

## ADDENDUM TO PLANNING COMMITTEE REPORT

Development Management Service  
 Planning and Development Division  
 Environment and Regeneration Department

Date:	14 January 2020	AGENDA ITEM: 02
		NON-EXEMPT

Application number	P2018/1580/FUL
Application type	Full Planning Application
Ward	Bunhill Ward
Listed building	Not listed
Conservation area	Clerkenwell Green Conservation Area (and Article 4 Direction Within 50m of Charterhouse Square Conservation Area
Development Plan Context	Core Strategy Key Area – Bunhill & Clerkenwell Central Activities Zone Employment Priority Area (General) Clerkenwell Archeological Priority Area Major Cycle Route Finsbury Local Plan Area – Bunhill & Clerkenwell Mayor's Protected Vistas – Alexandra Palace viewing terrace to St Paul's Cathedral Local views from St John Street Local view from Angel Local view from Archway Road Article 4 Direction (B1(c) to C3) Adjoining Grade II listed building – No. 72 St John Street Adjoining Grade II listed building – No. 78 St John Street Adjacent Grade I and Grade II listed buildings – Charterhouse
Licensing Implications	Bunhill Cumulative Impact Policy Area A4 Drinking Establishment A3 Restaurant and Café No licensing application details have been provided by the Applicant.
Site Address	74-76 St John Street, Islington, London, EC1M 4DZ
Proposal	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.

Case Officer	Nathan Stringer
Applicant	Venaglass Haymarket Limited
Agent	Quod – Mr Stephen Rose

### 1. RECOMMENDATION

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

- 1.1 the conditions set out in Appendix 2 and as amended in Sections 7 and 8 of this addendum report and legal agreement to secure the costs of works and reduction of the existing crossover in front of the site to allow for on-street refuse collection.

## **2. BACKGROUND OF DEFERRAL**

- 2.1 This application was previously published to the agenda for the Planning Sub-Committee A meeting on 07 November 2019. However, following the publishing of the agenda, officers became aware that a number of documents submitted as part of the application (specifically relating to site demand analysis) had not been made publicly available on the Council's website, and were therefore not available review. As a result, the relevant documents were published to the website and the application was subject to an additional consultation period which was carried out from the 8<sup>th</sup> November 2019 and ended on the 8<sup>th</sup> December 2019. To accommodate the required re-consultation period, the application was withdrawn from the agenda of the Planning Sub-Committee A meeting prior to the meeting to facilitate the inclusion of the site demand report to go online and for adjoining residents and third parties to fully consider it.
- 2.2 It is important to note that no additional information has been provided by the applicant since the publication of the agenda for the Planning Sub-Committee A meeting on 07 November 2019.

## **3. CONSULTATION**

- 3.1 The application has been subject to one round of re-consultation following the publishing of the relevant documents to the Council's website for public viewing. Letters were sent to occupants of 161 adjoining and nearby properties on 08 October 2019. A site notice and press advert were also displayed. The public re-consultation period therefore expired on 08<sup>th</sup> December 2019, however it is the Council's practice to consider representations made up until the date of a decision.
- 3.2 Six additional objections and one additional comment were received during the re-consultation period (beginning 8<sup>th</sup> November 2019), including 6no. objections and comment from previous objectors, and 1no. new objection from a neighbouring resident. In addition to the issues raised by residents following the first consultation period, the further concerns raised during the re-consultation period include:
  - The proposed low-level extractor would cause significant harm to neighbouring amenity with regard to noise and odour issues, exacerbated by the constraints of the site and nearby sensitive uses (**see paragraphs 5.1 and 5.2**)
  - The consultation of the proposal has been inadequate, and some documents not available (**see officer's note below**)
  - Loss of business floorspace within the Central Activities Zone is based upon submitted evidence which is at least 3 years old (**see paragraphs 5.3-5.4**)
  - Noise and odour impact of the proposal, including concern that the information provided to date is insufficient and noting that the Environmental Health officer recommends a condition requiring further details regarding flues and extractors to be submitted prior to first occupation of the A3/A4/D2 use to which they relate (**see paragraphs 5.1 and 5.2**)

- Outline Operational Management Plan is inadequate (**a further Scheme of Management is required to be submitted for approval under recommended Condition 8**)
- Concern that the proposed servicing and delivery details would not adequately manage the servicing/deliveries required at the site (**see paragraphs 5.5**)
- The application should be refused because the noise and odour implications of the proposal cannot be adequately assessed in the absence of detailed professional reports for such matters (**see paragraphs 5.1-5.2**)
- Concern with regard to the previous Inspector's consideration regarding neighbouring amenity concerns (**Inspector's Appeal Decision is attached at Appendix 3 of the original Committee Report**)
- Concern that the building at no. 66 was not specifically mentioned within the Committee Report (**whilst not explicitly named, the officer assessment of the proposal considered all adjoining and adjacent properties within the 'neighbouring amenity' section of the report**) and
- Concern relating to the recommended conditions of approval, including the absence of a condition requiring the proposed glazed roof to be fixed shut (**see paragraphs 5.6-5.10**).

