance	NO

#### *Basement excavation*

- 10.46 Paragraph 7.1.16 of the Council’s Supplementary Document – Basement Development (SPD) states that on commercial and mixed use redevelopment schemes with proposed basements, the extent of basement development should be commensurate to the site context and building design. Sites within commercial areas such as the Central Activities Zone often contain buildings built to boundary. Any basement component of the scheme should be designed to avoid adverse impacts to sensitive sites, building, trees and other structures that may be affected by the construction of the proposed development. Areas of landscaping proposed should be designed as deep soil landscaping with natural drainage and no basement or other impermeable structure underneath.
- 10.47 Paragraph 7.1.17 of the SPD states that in order to ensure consistency and safeguard against potential adverse impacts, commercial and other redevelopment sites must take into account and respond to the issues covered by this guidance and submit the appropriate documentation required in support of any planning application.
- 10.48 The application has been supported by a Structural Method Statement by Aviron, Geotechnical and Land Contamination Specialists (August 2015) highlighting minimal effects on neighboring amenity, trees and flood risk and conducting appropriate borehole and trial pits. The report is supported by an updated 2018 Structural Method Statement, which outlines the basement construction method in detail, plans of the proposed excavation and is again supported by a chartered structural engineer. There is therefore no objection to the scope of the works proposed, and a condition would be applied to adhere to the documentation submitted.

#### **Housing considerations**

##### *Housing mix*

- 10.49 Policy DM3.1 of the Islington Development Management Policies provides that all sites should provide a good mix of housing sizes. Table 3.1 sets out an indicative housing size mix required for each housing tenure. For market housing, 10% of units should be 1-bed, 75% should be 2-bed and 15% should be 3-bed. The proposal provides a

compliant mix of housing units with the provision of only 1 bed unit, three 2 bed units and one 3 bed unit and is welcomed in policy terms. The quality of the units and the amenity for these will be discussed in the next section

### Quality of Accommodation

- 10.50 In terms of new residential development, as well as having concern for the external quality in design terms it is vital that new units are of the highest quality internally, being, amongst other things of sufficient size, functional, accessible, private, offering sufficient storage space and also be dual aspect. London Plan (2016) policy 3.5 requires that housing developments should be of the highest quality internally, externally and in relation to their context and the wider environment. Table 3.3 of the London Plan prescribes the minimum space standards for new housing, which is taken directly from the London Housing Design Guide space standards. Islington's Development Management policy DM3.4 also accords with these requirements, with additional requirements for storage space.
- 10.51 A new nationally described space standard (NDSS) was introduced on 25 March 2015 through a written ministerial statement as part of the New National Technical Housing Standards. These new standards came into effect on 1 October 2015.
- 10.52 Policy DM3.4 of the Islington's Local Plan: Development Management Policies (adopted June 2013) sets the context for housing standards for new development. Table 3.2, which supports this Policy and gives the minimum gross internal areas (GIA) that new residential developments would be expected to achieve.
- 10.53 Amended plans were received, to include a reduction to the massing of the two storey extension fronting Astey's Row, this resulted in the layout of Home 3 being amended to a 1 bed 2 person dwelling. During the application process further amendments to the mix included the removal of 2no. 1-bedroom studios and addition of 1no. 2-bedroom 4 person unit upon the 3<sup>rd</sup> floor.

**Table 1:** Minimum floor and storage space

No. Bedrooms / Expected Occupancy	Floor Space Provided	Minimum Required	Provided Storage	Required Storage
2bed/3person (H1)	75.6 sq.m	61 sq.m	2 sq.m	2 sq.m
2 bed/3person	76.5 sq.m	61 sq.m	2.2 sq.m	2 sq.m
1bed/2person	70.2 sq.m	50 sq.m	0.9 sq.m	1.5 sq.m
2bed/4person	86.6 sq.m	70 sq.m	1.9 sq.m	2.5 sq.m
3bed/5person*	103.2 sq.m	86 sq.m	0 sq.m	3 sq.m

**Table 2:** Minimum bedroom floorspace

Home	Bedroom	Floor Space Provided	Minimum Required Floor Space
1	Double Bedroom Single Bedroom	12sq.m 9.3sq.m	12sq.m 8sq.m

2	Double Bedroom Single Bedroom	14.4sq.m 10sq.m	12sq.m 8sq.m
3	Double Bedroom	13sq.m	12sq.m
4	Double Bedroom Double Bedroom	16.7sq.m 17.4sq.m	12sq.m 12sq.m
5	Double Bedroom Double Bedroom Single Bedroom	16sq.m 22.7sq.m 18.9sq.m	12sq.m 12sq.m 8sq.m

10.54 The proposed dwellings would all comply with the space standards in both the size of the units and the size of bedrooms, additionally, the living spaces including kitchen, dining and living space comply with the requirements of Policy DM3.4 of the Islington's Local Plan: Development Management Policies (adopted June 2013) and the London Plan (2016) Policy 3.5 providing a good level of floorspace for each unit. Units would provide a good level of storage, however no storage is proposed at Home 5, although, given the generous size of the unit well beyond the standards, space for storage should be accommodating.

10.55 The London Plan states that a minimum ceiling height of 2.5m for at least 75% of the gross internal area is strongly encouraged. The Development Management Policies go further than this, advising that ceiling heights of at least 2.6m provide a greater sense of space and help keep rooms cool in summer months. All units on both the 2<sup>nd</sup> and 3<sup>rd</sup> floor would achieve at least 2.5m ceiling height in accordance with the London Plan, Home 1-3 would achieve the DM policies, whilst the larger Home 3-4 would be marginally short of 2.6m. Therefore, the proposed floor to ceiling heights would generally meet the minimum ceiling heights stipulated by the London Plan, whilst 2 home falling again marginally short of the Development Management Policies. The units would provide a good level of amenity for each unit, especially the larger units fronting Essex Road.

10.56 Dual aspect flats must be provided in all situations in accordance with policy CS9F of the Core Strategy 2011, and policy DM3.4D of the Development Management Policies 2013, unless exceptional circumstances can be demonstrated. It is considered that the dwelling would satisfy these requirements. The proposed dwellings would be afforded with an adequate level of outlook with the smaller units facing Astey's Row Park and Garden, whilst the larger units would have ample outlook over Essex Road with a good level of glazing proposed within all units. The units would look over each between the proposed podium with a separation distance of 7.8m, whilst Home 1 would be opposite the second and third floor of 135 Essex Road with a separation distance of 8.5m. Therefore, whilst there is a degree of dual aspect, the outlook would not be as advantageous to these elevations. Whilst this is acknowledged, regard is had to the existing building line and layout of adjacent buildings, whereby the separation distances are similar, this is observed between 4-7 Astey's Row and 131 Essex Road and also 11-13 Astey's Row and Anson and Essex House (141-147a Essex Road), therefore this proximity with the site context would be acceptable.

- 10.57 The layout of the podium results in a window to window relationship between units, with Homes 1-3 to the Astey's Row side and Homes 4-5 to the Essex Road side, with 4 at 2<sup>nd</sup> floor and 5 at 3<sup>rd</sup> floor. At second floor the layout has been designed to mitigate as little direct overlooking between the units by virtue of their position, with the windows within home 1-3 providing light to only the entrance and storage areas and would serve an entrance area and storage area for Home 4 minimising direct overlooking. Upon the 3<sup>rd</sup> floor the glazing from Essex Road would consist of high level glazing to the centre, one obscurely glazed window serving the entrance area and a clear glazed Juliet balcony for the bedroom, whilst to the opposing side at Astey's Row the glazing is predominantly obscured, with clear glazing positioned in a manner to not directly overlook the bedroom of Home 4. Officers consider the revised layout and fenestration to successfully overcome overlooking between the units given the constraints and separation distances. Additionally, the amendments made result, in the podium only being accessed by Homes 1-3 to access their own unit, with little or no scope to get within close proximity of the Essex Road units given the landscaping proposed.
- 10.58 Policy DM3.4E stipulates that all living areas, kitchens and dining spaces should preferably receive direct sunlight. Given the high level of glazing in all units it is considered that adequate sunlight would be provided with good levels of outlook from Essex Road and Astey's Row.
- 10.59 Policy DM3.5 identifies that 'all new residential development will be required to provide good quality private outdoor space in the form of gardens, balconies, roof terraces and/or glazed ventilated winter gardens'. Units on Astey's Row, including 1 bed-2 person (Home 3) and the 2 bed-3-person unit (Home 3) would not have amenity space nor the unit at 2<sup>nd</sup> floor at Essex Road (Home 4) which is 2 bed-4-person unit. Whilst the plans indicate amenity space at Home 2 and 3, officers do not agree with this assertion as it is within the internals of the property and is not included. The lack of amenity space would be of a concern for the larger unit as noted by the Inclusive Design Officer, however regard is had to the overall size of the unit well beyond the standards, additionally, Astey's Row public garden is in close proximity, whilst Canonbury Gardens is within 100m of the site with play space and landscaped areas accessible. Therefore, on balance this is considered acceptable to mitigate non-compliance with Policy DM3.5. Home 1 and Home 5 would have ample space upon the roof of the extensions, complying with the requirements and providing a good level of outlook and living space.
- 10.60 For the above reasons, it is concluded that the proposed development provides acceptable living conditions for future occupants in terms of the standard of accommodation and amenity space. Therefore, the proposal accords with policy 3.5 of the London Plan 2016, policies CS8, CS9 and CS12 of the Islington Core Strategy 2011 and policies DM2.1, DM3.4 and DM3.5 of the Islington Development Management Policies 2013 and the National Space Standard 2015.

### **Accessibility**

- 10.61 As a result of the change introduced by the Deregulation Bill (Royal Assent 26<sup>th</sup> March 2015) Islington is no longer able to insist that developers meet its own SPD standards for accessible housing, therefore we can no longer apply our flexible housing standards nor wheelchair housing standards.
- 10.62 On 1<sup>st</sup> October 2015, a new National Standard for Housing Design was introduced, as an enhancement of Part M of the Building Regulations, to be enforced by an Approved Inspector. Residential development containing fewer than 10 units should be designed so that all dwellings meet Category 2 of the National Housing Standards. A written statement explaining how each of the units meets the requisite standard should be provided with the application (this can be contained within the Planning Statement). Plans should indicate notional furniture layouts.
- 10.63 Policies 3.5 and 7.2 of the London Plan require all new development to achieve the highest standards of accessible and inclusive design and meet the changing needs of Londoners over their lifetimes. These aims are reflected in Policy DM2.2 of the Islington Development Management Policies, which requires developments to demonstrate, *inter alia*, that they produce places and spaces that are convenient and enjoyable to use for everyone.
- 10.64 In respect of the non-residential parts of the proposal, the applicant should have regard to the guidance contained within Section 4 of the Inclusive Design in Islington SPD (2014). The approach to all units should be step-free and the approach to the main entrance should be level or ramped. Due to the nature of the site and units located on the upper floors, there is no step free access, whilst access to the bicycle storage within the rear lightwell would not be step free and the entrances to the building do not have level thresholds. Concern was also raised in regards to the lift and how this could not be used for the residential space above. Having assessed the internals of the building and the layout proposed that clearly splits the uses between the floors it is not possible to be fully compliant, whilst the existing building and access to this would not be compliant, therefore, on balance given the site context, it is not justifiable to refuse the application based on these grounds. A condition is therefore attached to any permission given to ensure the residential dwellings, shall be constructed to the standards for flexible homes in Islington ('Accessible Housing in Islington' SPD) and incorporating all Lifetime Homes Standards in order to secure the provision of flexible, visitable and adaptable homes appropriate to diverse and changing needs.

### **Highways and Construction Noise**

- 10.65 A number of objections have been received in regards to concerns with how the site could be developed and the impacts on Astey's Row to the rear which is a public highway. Astey's Row is a single access road allowing the passing of one vehicle only, the development into the rear lightwell would not jeopardise this road given the development would be within the private boundary. However, in any case, in order to ensure that management practices are implemented to ensure that the impact of construction on neighbouring residents is minimised, a condition has been recommended requiring the applicant to provide a Construction and Environmental Management Plan for the approval of the Local Planning Authority prior to the

commencement of construction. The applicant has agreed to this requirement for a pre-commencement condition.

- 10.66 As per refuse and recycling, much of the deliveries and servicing will take place on Essex Road as per the existing circumstances, whilst Astey's Row can allow for a small amount of servicing with access to the new rear lightwell. The A1 and B1 uses are characteristic of the Town Centre area, whilst the site constraints dictate on street delivery for the associated uses.
- 10.67 For the reasons above, and subject to the conditions recommended, it is considered that the proposed development would not unacceptably harm the living conditions of the occupiers of adjoining and adjacent properties. Accordingly, the proposal does not conflict with policy DM2.1 of the Development Management Policies 2013 or policy 7.6 of the London Plan 2016 insofar as they aim to safeguard residential amenity. The scheme would also adhere to the core principle of the National Planning Policy Framework, which is to always ensure a good standard of amenity for all occupants of land and buildings.

#### **Highways continued**

- 10.68 Islington policy identifies that all new development shall be car free. Policy DM8.5 stipulates that no provision for vehicle parking or waiting will be allowed for new homes, except for essential drop-off and wheelchair accessible parking. The proposal does not include the provision of off-street car parking, and the loss of the existing parking is considered to be acceptable. Car free development means no parking provision will be allowed on site and occupiers will have no ability to obtain car parking permits, except for parking needed to meet the needs of disabled people. This is to be secured via a s106.
- 10.69 The provision of secure, sheltered and appropriately located cycle parking facilities (residents) will be expected in accordance with Transport for London's guidance: 'Cycle Parking Standards – TfL Proposed Guidelines' and Policy DM8.4 and Appendix 6 of the Development Management Policies 2013. In accordance with Appendix 6, 10 bicycle spaces should be provided for the 10 bedrooms proposed. The allocation proposed (11) would surpass the requirements for the residential use located at ground floor, whilst the combined commercial cycle spaces within the rear lightwell would amount to 12 spaces which would fulfil the requirements under Appendix 6. The arrangements are acceptable in principle, however further details including plans and elevations shall be provided subject to a pre-commencement condition. The proposal is considered to accord with policy DM8.4 and Appendix 6 of the Development Management Policies 2013 and the Cycle Parking Standards – TfL Proposed Guidance
- 10.70 Paragraph 5.2 of the Islington Street Environment Services 'Recycling and Refuse Storage Requirements' provides advice in relation to acceptable refuse and recycling provision for new residential units. The proposed bin stores have been shown on the proposed plan as being located to the ground floor entrance area for the residential units facing Essex Road, whilst the office space at ground and first floor has extensive

storage areas for refuse and recycling for the commercial area and a rear lightwell that can provide servicing from Astey's Row. When taking into consideration that the bin stores would be located would not be visible from the street, the proposed refuse storage requirements are acceptable and would cause no harm to the character or appearance of the host building. The arrangements are acceptable in principle, however further details including plans and sections shall be provided subject to a pre-commencement condition for the approval of the Local Planning Authority prior to occupation of the development.

### **Sustainability and Ecology**

- 10.71 Policy DM7.1 provides advice in relation to sustainable design and construction, stating 'Development proposals are required to integrate best practice sustainable design standards (as set out in the Environmental Design SPD), during design, construction and operation of the development'.
- 10.72 The Planning statement submitted states that the scheme has been designed in accordance with London Plan Policy 5.3 which seeks to address sustainable design and construction. The proposed development incorporates a green roof and green landscaping to the podium. This is considered to be an improvement over the environmental quality of the existing building and would be in line with policy DM7.1. A condition has been attached to ensure that the green roof contains a substrate base of 80-150mm, and is planted/seeded with a mix of species containing no more than a maximum of 25% sedum.
- 10.73 The applicant seeks to provide an exemplary building with an environmentally responsible design that conserves energy and enhances the environment which has been supported by a Sustainable Design & Construction Statement. This document details how the dwelling will achieve best practice sustainability standards with regard to water, materials, energy, ecology and adaptation to climate change. The statement aims to not exceed water use targets of 110L/per/day. This is to ensure sustainable standards of design in the interest of addressing climate change and to secure sustainable development. In terms of drainage and surface water run-off levels at the site, details on how the scheme is designed to ensure no net increase in surface water drainage from the site post development is achieved should be conditioned to be in accordance with the standards stipulated by policy DM6.6.
- 10.74 In light of comments received from the Islington Swifts Society, it is recommended that a pre-commencement condition be included to ensure bat and bird boxes are implemented based on information on the most suitable locations in accordance with the Council's biodiversity objectives.

### **Landscaping and Trees**

- 10.75 DM6.5 states that Developments must protect, contribute to and enhance the landscape, biodiversity value and growing conditions of the development site and surrounding area, including protecting connectivity between habitats. Developments are required to maximise the provision of soft landscaping, including trees, shrubs and

other vegetation, and maximise biodiversity benefits, including through the incorporation of wildlife habitats that complement surrounding habitats and support the council's Biodiversity Action Plan.

- 10.76 The proposed development and adjacent River Walk is separated by the roadway, kerb and fencing and the development into the basement and lightwell are a sufficient distance away from the root protection area of the willow tree located closest to the site. The structural impact assessments have not identified any harm to any trees and the development is acceptable in this regard.
- 10.77 The proposal would result in the greening of the roof of both extensions, by virtue of a sedum roof, this along with podium level hedging and hedging within the rear lightwell to the rear of the site which would contribute to the character of the Astey's Row, above and beyond the current building that is in situ and therefore reflects positively on the area.

### **Archaeology**

- 10.78 The site is within the Islington Village and Manor House Archaeological Priority Area. The applicant has instructed CgMs Heritage to produce an Archaeological Desk Based Assessment (November 2018). The report has considered there to be a low to moderate potential for Saxon archaeology and moderate potential for Medieval evidence. Comments have been received from Historic England (GLASS) who recommend no Archaeological requirements as although within an archaeological priority area, archaeological survival within this site is likely to be poor. Additionally, the submitted archaeological assessment shows that the site falls just outside the historic settlement. Given the limited archaeological potential and the relatively small scale development it is unlikely that there would be an archaeological impact at this location. It is therefore concluded that the proposal is unlikely to have a significant effect on heritage assets of archaeological interest. No further assessment or conditions are therefore necessary.

### **Small Sites Affordable Housing Contribution**

- 10.79 Islington's Core Strategy Policy CS 12 - Meeting the housing challenge – states in part G that to provide affordable housing 50% of additional housing to be built in the Borough over the plan period should be affordable. All sites capable of delivering 10 or more units gross should provide affordable homes on site. Schemes below this threshold should provide a financial contribution towards affordable housing provision elsewhere in the Borough.
- 10.80 The Council's Affordable Housing Small Sites Contributions Supplementary Planning Document (the SPD) supports the implementation of the Core Strategy. The SPD confirms that all minor residential developments resulting in the creation of 1 or more additional residential units(s) are required to provide a commuted sum towards the cost of affordable housing on other sites in the Borough. The requirement applies not only to new build but also conversions of existing buildings resulting in the creation of new units and the subdivision of residential properties resulting in net additional units.

Based on a study of the level of financial contribution that would be viable, the required contribution is £50,000 per additional (net) unit.

- 10.81 The applicant has agreed to contribute the full sum of £250,000 to the Council's Affordable Housing Small Sites Contributions as outlined within the Supplementary Planning Document (the SPD). This has been secured through a Unilateral Undertaking.

### **Community Infrastructure Levy**

- 10.82 The Community Infrastructure Levy will be calculated in accordance with the Mayor's adopted Community Infrastructure Levy Charging Schedule 2012 and the Islington adopted Community Infrastructure Levy Charging Schedule 2014. The payments would be chargeable on implementation of the private housing.

## **11. SUMMARY AND CONCLUSION**

### **Summary**

- 11.1 The principle of the development is considered acceptable and would provide a mixed use scheme of high quality, retaining retail space within the Angel Town Centre and Secondary Frontage, additional office floorspace and refurbishment of the existing building for local business use, and residential development at the proposed 3<sup>rd</sup> and 4<sup>th</sup> floors that have a good level of amenity for future occupiers, whilst the scale and design of the external development would not appear out of character within the streetscene, nor would the development harm the adjacent Canonbury Conservation Area and is considered conducive to the surrounding character and use which is varied in character.
- 11.2 Overall, subject to conditions, the proposal would significantly improve the host building and would not harm the surrounding area. The proposal accords with policies DM2.1 of the Development Management Policies 2013, policies CS8 and CS9 of the Core Strategy 2011 and the Urban Design Guide 2017.
- 11.3 It is considered that the development would not result in unacceptable loss of daylight or sunlight to the occupiers of adjoining residential properties having regard to the daylight and sunlight assessment against BRE guidelines. The proposal would not cause an unacceptable increase in enclosure levels, loss of outlook nor direct overlooking and would not regard have a detrimental impact upon nearby amenity levels taken as a whole and accords with Policy DM2.1.
- 11.4 In accordance with the above assessment, it is considered that the proposed development is consistent with the policies of the London Plan (2016), the Islington Core Strategy (2011), the Islington Development Management Policies (2013) and associated Supplementary Planning Documents and should be approved accordingly.

### **Conclusion**

- 11.5 It is recommended that planning permission is granted subject to conditions.

## **APPENDIX 1 – RECOMMENDATIONS**

### **RECOMMENDATION A**

That planning permission be granted subject to the prior completion of a Deed of Planning Obligation made under section 106 of the Town and Country Planning Act 1990 between the Council and all persons with an interest in the land (including mortgagees) in order to secure the following planning obligations to the satisfaction of the Head of Law and Public Services and the Service Director, Planning and Development / Head of Service – Development Management or, in their absence, the Deputy Head of Service:

- Contribution of £250,000 towards affordable housing within the borough.
- Contribution of £1,500 towards carbon off-setting

ALTERNATIVELY, should this application be refused (including refusals on the direction of The Secretary of State or The Mayor) and appealed to the Secretary of State, the Service Director, Planning and Development / Head of Service – Development Management or, in their absence, the Deputy Head of Service be authorised to enter into a Deed of Planning Obligation under section 106 of the Town and Country Planning Act 1990 to secure the heads of terms as set out in this report to Committee.