**Officers Note: upon commencement of the re-consultation period, officers noted that the relevant documents recommended for approval were publicly available on the Council's website. This was also confirmed at the writing of this addendum report (16 December 2019).**

#### **4. UPDATES FOLLOWING PLANNING SUB-COMMITTEE A 07<sup>TH</sup> NOVEMBER 2019**

- 4.1 A number of the recommended conditions have been revised to address the matters raised during the re-consultation period, as well as to strengthen the recommendation for approval. These are discussed further below.

#### **5. FURTHER OFFICER ASSESSMENT FOLLOWING THE RE-CONSULTATION PERIOD**

##### **Proposed extractor/flue unit/s**

- 5.1 Significant concerns have been raised by neighbouring occupiers with regard to the impact of the proposed low-level extractor unit upon the level of amenity afforded to residents of adjoining buildings, particularly with regard to noise, vibration and odour. During the re-consultation period of the application, officers attended a site visit to no. 66 St John Street, which adjoins the rear of the application site. During this site visit, it was observed that the low-level location of the proposed kitchen extractor would likely cause harm to neighbouring occupiers as a result of the close proximity of the extractor, and that any impacts would require further officer assessment should such a system be required. Therefore, it is recommended that **Conditions 2 and 9** are revised to explicitly state that no permission is hereby granted for the extractor as shown on proposed drawing number M-4761-XX-(57)-002 Rev P0. This is further discussed within paragraphs 5.6-5.9 of this addendum report.

- 5.2 Neighbour concern has also been raised with regard to the lack of information submitted with regard to the proposed extractor flues, and absence of detailed professional reports for matters such as noise, vibration and odour impacts. These matters were previously addressed within the Committee Report, and the assessment remains unchanged; these matters are also covered by recommended **Conditions 6 (noise), 7 (mechanical plant compliance report) and 9 (flues/extraction systems) as updated.**

#### **Loss of Business floorspace within the Central Activities Zone**

- 5.3 Additional concerns were raised during the re-consultation period that the proposed loss of business floorspace is based upon submitted evidence which is at least 3 years old.
- 5.4 As noted within the Committee Report, the information submitted with the application is considered to be sufficient in detail and scope to demonstrate that the loss of the business floorspace is acceptable in this specific case. This information has been scrutinized by the Planning Policy Officer, who considers that the asking price advertised as part of the marketing exercise for the unit is reasonable; the submitted evidence demonstrates that marketing particulars had been provided during the two-year process; and that whilst no additional commentary has been submitted with regard to the current and likely future demand for floorspace within the market area, on balance the information provided is sufficient to satisfy the marketing requirements outlined in Appendix 11 of the Development Management Policies 2013.

#### **Delivery and Servicing**

- 5.5 Whilst neighbour concern has been raised with regard to the proposed servicing and delivery procedures, it must be noted that these have been reviewed by the Council's Highways Officer who has raised no concern with regard to the impact of the procedures upon the safe and efficient operation of the highway. Specifically, when a query was raised with regard to whether or not a dedicated loading bay would be required, the officer advised that the proposed method of parking on the existing yellow lines would be sufficient for the requirements of the use.

#### **Amended recommended conditions**

- 5.6 Some concern has been raised with regard to the strength of the recommended conditions in ensuring that the proposal does not have an unacceptable impact upon the level of amenity experienced by neighbouring occupiers. Generally, officers consider that the conditions previously recommended are sufficient to ensure that no undue harm is caused; this is further outlined within the Committee Report. However, there are some recommended alterations to the list of recommended conditions.
- 5.7 Following the publication of the Planning Sub-Committee A Report (7<sup>th</sup> November 2019) for the application and the re-consultation of the development, some revisions to the recommended conditions of approval have been made.

- 5.8 It is recommended that document no. '**M-4761-XX-(57)-002 Rev P0**' is removed from the list of approved drawings and documents, and is therefore removed from **Condition 2**.
- 5.9 It is also recommended that **Condition 9** is re-worded to clarify that no permission is granted for the extractor details as submitted. Whilst **Condition 9** as originally drafted requires the submission and approval of details of any new extractor system prior to the first occupation of the development, for the avoidance of doubt the condition is re-worded to clarify that the outline extractor details provided within the drawings do not form part of the approval scheme.
- 5.10 It is also recommended that a new condition of approval is included, requiring that the proposed glazed roof above the access ramp is fixed shut prior to the first occupation of the unit and maintained as such into perpetuity. This matter was raised during the re-consultation period of the application, and officers noted during the site visit to no. 66 that any noise emanating from the rooflight may have the potential to cause harm to occupants of nearby residential dwellings in the case that it is openable. Concern has also been raised that any lightspill from the rooflight may also cause harm; however, officers consider that the low level of the rooflight (which is not located at the top of the lightwell) would ensure that no harmful lightspill is generated.

## **6. CONCLUSION**

- 6.1 The application was initially withdrawn from the agenda of the Planning Sub-Committee A meeting on 07 November 2019 due to a requirement for the application to be re-consulted given that some documents recommended for approval were not available for public viewing on the Council's website. The application has since been re-consulted and officers have undertaken an additional site visit to the adjoining property at no. 66 St John Street. The proposal is not considered to cause undue harm to the amenity of neighbouring occupants, subject to conditions, some of which have been revised following further officer assessment during and after the re-consultation period. The application is therefore recommended for approval, subject to conditions suggested previously amended condition 2 & 9 and new suggested condition 14.

## **7. UPDATED CONDITIONS**

### **Condition 2 Approved Plans:**

The development hereby permitted shall be carried out in accordance with the following approved plans:

**Change of Use Design Statement dated 28 January 2019; Email from Kamran Haider dated 02 July 2019; Covering letter dated 9 May 2018; Demand Analysis prepared by Richard Susskind and Company dated October 2017; Richard Susskind and Company – Marketing Particulars; Assessment of Marketing letter from Pater Johnson Merriman dated 1 November 2017; Letter from Howell Brooks and Partners LLP dated 20 July 2017; Letter from Jarvis Keller Stephens dated 20 September 2017; Letter from Imogen Blanning dated 20 July 2018 regarding quality of marketing evidence and Town Centre impact; Letter from Stephen Rose dated 12 February 2019; and Drawing Numbers: Location Plan, GA 01/F, GA 02/E, GA 03/C, GA 04/A, GA 05, GA 06, M-4761-XX-(57)-001 Rev P4, and M-4761-XX-(57)-003 Rev P4.**

**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.**

**Reworded Condition 9:** Notwithstanding the hereby approved development, no permission is granted for the kitchen extractor system as shown on omitted drawing number M-4761-XX-(57)-003 Rev P4. Details of any proposed new and/or re-purposed kitchen and/or bathroom flues/extraction systems for the A3/A4/D2 unit hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the use to which they relate.

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.

The flues/extraction systems shall be carried out strictly in accordance with the details so approved, installed and operational prior to the first occupation of the use to which they relate and maintained as such thereafter.

**REASON:** In the interest of protecting future residential amenity and the appearance of the resulting building(s).

**8. SUGGESTED NEW CONDITIONS**

**Condition 14: GLAZED ROOFLIGHT FIXED SHUT:** Notwithstanding the hereby approved drawings and documents, the glazed monopitch rooflight as shown on approved drawing no. GA 01/F shall be fixed shut prior to the first occupation of the A3/A4/D2 unit, and shall be retained as such thereafter into perpetuity.

**REASON:** To ensure that the proposed development does not have an unacceptable adverse impact on neighbouring residential amenity.

# APPENDIX 1 – PLANNING COMMITTEE REPORT

## PLANNING COMMITTEE REPORT

Development Management Service  
 Planning and Development Division  
 Environment and Regeneration Department

<b>PLANNING SUB-COMMITTEE A</b>	<b>AGENDA ITEM :B2</b>
Date: 07 November 2019	NON-EXEMPT

Application number	P2018/1580/FUL
Application type	Full Planning Application
Ward	Bunhill Ward
Listed building	Not listed
Conservation area	Clerkenwell Green Conservation Area (and Article 4 Direction Within 50m of Charterhouse Square Conservation Area
Development Plan Context	Core Strategy Key Area – Bunhill & Clerkenwell Central Activities Zone Employment Priority Area (General) Clerkenwell Archeological Priority Area Major Cycle Route Finsbury Local Plan Area – Bunhill & Clerkenwell Mayor’s Protected Vistas – Alexandra Palace viewing terrace to St Paul’s Cathedral Local views from St John Street Local view from Angel Local view from Archway Road Local view from Archway Bridge Article 4 Direction (A1-A2) Article 4 Direction (B1(c) to C3) Adjoining Grade II listed building – No. 72 St John Street Adjoining Grade II listed building – No. 78 St John Street Adjacent Grade I and Grade II listed buildings – Charterhouse
Licensing Implications	Bunhill Cumulative Impact Policy Area A4 Drinking Establishment A3 Restaurant and Café No licensing application details have been provided by the Applicant.
Site Address	74-76 St John Street, Islington, London, EC1M 4DZ
Proposal	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.

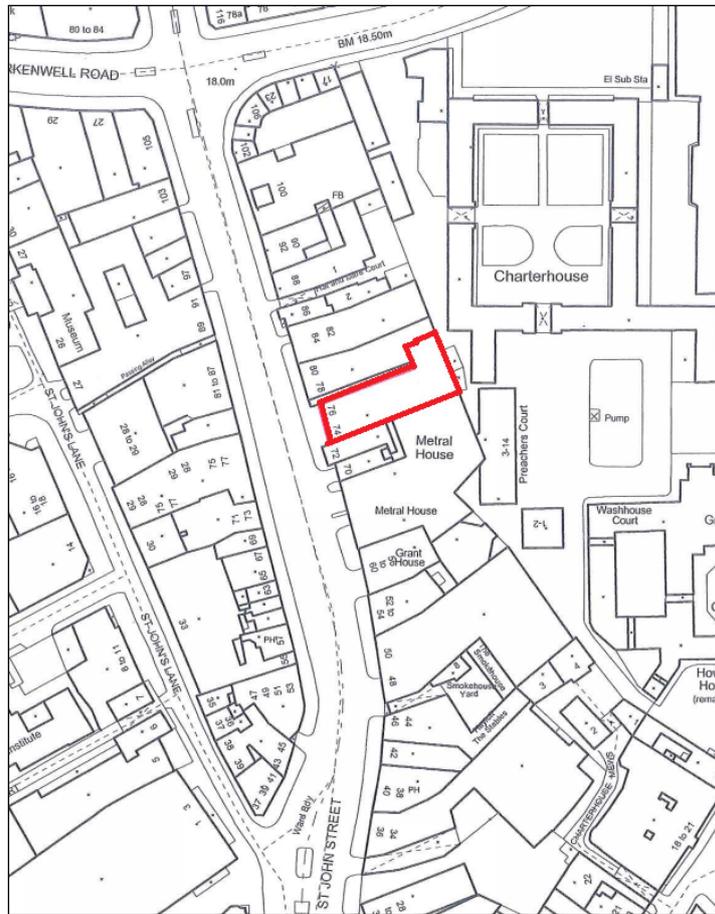
Case Officer	Nathan Stringer
Applicant	Venaqlass Havmarket Limited