## **RECOMMENDATION B**

That the grant of planning permission be subject to conditions to secure the following:

<b>1</b>	<b>Commencement</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Approved plans list</b>
	<p>CONDITION: The development hereby approved shall be carried out in accordance with the following approved plans:</p> <p>450-PT-10-ELE-PL-1001 PL1, 450-PT-10-ELE-PL-1002 PL1, 450-PT-10-L00-PL-1001 PL1, 450-PT-10-L01-PL-1001 PL1, 450-PT-10-L02-PL-1001 PL1, 450-PT-10-SEC-PL-1001 PL1, 450-PT-10-SEC-PL-1002 PL1, 450-PT-10-SEC-PL-1003 PL1, 450-PT-20-ELE-PL-2001 PL2, 450-PT-20-ELE-PL-2002 PL2, 450-PT-20-L00-PL-2001 PL2, 450-PT-20-L02-PL-2001 PL2, 450-PT-20-L03-PL-2001 PL2, 450-PT-20-L04-PL-2001 PL2, 450-PT-20-LRF-PL-2001 PL2, 450-PT-20-SEC-PL-2001 PL2, 450-PT-20-SEC-PL-2002 PL2, 450-PT-20-SEC-PL-2003 PL2, 450-PT-20-SEC-PL-2004 PL2, 450-PT-20-SEC-PL-2005 PL2, Daylight and sunlight by eb7 (September 2019), Design addendum (September 2019), Design and Access Statement including Landscape and ecology report, Heritage statement, Noise report, Tree report (December 2018), Archaeological Desk Based Assessment by cgms Heritage (November 2018), Planning Statement (December 2018), Sustainable design and construction statement (December 2018) and Structural method statement by conisbee (December 2018) including: Suggested Basement Construction Sequence (Appendix A), associated Trial Pit Locations &amp; Logs (Appendix B) and Geotechnical Investigation by Aviron (Appendix C).</p>

	<p>REASON: To comply with Section 70(1) (a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.</p>
<b>3</b>	<p><b>Materials (Details)</b></p> <p>CONDITION: Details and samples of all facing materials shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commencing on site. The details and samples shall include:</p> <ul style="list-style-type: none"> <li>g) Final colour, type and sample panel of brickwork for the main elevations</li> <li>h) window and door treatment (including sections and reveals);</li> <li>i) terrace glazing;</li> <li>j) balustrading;</li> <li>k) All boundary treatments and screens including podium level boundary treatments</li> <li>l) any other materials to be used.</li> </ul> <p>The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter into perpetuity.</p> <p>REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard and preserves the character and appearance of the Canonbury Conservation Area.</p>
<b>4</b>	<p><b>Opaque Screening</b></p> <p>CONDITION: The extent and final details regarding opaque glazing proposed within the development shall be submitted prior to commencement of development.</p> <p>REASON: To protect the amenity of neighbouring properties and future occupiers.</p>
<b>5</b>	<p><b>Construction and Environmental Management Plan</b></p> <p>CONDITION: Notwithstanding the details submitted with the application, a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The CEMP shall include details and arrangements regarding:</p> <ul style="list-style-type: none"> <li>p) The notification of neighbours with regard to specific works;</li> <li>q) Advance notification of any access way, pavement, or road closures;</li> <li>r) Details regarding parking, deliveries and storage including details of the routing, loading, off-loading, parking and turning of delivery and construction vehicles and the accommodation of all site operatives', visitors' and construction vehicles during the construction period;</li> <li>s) Details regarding the planned demolition and construction vehicle routes and access to the site;</li> <li>t) Details regarding dust mitigation and measures to prevent the deposit of mud and debris on the public highway. No vehicles shall leave the site until their wheels, chassis and external bodywork have been effectively cleaned and washed free of earth, mud, clay, gravel, stones or any other similar substance;</li> <li>u) Details of waste storage within the site to prevent debris on the surrounding estate and the highway and a scheme for</li> </ul>

	<p>recycling/disposing of waste resulting from demolition and construction works;</p> <ul style="list-style-type: none"> <li>v) The proposed hours and days of work (with reference to the limitations of noisy work which shall not take place outside the hours of 08.00-18.00 Monday to Friday, 08.00-13.00 on Saturdays, and none on Sundays or Bank Holidays.)</li> <li>w) Details of any proposed external illumination and/or floodlighting during construction, including positions and hours of lighting;</li> <li>x) Details of measures taken to prevent noise disturbance to surrounding residents;</li> <li>y) Information on access and security measures proposed to prevent security breaches at the existing entrances to the site, to prevent danger or harm to the neighbouring residents, and to avoid harm to neighbour amenity caused by site workers at the entrances to the site;</li> <li>z) Details addressing environmental and amenity impacts (including (but not limited to) noise, air quality, smoke and odour, vibration and TV reception)</li> <li>aa) Details as to how safe and convenient vehicle access will be maintained for all existing vehicle traffic at all times, including emergency service vehicles;</li> <li>bb) Details of any construction compound including the siting of any temporary site office, toilets, skips or any other structure; and</li> <li>cc) Details of any further measures taken to limit and mitigate the impact of construction upon the operation of the highway and the amenity of the area.</li> <li>dd) Details of measures taken to minimise the impacts of the construction process on air quality, including NRMM registration.</li> </ul> <p>The report shall assess the impacts during the preparation/demolition, excavation and construction phases of the development on the surrounding roads, together with means of mitigating any identified impacts. The report shall also identify other local developments and highways works, and demonstrate how vehicle movements would be planned to avoid clashes and/or highway obstruction on the surrounding roads.</p> <p>The demolition and development shall thereafter be carried out in accordance with the approved details and measures.</p> <p>The development shall be carried out strictly in accordance with the details so approved and no change therefrom shall take place without the prior written consent of the Local Planning Authority.</p> <p>REASON: In order to secure the safe and efficient operation of the highway network, local residential amenity and to mitigate the impacts of the development.</p>
<b>6</b>	<p><b>Refuse/Recycling</b></p> <p>CONDITION: Details of refuse / recycling storage and collection arrangements shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development.</p> <p>The refuse / recycling storage and collection arrangements shall ensure that storage bins do not obstruct the public highway. The dedicated refuse / recycling enclosure(s) approved shall be provided prior to the first occupation of the development hereby approved and shall be maintained as such thereafter.</p>

	<p>REASON: To secure the necessary physical waste enclosures to support the development and to ensure that responsible waste management practices are adhered to.</p>
<b>7</b>	<p><b>Cycle parking</b></p> <p>CYCLE PARKING PROVISION (DETAILS): Details of the layout, design and appearance (shown in context) of the bicycle storage area(s) for the site shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the residential units approved under this consent. The storage area(s) shall be secure and provide for no less than 11 cycle spaces for the proposed residential units and 12 spaces for the commercial uses hereby approved.</p> <p>The bicycle storage area(s) shall be provided strictly in accordance with the details so approved, provided/erected prior to the first occupation of the development, and maintained as such thereafter.</p> <p>REASON: To ensure adequate cycle parking is available and easily accessible on site and to promote sustainable modes of transport.</p>
<b>8</b>	<p><b>Acoustic Design Statement</b></p> <p>An Acoustic Design Statement following the guidelines of PPG24 and a scheme for sound insulation and noise control measures shall be submitted to and approved in writing by; and implemented to the satisfaction of the Local Planning Authority prior to the first occupation of the rooms hereby approved. The sound insulation and noise control measures shall achieve the following internal noise targets:</p> <p>Bedrooms (23.00-07.00 hrs) 30 dB LAeq,8 hour and 45 dB Lmax (fast)  Living Rooms (07.00-23.00 hrs) 35 dB LAeq, 16 hour  Dining rooms (07.00 -23.00 hrs) 40 dB LAeq, 16 hour</p> <p>The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.</p> <p>The development would require mechanical ventilation and the report should pay reference to the AVO guidance on ventilation and overheating and the ProPG Planning and Noise guidance.</p> <p>REASON: To protect the amenity of neighbouring properties and future occupiers.</p>
<b>9</b>	<p><b>Air Quality Report</b></p> <p>CONDITION: Before commencement of the development, an air quality report shall be submitted to and agreed by the Local Planning Authority. The report shall detail:</p> <ul style="list-style-type: none"> <li>· the area within the boundary of the site, which may exceed relevant national air quality objectives.</li> <li>· specify how the detailed application will address any potential to cause relevant exposure to air pollution levels exceeding the national air quality objectives.</li> <li>· identify areas of potential exposure.</li> </ul>

	<p>· detail how the development will reduce its impact on local air pollution.</p> <p>Regard shall be had to the guidance from the Association of London Government "Air quality assessment for planning applications - Technical Guidance Note", the GLA's Air Quality Neutral policy and EP-UK &amp; IAQM's "Planning For Air Quality" in the compilation of the report.</p> <p>REASON: To protect the amenity of neighbouring properties and future occupiers.</p>
<b>10</b>	<b>Secured by Design accreditation</b>
	<p>SECURED BY DESIGN: Prior to commencement of the development hereby approved, details of how the development achieves Secured by Design accreditation shall be submitted to and approved in writing by the Local Planning Authority.</p> <p>The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interests of safety and security.</p>
<b>11</b>	<b>Basement Development Monitoring</b>
	<p>BASEMENT DEVELOPMENT MONITORING: The Chartered Structural Engineer (MI Struct.E) certifying the Structural Method Statement (SMS) dated December 2018 submitted to support the hereby approved development shall be retained (or a replacement person holding equivalent qualifications shall be appointed and retained) for the duration of the development to monitor the safety of the construction stages and to ensure that the long term structural stability of the existing buildings and other nearby buildings are safeguarded, in line with the supporting Structural Method Statement. At no time shall any construction work take place unless a qualified engineer is appointed and retained in accordance with this condition.</p> <p>REASON: To ensure that the construction work carried out is in accordance to the submitted Structural Method Statement for the duration of the construction and maintain compliance with the Islington Basement Development SPD (2016).</p>
<b>12</b>	<b>Water efficiency requirements</b>
	<p>CONDITION: Prior to the occupation of the hereby approved development, details shall be submitted and approved in writing, demonstrating compliance with the water efficiency requirements of Part G of Policy 7.4 of Development Management Policies (2013) and Environmental Design SPD. The approved measures shall be implemented in full and retained thereafter.</p> <p>REASON: To ensure the water efficiency of the development.</p>
<b>13</b>	<b>Carbon efficiency</b>
	<p>CONDITION: The development hereby permitted shall be constructed to achieve a 19% reduction in regulated CO2 emissions, compared to compliance with the Building Regulations 2015 and an on-site reduction in regulated CO2 emissions of at least 25% in comparison with regulated emissions from a building which complies with <i>Building Regulations Part L 2010</i> (equivalent to Code for Sustainable Homes level 4), unless such provision is not feasible.</p> <p>REASON: In the interest of securing sustainable development.</p>

<b>14</b>	<b>Landscaping</b>
	<p>CONDITION: A landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works commencing on site. The landscaping scheme shall include the following details:</p> <ul style="list-style-type: none"> <li>a) a biodiversity statement detailing how the landscaping scheme maximises biodiversity;</li> <li>b) existing and proposed underground services and their relationship to both hard and soft landscaping;</li> <li>c) soft plantings: including grass and turf areas, shrub and herbaceous areas;</li> <li>d) topographical survey: including earthworks, ground finishes, top soiling with both conserved and imported topsoil(s), levels, drainage and fall in drain types;</li> <li>e) enclosures: including types, dimensions and treatments of walls, fences, screen walls, barriers, rails, retaining walls and hedges;</li> <li>f) hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible pavings, unit paving, furniture, steps and if applicable synthetic surfaces; and</li> <li>g) any other landscaping feature(s) forming part of the scheme. All landscaping in accordance with the approved scheme shall be completed / planted during the first planting season following practical completion of the development hereby approved.</li> </ul> <p>The landscaping and tree planting shall have a two-year maintenance / watering provision following planting and any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of completion of the development shall be replaced with the same species or an approved alternative to the satisfaction of the Local Planning Authority within the next planting season. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interest of biodiversity, sustainability, and to ensure that a satisfactory standard of visual amenity is provided and maintained.</p>
<b>15</b>	<b>Green Roof</b>
	<p>CONDITION: The biodiversity green roof as indicated on Drawing No. 450-PT-20-LRF-PL-2001 PL2 shall be:</p> <ul style="list-style-type: none"> <li>d) biodiversity based with extensive substrate base (depth 80-150mm);</li> <li>e) laid out in accordance with plan number 450-PT-20-LRF-PL-2001 PL2 hereby approved; and</li> <li>f) planted/seeded with a mix of species within the first planting season following the practical completion of the building works (the seed mix shall be focused on wildflower planting, and shall contain no more than a maximum of 25% sedum).</li> </ul> <p>The biodiversity green roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair, or escape in case of emergency.</p>

	<p>The biodiversity roof shall be carried out strictly in accordance with the details specified and shall be maintained as such thereafter into perpetuity.</p> <p>REASON: To ensure the development provides the maximum possible provision towards creation of habitats and valuable areas for biodiversity.</p>
<b>16</b>	<b>Ecology protection</b>
	<p>CONDITION: Prior to the commencement of the hereby approved development details of the bat and bird boxes shall be submitted and approved. The details shall include information an investigation of the most suitable location and shall include nesting location and boxes for swifts. The approved details shall be implemented in full and retained thereafter.</p> <p>REASON: To provide suitable nesting locations in accordance with the Council's biodiversity objectives.</p>
<b>17</b>	<b>Accessible Homes Standards</b>
	<p>ACCESSIBLE HOMES STANDARDS - (COMPLIANCE): The residential dwellings, in accordance with the Access Statement and plans hereby approved, shall be constructed to the standards for flexible homes in Islington ('Accessible Housing in Islington' SPD) and incorporating all Lifetime Homes Standards.</p> <p>REASON: To secure the provision of flexible, visitable and adaptable homes appropriate to diverse and changing needs.</p>

**List of Informatives:**

<b>1</b>	<b>Construction works</b>
	<p>Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Pollution Team, Islington Council, 222 Upper Street London N1 1XR (Tel. No. 020 7527 3258 or by email <a href="mailto:pollution@islington.gov.uk">pollution@islington.gov.uk</a>) or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.</p>
<b>2</b>	<b>Highways Requirements</b>
	<p>Compliance with sections 168 to 175 and of the Highways Act, 1980, relating to "Precautions to be taken in doing certain works in or near streets or highways". This relates, to scaffolding, hoarding and so on. All licenses can be acquired through <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>. <u>All agreements relating to the above need to be in place prior to works commencing.</u></p> <p>Compliance with section 174 of the Highways Act, 1980 - "Precautions to be taken by persons executing works in streets." Should a company/individual request to work on the public highway a Section 50 license is required. Can be gained through <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>. <u>Section 50 license must be agreed prior to any works commencing.</u></p> <p>Compliance with section 140A of the Highways Act, 1980 – "Builders skips: charge for occupation of highway. Licenses can be gained through <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>.</p> <p>Compliance with sections 59 and 60 of the Highway Act, 1980 – "Recovery by highways authorities etc. of certain expenses incurred in maintaining highways".</p>

	<p>Haulage route to be agreed with streetworks officer. Contact <a href="mailto:streetworks@islington.gov.uk">streetworks@islington.gov.uk</a>.</p> <p>Joint condition survey required between Islington Council Highways and interested parties before commencement of building works to catalogue condition of streets and drainage gullies. Contact <a href="mailto:highways.maintenance@islington.gov.uk">highways.maintenance@islington.gov.uk</a>.</p>
	<p><b>SECTION 106 AGREEMENT</b></p> <p>You are advised that this permission has been granted subject to a legal agreement under Section 106 of the Town and Country Planning Act 1990.</p>

## **APPENDIX 2: RELEVANT DEVELOPMENT PLAN POLICIES AND GUIDANCE**

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

### **1. National and Regional Guidance**

The National Planning Policy Framework 2019 seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.

- NPPF (2019)

### **2. Development Plan**

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

#### **A) The London Plan 2016 - Spatial Development Strategy for Greater London**

Policy 3.3 Increasing Housing Supply  
Policy 3.4 Optimising Housing Potential  
Policy 3.5 Quality & Design of Housing Developments  
Policy 3.8 Housing choice  
Policy 3.12 Negotiating affordable housing  
Policy 3.14 Existing housing  
Policy 4.3 Mixed use development and offices  
Policy 5.1 Climate change mitigation  
Policy 5.2 Minimising carbon dioxide emissions  
Policy 5.3 Sustainable design and construction  
Policy 5.9 Overheating and cooling  
Policy 6.7 Better streets and surface transport  
Policy 6.9 Cycling  
Policy 6.10 Walking  
Policy 6.13 Parking  
Policy 7.1 Lifetime neighbourhoods  
Policy 7.2 An inclusive environment  
Policy 7.4 Local Character  
Policy 7.6 Architecture  
Policy 7.8 Heritage Assets and Archaeology

#### **B) Islington Core Strategy 2011**

Policy CS5 Angel and Upper Street  
Policy CS8 Enhancing Islington's character  
Policy CS9 Protecting and enhancing Islington's built and historic environment  
Policy CS10 Sustainable design  
Policy CS11 Waste  
Policy CS12 Meeting the Housing Challenge  
Policy CS13 Employment spaces  
Policy CS14 Retail and services  
Policy CS18 Delivery and infrastructure

#### **C) Development Management Policies June 2013**

##### Design and Heritage

DM2.1 Design  
DM2.2 Inclusive Design  
DM2.3 Heritage

### Housing

- DM3.1 Mix of housing sizes
- DM3.3 Residential conversions and extensions
- DM3.4 Housing standards
- DM3.5 Private outdoor space

### Shops, culture and services

- DM4.4 Promoting Islington's Town Centre
- DM4.5 Primary and Secondary Frontages

### Employment

- DM5.1 New business floorspace

### Health and Open Space

- DM6.3 Protecting open space
- DM6.5 Landscaping, trees and biodiversity

### Energy and Environmental Standards

- DM7.1 Sustainable Design and Construction
- DM7.2 Energy efficiency and carbon reduction in minor schemes

### Transport

- DM8.4 Walking and Cycling
- DM8.5 Vehicle Parking
- DM8.6 Delivery and servicing for new developments

## **3. Designations**

The site has the following designations under the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and Site Allocations 2013:

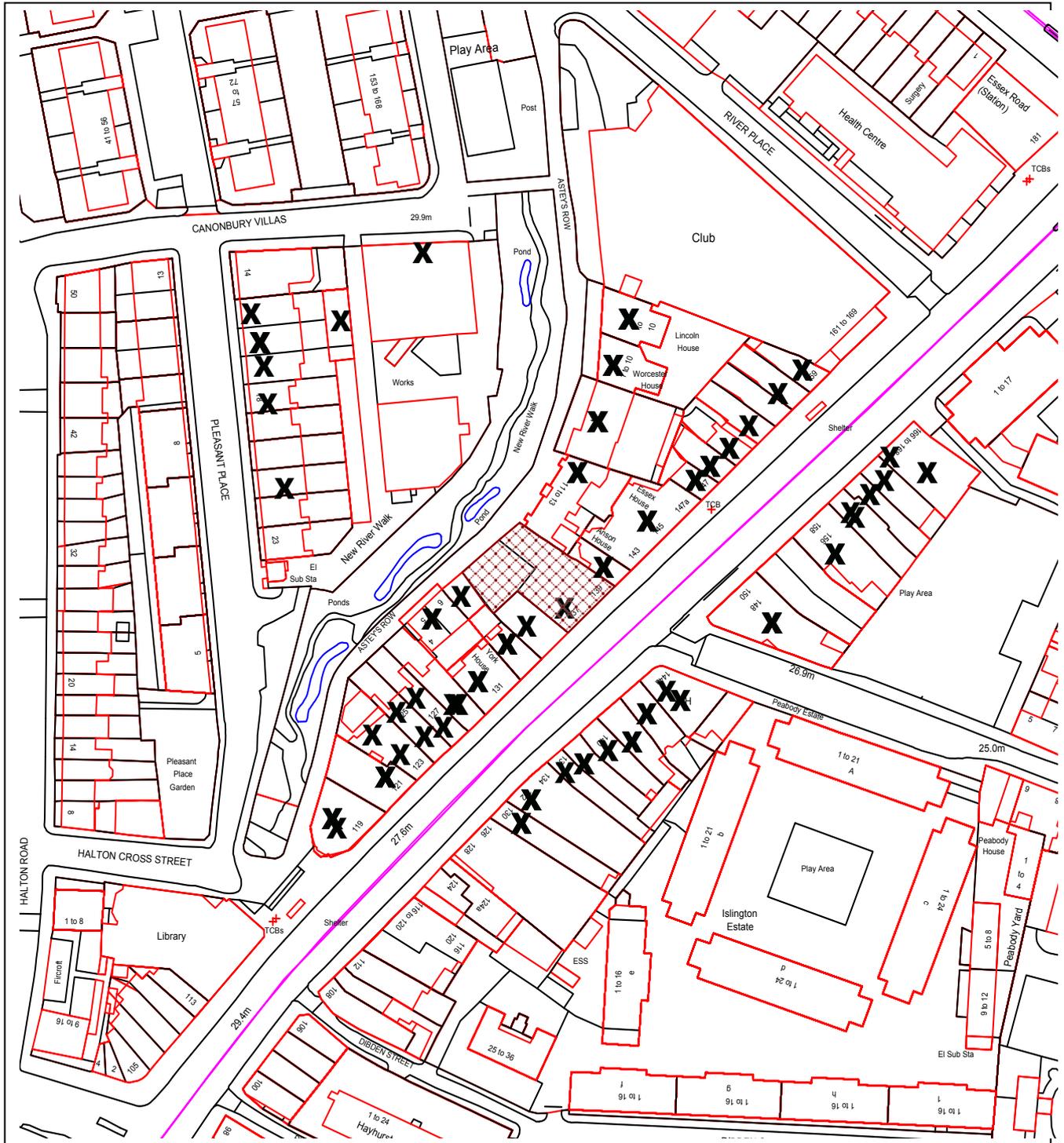
## **4. Supplementary Planning Guidance (SPG) / Document (SPD)**

The following SPGs and/or SPDs are relevant:

<u>London Plan</u>	Accessible London (2016) Character and Context (2014) Housing (2016) Sustainable Design and Construction (2014) Town Centres (2014)
<u>Islington</u>	Affordable Housing Small Sites Contributions (2012) Conservation Area Design Guidelines (Canonbury Conservation Area; 2002)  Basement Development (2016) Environmental Design (2012) Inclusive Design in Islington (2014) Islington Urban Design Guide (2017)

This page is intentionally left blank

# Islington SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.  
P2018/4159/FUL

This page is intentionally left blank

## ADDENDUM TO PLANNING COMMITTEE REPORT

Development Management Service  
Planning and Development Division  
Environment and Regeneration Department

<b>PLANNING SUB-COMMITTEE A</b>		<b>AGENDA ITEM NO:</b>	<b>B4</b>
<b>Date:</b>	17 <sup>th</sup> March 2019	<b>NON-EXEMPT</b>	

Application number	P2018/4275/FUL
Application type	Full Planning Application (council own building)
Ward	Bunhill
Listed building	N/A
Conservation area	N/A
Development Plan Context	Moorfields Archeological Priority Area Bunhill & Clerkenwell Core Strategy Key Area Central Activities Zone Cycle Routes (Local & Major) Bunhill & Clerkenwell Local Plan Area Within 50m of St Luke's Conservation Area Within 50m of Bunhill Fields and Finsbury Square Conservation Area Article 4 Direction A1 to A2 (Rest of Borough) Article 4 Direction B1(c) to C3 Heathrow Safeguarding Area
Licensing Implications	None
Site Address	Braithwaite House, Bunhill Row, Islington, London, EC1Y 8NE
Proposal	The installation of 65 no. small antennas pole mounted on 13 no. free-standing support frames upon the roof of the building, the installation of 2 no. equipment cabinets within an existing plant room and development ancillary thereto.