**1. RECOMMENDATION**

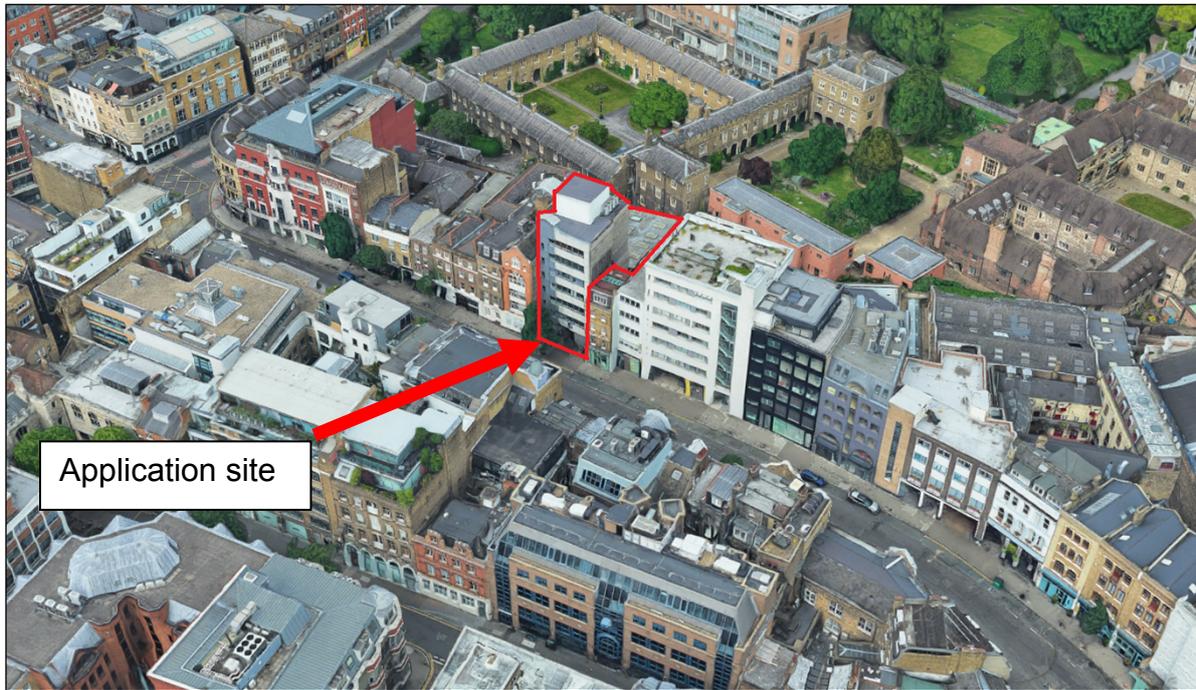
The Committee is asked to resolve to **GRANT** planning permission subject to:

- 1.1 the conditions set out in Appendix 1; and
- 1.2 the completion of a S106 legal agreement for the provision of costs attributable to the reduction of the existing crossover on the pavement fronting St John Street.

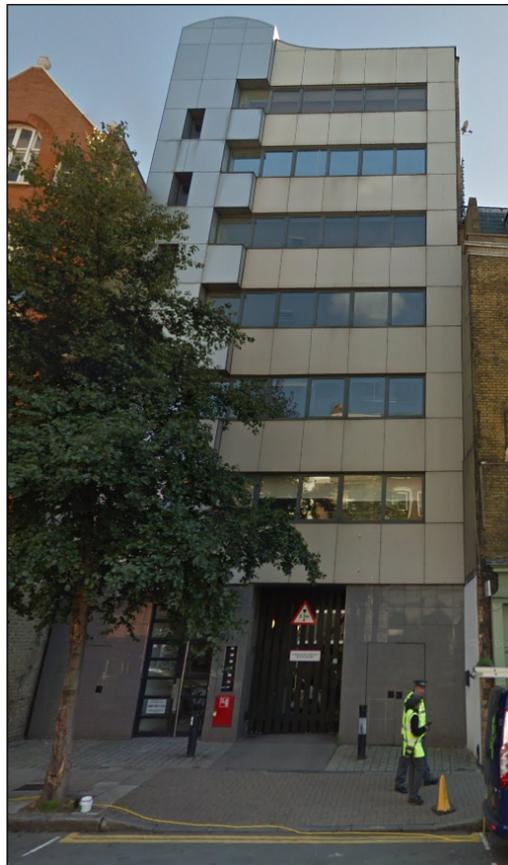
2. SITE PLAN (SITE OUTLINED IN RED)



**3. PHOTOS OF SITE/STREET**



**Image 1:** Aerial view of the application site



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



**Image 3:** St John Street, looking north. Site is shown on the right.



**Image 4:** St John Street, looking south. Site is shown on the left.



**Image 5:** Basement interior view



**Image 5:** Basement ramp facing upward towards St John Street

## 4. SUMMARY

- 4.1 Planning permission is sought for the change of use of ground floor (part), basement and lower basement levels of the property at no. 74-76 St John Street from B8 (Storage) to flexible commercial use within Use Classes A3 (Restaurants and cafes), A4 (Drinking establishments) and D2 (Assembly and leisure). The proposal also includes the installation of a replacement ground floor front façade, and fenestration to enclose the existing ramp fronting St John Street. The key considerations in determining the application relate to the land use, including the loss of the B8 floorspace and the acceptability of the introduction of A3/A4/D2 uses at this location, the associated impact on neighbouring amenity at nos. 72 and 78-80 St John Street and the Charterhouse Buildings to the rear, and the impact of the external alterations on the appearance of the existing building and on the character and appearance of the surrounding conservation area and the setting of the adjoining and adjacent Grade I and Grade II listed buildings.
- 4.2 The proposal is brought to committee because it has received 12 objections from neighbouring residents, generating a lot of interest in the development. The main concerns from objectors include the impact of the proposed use on neighbouring amenity with regard to noise, odour, waste and safety impacts.
- 4.3 The application site comprises a seven storey (over-basement) mid-terrace building located on the eastern side of St John Street. The building also contains a two storey element at the rear. The property consists of storage (B8) use at (part) ground floor, basement and lower basement levels, and office (B1) on the upper floors. The site is excavated to basement level across the full extent of the site. This application relates to the (part) ground, basement and lower basement levels. The building is not listed; however, it is located within the Clerkenwell Green Conservation Area. Immediately to the rear of the site lies the Grade I listed London Charterhouse, and the building adjoins Grade II listed properties to the north and south at nos. 72 and 78-80 St John Street. The site is designated within the Central Activities Zone, the Bunhill & Clerkenwell Finsbury Local Plan Area, the Bunhill & Clerkenwell Core Strategy Key Area, an Employment Priority Area (General), and the Clerkenwell Archaeological Priority Area.
- 4.4 The proposed development would not result in an unjustified loss of guaranteed business floorspace at the site (including the lawful B8 use), and it is considered that the information provided is sufficient to demonstrate that a proposed A3/A4/D2 flexible use at the site would not individually, or cumulatively with other development, have a detrimental impact on the vitality and viability of the borough's Town Centres or of the Central Activities Zone. The development therefore complies with the requirements of policy CS13 of the Core Strategy 2011, policy DM5.2 of the Development Management Policies 2013, and policy BC8 of the Finsbury Local Plan 2013.

- 4.5 The proposed flexible use, together with the proposed external alterations, are not considered to harm the character nor visual appearance of the host building, the surrounding conservation area, or the setting of the adjacent and adjoining statutorily listed buildings. Subject to conditions, the proposal is considered not to have a significant impact upon the local highway network or the amenity of neighbouring properties.
- 4.6 The proposal is therefore considered to be acceptable and it is recommended that the application is approved subject to conditions.

## **5. SITE AND SURROUNDING**

- 5.1 The application site at no. 74-76 St John Street (known as 'Abbey House') is located on the eastern side of St John Street. Immediately at the rear of the site lies the Grade I listed London Charterhouse, and the site immediately adjoins Grade II listed buildings to the north and south. This section of St John Street is largely mixed use in character, with many commercial and residential buildings, and some ground floor retail/restaurant/bar uses.
- 5.2 The site is a seven storey (over-basement) mid-terrace building consists of storage (B8) use at (part) ground floor, basement and lower basement levels, and office (B1) on the upper floors. The site is excavated to basement level across the full extent of the site. This application relates to the (part) ground, basement and lower basement levels.
- 5.3 The property is not listed, however it is located within the Clerkenwell Green Conservation Area. The site is within the setting of Grade II listed buildings immediately adjoining the site at nos. 74 and 78-80 St John Street, and the Grade I and Grade II listed buildings to the rear at the Charterhouse site. The site is designated within the Central Activities Zone, the Bunhill & Clerkenwell Finsbury Local Plan Area, the Bunhill & Clerkenwell Core Strategy Key Area, an Employment Priority Area (General), and the Clerkenwell Archaeological Priority Area.

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

- 6.1 The application seeks permission for a change of use of 585 sqm of floorspace at ground floor (part), basement and lower basement levels of the property at no. 74-76 St John Street from B8 (Storage) to flexible commercial use within Use Classes A3 (Restaurants and cafes), A4 (Drinking establishments) and D2 (Assembly and leisure). The proposal also includes the installation of a replacement ground floor front façade, and fenestration to enclose the existing ramp fronting St John Street.