Case Officer	Mr Ross Harvey
Applicant	N/A
Agent	Mr Chris Andrews – Waldon Telecom Ltd

### 1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission:

1. subject to the conditions set out in **Appendix 1** of this addendum report;

## **2. REASON FOR DEFERAL**

- 2.1 This application was confirmed for the agenda of Planning Sub-Committee A on 7<sup>th</sup> November 2019. The application was withdrawn from the agenda and therefore not heard or considered by members on the night.
- 2.2 The reasons for deferral relate to the advice of planning officers who confirmed that the council had not received comments from the councils housing section in relation to the proposed telecoms before members.
- 2.3 Since the deferral of the item, Officers have received confirmation that the Housing Department are in support of the application. In addition, the applicant has provided further information regarding the type of infrastructure being proposed. The installation of the type of antennas proposed (Siklu and Radwin) is sought in association with extending the fixed broadband wireless network across central London. This type of connection would for example provide a network link between 2 offices which already have fibre broadband without the need for fibre cables to be provided between the 2 buildings. The technology is different to Wi-Fi, with Wi-Fi signals typically designed to cover a wider area to maximise the number of devices that can connect and is substantially different to 4G and 5G technology as fixed broadband wireless relies on point to point connection dependent on a line of site rather than 4G/ 5G signals which can penetrate walls and buildings.
- 2.4 The application had previously been assessed on the basis that it was for the installation of 5G telecoms technology. A new report has been prepared on the basis of the updated information provided, confirming that the scheme is for fixed broadband wireless internet and not 5 G technology, and attached at **Appendix 1** below.

## Appendix 1 PLANNING COMMITTEE REPORT

<b>PLANNING SUB COMMITTEE A</b>		<b>AGENDA ITEM NO:</b>	
<b>Date:</b>	Tuesday, 17 March 2019	<b>NON-EXEMPT</b>	

Application number	P2018/4275/FUL
Application type	Full Planning
Ward	Bunhill
Listed building	N/A
Conservation area	N/A
Development Plan Context	Moorfields Archeological Priority Area Bunhill & Clerkenwell Core Strategy Key Area Central Activities Zone Cycle Routes (Local & Major) Bunhill & Clerkenwell Local Plan Area Within 50m of St Luke's Conservation Area Within 50m of Bunhill Fields and Finsbury Square Conservation Area Article 4 Direction A1 to A2 (Rest of Borough) Article 4 Direction B1(c) to C3 Heathrow Safeguarding Area
Licensing Implications	None
Site Address	Braithwaite House, Bunhill Row, Islington, London, EC1Y 8NE
Proposal	The installation of 65 no. small antennas pole mounted on 13 no. free-standing support frames upon the roof of the building, the installation of 2 no. equipment cabinets within an existing plant room and development ancillary thereto.

Case Officer	Ross Harvey
Applicant	N/A
Agent	Mr Chris Andrews – Waldon Telecom Ltd

### 1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission subject to:

1. The conditions set out in **Appendix 1** (Recommendation A);

## 2. SITE PLAN

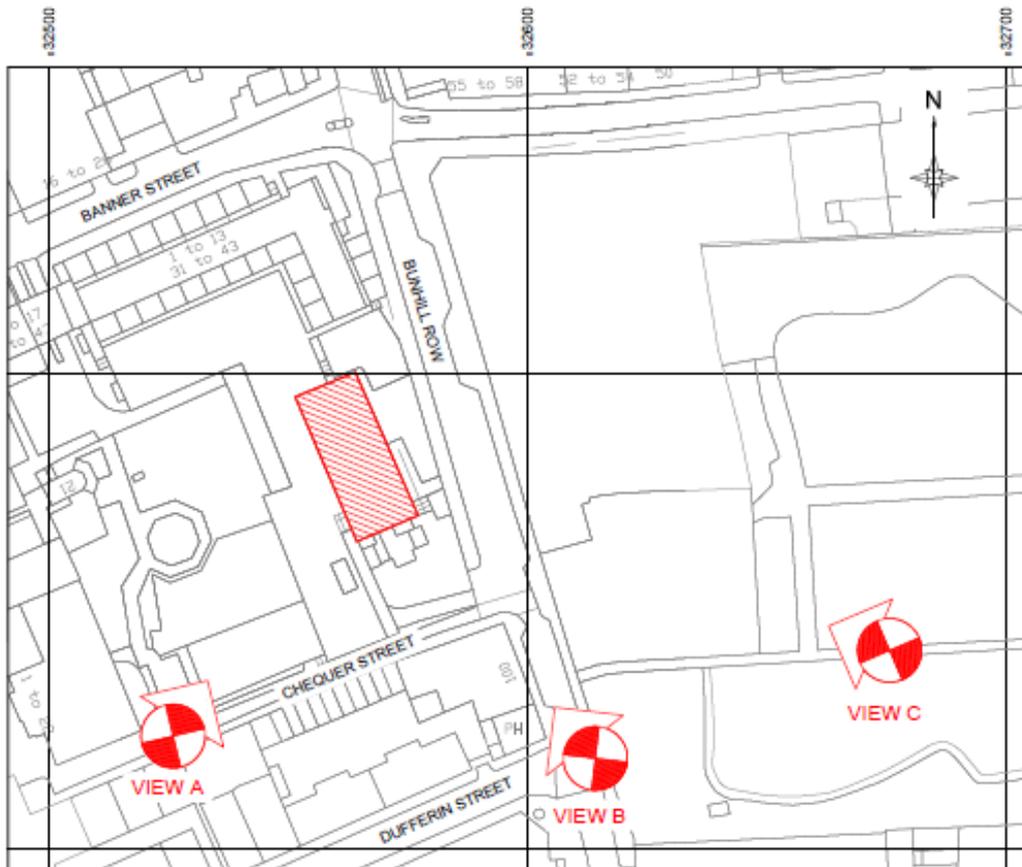


Image 1: Site Location Plan (outlined in red)

## 3. PHOTOS OF SITE/STREET



Image 2: Aerial view in northerly direction



**Image 3:** Aerial view in southerly direction



**Image 4:** View towards Braithwaite House from Old Street (outside Conservation Area)



**Image 5:** View from Grade I Listed Bunhill Fields Burial Ground



**Image 6:** View from Chequer Court (St Lukes Conservation Area)

#### **4. SUMMARY**

- 4.1 Planning permission is sought for the installation of 65 no. small antennas pole mounted on 13 no. free-standing support frames upon the roof of the building, the installation of 2 no. equipment cabinets within an existing plant room and development ancillary thereto. The installation of the type of antennas proposed (Siklu and Radwin) is sought in association with extending the fixed broadband wireless network across central London.
- 4.2 This type of connection would for example provide a network link between 2 offices which already have fibre broadband without the need for fibre cables to be provided between the 2 buildings. The technology is different to Wi-Fi, with Wi-Fi signals typically designed to cover a wider area to maximise the number of devices that can connect and is substantially different to 4G and 5G technology as fixed broadband wireless relies on point to point connection dependent on a line of site rather than 4G/ 5G signals which can penetrate walls and buildings.
- 4.3 The application building is known as Braithwaite House - a 19 storey (57m) mid-twentieth century building in an area which exhibits a wide variety of building sizes and typologies. The site is not situated within a conservation area but is immediately adjacent to the St Luke's and Bunhill Fields and Finsbury Square Conservation Areas. Adjacent to the site is also the Grade I Listed Bunhill Fields Burial Ground, with the Grade II\* Armoury House being approximately 150m to the south east.
- 4.4 The application is being brought to committee due to the nature of development on the roof of a tall building with historically sensitive buildings and protected spaces adjacent to the site.
- 4.5 The main considerations in this assessment include the impact of the proposals on the historic setting of the adjacent Grade I Listed Bunhill Fields Burial Ground and the character and appearance of the Conservation Area, as well as considering the potential neighbor amenity impacts and public benefits of the proposals. The application had previously been assessed on the basis that it was for the installation of 5G technology. The report has been amended on the basis of the updated information provided, confirming that the scheme is for fixed broadband wireless internet. The assessment outlined in the chapters below is reflective of the updated information provided.

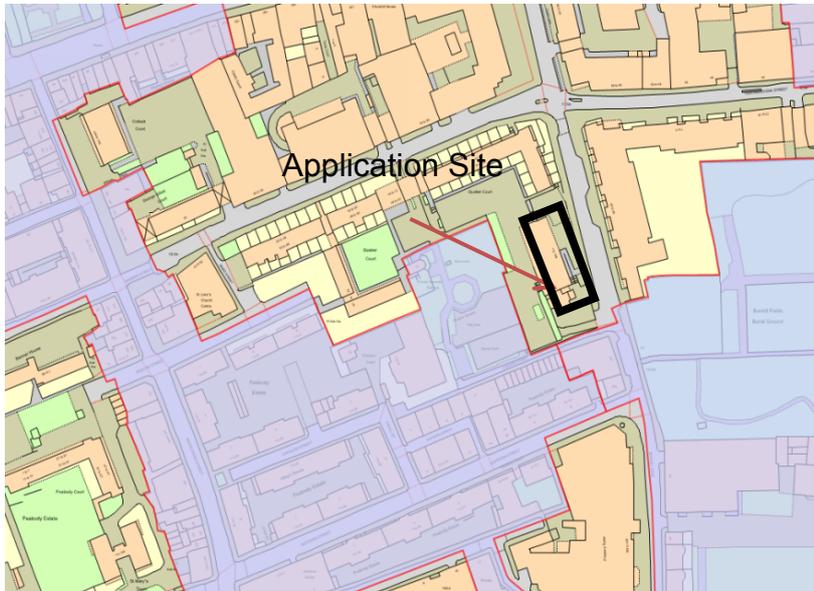


**Image 7:** Diagram showing function of proposed wireless infrastructure

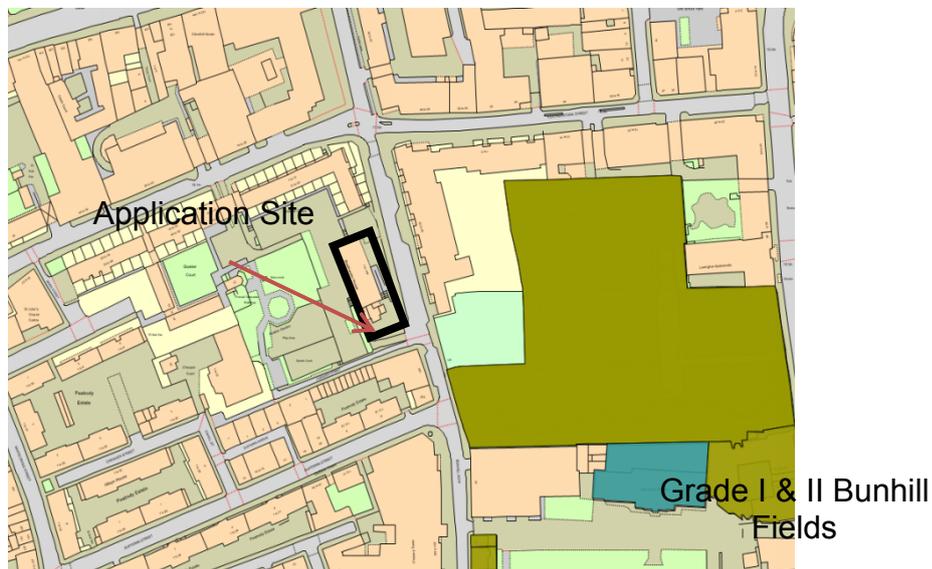
- 4.6 The Design and Conservation Team consider that the proposals would impact on views from the public realm is considered to cause some limited harm the character and appearance of the area and the setting of the listed buildings, and visual amenity generally.
- 4.7 Paragraph 196 of the NPPF 2019 states ‘where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use’. In accordance with the NPPF, public benefits are looked at. In this situation, there is considerable public benefit from the overall objective to improve electronic communication and the resulting fast and ubiquitous access to the internet from mobile and fixed devices is considered to outweigh the less than substantial harm caused to the nearby heritage assets. Appropriate weight in accordance with the statutory duties (S66 and S72) have been applied to “preserve” the heritage assets. In addition, the proposals would not be considered to cause harm to the amenities of neighbouring properties.
- 4.8 For the above reasons the recommendation to committee is to resolve to grant permission subject to planning conditions.

## 5. SITE AND SURROUNDING

- 5.1 The application site refers to the roof of a 19 storey residential building situated on the western side of Bunhill Row.
- 5.2 The site is not situated within a conservation area, nor does it contain any statutory listed buildings. The immediate surrounding area is predominantly characterised by multi-unit housing. However, the broader area is comprised of a range of commercial and mixed uses. The site is designated within the Central Activities Zone and the Bunhill and Clerkenwell Core Strategy Key Area.
- 5.3 To the east of the site is the Grade I listed Bunhill Fields Burial Ground, which is an open space directly opposite the application site. The Burial Ground also contains a large number of Grade II Listed monuments which relate to burial grounds of high importance. Further east is the Grade II\* listed Armoury House and Nos. 20-29 Bunhill Row (Grade II listed), both to the south. In addition, whilst the application site is not within a conservation area, it is immediately adjacent to St Luke’s and Bunhill Fields & Finsbury Square Conservation Areas.



**Image 7:** Nearby Conservation Area Boundaries (site outlined in black)



**Image 8:** Nearby Statutory Listings

## 6. PROPOSAL (in detail)

- 6.1 Planning permission is sought for the installation of 65 no. small antennas pole mounted on 13 no. free-standing support frames upon the roof of the building, the installation of 2 no. equipment cabinets within an existing plant room and development ancillary thereto.
- 6.2 The drawings show the proposed infrastructure arranged along the outer edge of the roof, generally along the eastern and western parapets. In terms of their overall height, the proposed 13no. free standing support frames would measure approximately 3.1m above the existing roof level and approximately 1m above the existing parapet wall, when measured from their highest point being the top antenna. The 2no. equipment cabinets would measure approximately 2.5m above roof level and approximately 0.4m above the existing parapet wall.
- 6.3 The proposed infrastructure is in addition to permission granted for the installation of 10no. 3.5m long support poles each supporting 4no. 300mm diameter transmission dishes at roof level, along with 1no. Optimity comms cabinet, 6no. self-closing safety gates which were granted in March 2019, but not yet implemented. The approved support poles measured approximately 2.4m above the existing parapet wall and will be operated by Optimity, rather than Luminet. It is understood that the intention is for both applications to be implemented when permission is granted.

## 7. RELEVANT HISTORY:

### PLANNING APPLICATIONS

#### *Braithwaite House*

- 7.1 P2018/3215/FUL - Installation of wireless internet services infrastructure comprising 10no. 3.5m long support poles each supporting 4no. 300mm diameter transmission dishes at roof level, along with 1no. Optimity comms cabinet, 6no. self-closing safety gates to be installed in existing safety hand railing and development ancillary thereto. Approved with conditions 15/03/2019
- 7.2 P101335 - Change of use of self-contained flat to tenant management office. Approve with conditions 28/09/2019
- 7.3 P100865 - Erection of full-height riser on north side of building plus works associated with the creation of a plant room enclosure at ground floor level. Approve with conditions 12/08/2010
- 7.4 P090863(MA01) - Enlargement of powder coated steel lettering as a minor amendment to advertisement consent reference P090863 (dated 25/06/2009) for display of name sign and relocation of existing sign to the front elevation of Braithwaite House, fronting Bunhill Row. Non-material amendment agreed 20/07/2009
- 7.5 P090863 - Display of name sign and relocation of existing sign to the front elevation of Braithwaite House, fronting Bunhill Row. Approve with conditions 25/06/2009

#### *Finsbury Tower - 103 - 105 Bunhill Row*

- 7.10 P2016/3939/FUL - Erection of a 12 storey extension to the existing 16 storey building and a 3 to 6 storey extension to the existing podium block up to 7 storeys to provide additional office (Use Class B1a) floorspace; recladding of the existing building to match the materials of the extensions; change of use of part of the ground floor accommodation to flexible Class A1 (retail) and A3 (restaurant/cafe) uses; demolition of single storey structures and the erection of 6 storey block adjacent to the western elevation to provide 25 affordable dwellings; alterations to the public realm, including landscaping and highways improvements and other associated works. Approved with conditions 24/08/2017

### ENFORCEMENT

- 7.5 None.

## 8. CONSULTATION

### Public Consultation

- 8.1 Letters were sent to 218 occupants of adjoining and nearby properties at Banner Street, Bunhill Row, Chequer Street, and Dufferin Avenue on 18 February 2019. A Site Notice and Press Advert were also displayed. The public consultation exercise therefore expired on 17 March 2019. Further documents from the applicant a further round of consultation was undertaken on 13 January 2020 with letters sent to the 218 addresses and an accompanying site and press displayed on 16 January 2020. The latest round of public consultation on the application therefore expired on 09 February 2020, however it is the Council's practice to continue to consider representations made up until the date of a decision.

- 8.2 At the time of writing of this report a total of 4 no. objections had been received from the public. The following issues were raised:
- environment and health impacts associated with the proposed antenna installation. The objector requested a report to address these concerns. (See paragraphs 10.30 to 10.39)
  - roof is used as a means of fire escape (See paragraph 10.40)
  - guarantee that the antennas will not be used for 5G in the future (See paragraph 10.41)
  - concerns regarding the infrastructure being installed on social housing (See paragraph 10.42)

### Internal Consultees

- 8.3 **Design and Conservation Officer:** *Braithwaite House is a tower block in close proximity to the Grade I listed Bunhill Fields, which is an open space directly opposite. It is also in the setting of the Grade II\* listed Armoury House and Nos. 20-29 Bunhill Row (Grade II listed), both to the south. In addition, it is visible from within two neighbouring Conservation Areas – St Luke’s and Bunhill Fields & Finsbury Square.*
- 8.4 *In addition to the policies set out within the development plan, section 72(1) of the Planning (Listed Building & Conservation Areas) Act 1990 requires local authorities, in the exercise of their planning functions with respect to any buildings or land, to pay special attention to the desirability of preserving or enhancing the character and appearance of conservation areas. Section 66(1) of The Act requires that local authorities have special regard to preserving or enhancing listed buildings and their settings in considering whether or not to grant permission for development which affects a listed building or its setting. Additionally, paragraph 190 of the NPPF 2019 requires local authorities to assess the significance of any heritage assets that may be affected by a proposal (including development affecting the setting of a heritage asset), and paragraph 192 directs local authorities to take account of the desirability of preserving and enhancing that significance in determining applications.*
- 8.5 *The proposed installation of tall, contemporary telecommunications equipment on the roof of the tallest and most incongruous building in the area would draw the eye away from those buildings of special interest and adds visual clutter to the roofline of an already dominant building. The resulting impact on views from the public realm is considered to harm the character and appearance of the area and the setting of the listed buildings, and visual amenity generally.*
- 8.6 *Alternative sites should be explored, or the impact reduced by locating the telecommunications in the centre of the roof, set back from the edges as much as possible.*
- 8.7 **Public Health:** *Response received jointly from Islington and Camden Public Health Officers stating that research has been undertaken on the impacts of wireless antennas, radio base stations and electromotive force on human health and that the evidence demonstrates that there are no ill effects on human health. All antenna and equipment used in the transmission of mobile phone signals, television and radio transmission and wireless broadband are required to adhere to strictly standards on non-ionising radiation set out by the (International Commission on Non- Ionizing Radiation Protection).*

This link (<https://www.gov.uk/government/publications/mobile-phone-base-stations-radio-waves-and-health/mobile-phone-base-stations-radio-waves-and-health>) includes detailed information on exposure guidelines and health-related evidence and reviews. PHE continues to monitor the latest scientific evidence on this topic and update its advice, and Islington Council will regularly review its position in light of the latest available evidence and national guidance on the health impacts of mobile phone installations.

8.8 **Housing:** *The Housing Department is happy with the applications that have been made and does not have objections to either of the two schemes*

## 9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATIONS & POLICIES

9.1 Islington Council (Planning Committee), in determining the planning application has the following main statutory duties to perform:

- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990);
- To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance.)
- As the development affects the setting of listed buildings, Islington Council (Planning Committee) is required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses (S66 (1) Planning (Listed Buildings and Conservation Areas) Act 1990) and;
- As the development is within or adjacent to a conservation area(s), the Council also has a statutory duty in that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area (s72(1)).

9.4 At paragraph 8 the NPPF (2019) states: "that sustainable development has an economic, social and environmental role".

9.6 Since March 2014 Planning Practice Guidance for England has been published online.

9.7 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.