## **7. RELEVANT HISTORY:**

### **PLANNING APPLICATIONS**

- 7.1 **P2016/4605/FUL:** Change of use of part ground floor, basement and lower basement from Use Class B8 (storage) to flexible commercial use within Use Classes A1/A2/A3/A4/B1/D1/D2) use, replacement of ground floor facade and entrance doors, and fenestration to enclose existing ramp. Application refused under delegated authority dated 06/02/2017.

**REASON:** The proposed development would result in the loss of the lawful B8 use and insufficient evidence has been submitted with the application to indicate that there is no demand for the unit as business use. The development is as such contrary to policy CS13 of the Core Strategy (2011) and Policy BC8 of the Finsbury Local Plan (2013).

**REASON:** The applicant has failed to submit a Sequential Test to support the location of the proposed A uses and D2 use in an out of Town Centre location. The application has failed to demonstrate how the proposals would not individually, or cumulatively with other development, have a detrimental impact on the vitality and viability of the borough's Town Centres. The proposal has failed to demonstrate how the proposed uses can be accommodated without adverse impact on the amenities of neighbouring residential occupiers. The proposal is therefore contrary to paragraph 24 of the National Planning Policy Framework (2012), and policy DM4.4B of the Development Management Policies (2013).

7.2 The applicant subsequently appealed the decision under appeal reference APP/V5570/W/17/3171820. The Planning Inspectorate dismissed the appeal dated 5 July 2017. The Inspector's decision is attached at Appendix 3.

## 8. CONSULTATION

### Public Consultation

8.1 Letters were sent to occupants of 166 adjoining and nearby properties on 22 May 2018. A site notice and press advert were also displayed. The public consultation of the application therefore expired on 14 June 2018, 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, 12 objections had been received from the public with regard to the application. The issues can be summarised as follows (with the paragraph that provides responses to each issue indicated in brackets):

- Loss of business floorspace within the Central Activities Zone, without sufficient marketing evidence to demonstrate exceptional circumstances (**see paragraphs 10.2-10.15**)
- Impact of the change of use on neighbouring amenity, including noise, odour, deliveries and waste (**see paragraphs 10.41-10.55**)
- Further noise impacts from the proposal should customers be permitted to drink, dine or socialise on the street (**see paragraphs 10.41-10.55**)
- Increase in traffic movements resulting from the proposal (**see paragraphs 10.56-10.58; and 10.60**)
- Over-concentration of A3/A4 uses on St John Street as a result of the proposal (**see paragraphs 10.16-10.33**)
- Concern that the unit could be used as a night club (**see paragraph 10.62**)
- Note that a similar proposal was previously refused, and that the subsequent appeal was dismissed (**see officer's note below**)

**Officer's Note:** the site was subject to a previously refused planning application, which was upheld at appeal. The reasons given for the refusal of that application have been addressed in this report, paying special attention as to whether the information submitted is sufficient to overcome concerns.

### **Internal Consultees**

- 8.3 **Policy Officer:** advises that, given the additional information has been provided and because the proposal does not involve A1 floorspace, they no longer have concern regarding the impact of the use upon Town Centres elsewhere within the Borough. Advises that the marketing evidence provided is sufficient to demonstrate that the loss of the business floorspace is acceptable.
- 8.4 **Public Protection Officer:** does not object to the proposal, however notes that the proposed flexible use could allow for restaurants, pubs and gyms at the site, all of which are potentially high noise generating uses with late night operation. Notes that sufficient detail for plant and machinery has not been provided, and that these matters would need to form a further planning application. Advises that a condition is included should permission be granted, requiring a scheme of management be submitted and approved in writing by the Local Planning Authority prior to first occupation of the unit.
- 8.5 **Environmental Health:** does not object to the proposal, however requests that conditions be included requiring further details of the proposed flues / extractor systems be submitted and approved in writing by the Local Planning Authority, and requiring that the flue be fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration.
- 8.6 **Refuse and recycling:** No comment.
- 8.7 **Licensing Officer:** advised that the site is located within the Clerkenwell Cumulative Impact Area, and that any licensing requests would be subject to the provision of additional information to prove that the operation of the unit would not add to the cumulative impact. Also noted that any licence issued would be subject to restriction on hours of operation.
- 8.8 **Inclusive Design:** raised concern that the proposed unit would not include a lift, and that plans detailing the provision of accessible toilets and accessible cycle storage have not been provided. Recommended that a condition is included requiring that an access strategy is submitted to and approved by the Local Planning Authority prior to the commencement of works at the site.