9.8 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:

- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

9.9 Members of the Planning Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.

- 9.10 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

#### Telecommunications

- 9.11 Chapter 10 of the NPPF is entitled Supporting high Quality communications. It is stated at Paragraph 112 that, *'Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).'*
- 9.12 Paragraph 113 further clarifies that *'The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged. Where new sites are required equipment should be sympathetically designed and camouflaged where appropriate.'*
- 9.13 Paragraph 114 establishes that *'Local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that: a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.'*
- 9.14 Paragraph 115 states that *'Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include: a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure 34 and a statement that self-certifies that, when operational, International Commission guidelines will be met.'*

- 9.15 In addition, Paragraph 116 states that ‘Local *planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure*

### **Development Plan**

- 9.16 The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and the Finsbury Local Plan 2013. The policies of the Development Plan that are considered relevant to this application are listed at Appendix 2 to this report.
- 9.17 The site has the following designations under the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013:
- Moorfields Archeological Priority Area
  - Bunhill & Clerkenwell Core Strategy Key Area
  - Central Activities Zone
  - Cycle Routes (Local & Major)
  - Bunhill & Clerkenwell Local Plan Area
  - Within 50m of St Luke’s Conservation Area
  - Within 50m of Bunhill Fields and Finsbury Square Conservation Area
  - Article 4 Direction A1 to A2 (Rest of Borough)
  - Article 4 Direction B1(c) to C3
  - Heathrow Safeguarding Area

### **Supplementary Planning Guidance (SPG) / Document (SPD)**

- 9.18 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

## **10. ASSESSMENT**

- 10.1 The main issues arising from this proposal relate to:

- Design and harm to the conservation area, the statutory listed building and nearby statutory listed buildings
- Neighbours Amenity
- Public Benefit

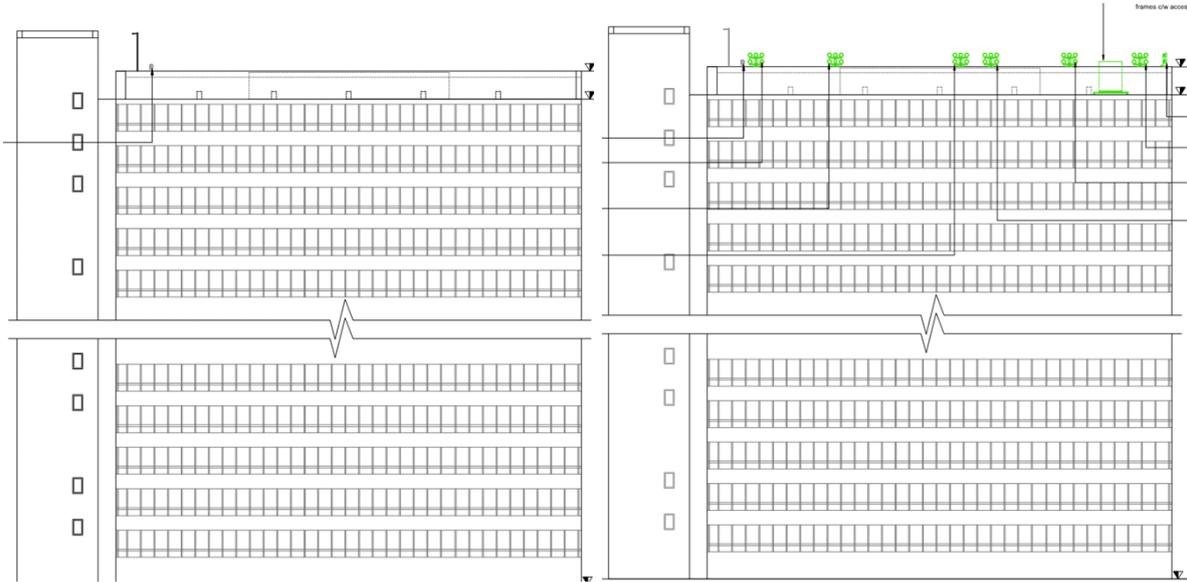
### **Design and Conservation**

#### *Policy context*

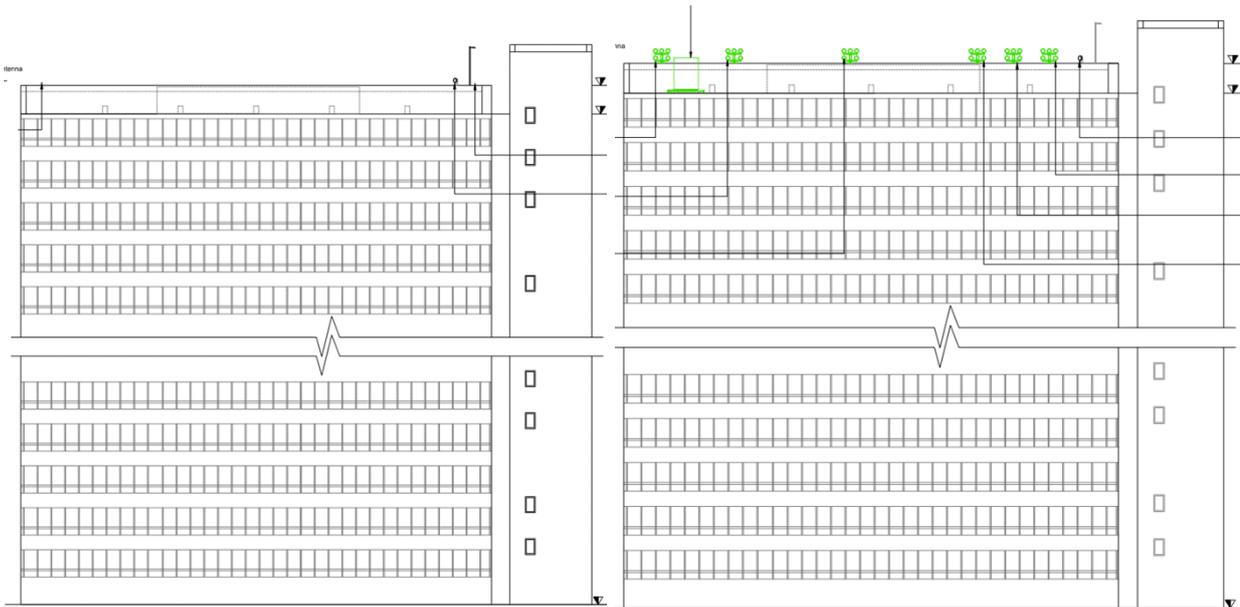
- 10.2 Section 72 (1) of the of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Local Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
- 10.3 Under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the local planning authority has a duty in considering whether to grant planning permission for development which affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. This is also the wording of the duty the local planning authority has when considering applications for listed building consent
- 10.4 Paragraph 114 of the NPPF 2019 states that local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that:

- a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and
  - b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.
- 10.5 Paragraph 192 of National Planning Policy Framework (2019) states in determining applications, local planning authorities should take account of
- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation
  - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - c) the desirability of new development making a positive contribution
- 10.6 Paragraphs 194-196 of the NPPF (2018) deals specifically with harm to the significance of a designated heritage asset and whether this harm is substantial or less than substantial. In cases where the harm is less than substantial harm, this should be weighed against the public benefits of the proposal.
- 10.7 Policy CS9 of Islington's Core Strategy (CS) 2011 and Policy DM2.1 of Islington's Development Management Policies 2013 accord with the National Planning Policy Framework (NPPF) in seeking to sustain and enhance Islington's built environment. Taken together, they seek to ensure that proposed development responds positively to existing buildings, the streetscape and the wider context, including local architecture and character, surrounding heritage assets, and locally distinctive patterns of development.
- 10.8 Policy DM2.3 states that Islington's historic environment is an irreplaceable resource and the council will ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance. It also states that the council will require that alterations to existing buildings in conservation areas conserve or enhance their significance.
- 10.9 Development Management Policy DM2.7 states that telecommunications and utilities equipment will only be permitted where they are sited and designed to minimise their visual impact, do not have a detrimental effect upon the character or appearance of the building or area, innovative design and technological solutions have been explored to minimise visual impact, and there is no reasonable possibility of sharing facilities.
- 10.10 According to the Urban Design Guide (paragraph 5.189) telecommunication aerials and equipment often contribute to physical clutter. It states that every opportunity should be made to rationalise and reduce their impact within the public realm.
- 10.11 Paragraph 190 of the Islington Urban Design Guide SPD states that particular care needs to be taken with mobile phone/telecommunication masts to ensure their size, height and positioning does not dominate the surrounding public realm. Where it will not have a detrimental impact on performance, they should be located where they are largely obscured from the surrounding public realm and do not impact adversely upon the skyline from longer views.
- 10.12 The application site is not within a conservation area but is within close proximity to the St Lukes Conservation Area and the Bunhill Fields and Finsbury Square Conservation Area. Whilst limited it is acknowledged that the proposed infrastructure would be visible from long views within the surrounding conservation areas. The Bunhill Fields and Finsbury Square Conservation Area Design Guidelines are relatively quiet with regards to plant or roof equipment in areas away from City Road and Tabernacle Street. It states at paragraph 22.23 that Bunhill Fields, which is a quiet retreat from the busy streets, has a very special character. Its seclusion and tranquillity (Grade I Listed Bunhill Fields Rural Grounds) must not be threatened by any increase in scale of buildings on City Road, Bunhill Row and Featherstone Street which back onto the Fields.

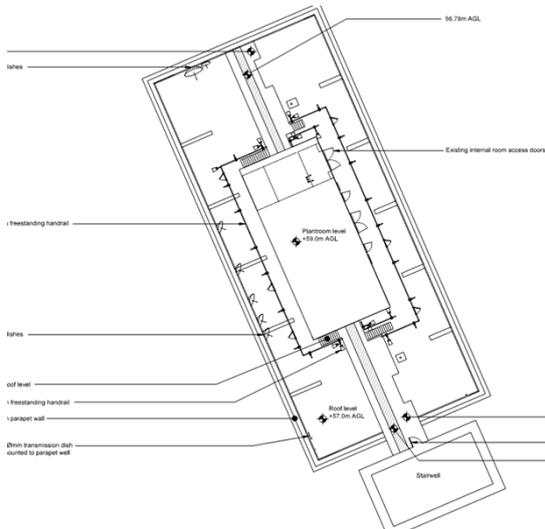
10.13 The St Lukes Conservation Area Design Guidelines at paragraph 16.15 states the Council is opposed to the erection of plant rooms, air conditioning units and other services including water tanks and radio satellite or telecommunications equipment at roof level where this can be seen from street level or public space, including long views from side streets.



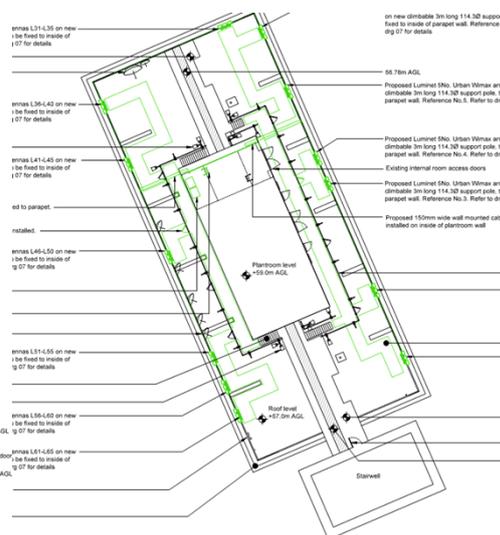
**Image 9:** Existing and Proposed East Elevation



**Image 11:** Existing and Proposed West Elevation



**Image 13:** Existing Site Plan



**Image 14:** Proposed Site Plan

### Assessment of Proposals

- 10.14 Braithwaite House is a mid-twentieth century building in an area which exhibits a wide variety of building sizes and typologies. Whilst the St Luke's Conservation Area is to the immediate south and west of the application site, the majority of nearby properties are of mid to late 20th century construction, at heights much lower than Braithwaite House. The more traditional Peabody Estate and Chequer Court are located approximately 20m and 55m from Braithwaite House.
- 10.15 The application property is 19 storey building in residential use, located near a busy main road in a mixed use area. It is located in the Central Activities Zone and within the Bunhill and Clerkenwell Core Strategy Key Area. The proposal would lead to the installation of pole mounted dishes on the roof of the property in addition to existing equipment. The purpose of these would be to provide improved wireless internet services in this dense urban location.
- 10.16 The proposed development would lead to the placing of the equipment on all sides of the roof of the building, largely hidden by the high parapet and the sheer height of the building. It is understood that in order to receive sufficient signal, the proposed equipment is required to be sited towards the edge of the roof. In this instance the siting of the proposed equipment is considered to be placed appropriately to reduce its prominence from the public realm. This is on the basis that the height of the building ensures that views are heavily obscured from nearby the public realm, and the equipment not large enough to be noticeably visible from most longer views. It is acknowledged these would be visible from some longer views from the St Lukes Conservation Area and the Bunhill Fields and Finsbury Square Conservation Area resulting in some limited harm in design and conservation terms. Similarly, the application site is within close proximity to the Grade I Listed Bunhill Fields Burial Ground. Whilst it is acknowledged that the proposals would result in some limited harm to the character and appearance of the surrounding conservation areas and the setting of the Grade I Listed burial grounds, it would be less than substantial. This is due to their lack of obvious visibility, even during winter months from within the Burial Ground and wider public views within the conservation areas.

- 10.17 Overall, the proposed development would cause some limited visual harm to the character and appearance of the surrounding St Lukes and Bunhill Fields and Finsbury Square Conservation Areas. It complies with the Framework and to Core Strategy policy CS9, which together amongst other things, seek to protect local character, Policy DM2.1, Policy DM2.3 and Policy DM2.7 of the Development Management Policies.
- 10.18 Also recognised is the importance the Government attaches to a high quality communications infrastructure, and the related benefits this brings, in this case, the public benefits of allowing the proposal would not contravene the statutory requirement to pay special regard to the conservation area, a designated heritage asset
- 10.19 The paragraphs above outline the impact of the proposals on the special architectural and historic interest of the Grade I Listed Bunhill Field Burial Ground and Grade II\* Listed Armoury House and well as the character or appearance of nearby conservation areas, as well as the Council's Design and Conservation Team's rationale for objecting to the application. The Design and Conservation Team consider that the proposals would cause less than substantial harm to significance of the designated heritage assets, due to the visibility of the infrastructure from the Grade I Listed burial grounds and proximity to the Grade II\* Armoury House. In accordance with the NPPF, public benefits are looked at. In this situation, there is clear public benefit from the improved wireless mobile internet network.
- 10.20 According to the National Planning Policy Framework section 16 and paragraph 196 which states the following "where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use". The weighing of public benefits against harm is carried out at Paragraphs 10.27 to 10.30 below.

### **Public Benefits**

- 10.21 Paragraph 112 of the National Planning Policy Framework Infrastructure is essential for economic growth and social well-being. The Paragraph states that planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology and full fibre broadband connections".
- 10.22 Paragraph 196 of the National Planning Policy Framework 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 proposals, including where appropriate, securing its optimum viable use.
- 10.23 Paragraph 114 of the NPPF 2019 states that "*local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that:*
- a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and*
  - b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services"*

- 10.24 As demonstrated above, the proposals would cause less than substantial harm to the character and appearance of the surrounding conservation areas. The setting of the adjacent Grade I Listed Bunhill Fields and Burial Ground will not be harmed by the proposals. It is considered that the public benefit of the of the wireless broadband provided by the proposals outweigh the less than substantial harm caused to the character and appearance of the conservation area. In accordance with Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposal hereby under consideration, special regard has been paid (and great weight given to “doing no harm”) to the desirability of preserving or enhancing the character or appearance of the nearby Grade I Listed Building and surrounding conservation areas. In this instance there are several mitigating factors to consider, including the height and scale of the existing building, limiting public views to infrastructure at roof level, as well as the strong government support within the updated NPPF (2019) for improved wireless broadband across London.
- 10.25 The benefits of the proposal, including efforts to improve wireless internet infrastructure and the resulting fast and ubiquitous access to the internet from mobile and fixed devices is considered to outweigh the less than substantial harm caused to the nearby heritage assets. The proposals would be either not visible or of limited glimpsed visibility from Bunhill Fields and Burial Ground, Whitecross Street, and Chequer Street. Whilst visible from some public views within the Conservation Area, the design of the proposals and their siting are for the purpose of achieving maximum efficiency.
- 10.26 The benefits of improved mobile infrastructure form the basis of public benefits that tips the planning balance to outweigh the limited visual harm, in a manner that gives great weight to “preserving” or doing no harm on nearby heritage assets. Therefore, it is considered that the visual harm created would be limited and would be mitigated by the public benefits of increased broadband and telecommunications coverage within a dense urban and central London location in this case.

#### **Impacts to Neighbour Amenity**

- 10.27 Policy 7.6 of the London Plan and Development Management Policy DM2.1 requires that development should have regard to the form and layout of existing and adjacent buildings; good level of amenity including consideration of noise and the impact of disturbance, hours of operation, vibration, pollution, fumes between and within developments, overshadowing, overlooking, privacy, direct sunlight and daylight, over-dominance, sense of enclosure and outlook.
- 10.28 Paragraph 116 of the Framework states that the need for the telecommunication system should not be questioned, nor should health safeguards be determined if the proposal meets International Commission guidelines for public exposure.
- 10.29 That would be the case here, within the application having submitted an appropriate Declaration of Conformity by way of the ICNIRP evidence provided by the applicant.

#### **Health Risks**

- 10.30 Paragraph 116 of the National Planning Policy Framework states that Local authorities must determine applications on planning grounds only. They should not question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.
- 10.31 Luminet regulates the operation of mobile networks in relation to their use of radio frequencies and whilst it does not have any duties related to the recommendations for exposure to Electromagnetic radiation emissions, it does set out the need for certificates of International Commission on Non-Ionizing Radiation Protection (ICNIRP) compliance to be provided with planning applications and for operators to continue to ensure all sites remain compliant.

- 10.32 An ICNIRP Declaration from the manufacturer (Siklu Communication Ltd) was submitted with the application confirming that the proposed antennas would not generate Electromagnetic radiation above thresholds that would pose a risk to the general public or workers responsible for maintaining the equipment.
- 10.33 Further, Public Protection Officer from both Islington and Camden Boroughs have reviewed the proposals with their comments as follows.
- 10.34 *In terms of health concerns regarding installations of this type, mobile phones and devices are new but the technology is not, and research has been ongoing in this area for almost 75 years. After a thorough review of the available scientific findings, the World Health Organization (WHO) reported: "To date, the only health effect from radiofrequency (RF) fields identified in scientific reviews has been related to an increase in body temperature (> 1 °C) from exposure at very high field intensity found only in certain industrial facilities, such as RF heaters. The levels of RF exposure from base stations and wireless networks are so low that the temperature increases are insignificant and do not affect human health" [Source: World Health Organisation, Fact Sheet 304, Base stations and wireless technologies, 2006]. In addition, the WHO notes that "Based on a recent in-depth review of the scientific literature, the WHO concluded that current evidence does not confirm the existence of any health consequences from exposure to low level electromagnetic fields" (<http://www.who.int/peh-emf/about/WhatisEMF/en/index1.html>).*
- 10.35 *The Advisory Group on Non-ionising Radiation summarised that: "...although a substantial amount of research has been conducted in this area, there is no convincing evidence that RF field exposure below guideline levels causes health effects in adults or children." [Health Effects from Radiofrequency Electromagnetic Fields – RCE 20, 2012].*
- 10.36 *In addition, the report 'Recent Research on EMF and Health Risk – Tenth report from SSM's Scientific Council on Electromagnetic Fields, 2015' notes that: "new studies on adult and childhood cancer with improved exposure assessment do not indicate any health risks for the general public related to exposure from radiofrequency electromagnetic fields from far-field sources, such as base stations and radio and TV transmitters.*
- 10.37 *Radio base stations are designed to comply with the stringent, precautionary public exposure guidelines set out by ICNIRP (International Commission on Non-Ionizing Radiation Protection). These guidelines have been developed following a thorough review of the science including both thermal and non-thermal effects. UK radio base station installations have been surveyed by independent bodies and found to be hundreds, and sometimes thousands, of times below these guidelines. When ICNIRP reviewed their guidelines in 2009 they concluded: "ICNIRP reconfirms the 1998 basic restrictions in the frequency range 100 kHz–300 GHz until further notice." [Source: ICNIRP statement on the "Guidelines for limiting exposure to time-varying electric, magnetic and electromagnetic fields (up to 300 GHz)"] (As above, these guidelines are currently being revised, with consultation having been undertaken in July to October 2018 and the results being collated at the moment.)*
- 10.38 In this case the planning application proposal has provided the required declaration of conformity with ICNIRP guidelines. Moreover, the National Planning Policy Framework is explicit in that local planning authorities must determine applications for telecommunications equipment on planning grounds only. Local planning authorities cannot set health safeguards that are different to the International Commission's guidelines.
- 10.39 With telecommunications equipment Public Health confirm that risks from EMF are low. Overall, it is considered that the electromagnetic radiation emitted by the proposed antennas would be minimal and would conform with ICNIRP Guidelines. As a result, it is considered that the proposed installation of antennas atop the roof of the building would not pose a risk to Public Health to existing or adjoining residents in the area.

## **Other Matters**

- 10.40 Concerns have been raised regarding impacts of the proposals as the roof is used for fire escape from the upper floor levels. Any permission will be required to be developed in accordance with building control regulations, including Approved Document B which relates to fire safety. In planning terms, the antennas are not designed to prevent access to large parts of the roof and therefore no objections would be raised in this regard, provided that the relevant building control regulations are complied with.
- 10.41 Concerns have also been raised regarding the potential use of the infrastructure for 5G telecommunications in the future. A letter from the applicant dated 30/12/2019 states that Luminet has no future plans to start 4G/5G mobile services that require a different set of equipment and infrastructure. Equipment and infrastructure associated with 4G/5G would likely require separate planning permission, if proposed in the future.
- 10.42 Finally, concerns have been raised regarding the installation of the proposed antennas on social housing. Whilst the LPA have limited control over the location of this infrastructure and equipment, the assessment process considers their potential impacts on neighbour amenity and health risks to residents who occupy the building and within close proximity of the site. In this instance the LPA's Housing Department has raised not objections and, as detailed in the sections above, the scheme is not considered to result in significant health impacts, nor will it result in significant harm to the amenities of neighbouring occupiers. Officers and committee members must assess the individual planning merits of each individual planning application submitted to the LPA for formal decision.

## **11. SUMMARY AND CONCLUSION**

### **Summary**

- 10.43 A summary of the proposal and its impacts and acceptability is set out at paragraphs 4.1 to 4.5 of this report. Great weight has been afforded to the desirability to “preserve” the character and appearance of the Conservation area (Section 72) and the special architectural interest of the adjacent statutory listed Bunhill Fields and Burial Ground (Section 66). Whilst the proposed antennas will be visible from some public views within the Conservation Area and Grade II Listed burial ground, given the size of the proposed building and the surrounding large scale surrounding development, the harm caused is considered to be less than substantial.
- 10.44 The benefits of improved wireless fibre broadband infrastructure form the basis of public benefits that tips the balance to outweigh harm, in a manner that gives great weight to “preserving” or doing no harm.
- 10.45 As such, the proposed development is considered to accord with the policies in the London plan, Islington Core Strategy, Islington Development Management Policies and the National Planning Policy Framework and as such is recommended for an approval subject to appropriate conditions.

### **Conclusion**

- 10.46 It is recommended that planning permission be granted subject to conditions as set out in Appendix 1 - RECOMMENDATION.

## APPENDIX 1 – RECOMMENDATIONS

### RECOMMENDATION A

That the grant of planning permission be subject to conditions to secure the following:

#### List of Conditions:

<b>1</b>	<b>Commencement</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Approved plans list</b>
	<p>CONDITION: The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>DWG LUM0006-03 Rev C; DWG LUM0006-05 Rev C; DWG LUM0006-07 Rev C; Declaration of Conformity for RF Exposure; Luminet Background Information July 2017; LUM0006-PM01 Rev A; LUM0006-PM02 Rev A; LUM0006-PM03 Rev A; LUM0006-PM04 Rev A; Supporting Planning Statement; Cover Letter by Waldon dated 21 December 2018</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Planning Act 1990 as amended and also for the avoidance of doubt and in the interest of proper planning.</p>
<b>3</b>	<b>Materials (Compliance)</b>
	<p>CONDITION: The hereby approved development shall be constructed in accordance with the schedule of materials noted on the approved plans and within the Design and Access Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter into perpetuity.</p> <p>REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard.</p>

## **APPENDIX 2: RELEVANT POLICIES**

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

### **1. National Guidance**

The National Planning Policy Framework 2019 and Planning Policy Guidance (PPG) seek to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF and PPG are material considerations and have been taken into account as part of the assessment of these proposals.