### **External Consultees**

8.9 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. 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 Quality 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**

- 9.9 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.
- 9.10 Weight is attributable to the Draft London Plan.
- 9.11 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:
- Clerkenwell Green Conservation Area (and Article 4 Direction)
  - Within 50m of Charterhouse Square Conservation Area
  - Core Strategy Key Area – Bunhill & Clerkenwell
  - Central Activities Zone
  - Employment Priority Area (General)
  - Clerkenwell Archeological Priority Area
  - Major Cycle Route
  - Finsbury Local Plan Area – Bunhill & Clerkenwell
  - Mayor's Protected Vistas – Alexandra Palace viewing terrace to St Paul's Cathedral
  - Local views from St John Street
  - Local view from Angel
  - Local view from Archway Road
  - Local view from Archway Bridge
  - Article 4 Direction (A1-A2)
  - Article 4 Direction (B1(c) to C3)
  - Adjoining Grade II listed building – No. 72 St John Street
  - Adjoining Grade II listed building – No. 78 St John Street
  - Adjoining Grade I and Grade II listed buildings – Charterhouse

### **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
- Neighbouring Amenity
- Delivery and Servicing
- Refuse
- Cycle Parking
- Accessibility
- Other Matters

## Land Use

### *Loss of B8 floorspace*

- 10.2 The application site is a seven storey plus two level basement building located on the eastern side of St John Street. The application pertains to (part) ground, basement and lower basement levels of the building. The proposed flexible use would result in the loss of guaranteed 353 square metres of B8 (storage) business floorspace on the site. The site also includes a car park of 262 square metres, however the application was presented in the initially submitted application as B8 storage. The supporting Planning Statement advises that the established use is B8 (storage) totalling 585 square metres. This was accepted as part of the assessment of the previously refused application ref: P2016/4605/FUL, and was also accepted by the Planning Inspectorate in their assessment of the subsequent appeal.
- 10.3 The site is within an Employment Priority Area (General) and includes 585 square metres of B8 (storage) floorspace. Therefore, Policy CS13 of the Core Strategy 2011, Policy DM5.2 of the Development Management Policies 2013 and Policy BC8A of the Finsbury Local Plan 2013 applies.
- 10.4 Policies CS13 of the Core Strategy and DM5.2 of the Development Management Policies 2013 seek to safeguard existing business floorspace throughout the Borough.
- 10.5 Policy BC8, Part A of the Finsbury Local Plan 2013 states:
- 'A. Within the Employment Priority Areas (General and Offices) designated on the Policies Map shown on Figure 16:*
- i. No net loss in business floorspace will be permitted, either through change of use or redevelopment, unless exceptional circumstances can be demonstrated, including through the submission of clear and robust marketing evidence which shows that there is no demand for the floorspace. This evidence must demonstrate that the floorspace has been vacant and continuous 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. In addition, the loss of business floorspace will only be permitted where:*
    - a. The proposal would not have a detrimental individual or cumulative impact on the area's primary business role and would not compromise economic function/growth, or*
    - b. It can be demonstrated to the council's satisfaction that the site is no longer suitable for the provision of similar uses.*
  - ii. Proposals should incorporate the maximum amount of business floorspace reasonable possible on the site.'*
- 10.6 Where policies require marketing evidence to be submitted, Appendix 11 of the Development Management Policies 2013 sets out the details required in order to assess the acceptability, or otherwise, of the information submitted.