### **2. Development Plan**

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

#### **A) The London Plan 2016 - Spatial Development Strategy for Greater London**

Policy 7.4 Local character  
Policy 7.5 Public realm  
Policy 7.6 Architecture  
Policy 7.8 Heritage assets and archaeology

#### **B) Islington Core Strategy 2011**

##### Strategic Policies

Policy CS 8 – Enhancing Islington’s character  
Policy CS 9 - Protecting and enhancing Islington’s built and historic environment

#### **C) Development Management Policies June 2013**

- Policy DM2.1 – Design
- Policy DM2.3 – Heritage
- Policy DM2.7 – Telecommunications and utilities

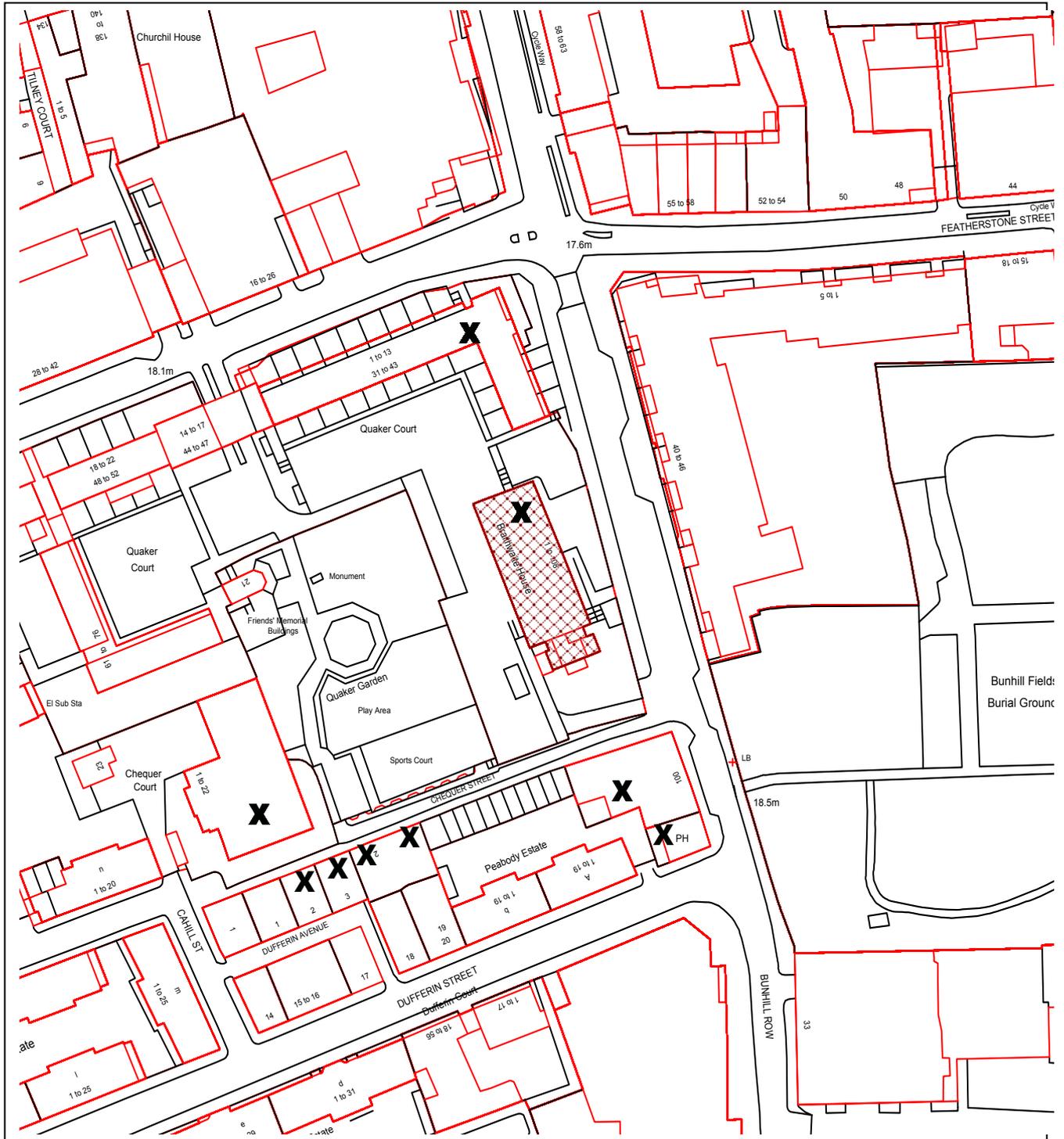
### **3. Designations**

- Moorfields Archeological Priority Area
- Bunhill & Clerkenwell Core Strategy Key Area
- Central Activities Zone
- Cycle Routes (Local & Major)
- Bunhill & Clerkenwell Local Plan Area
- Within 50m of St Luke’s Conservation Area
- Within 50m of Bunhill Fields and Finsbury Square Conservation Area
- Article 4 Direction A1 to A2 (Rest of Borough)
- Article 4 Direction B1(c) to C3
- Heathrow Safeguarding Area

### **4. SPD/SPGS**

Urban Design Guidelines

# Islington SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.  
P2018/4275/FUL

This page is intentionally left blank

## ADDENDUM PLANNING COMMITTEE REPORT

Development Management Service  
 Planning and Development Division  
 Environment and Regeneration Department

<b>PLANNING SUB COMMITTEE A</b>	<b>AGENDA ITEM NO:</b>	<b>B5</b>
<b>Date:</b> Thursday, 7 November 2019	<b>NON-EXEMPT</b>	

Application number	P2018/4282/FUL (council own building)
Application type	Full Planning
Ward	Bunhill
Listed building	N/A
Conservation area	N/A
Development Plan Context	Bunhill & Clerkenwell Core Strategy Key Area Central Activities Zone Cycle Routes (Major) Bunhill & Clerkenwell Local Plan Area Article 4 Direction A1 to A2 (Rest of Borough) Article 4 Direction B1(c) to C3 Heathrow Safeguarding Area
Licensing Implications	None
Site Address	Michael Cliffe House Skinner Street London EC1R 0WW
Proposal	The installation of 86 no. small antennas pole mounted on 10 no. free-standing support frames upon the roof of the building, as well as one equipment cabinet and associated alterations.

Case Officer	Alexander McCombie
Applicant	N/A
Agent	Mr Chris Andrews – Waldon Telecom Ltd

### 1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission:

1. subject to the conditions set out in **Appendix 1** (Recommendation A);

## 1. REASON FOR DEFERAL

- 1.1 This application was confirmed for the agenda of Planning Sub-Committee A on 7<sup>th</sup> November 2019. The application was pulled from the meeting and therefore not heard by members on the night.
- 1.2 The reasons for deferral relate to the advice of planning officers who confirmed that the council had not received comments from the councils housing section in relation to the proposed telecoms before members.
- 1.3 Since the deferral of the item, Officers have received confirmation that the Housing Department are in support of the application. In addition, the applicant has provided further information regarding the type of infrastructure being proposed. The installation of the type of antennas proposed (Siklu and Radwin) is sought in association with extending the fixed broadband wireless network across central London. This type of connection would for example provide a network link between 2 offices which already have fibre broadband without the need for fibre cables to be provided between the 2 buildings. The technology is different to Wi-Fi, with Wi-Fi signals typically designed to cover a wider area to maximise the number of devices that can connect and is substantially different to 4G and 5G technology as fixed broadband wireless relies on point to point connection dependent on a line of site rather than 4G/ 5G signals which can penetrate walls and buildings.
- 1.4 The application had previously been assessed on the basis that it was for the installation of 5G technology. A new report has been prepared on the basis of the updated information provided, confirming that the scheme is for fixed broadband wireless internet and not new 5G technology, and attached at **Appendix 1** below.

## Appendix 1

### PLANNING COMMITTEE REPORT

Development Management Service  
Planning and Development Division  
Environment and Regeneration Department

<b>PLANNING SUB COMMITTEE A</b>		<b>AGENDA ITEM NO:</b>	
<b>Date:</b>	Tuesday 17 <sup>th</sup> March 2020	<b>NON-EXEMPT</b>	

Application number	P2018/4282/FUL (council own building)
Application type	Full Planning
Ward	Bunhill
Listed building	N/A
Conservation area	N/A
Development Plan Context	Bunhill & Clerkenwell Core Strategy Key Area Central Activities Zone Cycle Routes (Major) Bunhill & Clerkenwell Local Plan Area Article 4 Direction A1 to A2 (Rest of Borough) Article 4 Direction B1(c) to C3 Heathrow Safeguarding Area
Licensing Implications	None
Site Address	Michael Cliffe House Skinner Street London EC1R 0WW
Proposal	The installation of 86 no. small antennas pole mounted on 10 no. free-standing support frames upon the roof of the building, as well as one equipment cabinet.

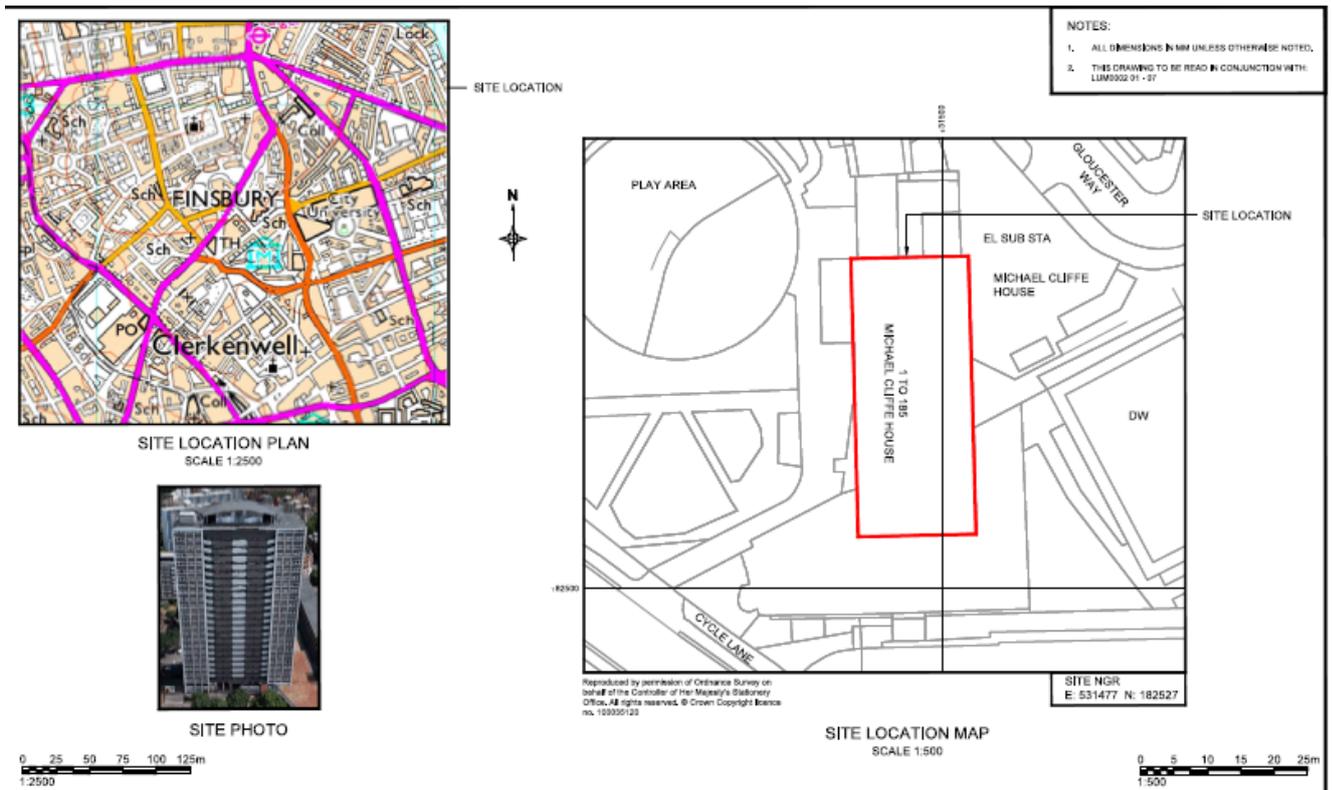
Case Officer	Alexander McCombie
Applicant	N/A
Agent	Mr Chris Andrews – Waldon Telecom Ltd

### 1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission subject to:

1.1 The conditions set out in **Appendix 1** (Recommendation A);

**2. SITE PLAN (site outlined in red)**



**Image 1: Site location Plan (outlined in red)**

**3. PHOTOS OF SITE/STREET**



**Image 2: Aerial view of site (from the south)**



Ima

**Image 3: Aerial view of site (from the north)**



EXISTING VIEW A



PROPOSED VIEW A

**Image 4:** View from junction of Tysoe Street and Roseberry Avenue to the west of the site (Roseberry Avenue Conservation area)



EXISTING VIEW B



PROPOSED VIEW B

**Image 5:** View of proposals from Junction of St John, Percival and Skinner Street to the east of the site (Clerkenwell Green Conservation Area).



EXISTING VIEW C



PROPOSED VIEW C

**Image 6:** View of proposals from St John Street to the north of the site.

## SUMMARY

- 3.1 The application proposes the installation of 86 x small antennas pole mounted on 10 x free standing support frames upon the roof of the building, the installation of 2 x equipment cabinets within the existing plant room and associated works. The installation of the type of antennas proposed (Siklu and Radwin) is sought in association with extending the fixed broadband wireless network across central London.
- 3.2 This type of connection would for example provide a network link between 2 offices which already have fibre broadband without the need for fibre cables to be provided between the 2 buildings. The technology is different to Wi-Fi, with Wi-Fi signals typically designed to cover a wider area to maximise the number of devices that can connect and is substantially different to 4G and 5G technology as fixed broadband wireless relies on point to point connection dependent on a line of site rather than 4G/5G signals which can penetrate walls and buildings.
- 3.3 The proposed antennas would sit inside an existing 1.1-metre-high handrail inset from the edge of the roof upon which existing telecommunications antenna is already fixed. The antennas are necessitated to be positioned close to the edge of the roof on all side of the building in order to ensure sufficient signal and point to point connections.
- 3.4 Matters of design and scale have been considered during the course of the application. In this instance it is considered that the siting of the proposed equipment, when considered against the high level location of the proposals, are placed appropriately to reduce its prominence from the public realm. This is on the basis that the height of the building ensures that views are heavily obscured from nearby views, and that the equipment is not large enough to be noticeably visible from longer views. It is acknowledged these would be visible from some longer views from the surrounding conservation areas, however the positioning, relative small scale of the dishes and high level position of the antennas would not lead to harm to the surrounding conservation areas.
- 3.5 The proposals are thus considered to be acceptable in visual amenity terms, would in light of their limited scale have no impact on the amenities of neighbouring properties according with the Council's Development Plan.
- 3.6 In regard to health and safety relating to any potential impact of the proposed equipment on human health. A signed ICNIRP Declaration from the manufacturer (Siklu Communication Ltd) has been submitted with the application confirming that the proposed antennas would not generate Electromagnetic radiation above thresholds that would pose a risk to the general public or workers responsible for maintaining the equipment.
- 3.7 Additionally, comments have been received from the Islington and Council Public Health with the comments suggesting that there is extensive research that concludes that point to point wireless broadband and its associated infrastructure does not cause a threat to human health
- 3.8 Further, the proposals would provide a significant public benefit in improving wireless internet according with the intentions of Paragraph 7 of the NPPF to ensure the purpose of the planning system to contribute to the achievement of sustainable development and the presumption in favour of sustainable development in paragraph 10 of the NPPF. More specifically, the proposals would also support paragraph 112 of

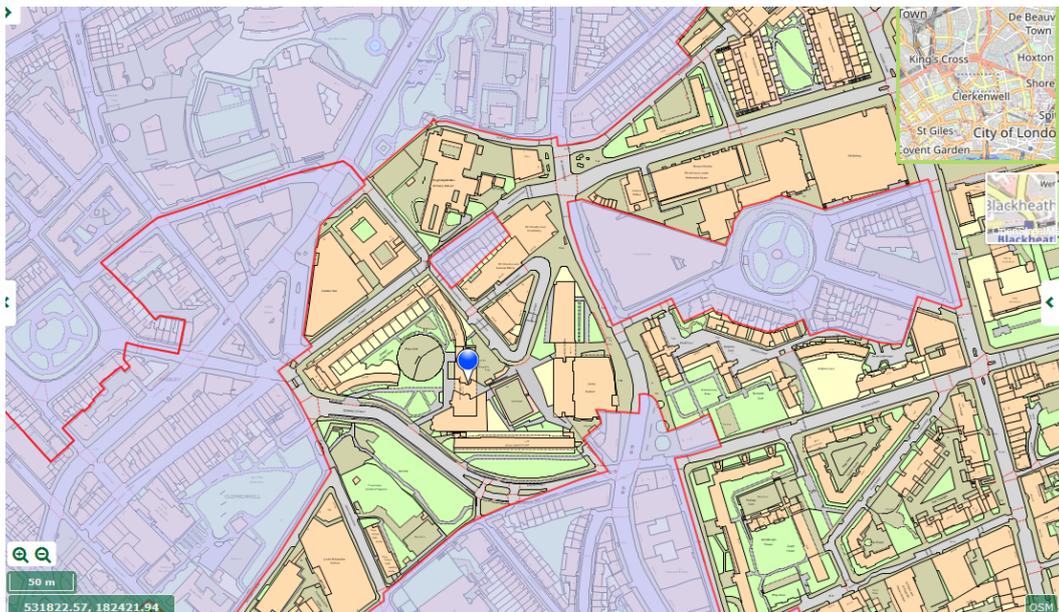
the Framework which states that ‘Advanced, *high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning Policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology and full fibre broadband connections*’.

3.9 For the reasons above the recommendation to committee is to resolve to grant planning permission subject to planning conditions.

#### 4. SITE AND SURROUNDING

4.1 The application site refers to the roof of a 24 storey residential building situated on the northern side of Skinner Street in the Bunhill and Clerkenwell area of the borough. Council tax records show that the building is separated into 136 self-contained flats.

4.2 The site is not situated within a conservation area, nor does it contain any statutory listed or locally listed buildings. The site is located in proximity to a number of conservation areas including the New River CA to the north, the Northampton Square CA to the east, the Clerkenwell Green CA to the south and Roseberry Avenue CA to the west. The location of the conservation areas in relation to the application site is shown below:



**Image 7: Nearby Conservation Area Boundaries**

4.3 The immediate surrounding area is predominantly characterised by multi-unit housing. However, the broader area is comprised of a range of commercial and mixed uses. The site is designated within the Central Activities Zone and the Bunhill and Clerkenwell Core Strategy Key Area.

#### 5. PROPOSAL (IN DETAIL)

5.1 The proposals include the installation of 86 small antennas pole mounted on 10 free-standing support frames upon the roof of the building, the installation of 2 x equipment cabinets at roof level and associated works.

## 6. RELEVANT HISTORY:

- 6.1 **P2017/4482/FUL** - Installation of eight poles, each supporting four antennas on the rooftop plus associated equipment. **Approved 9<sup>th</sup> January 2019.**
- 6.2 **P062129** - Re-siting of existing equipment cabinet at roof top level and provision of a second cabinet. **Approved 21<sup>st</sup> July 2007**

## 7. CONSULTATION

### Public Consultation

- 7.1 Letters were sent to occupants of 316 addresses including residents at Michael Cliffe House and adjoining and nearby properties at Skinner Street, Myddelton Street and Gloucester Way initially on 20 February 2019, with an associated site notice displayed on 28 February 2019.
- 7.2 However, given the time since this initial consultation and the receipt of further documents, following the deferral of the application from 7<sup>th</sup> November 2019 committee. A further round of consultation has been undertaken with letters sent out on 15 January 2020 to the 316 addresses and an accompanying site and press displayed on 23 January 2020. The latest round of public consultation on the application therefore expired on 16 February 2020, however it is the Council's practice to continue to consider representations made up until the date of a decision.
- 7.3 At the time of the writing of this report a total of **197 objections** (primarily from residents within Michael Cliffe House and the Tenants Resident Association) have been received from the public by way of a petition in relation to the application. The issues raised can be summarised as follows.
- 7.4 Grounds of objection can be summarised as:
1. Concern that the installation of the 86 antennas will bring increased activity to the roof with operatives on the roof for 2 to 3 hour sessions once or twice a week to maintain the antennas causing disruption to the households on the top floor of the block
  2. Concern that the fabric of the roof at Michael Cliffe House is not designed to withstand constant pedestrian access and that the activity of maintenance operatives will cause damage to the roof.
  3. Concern that the increase in access to the roof will compromise security to the building with a history of the roof as a suicide location.

**Officer Response-** *With regard to points 1-3 it is noted that the roof already hosts equipment including a radio base station for another operator and a weather station. Whilst it is acknowledged that the proposed installation of 86 antennas would require maintenance, it is not considered that their maintenance would be dissimilar to the existing maintenance arrangement and requirement for the existing equipment. Officers thus do not consider that the resulting movements to and from the roof to maintain the equipment would cause noise nuisance, would damage the roof or would lead to a compromise in security allowing further persons on to the roof.*

4. Concern that the radiation from 86 antennas will endanger the health of residents (**See Health Risks section of the report, Paragraphs 9.27- 9.35**).

**Officer Response-** *The issue of any potential public health impact of the proposed antennas on residents is taken very seriously by the Council. During the consideration of the application a response has been received from Camden and Islington Public Health departments confirming that extensive research on the health impacts of antennas has been undertaken and demonstrates that these structures have no detrimental impact on public health. Notwithstanding this the proposed antennas are also required to meet the International Commission on Non- Ionizing Radiation Protection standards regarding the level of non-ionizing radiation they are able to emit. A statement has been submitted with the application to confirm that the proposed antennas meet this standard.*

5. That Michael Cliffe House is a notable example of brutalist architecture. Concern that the proposed equipment will have a detrimental impact to the visual amenities of the building and the setting of the surrounding conservation areas

**Officer Response-** (**See visual amenity section of the report, paragraphs 9.2-9.7**)

6. Concern that alternative sites have not been fully considered. It is stated that there a number of high office buildings in the vicinity that could serve the same purpose or that trenching of wired fibre broadband cable could be undertaken instead.

**Officer Response-** *Alternative sites- The Planning Statement submitted with the application states that Michael Cliffe House is one of a limited number of sufficiently tall buildings in the intended area that can meet both the technical requirements and maintain operational security. As the building already accommodates communications equipment it is considered an unreasonable location for the proposed equipment. Planning must consider the individual planning merits of each individual case and in this instance the proposed location is considered an appropriate location for the proposed equipment.*

### **Internal Consultees**

- 7.5 Public Health – Response received jointly from Islington and Camden Public Health Officers stating that research has been undertaken on the impacts of wireless antennas, radio base stations and electromotive force on human health and that the evidence demonstrates that there are no ill effects on human health. All antenna and equipment used in the transmission of mobile phone signals, television and radio transmission and wireless broadband are required to adhere to strictly standards on non-ionising radiation set out by the (International Commission on Non- Ionizing Radiation Protection).

## **8. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATION & POLICIES**

8.1 Islington Council (Planning Sub-Committee A), in determining the planning application has the following main statutory duties to perform:

- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990);
- To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance.)

8.2 National Planning Policy Framework 2019 (NPPF): Paragraph 10 states: "at the heart of the NPPF is a presumption in favour of sustainable development.

8.3 The National Planning Policy Framework 2019 seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.

8.4 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.

8.5 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:

- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

8.6 Members of the Planning Sub-Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.

- 8.7 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.8 In line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been given to the desirability of preserving the Conservation Area, its setting and any of its features of special architectural or historic interest.
- 8.9 The National Planning Policy Framework 2019 seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.

#### Telecommunications

- 8.10 Chapter 10 of the NPPF is entitled Supporting high Quality communications. It is stated at Paragraph 112 that, *'Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).'*
- 8.11 Paragraph 113 further clarifies that *'The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged. Where new sites are required equipment should be sympathetically designed and camouflaged where appropriate.'*
- 8.12 Paragraph 114 establishes that *'Local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that: a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.'*

8.13 Paragraph 115 states that *'Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include: a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure 34 and a statement that self-certifies that, when operational, International Commission guidelines will be met.'*

8.14 In addition, Paragraph 116 states that *'Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.'*

#### **Development Plan**

8.15 The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and Site Allocations 2013. The policies of the Development Plan are considered relevant to this application and are listed at Appendix 2 to this report.

8.16 Some weight is attributable to the Draft London Plan

#### **Supplementary Planning Guidance (SPG) / Document (SPD)**

8.17 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

### **9. ASSESSMENT**

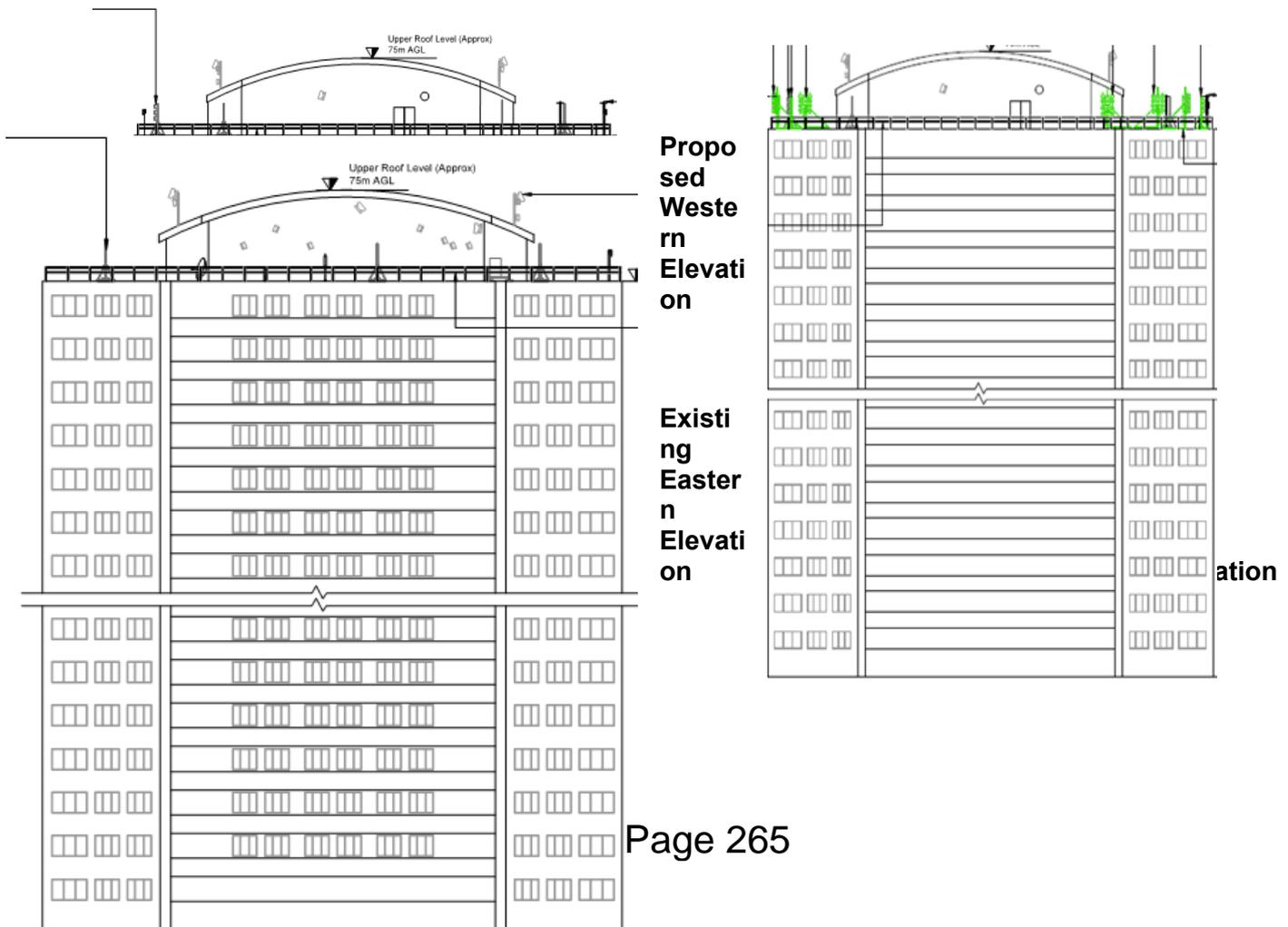
9.1 The main issues arising from this proposal relate to:

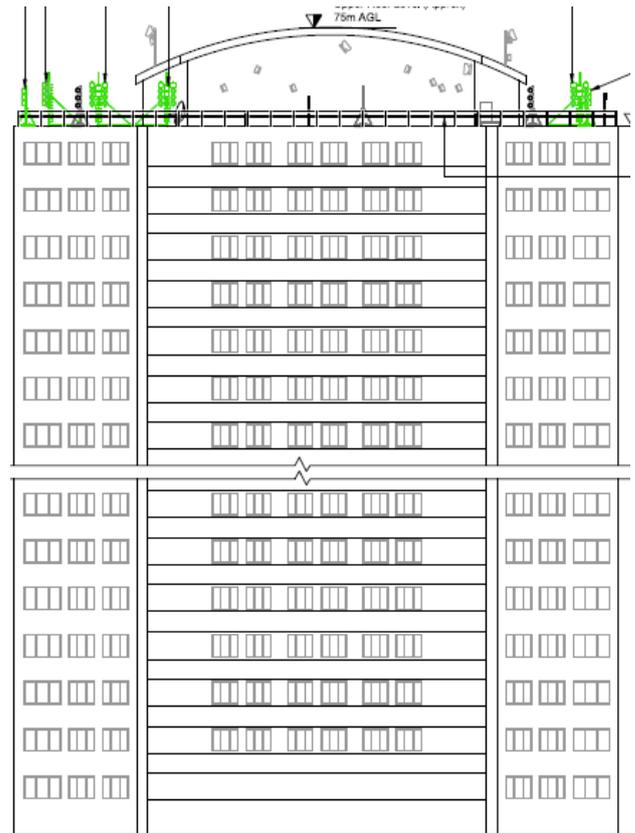
- Design and character
- Impact on the amenity of neighbouring residents
- Public Health

#### **Design and Character**

9.2 The National Planning Policy Framework (NPPF) has been considered in the assessment of this application. Policy DM2.1 states that all forms of development should be of a high quality and make a positive contribution to the local character and distinctiveness of an area, based upon an understanding and evaluation of its defining characteristics.

- 9.3 Development Management Policy DM2.3 states that Islington's historic environment is an irreplaceable resource and the council will ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance. In this instance, whilst the application site is not within a Conservation Area, it is within close proximity to four different conservation areas. To the north is New River CA, to the east is Northampton Square CA, to the south is Clerkenwell Green CA and to the west is Roseberry Avenue. The closest of which is New River that is approximately 60m to the north for the site.
- 9.4 Development Management Policy DM2.7 states that telecommunications and utilities equipment will only be permitted where they are sited and designed to minimise their visual impact, do not have a detrimental effect upon the character or appearance of the building or area, innovative design and technological solutions have been explored to minimise visual impact, and there is no reasonable possibility of sharing facilities.
- 9.5 Michael Cliffe House is a mid-twentieth century building in an area which exhibits a wide variety of building sizes and typologies. Whilst the building is surrounded by Conservation Areas, the majority of nearby properties in the immediate area are of mid to late 20th century construction, at heights much lower than Michael Cliff House.
- 9.6 The application property is 24 storey building in residential use, situated to the west of St Johns Street and to the north of Skinner street, and forms the main building of a residential estate known as Finsbury Estate. It is located in the Central Activities Zone and within the Bunhill and Clerkenwell Core Strategy Key Area.
- 9.7 The proposal would lead to the installation of 86 pole mounted antennas on the roof of the property in addition to existing equipment. The purpose of these would be to provide improved wireless internet services to act as a wireless connection between pre-existing wired fibre broadband networks.





**Samples antennas similar to those proposed**



- 9.8 The supporting planning statement submitted with the application sets out that the building already hosts rooftop equipment which includes a base station for another operator, a weather station and handrailing around the roof.
- 9.9 The proposed development would lead to the placing of further equipment on all sides of the roof of the building. It is understood that in order to receive sufficient signal, the

proposed equipment is required to be sited towards the edge of the roof as the technology is dependent on a direct line of sight between 2 corresponding sets of antennas. The existing roof includes a 1.1m hand rail that borders the roof, inset from the buildings edge and there are various pieces of telecommunications equipment already installed at roof level. At the northern end of the roof three frames will be installed capable of holding 10 antennas each and one smaller frame capable of holding 3 antennas. To the southern end of the roof a further five frames capable of holding 10 antennas each will be installed and a single platform capable of holding three antennas will be installed. In total 86 antennas will be installed on top of the roof.

- 9.10 It is also proposed to install an equipment cabinet at roof level where previously this was proposed to be installed within an existing plant room. The cabinet is 2.5m high and positioned in the central location of the roof space and will therefore not be visible from the surrounding streetscene.
- 9.11 The application is supported by several photomontages, shown in images 4 to 6 which demonstrate the visibility of the structures in comparison to the existing building and existing structures on top of the roof.
- 9.12 In this instance the siting of the proposed equipment atop a relatively high 25 storey building means that views of the proposed equipment would be obscured in short views of the property from the surrounding streetscene.
- 9.13 It is acknowledged that there would be some visibility in medium to longer public views from the surrounding conservation areas. This is demonstrated by the photomontages in Images 4 to 6 which demonstrate that there would be some limited visibility from Tysoe Street and Roseberry Avenue to the west of the site located in the Roseberry Avenue Conservation Area. In addition to limited visibility from the Clerkenwell Green Conservation Area to the East on St John Street, Percival and Skinner Street and further visibility to the North from St John Street.
- 9.14 However, it is considered that the scale of the proposed antennas, set against the existing equipment on top of the roof would ensure that the structures would be assimilated into the main built form. The proposed antennas are not considered to overly dominate views of the building nor the setting of the adjacent conservation areas.
- 9.15 Overall, the proposed high level location limits the visibility of the structures in short views, it is acknowledged that there would be some limited views of the structures in medium and long views of the building which would lead to some limited visual harm.
- 9.16 Notwithstanding this, the level of visual harm to the streetscene and setting of the surrounding conservation areas is considered to be less than substantial. In accordance with Paragraph 196 of the NPPF where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset (the surrounding conservation areas), this harm should be weighed against the public benefits of the proposals.

- 9.17 The importance the Government attaches to high quality communications infrastructure, and the related benefits this brings is also recognised. In this case, the public benefits of allowing the proposal would not contravene the statutory requirement to pay special regard to the conservation areas, designated heritage assets. The public benefits of the scheme are set out in the following section of this report.

### **Public Benefit**

- 9.18 Paragraph 112 of the National Planning Policy Framework Infrastructure is essential for economic growth and social well-being. The Paragraph states that planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology and full fibre broadband connections”.
- 9.19 Paragraph 196 of the National Planning Policy Framework 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 proposals, including where appropriate, securing its optimum viable use.
- 9.20 As demonstrated in the visual amenity section of this report, it is considered that the proposals would cause less than substantial harm to character than appearance of the surrounding conservation areas. It is considered that the public benefit of the wireless broadband provided by the proposals outweighs the less than substantial harm caused to the character and appearance of the conservation area. In accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposal hereby under consideration, special regard has been paid (and great weight given to “doing no harm”) to the desirability of preserving or enhancing the character or appearance of the surrounding conservation areas.
- 9.21 The benefits of the proposal, include the improvement of the wireless internet infrastructure and the resulting fast and ubiquitous access to the internet from the proposed fixed broadband wireless connection which can be used as an alternative to a wired fibre connection and to bridge a gap in the wired fibre network where a direct wired connection is logistically difficult.
- 9.22 The benefits of this type of connection in comparison to a traditional wired fibre broadband connection is that the wireless technology avoids the need for the trenching of a new fibre cable which can involve weeks of disruption where fibre cable need to be routed under pavements and roads.
- 9.23 It is considered that the connectivity improvements as a result of the proposals outweigh the less than substantial harm caused to the nearby heritage assets. The proposals would be visible in some long views within the surrounding Conservation Areas, however their design and their siting are for the purposes of achieving maximum efficiency.
- 9.24 The benefits of improved mobile infrastructure form the basis of public benefits that tips the balance to outweigh harm, in a manner that gives great weight to “preserving” or doing no harm on nearby heritage assets.
- 9.25 Overall, the proposed 86 antennas on top of the roof of the 25 storey Michael Cliffe House building are considered to result in significant public benefits, outweighed the less than substantial harm to the Surrounding conservation areas in accordance with Paragraphs 112 and 196 of the National Planning Policy Framework (2019).

### **Neighbouring Amenity**

- 9.26 The proposals comprising the installation of 86 x dish antennas to short antenna poles mounted on 10 x freestanding support frames upon the roof of the building and the installation of 2 x equipment cabinets is not considered to raise any concerns in relation to sunlight, daylight and outlook from neighbouring properties. Further, the proposals would not raise any concerns in relation to privacy conforming with Policy DM2.1 of the DMP (2013).

### **Health Risks**

- 9.27 Paragraph 116 of the National Planning Policy Framework states that Local Authorities must determine applications on planning grounds only. They should not question the need for an electronic communications system, or set health safeguards different from the International Commission Guidelines for Public Exposure.
- 9.28 Ofcom regulates the operation of mobile networks in relation to their use of radio frequencies and whilst it does not have any duties related to the recommendations for exposure to Electromagnetic Radiation Emissions, it does set out the need for certificates of International Commission on Non-Ionizing Radiation Protection (ICNIRP) compliance to be provided with planning applications and for operators to continue to ensure all sites remain compliant.
- 9.29 An ICNIRP Declaration from the manufacturer (Siklu Communication Ltd) was submitted with the application confirming that the proposed antennas would not generate electromagnetic radiation above thresholds that would pose a risk to the general public or workers responsible for maintaining the equipment.
- 9.30 Further, Public Protection Officer from both Islington and Camden Boroughs have reviewed the proposals with their comments as follows.
- 9.31 *In terms of health concerns regarding installations of this type, mobile phones and devices are new but the technology is not, and research has been ongoing in this area for almost 75 years. After a thorough review of the available scientific findings, the World Health Organization (WHO) reported: "To date, the only health effect from radiofrequency (RF) fields identified in scientific reviews has been related to an increase in body temperature (> 1 °C) from exposure at very high field intensity found only in certain industrial facilities, such as RF heaters. The levels of RF exposure from base stations and wireless networks are so low that the temperature increases are insignificant and do not affect human health" [Source: World Health Organisation, Fact Sheet 304, Base stations and wireless technologies, 2006]. In addition, the WHO notes that "Based on a recent in-depth review of the scientific literature, the WHO concluded that current evidence does not confirm the existence of any health consequences from exposure to low level electromagnetic fields" (<http://www.who.int/peh-emf/about/WhatisEMF/en/index1.html>).*
- 9.32 *The Advisory Group on Non-ionising Radiation summarised that: "...although a substantial amount of research has been conducted in this area, there is no convincing evidence that RF field exposure below guideline levels causes health effects in adults or children." [Health Effects from Radiofrequency Electromagnetic Fields – RCE 20, 2012].*
- 9.33 *In addition, the report 'Recent Research on EMF and Health Risk – Tenth report from SSM's Scientific Council on Electromagnetic Fields, 2015' notes that: "new studies on adult and childhood cancer with improved exposure assessment do not indicate any health risks for the general public related to exposure from radiofrequency*

*electromagnetic fields from far-field sources, such as base stations and radio and TV transmitters.*

- 9.34 *Radio base stations are designed to comply with the stringent, precautionary public exposure guidelines set out by ICNIRP (International Commission on Non-Ionizing Radiation Protection). These guidelines have been developed following a thorough review of the science including both thermal and non-thermal effects. UK radio base station installations have been surveyed by independent bodies and found to be hundreds, and sometimes thousands, of times below these guidelines. When ICNIRP reviewed their guidelines in 2009 they concluded: “ICNIRP reconfirms the 1998 basic restrictions in the frequency range 100 kHz–300 GHz until further notice.” [Source: ICNIRP statement on the “Guidelines for limiting exposure to time-varying electric, magnetic and electromagnetic fields (up to 300 GHz)”] (As above, these guidelines are currently being revised, with consultation having been undertaken in July to October 2018 and the results being collated at the moment.)*
- 9.35 With telecommunications equipment Public Health have confirmed that risks from Electromagnetic Field(EMF) are low. Overall, it is considered that the electromagnetic radiation emitted by the proposed antennas would be minimal and would conform with ICNIRP Guidelines. As a result, it is considered that the proposed installation of antennas atop the roof of the building would not pose a risk to Public Health.

## **10. SUMMARY AND CONCLUSION**

- 10.1 It is recommended that planning permission be granted subject to conditions.
- 10.2 A summary of the proposal and its impacts and acceptability is set out at paragraphs 4.1 to 4.9 of this report.
- 10.3 Great weight has been afforded to the desirability to “preserve” the character and appearance of the surrounding Conservation areas (Section 72). Whilst the proposed antennas will be visible from some medium to longer public views within the surrounding Conservation Areas, given the height of the existing building and the small scale nature of the proposed antennas set against the backdrop of the existing equipment on top of the roof, the harm caused is considered to be less than substantial.
- 10.4 The benefits of improved wireless fibre broadband infrastructure is considered to form the basis of public benefits that tips the balance to outweigh harm, in a manner that gives great weight to “preserving” or doing no harm.
- 10.5 As such, the proposed development is considered to accord with the policies in the London plan, Islington Core Strategy, Islington Development Management Policies and the National Planning Policy Framework and as such is recommended for an approval subject to appropriate conditions.

### **Conclusion**

- 10.6 It is recommended that planning permission be granted subject to conditions as set out in Appendix 1 – RECOMMENDATION A.

## **APPENDIX 1 – RECOMMENDATIONS**

## RECOMMENDATION A

That the grant of planning permission be subject to conditions to secure the following:

### List of Conditions:

<b>1</b>	<b>Commencement</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Approved plans list</b>
	<p>CONDITION: The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Supporting Planning Statement; LUM0002-04- Issue F; LUM0002-05 Issue F; LUM0002-03 Issue F; Declaration of Conformity for RF Exposure and Amended Statement (30<sup>th</sup> December 2019)- Luminet Solutions Ltd.</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Planning Act 1990 as amended and also for the avoidance of doubt and in the interest of proper planning.</p>
<b>3</b>	<b>Materials (Compliance)</b>
	<p>CONDITION: The hereby approved development shall be constructed in accordance with the schedule of materials noted on the approved plans and within the Design and Access Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard.</p>

## APPENDIX 2: RELEVANT POLICIES

This appendix lists all relevant development plan polices and guidance notes pertinent to the determination of this planning application.

### 1. National Guidance

The National Planning Policy Framework 2019 and Planning Policy Guidance (PPG) seek to secure positive growth in a way that effectively balances economic, environmental and social

progress for this and future generations. The NPPF and PPG are material considerations and have been taken into account as part of the assessment of these proposals.

## **2. Development Plan**

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

### **A) The London Plan 2016 - Spatial Development Strategy for Greater London**

Policy 7.4 Local character  
Policy 7.5 Public realm  
Policy 7.6 Architecture  
Policy 7.8 Heritage assets and archaeology

### **B) Islington Core Strategy 2011**

#### Strategic Policies

Policy CS 8 – Enhancing Islington’s character  
Policy CS 9 - Protecting and enhancing Islington’s built and historic environment

### **C) Development Management Policies June 2013**

- Policy DM2.1 – Design
- Policy DM2.3 – Heritage
- Policy DM2.7 – Telecommunications and utilities

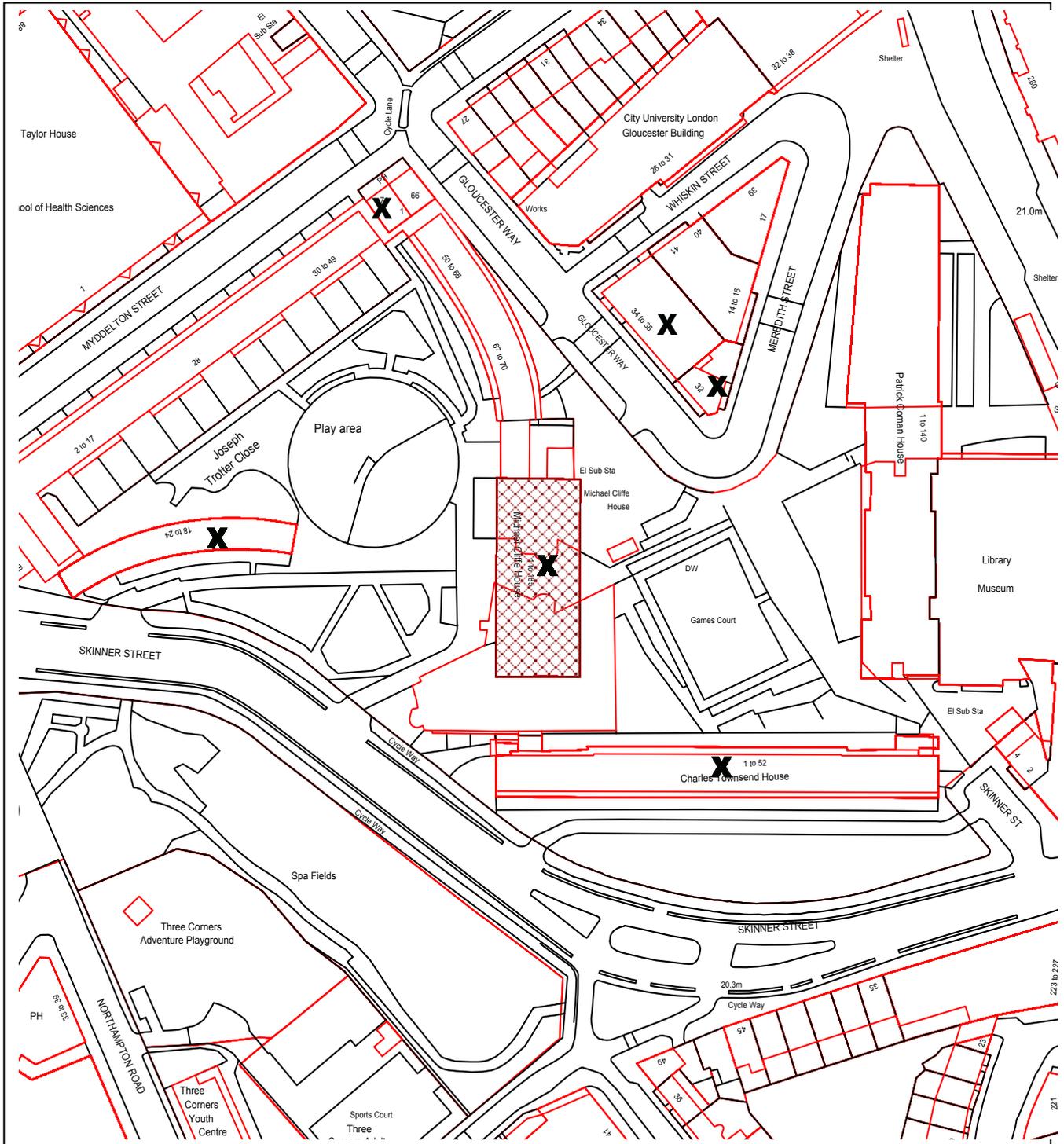
## **3. Designations**

- Bunhill & Clerkenwell Core Strategy Key Area
- Central Activities Zone
- Cycle Routes (Major)
- Bunhill & Clerkenwell Local Plan Area
- Article 4 Direction A1 to A2 (Rest of Borough)
- Article 4 Direction B1(c) to C3
- Heathrow Safeguarding Area

## **4. SPD/SPGS**

Urban Design Guidelines

# Islington SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.  
P2018/4282/FUL

This page is intentionally left blank

## PLANNING COMMITTEE REPORT

Development Management Service  
 Planning and Development Division  
 Environment and Regeneration Department

Date:	17 March 2020	AGENDA ITEM NO. 10	NON-EXEMPT
-------	---------------	--------------------	------------

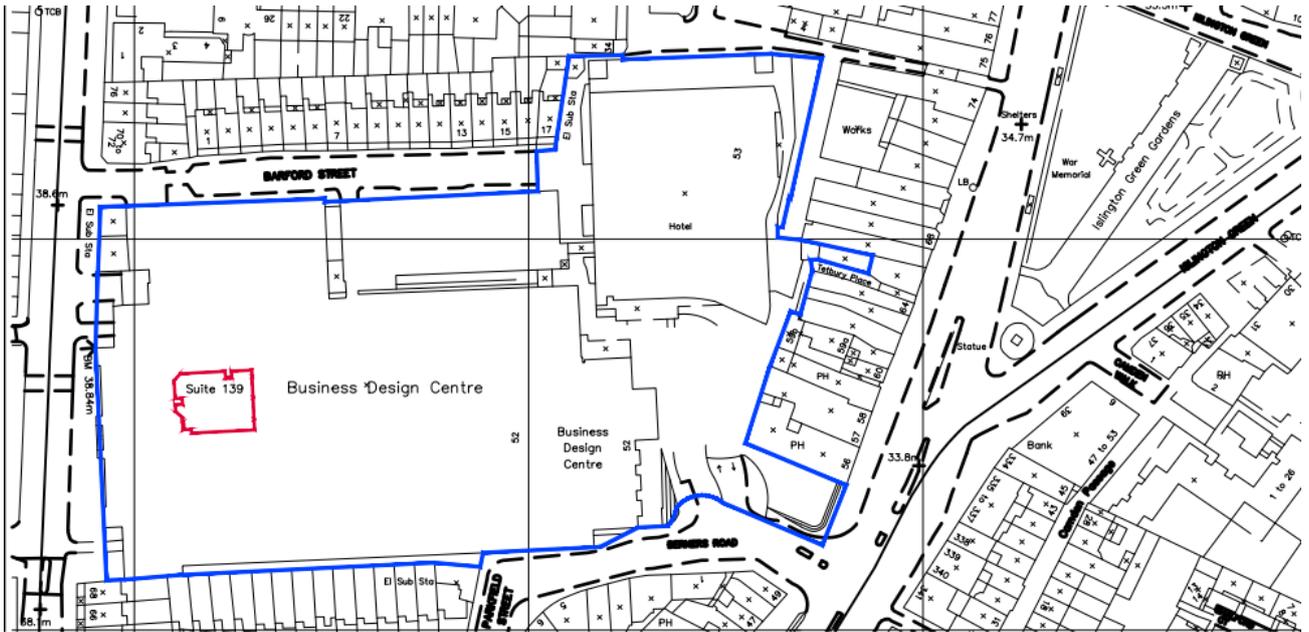
Application number	P2019/2447/FUL
Application type	Full Planning Application
Ward	St. Marys
Listed building	Grade II Listed Building Adjacent to Grade II Listed Buildings (nos. 1-14 (odd) Bromfield Street (to south) 1-17 Barfield Street (to the north) 63, 69, 75, 79, 91,95-103 (odd) Liverpool Road and 34A Cloudesley Place (to the west))
Conservation area	Angel Conservation Area (and Article 4 Direction) Adjacent to Barnsbury Conservation Area (to north, west and south)
Development Plan Context	Archaeological Priority Area – Islington Village Core Strategy Key Area – Angel & Upper Street Cycle Route (Local) Cycle Route (Major) Angel Town Centre Mayors Protected Vistas – Alexandra Palace viewing terrace to St Paul’s Cathedral Site within 100m of Traffic for London Road Network Site within 100m of Strategic Road Network Article 4 Direction (A1 to A2)
Licensing Implications	None
Site Address	Unit 139-142, Business Design Centre, 52 Upper Street London N1 0QH
Proposal	Change of use of part of the existing office (Use Class B1a) to a part office (Use Class B1a) part (68 sqm) training facility (Sui Generis) No internal or external works are proposed as part of this proposal.

Case Officer	Daniel Jeffries
Applicant	Ola UK Private Limited
Agent	JLL - Mr Alex Rogerson

### 1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission subject to:

- 1.1 the conditions set out in Appendix 1 (Recommendation A).



### 3. PHOTOS OF SITE/STREET

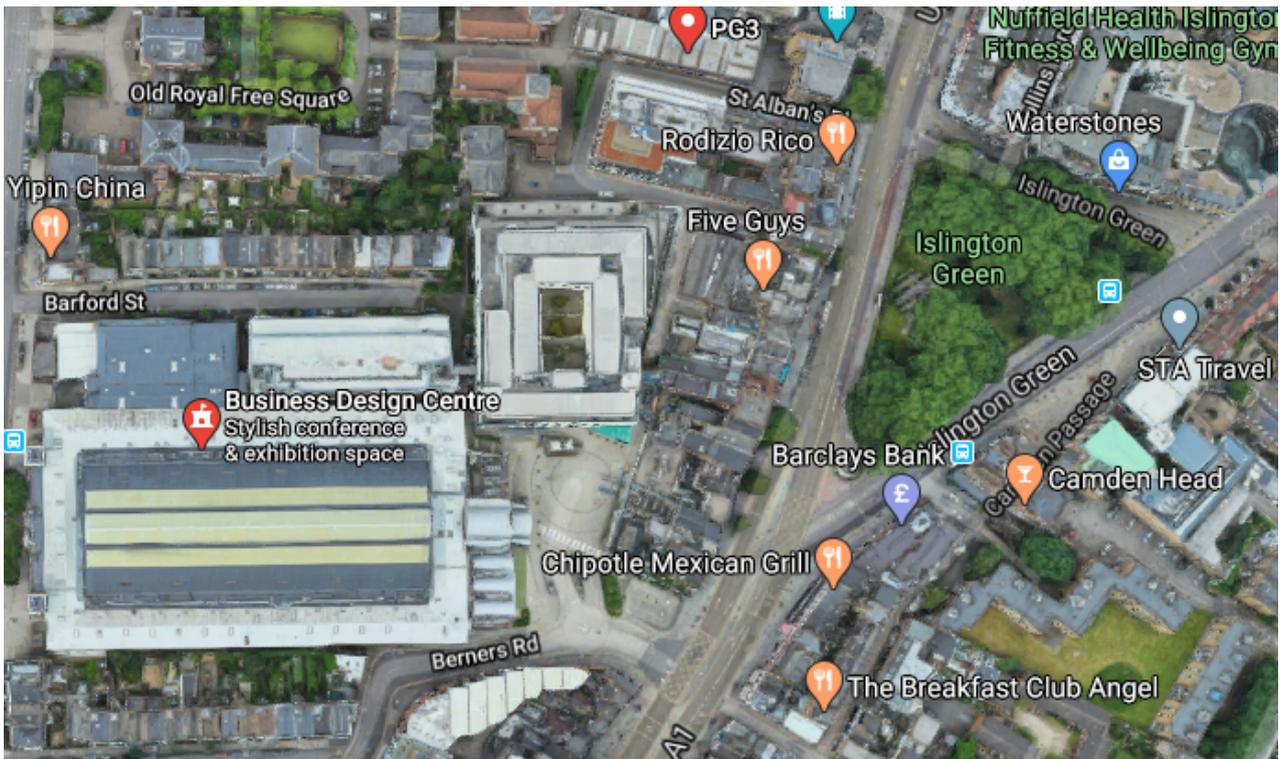


Image 1: Aerial view of site



**Image 2** Aerial view of the site from the east



**Image 3:** The front elevation of the site as viewed from Berners Road

#### **4. SUMMARY**

- 4.1 The application seeks full planning permission for the change of use of the existing office (Use Class B1a) within Unit 139 to a part office (Use Class B1a) part (68 sqm) training facility (Sui Generis). There are no external or internal alterations associated with the proposal.
- 4.2 The application is presented at the Planning Sub-Committee as the proposal would result in the loss of business floorspace without the necessary marketing evidence to demonstrate compliance with Development Management Policies (2013).
- 4.3 Given the constraints associated with the application, including being within the Central Activities Zone, the Angel Town Centre and a Core Strategy Key Area (Angel and Upper Street), ordinarily an application resulting in the loss of business floorspace without the necessary marketing evidence would not be acceptable in land use terms. However, the proposal would result in the change of use of floorspace which would be used as a

training centre for employees of the applicants business, which is 'Ola' a mobile phone application private hire vehicles and metered taxis.

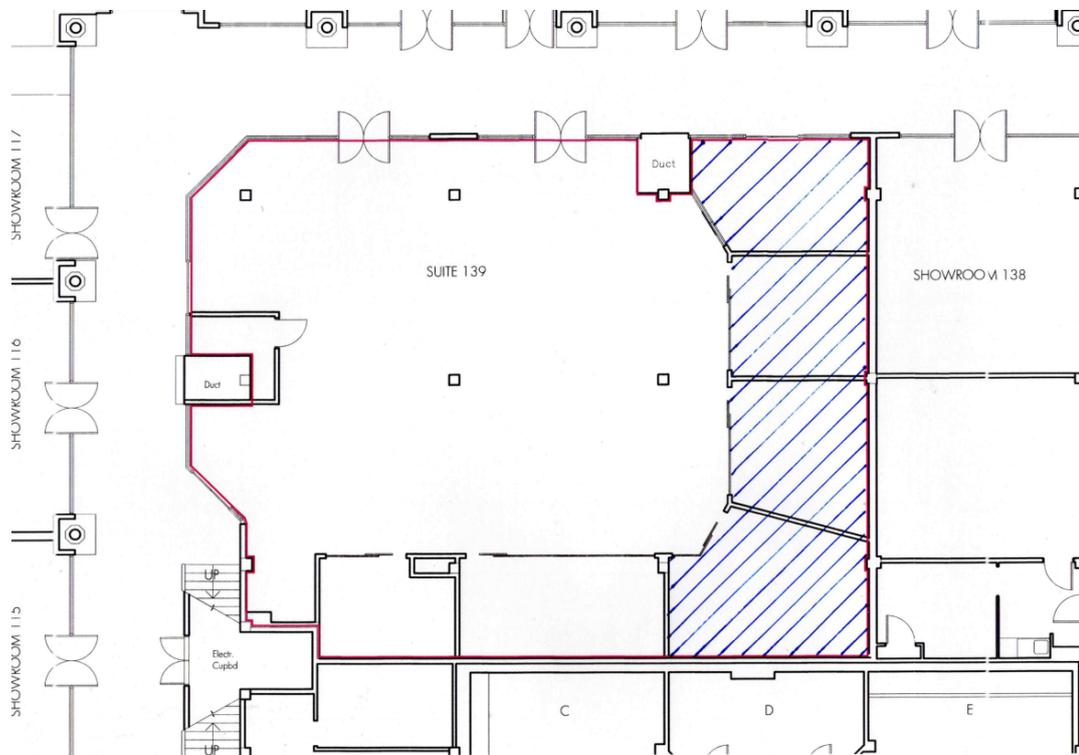
- 4.4 Whilst the permanent loss of business floorspace would not be acceptable, and contrary to the Council's policies in land use terms, the Council considers that a personal permission secured by condition to ensure the floorspace would return to its existing use as office (B1a) floorspace, following the applicant vacating the premises. Therefore, subject to this condition, the proposal is considered, on balance, to be acceptable in land use terms.
- 4.5 The proposal is considered to preserve the visual appearance and historic character of the heritage assets, being the Angel and Barnsbury Conservation Areas and Grade II Listed Buildings, in accordance with section 72(1) and 66(1) of Planning (Listed Buildings and Conservation Areas) Act 1990. This is given the acceptability of the proposal in land use terms and that no internal and external alterations are proposed.
- 4.6 The proposal would have an acceptable amenity impact on neighbouring properties and the surrounding area including the public highway network, a condition has been recommended to ensure the proposal would not result in a taxi rank or drop off/collection point for taxis.

## **5. SITE AND SURROUNDING**

- 5.1 The application site is comprised of the Business Design Centre which is bounded by Liverpool Road (to the west), Barford Street (to the north) and Berners Road (to the south) which provides access from Upper Street. The main entrance to the building is from the east elevation, which is adjacent to an existing hotel. To the south of the site is Angel Central, a retail centre (Use Class A1), and to the west is predominately 3 to 4 storeys residential (Use Class C3) terraced units. The Business Design Centre is a conference centre and exhibition hall; the Centre hosts approximately 300 events with 500,000 visitors a year. In association with the Business Design Centre there is an undercover car park with 250 car parking spaces with disabled and electric vehicle charging, as well as free bicycle parking.
- 5.2 The host building was designed by Fredrick Peck and formerly used as the Royal Agricultural Hall which opened in 1862, for holding agricultural shows. The building was redeveloped and subsequently opened as the Business Design Centre in October 1986. The main exhibition hall consists of 6,000 sqm, this application relates to a unit located on the ground floor (in the western section of The Business Design Centre) underneath the mezzanine floorplate (which is used as exhibition and event space), covering an area of 292 sqm. The host building is predominately constructed in brickwork, with a large glazed frontage.
- 5.3 The site is located within the Angel Conservation Area and is immediately adjacent to the Barnsbury Conservation Area, to the north, west and south. The host building is a Grade II listed building and is located immediately to the north of the row of Grade II Listed terraced properties along Bromfield Street, and the north elevation is located opposite the row of terraced Grade II listed Buildings along Barford Street, as well as the row of Grade II listed buildings along Liverpool Road/Cloudesley Place. It is also located within the Central Activities Zone, Angel & Upper Street Core Strategy Key Area, the Angel Town Centre, and within 100m of the Transport for London's SRN (Strategic Road Network) (Essex Road) and TLRN (Traffic for London Road Network) (Upper Street).

## 6. PROPOSAL (IN DETAIL)

- 6.1 The application seeks permission for the change of use of part of existing unit currently used as an office (Use Class B1a) to a part office (Use Class B1a) part (68 sqm) training facility (Sui Generis).
- 6.2 The applicant and the proposed occupier of the unit is a company called 'Ola Private UK Ltd' which is a ride-hailing mobile phone application for both private hire vehicles and metered taxis. The applicant has confirmed that they seek to relocate their headquarters to the currently vacant unit within the Business Design Centre to expand their operations. The applicant seeks use the majority of the unit as an office (B1a use) and use part of the unit (68 sqm) to operate a training centre alongside the main office function, resulting in a Sui Generis use. The training centre element of the unit would enable the applicant to train taxi drivers registered to the application. It should be noted whilst the application relates to a business providing private hire vehicles and metered taxis, the proposal would not result in the creation of a taxi rank or any private hire vehicles or metered taxis using the application to collect users.



**Image 4:** Proposed layout of Unit 139 with the area used a training centre identified (annotated with stripes).

- 6.3 The proposal is brought to the committee because the application would result in the loss of 68sqm business floorspace, without the policy required marketing evidence, by Development Management Policies (2013) Policy DM5.2.

## 7. RELEVANT HISTORY:

## Planning applications

- 7.1 The site has extensive planning history including external and internal alterations, appeals, and it is noted that there is an active case which is currently under assessment. The following section contains the more relevant cases to the proposal.
- 7.2 **P2019/2821/FUL** (PP): Change of use of the Gallery suite from Class B1 (offices) to Class D2 (gymnasium) with minor external alterations including replacement of existing entrance doors.(currently under assessment).
- 7.3 **P102597** (PP) - Application under section 73 of the Town and Country Planning Act 1990 to vary the wording of condition 19 (hours of operation) of planning permission 83/0398 dated 25/04/1984 (as amended by appeal dated 31/10/91) for the 'restoration of the main hall at Royal Agricultural Hall and Liverpool Road and 56-61 (incl) Upper Street and its use as a Design Trade Centre, including ancilliary management offices, designers club, restaurant and storage, the restoration and adaptation of the New Hall to provide an under cover service area for the Design Trade Center together with the provision of 6,774sqm (gross) of offices with car parking for 270 cars, 7 of which are related to the office floorspace.' The variation secures the operation of the centre from 27 July to 12 August 2012 (incl), with the operational hours of 8am to 1am Mondays to Saturdays and 8am to 10pm Sundays. Approved with conditions and legal agreement on 24/05/2011
- 7.4 **P091764** (PP) - Variation of Saturday operating hours to allow opening until 10pm. Refused on 24/12/2009
- REASON 01:** The extended opening hours would have a detrimental effect on the residential amenity of neighbours due to increased levels of noise and disturbance
- 7.5 **P053014** (PP) - Change of use of level 2 of Galleria building from health club to B1 office, and construction of link to principal building. Approve with conditions
- 7.6 **991088** (PP) - Variation to conditions on hours and numbers of people (currently limited to 20.00 on Saturdays and 2000 people). This is to enable the Islington Churches Millenium Group to have a Millenium Carol Service on Saturday 18th December, 1999 - service intended for up to 3000 with a finish time of about 21.15 to enable departure by 22.00. Approve with conditions on 23/07/1999
- 7.7 **990996** (PP) - Change of use of part of the south east corner of the front part of the building from restaurant/bar to offices (B1) (255sq.m.). Approve with conditions on 26/08/1999
- 7.8 **910103** (PP) - To extend the definition of the Business Design Centre to include:- Art Gallery Class D1 Exhibition Hall. Appeal made against non-determination allowed with Conditions on 31/10/1991
- 7.9 **900938** (PP) - That the hours specified in Condition 14 of permission 83/0398 dated 25th April 1984 be amended to: Monday to Friday 7.30am - 6.30pm. Saturday 7.30am - 4.00pm.

Sunday 10.00am to 4.00pm (on those days when an exhibition opens on the following day). Except that on days when exhibitions close the closing time may be extended by one hour. Appeal made against non-determination Allowed with Conditions 31/06/1991

- 7.10 **900670** (PP) & **900669** (LBC) - To provide a ground floor and mezzanine retail A or A2 Class at ground floor with two floors B1(a) above. Appeal decision unknown on 12/04/1996
- 7.11 **900383** (PP) & **900384** (LBC) - Erection of four five storey office block above existing car park. Appeal made against non-determination Dismissed on 31/10/1991
- 7.12 **830398** (PP) - Restore and rehabilitate the Royal Agricultural Hall as a Design Trade Centre including ancillary offices designers club restaurant new offices (72 000 sq. ft.) and multi-storey car park for 260 cars. Approve with conditions on 25/04/1984

### **Enforcement History**

- 7.13 Various enforcement investigations relating to various matters including vehicle movements, plant equipment, window opening, erection of hoardings amongst other matters. The following investigation is considered most relevant to this application.
- 7.14 E11/05690 - Non compliance with hours of operation. Case closed on 31/10/2011

### **Pre applications**

- 7.15 None

## **8. CONSULTATION**

### **Public Consultation**

- 8.1 Letters were sent to occupants of 185 adjoining and nearby properties on 5<sup>th</sup> September 2019. A site notice and press advert were also displayed. The public consultation of the application therefore expired on 6<sup>th</sup> October 2019, however it is the Council's practice to consider representations made up until the date of a decision.
- 8.2 At the time of the writing of this report, no objections had been received from the public with regard to the application.

### **Internal Consultees**

- 8.3 **Design and Conservation Officer:** raised no objections to the proposal and confirmed that the proposal does not require listed building consent.
- 8.4 **Public Protection (Noise) Officer:** raised no objections to the proposal.
- 8.5 **Planning Policy Officer:** raised objections to the loss of business floorspace given the lack of marketing evidence.

## **9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATION & POLICIES**

- 9.1 Islington Council (Planning Sub-Committee A), in determining the planning application has the following main statutory duties to perform:
- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990);
  - To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance.)
  - In line with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been given to the desirability of preserving the Conservation Area, its setting and any of its features of special architectural or historic interest.
  - In line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been given to the desirability of preserving the listed buildings, their setting and any features of special architectural or historic interest
- 9.2 National Planning Policy Framework 2019 (NPPF): Paragraph 10 states: "at the heart of the NPPF is a presumption in favour of sustainable development."
- 9.3 At paragraph 8 the NPPF states that the planning system has three overarching objectives in achieving sustainable development, being an economic objective, a social objective and an environmental objective.
- 9.4 The NPPF seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.
- 9.5 Since March 2014 Planning Practice Guidance for England has been published online.
- 9.6 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.
- 9.7 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:
- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

9.8 Members of the Planning Sub-Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.

9.9 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

### **Development Plan**

9.10 The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The policies of the Development Plan that are considered relevant to this application are listed at Appendix 2 to this report.

### **Designations**

9.11 The site has the following designations under the London Plan 2016, Islington Core Strategy 2011, Islington's Development Management Policies 2013 and Site Allocations Document 2013::

- The Angel Conservation Area (and Article 4 Direction)
- Adjacent to Barnsbury Conservation Area (to north, west and south)
- Archaeological Priority Area – Islington Village
- Core Strategy Key Area – Angel & Upper Street
- Cycle Route (Local)
- Cycle Route (Major)
- Angel Town Centre
- Mayors Protected Vistas – Alexandra Palace viewing terrace to St Paul's Cathedral
- Site within 100m of Traffic for London Road Network
- Site within 100m of Strategic Road Network
- Article 4 Direction (A1 to A2)

## **Supplementary Planning Guidance (SPG) / Document (SPD)**

9.12 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

### **10. ASSESSMENT**

10.1 The main issues arising from this proposal relate to:

- Land Use
- Design and Conservation
- Accessibility
- Neighbouring Amenity
- Highways and Transportation

#### **Land Use**

- 10.2 As noted in paragraph 5.2 above, the host building was formerly used as the Royal Agricultural Hall which opened in 1862, for holding agricultural shows. The building was redeveloped and subsequently opened as the Business Design Centre in October 1986 following the planning permission (ref. 830398) as a Design Trade Centre in April 1984. This permission also allowed the use of the building for ancillary offices, designers club, restaurant and new offices, as well as a multi-storey car park for 260 cars. The host building has been subject to various applications since this approved application for various internal and external changes including the use of different parts of the host building.
- 10.3 In its current form, the host building consists of 6565.5 sqm (GIA - Gross Internal Area) floorspace, which consists of 2088 sqm mezzanine level, 471.5 sqm (GIA) ground floor, 1468 sqm (GIA) Gallery Bays, 837 sqm (GIA) Gallery Hall, 558 sqm (GIA) Gallery Atrium and 1140 sqm (GIA) Conference centre. The Gallery Hall is a multi-purpose space and can be used for exhibitions, large conferences and for a conference as a catering area. Overlooking the Gallery Hall is the Gallery Atrium which provides additional space for catering, and is often used for drinks receptions. The Auditorium located at ground floor is used for both theatre and classroom style events, and offers a large space which can seat just over 500 patrons.
- 10.4 In addition to the uses associated with the original permission, the host building has benefitted from planning permission for an art gallery (D1) as well as additional office space and various other uses.
- 10.5 The applicant has confirmed that the current use of the host building varies from small meetings right through to conferences for 2,000 delegates and exhibition space. The application under consideration relates to a unit within the host building located at ground floor level (in the western section of The Business Design Centre) underneath the mezzanine floorplate (which is used as exhibition and event space), covering an area of 292 sqm.
- 10.6 The accompanying information provided by the applicant confirms that the unit is currently vacant but its last known use was for office (B1a) accommodation. This application would result in the retention of the majority (224 sqm) of the unit for office floorspace, but part (68 sqm) of the unit would be used as a training facility. The proposal would therefore result in the loss (68sqm) of business floorspace.

- 10.7 Policy DM5.2 Part A of the Development Management Policies (2013) seeks to ensure *proposals that would result in a loss or reduction of business floorspace will be refused unless the applicant can demonstrate exceptional circumstances, including through the submission of clear and robust evidence which shows there is no demand for the floorspace. This evidence must demonstrate that the floorspace has been vacant and continuously marketed for a period of at least two years. In exceptional cases related to site-specific circumstances, where the vacancy period has been less than two years, a robust market demand analysis which supplements any marketing and vacancy evidence may be considered acceptable.*
- 10.8 Part B of this policy is also relevant, given its location within the Angel Town Centre, which seeks ensure developments *within Employment Growth Areas and Town Centres, in addition to the above, the loss or reduction of business floorspace will be resisted where the proposal would have a detrimental individual or cumulative impact on the area's primary economic function (including by constraining future growth of the primary economic function).* It should also be noted that the site is within the Central Activities Zone (CAZ) which is described within the London Plan as *London's vibrant centre and one of the world's most attractive and competitive business locations.*
- 10.9 Islington Core Strategy (2011) Policy CS5 Part C, relating to the Angel and Upper Street Key Area, seeks to ensure *business floor space will be protected from change of use and opportunities for office-led mixed use development, through intensification of uses to contribute to wider employment growth in the borough, will be encouraged.* The Core Strategy (para 2.6.1) also notes that *the Angel is the most significant town centre in Islington: it is one of two major town centres.*
- 10.10 Whilst a number of these issues are addressed later within this report, Policy DM4.4 Part C seeks to ensure development within Town Centres is required to meet the following objectives:
- i) *be appropriate to the scale, character and function of the centre;*
  - ii) *contribute positively to the vitality and viability of the centre;*
  - iii) *promote a vibrant and attractive place;*
  - iv) *respect and enhance the heritage, character and local distinctiveness of the centre;*
  - v) *provide a variety of different sized retail units;*
  - vi) *meet the council's policies on Inclusive Design; and*
  - vii) *not cause detrimental disturbance from noise, odour, fumes or other environmental harm.*
- 10.11 The Angel Conservation Area Design Guidelines confirms (para. 18.4) that the *Council will operate its land use policies so as to enhance the character and vitality of the area. Planning permission will not be granted to change, expand or intensify uses which would harm the character of the conservation area.* It also notes that (para. 18.5) the *Council will seek to maintain the lively retail nature of the area and will not normally grant permission for schemes which harm this established mixed use character.*

- 10.12 As noted above, the applicant has confirmed that the unit (292sqm) is currently vacant. However, no information has been provided in terms of how long this period of vacancy covers. In addition, unfortunately the application has not been accompanied by any marketing evidence as required by Policy DM5.2, to demonstrate that the partial loss of business would be acceptable, and to accord with the identified land use policies above and the Conservation Area Design Guidelines.
- 10.13 Ordinarily an application resulting in the total loss of business floorspace, without the required marketing evidence would be resisted in land use terms. This is particularly the case, given the sites location within the Central Activities Zone, Angel Town Centre and Core Strategy Key Area (Angel and Upper Street), as well as being within the Business Design Centre.
- 10.14 However, the unit forms part of, and is linked to the the the proposal would not result in a total loss of the existing unit subject to the application, with the majority (224sqm - 77%) of the unit being retained as office accommodation. However, a significant portion of the existing unit (68sqm - 23%) no longer being used as office accommodation which is shown in Image 4. The applicant has confirmed that this floorspace would be used as a training centre, associated with the office floorspace. This is to allow the applicant to train taxi drivers registered to the applicants business to use the mobile phone application associated with the business.
- 10.15 Self-contained training centres are considered to be D1 uses (as defined under the Town and Country Planning (Use Classes) Order 2015 and its subsequent amendments), being non-residential institutions, and are included in Appendix 13 of Development Management Policies (2013). As the proposed training centre would be training for taxi drivers associated with the applicants company only and the use of the office accommodation, the proposed use of part (68 sqm) of unit is not considered to fall within the definition of social infrastructure, rather it would be Sui Generis use. Therefore the requirements of Policy DM4.12 is not applicable in the assessment of the application. However, the principle of providing training facilities even ones restricted to the use of the company, is supported by the Council's policies. Paragraph 3.4.9 of the Core Strategy confirms the Council's focus is on securing training opportunities for local residents, and paragraph 5.1 of Development Management Policies (2013) seeks to provide for *future employment growth throughout the borough, by promoting new and/or intensified floorspace and requiring development to contribute to the local economy through the provision of employment and training opportunities*. The applicant has confirmed that the proposal would generate 38 no. jobs initially, which could increase to 50 no. jobs through the duration of the tenancy of its tenancy.
- 10.16 Whilst it is acknowledged that no marketing evidence has been provided, the existing unit is one of several units within the Building Design Centre, which provides business floorspace. As a result the access to the unit is shared with the other units and other parts of the building, via the main entrance to the east of the building from Berners Road. Given this situation and the bespoke nature of the space, it would be very difficult to market the individual unit on this basis.
- 10.17 As noted in the site and surrounds section above, the use of the host building has evolved over the course of its lifetime, since its formation of as a Business Design Centre in 1986. This has resulted in many changes to the use of the building to support the host building and wider areas economic function. Whilst it is acknowledged there has been a number of policy changes since this date, this includes the introduction of a D1 use (non-residential institution) with the approved application (ref. 910103) which allowed for the change of use to create an art gallery in 1991.

- 10.18 Given the interlinked and symbiotic nature of the proposal which would allow for the existing vacant unit to be brought back into use, and would help support the existing primary function as office accommodation, being used solely by employees of the business, as well as generating jobs, and providing training for future employees of the business, is considered to be acceptable due to the specific circumstances of the proposed use of the unit. Therefore the partial loss of the existing business floorspace, on balance, is considered acceptable. This is considered on the basis that a recommended condition requiring the part of the unit which would be used as a D1 use would be returned to office floorspace upon the applicants business vacating the premises. This is to ensure the whole of the unit subject to the application being returned to its existing use as solely office (B1a use) floorspace.
- 10.19 Therefore, on balance and subject to the proposal being acceptable in all other regards, including the requirements of policy DM4.4C, including its amenity impact on neighbouring properties and the local highway network, the proposal is considered acceptable in land use terms.

### **Design and Conservation**

- 10.20 The application site consists of the Business Design Centre which is a Grade II Listed Building. The host building is also within the setting of several Grade II Listed Building to the north south and west. It is also within the Angel Conservation Area and is within the setting of (being adjacent) the Barnsbury Conservation Area. Therefore, the proposal is required to pay special regard to preserving or enhancing the historic character and visual appearance of these heritage assets, in accordance with section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 10.21 The design advice found within the Islington Urban Design Guide (2017) and the Angel Conservation Area Design Guidelines should be taken into consideration in terms of the assessment of the proposal in design terms. Whilst it is acknowledged it is not within the Barnsbury Conservation Area, the associated Design Guidelines should also be taken into consideration given it is located immediately adjacent to the site.
- 10.22 Policy CS9 of Islington's Core Strategy (CS) 2011 and Policy DM2.1 of Islington's Development Management Policies 2013 accord with the National Planning Policy Framework (NPPF) in seeking to sustain and enhance Islington's built environment. Taken together, they seek to ensure that proposed development responds positively to existing buildings, the streetscape and the wider context, including local architecture and character, surrounding heritage assets, and locally distinctive patterns of development.
- 10.23 Policy DM2.3 states that Islington's historic environment is an irreplaceable resource and the council will ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance.
- 10.24 The proposal would not result in any internal or external alterations, therefore the acceptability of the proposed development is dependent on the impact on the historic character of the Angel Conservation Area, and the adjacent Barnsbury Conservation Area.
- 10.25 Given the proposed loss of business floorspace is considered to be, on balance, acceptable in land use terms, and compliant with the Council's objectives including the impact of the historic character of the heritage assets associated with the proposal, it is considered to preserve the visual appearance and historic character of the Grade II Listed host building and wider area including the adjoining Grade II Listed Buildings and the Angel and Barnsbury Conservation Areas and is considered acceptable in design terms.

The proposal therefore accords with the NPPF 2019, policies 7.4, 7.6 and 7.8 of the London Plan 2016, policy CS9 of the Islington Core Strategy 2011, and policies DM2.1 and DM2.3 of the Islington Development Management Policies (2013).

### **Accessibility**

- 10.26 Policy 7.2 of the London Plan 2016 states development should achieve the highest standards of accessible and inclusive design, ensuring that developments can be used safely, easily and with dignity by all regardless of disability, age, gender, ethnicity or economic circumstances. Further, policy DM2.2 of the Development Management Policies 2013 seeks all new developments to demonstrate inclusive design. The principles of inclusive and accessible design have been adopted in the design of this development in accordance with the above policies.
- 10.27 The existing unit is one of several commercial units within the host building. The proposal does not include any internal or external alterations to the host building, therefore the occupiers of the unit subject to this application would benefit from the existing arrangements in relation to accessible accommodation which would have been considered as part of previous applications for the subject to building. Any future internal changes, including to providing accessible accommodation would likely be subject to an application for listed building consent, given its designation as a Grade II Listed Building.
- 10.28 Therefore, the proposal is considered to provide accessible accommodation to future occupiers of the unit, and is acceptable in this regard. The proposal is therefore considered to comply with policy 7.2 of the London Plan 2016, policy CS12 of the Islington Core Strategy 2011, and policy DM2.2 of the Islington Development Management Policies 2013.

### **Neighbouring Amenity**

- 10.29 Policy 7.6 of the London Plan 2016 requires buildings and structures not to cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy and overshadowing, in particular. Policy DM2.1 of the Development Management Policies 2013 states that development should not have an adverse impact on neighbouring amenity in terms of noise disturbance, overshadowing, overlooking, privacy, sunlight and day light receipt, over-dominance, sense of enclosure and outlook.
- 10.30 The proposal would not result in any internal or external alterations to the host building, and is considered therefore not to result in any additional overlooking, loss of daylight/sunlight or outlook to neighbouring properties.
- 10.31 The covering letter accompanying the application confirms that proposal would not require a physical presence in which to house a call handler as all journeys are booked via the applicants mobile phone application, with drivers similarly routed to customers via the application. As a result drivers would not congregate at the host building. Therefore, the proposal would not result in the creation of a taxi rank or result in a collection/drop off point for private hire vehicles or metered taxis associated with the proposal. A condition has been recommended to ensure to prevent the creation of taxi rank or drop off/collection point for private hire vehicles or metered taxis.

- 10.32 The applicant has confirmed that the proposed occupation of the unit would be between 8am to 10pm Monday to Saturdays and 10am to 7pm on Sundays. Whilst the core publicly accessible opening hours of the Business Design Centre are 8am to 9pm Monday to Friday, planning permission (ref. P102597) was granted in February 2011 which extended the operational hours of 8am to 1am Mondays to Saturdays and 8am to 10pm Sundays, this includes the use of ancilliary management offices, designers club, restaurant and storage. It is therefore considered that the proposed hours of use would be consistent with the use of the building.
- 10.33 Given the proposal relates to an existing unit at ground floor, within the centre of the building, and the nature of the proposed of the use of the unit, it is not considered to result in any increased in noise to neighbouring properties, or result in any significant increase in users of the buildings, given they would be employees of the applicants business. However, a condition has been recommended to restrict the hours of use of the unit subject to the application.
- 10.34 The application is therefore considered to be acceptable with regard to neighbouring amenity, and accords with Policy 7.6 of the London Plan 2016 and Policy DM2.1 of the Development Management Policies 2013.

### **Highways and Transportation**

- 10.35 The site is located to the north of Berners Road, which provides access to the site, and to the west of Upper Street, which forms part of the Transport for London Road Network and is a principal north-south route within Central London. The site has an excellent Public Transport Accessibility Level (PTAL) of 6a (with 6 being the best and 0 being the worst), with a number of bus stops and Angel Underground station being within walking distance. The existing building contains a number of car parking spaces and a servicing area within the front forecourt.
- 10.36 Policy DM8.4 (Walking and cycling) Part C of the Development Management Policies 2013 requires the provision of secure, sheltered, integrated, conveniently located, adequately lit, step-free and accessible cycle parking. Additionally, Policy CS10 (Sustainable design) Part H of the Core Strategy 2011 seeks to maximise opportunities for cycling. Whilst it is acknowledged that no cycle parking is proposed as part of this application, the cycle provision has been provided as part of the original development and no changes are proposed to this existing provision. Given that the proposal does not alter this existing provision and that the proposal would not result in a self-contained use, as it would be associated with the primary function as an office, the lack of any additional cycle storage provision is acceptable, in this case.

### **Vehicle Parking**

- 10.37 Islington operations car-free policies. For non-residential development, Policy DM8.5 Part B states that parking will only be permitted where this is essential for operational requirements and integral to the nature of the business/service (such as car hire or storage/distribution use). Normal staff parking will not be permitted. The application has existing car parking, adjacent to the west elevation frontage, but no changes are proposed. Whilst it is acknowledged that the proposal does relate to a private vehicle hire and metered taxi business, the proposal relates to the office accommodation and associated training centre only, and would not result in the creation of taxi rank, or a collection/drop off point for journeys. A condition has been recommended in relation to this matter.

### Refuse/Recycling

- 10.38 The proposal is not considered to give rise to any significant increase in refuse and recycling, with the unit subject to this application benefitting from the existing arrangements.

### Servicing and Deliveries

- 10.39 Little information has been provided as part of the application with regard to servicing and deliveries. However, given the existing arrangements would be retained and the nature and scale of the proposed use of the unit, which would be similar to the existing arrangement and would not result in any requirement for additional servicing and delivery requirement.

## **11. SUMMARY AND CONCLUSION**

### **Summary**

- 11.1 A summary of the proposal is set out at section 4 of this report.

### **Conclusion**

- 11.2 It is recommended that planning permission be granted subject to conditions and planning obligations as set out in Appendix 1 – RECOMMENDATIONS.

## APPENDIX 1 – RECOMMENDATIONS

### RECOMMENDATION A

That the grant of planning permission be subject to **conditions** to secure the following:

#### List of Conditions:

<b>1</b>	<b>Commencement</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>Approved plans list</b>
	<p>CONDITION: The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Cover Letter dated 12 August 2019 from Jones Lang LaSalle Ltd,</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Planning Act 1990 as amended and also for the avoidance of doubt and in the interest of proper planning.</p>
<b>3</b>	<b>Hours of Operation</b>
	<p>CONDITION: The hereby approved use of unit 139 (as shown on drawing no. 3966/PL/04/TR) shall only be used used between the following hours:</p> <p>08:00 to 2200 Monday to Saturday and 10:00 to 1900 on Sundays.</p> <p>Shall be no use of the unit on Bank Holidays or outside these hours.</p> <p>REASON: To protect the amenity of neighbouring residential properties.</p>
<b>4</b>	<b>Personal Permission</b>
	<p>CONDITION: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) Order 2016 (or any order revoking and re-enacting that Order with or without modification), the shaded areas identified on drawing no. 39666/PL/04/TR being part of the premises forming the subject of this permission identified on the approved drawings shall be used as a training centre (Sui Generis use) only under the operation of Ola UK Private Ltd. Following the cessation of the specific D1 operation by Ola UK Private Ltd hereby approved, the unit shall revert back to B1a use (office), and for no other purpose including any other purpose within the Schedule of the Town and Country Planning (Use Classes) Order 2005 (as amended, or any order revoking and re-enacting that Order).</p> <p>REASON: To protect the viability of the area.</p>

<b>5</b>	<b>No Taxi rank or drop off/collection point</b>
	<p>CONDITION: Notwithstanding the hereby approved plans the site shall not be used as a taxi rank or as a collection/drop off point for metered taxi or private hire vehicles.</p> <p>REASON: To protect the amenity of neighbouring properties and the wider public highway network.</p>

**List of Informatives:**

<b>1</b>	<b>Community infrastructure Levy (CIL)</b>
	<p>CIL Informative: Under the terms of the Planning Act 2008 (as amended) and Community Infrastructure Levy Regulations 2010 (as amended), this development is liable to pay the London Borough of Islington Community Infrastructure Levy (CIL) and the Mayor of London's Community Infrastructure Levy (CIL). These charges will be calculated in accordance with the London Borough of Islington CIL Charging Schedule 2014 and the Mayor of London's CIL Charging Schedule 2012. One of the development parties must now assume liability to pay CIL by submitting an Assumption of Liability Notice to the Council at <a href="mailto:cil@islington.gov.uk">cil@islington.gov.uk</a>. The Council will then issue a Liability Notice setting out the amount of CIL payable on commencement of the development. Further information and all CIL forms are available on the Planning Portal at <a href="http://planningportal.gov.uk">http://planningportal.gov.uk</a> and the Islington Council website at <a href="http://www.islington.gov.uk/cilinfo">www.islington.gov.uk/cilinfo</a>. Guidance on the Community Infrastructure Levy can be found on the National Planning Practice Guidance website at <a href="http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/">http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/</a></p>
<b>2</b>	<b>Other Legislation</b>
	<p>You are advised that the planning permission hereby approved would be subject to fully complying with other legislation outside the realms of the planning regulations including licensing, environmental acts, building control and fire safety regulations.</p>

## **APPENDIX 2: RELEVANT POLICIES**

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

### **1. National Guidance**

The National Planning Policy Framework 2019 and Planning Policy Guidance (PPG) seek to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF and PPG are material considerations and have been taken into account as part of the assessment of these proposals.

### **2. Development Plan**

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

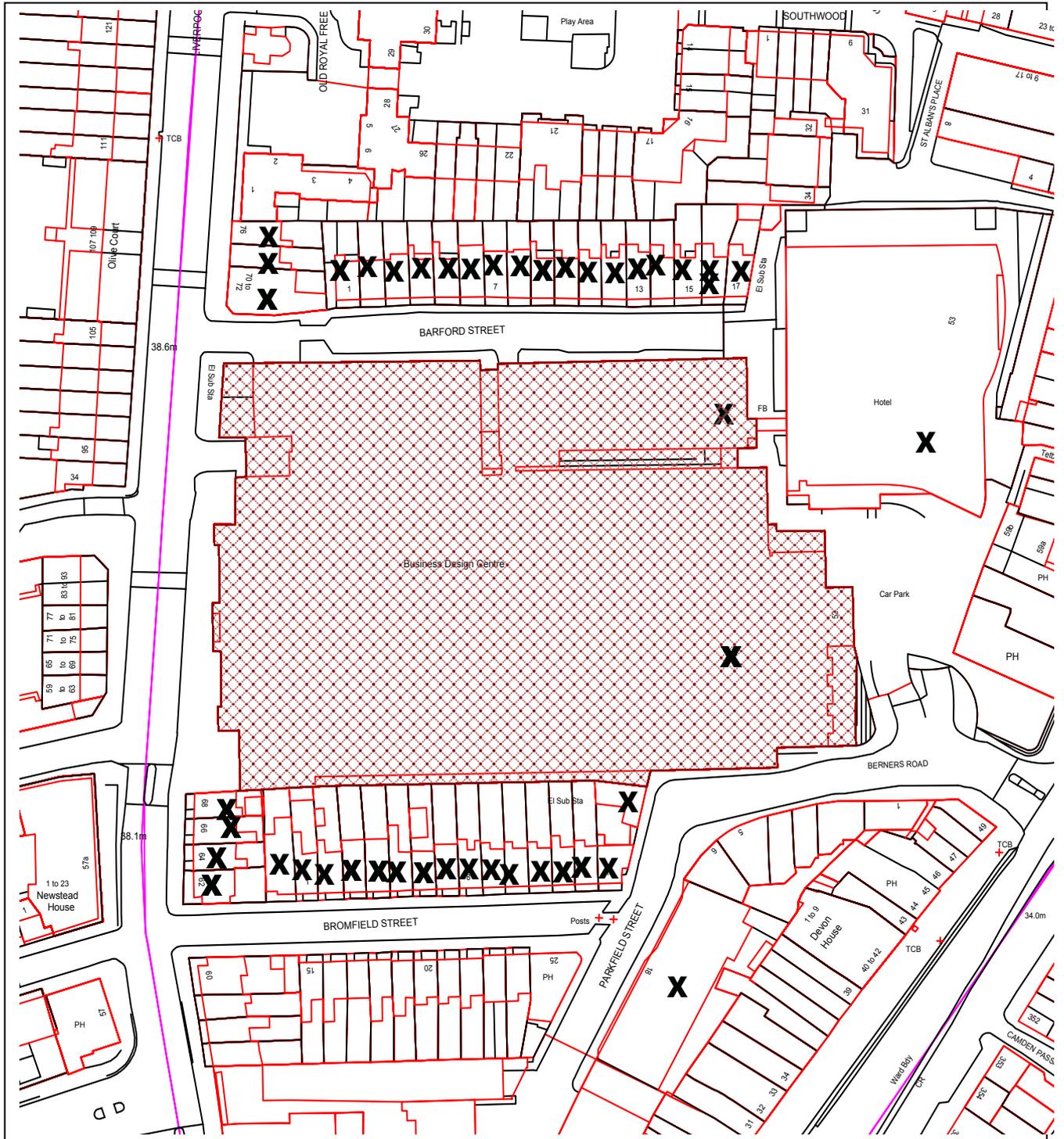
- a. **The London Plan 2016** - Spatial Development Strategy for Greater London
    - Policy 3.16 – Protection and enhancement of social infrastructure
    - Policy 6.9 – Cycling
    - Policy 6.10 – Walking
    - Policy 7.2 – An inclusive environment
    - Policy 7.4 – Local Character
    - Policy 7.6 – Architecture
    - Policy 7.8 – Heritage assets and archaeology
  - b. **Islington Core Strategy 2011**
    - Policy CS5 – Angel and Upper Street
    - Policy CS9 – Protecting and enhancing Islington’s built and historic environment
  - c. **Development Management Policies June 2013**
    - Policy DM2.1 – Design
    - Policy DM2.2 – Inclusive design
    - Policy DM2.3 – Heritage
    - Policy DM4.3 – Location and concentration of uses
    - Policy DM4.4 – Promoting Islington’s Town Centres
    - Policy DM4.12 – Social and strategic infrastructure and cultural facilities
    - Policy DM5.2 – Loss of existing business floorspace
    - Policy DM8.2 – Managing transport impacts
    - Policy DM8.3 – Public transport
    - Policy DM8.4 – Walking and cycling
    - Policy DM8.5 – Vehicle parking
    - Policy DM8.6 - Delivery and servicing for new developments
    - Appendix 6 – Cycling
- ### **3. Designations**
- Core Strategy Key Area – Angel and Upper Street
  - Grade II Listed Building (host building)
  - Adjacent to several Grade II Listed Buildings (to north, south and west of the site)
  - Angel Conservation Area (and Article 4 Direction)
  - Adjacent to Barnsbury Conservation Area (to north, west and south)
  - Archaeological Priority Area – Islington Village
  - Core Strategy Key Area – Angel & Upper Street
  - Cycle Route (Local)
  - Cycle Route (Major)
  - Angel Town Centre
  - Mayors Protected Vistas – Alexandra Palace viewing terrace to St Paul’s Cathedral
  - Site within 100m of Traffic for London Road Network

- Site within 100m of Strategic Road Network
- Article 4 Direction (A1 to A2)

**4. SPD/SPGS**

- Urban Design Guide 2017
- Conservation Area Design Guidelines

# Islington SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.  
P2019/2447/FUL

This page is intentionally left blank