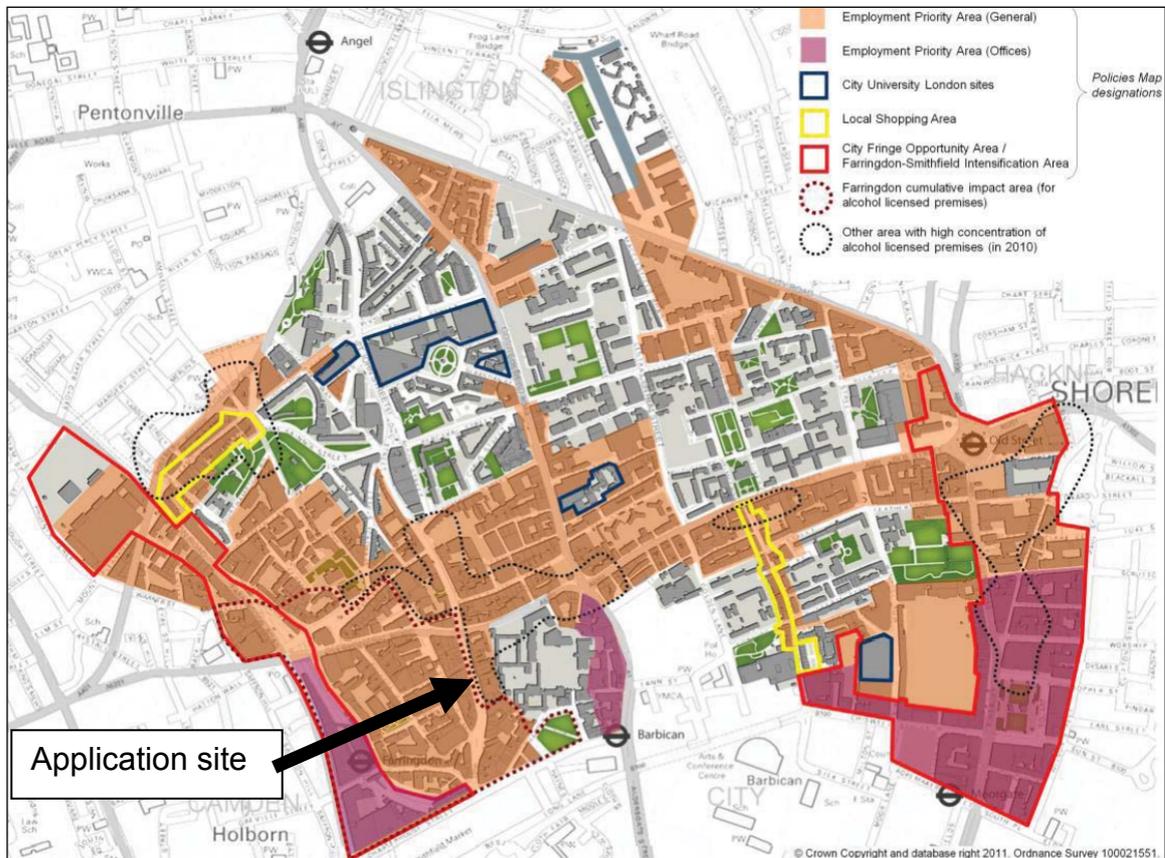
- 10.7 As set out in criteria (i) of the policy, no net loss of business floorspace is permitted unless exceptional circumstances can be demonstrated, including that the floorspace has been vacant and continuously marketed for a period of at least two years. The Applicant has provided evidence to demonstrate that the site was subject to active continuous marketing from June 2014 until June 2016. Marketing information states that offers were invited in excess of £130,000, a price verified by three independent opinions. The site was marketed on the basis of all commercial use classes, and attracted 37 viewings, only one of which was for business floorspace. During the period, five outcomes were unable to agree terms, as the offers provided were considered to be unacceptable.
- 10.8 The Council's policy officer has advised that the asking price advertised as part of the marketing exercise for the unit is considered to be reasonable, when considering comparables in the vicinity and noting that this has been supported by independent verification. The submitted evidence demonstrates that marketing particulars had been provided during the two-year process, including property details and contact information. Whilst the officer notes that no additional commentary has been submitted by the applicant with regard to the current and likely future demand for floorspace within the market area, the information provided is sufficient to satisfy the marketing requirements outlined in Appendix 11 of the Development Management Policies 2013.
- 10.9 As set out in criteria (ii) of the above policy, proposals should incorporate the maximum amount of business floorspace reasonable possible on the site. The existing B8 floorspace was previously used to support the operations of the B1 (office) floorspace on the upper levels of the building. The information provided demonstrates that the site was marketed for a range of business uses, including B1 business floorspace. Officers note that technological advancements have resulted in a reduced demand for business storage capacity, and therefore the loss of the B8 storage space is considered to be acceptable in this instance. Further, the Applicant has also demonstrated that there is no demand for the use of the unit (which has been vacant since at least June 2014) as B1 office floorspace. Given the above, overall it is considered that the proposal has considered the impact of the proposed loss of business floorspace on the area's primary business role, as required by part (a) of policy BC8 of the Finsbury Local Plan 2013. Therefore, the loss of the business floorspace is considered to be acceptable in this instance.
- 10.10 Policy BC8, Part B of the Finsbury Local Plan 2013 states:
- 'B. Within the Employment Priority Area (General) designated on the Policies Map and shown on Figure 16, the employment floorspace component of a development or change of use proposal should not be unfettered commercial (B1(a)) uses, but, where appropriate, must also include retail or leisure uses at ground floor, alongside:*
- i. A proportion of non-B1(a) business of business-related floorspace (e.g. light industrial workshops, galleries and exhibition space), and/or*
  - ii. Office (B1(a)) or retail (A1) floorspace that may be suitable for accommodation by micro and small enterprises by virtue of its design, size or management, and/or*
  - iii. Affordable workspace, to be managed for the benefit of occupants whose needs are not met by the market. [...]*
- 10.11 The proposed flexible use for the site does not incorporate any business floorspace. However, officers note that the upper levels of the building, including (part) ground floor and one to six, are used solely for B1 purposes. The application does not include the change of use of these levels, and therefore parts (i), (ii) and (iii) of the policy do not apply in this instance.

- 10.12 The development would include the change of use of (part) ground floor, basement and lower basement levels to a flexible A3/A4/D2 use. Each of these uses is considered to constitute a 'leisure' use, and would provide opportunity for non B1(a) floorspace to be provided at the site, in accordance with Part B of policy BC8.
- 10.13 The Council's intention is to deliver a diversity of uses at ground floor level in order to support the core B1(a) office function. Whilst the proposed flexible A3/A4/D2 use would be in the basement levels, it would be accessed through the ground floor street frontage.
- 10.14 As discussed above, it is considered that the applicant has considered the impact of the proposed loss of business floorspace at the site on the areas primary business role, and it has been demonstrated that there is no demand for the use of the basement floor levels (as well as the ground floor access to these levels) as business floorspace. The proposed uses would provide an opportunity to accommodate leisure uses at the ground and level floor levels at the site. The information submitted as part of this application is therefore considered to overcome the first reason given for the refusal of the previous planning application ref: P2016/4605/FUL.
- 10.15 Overall, it is considered that on balance the proposed development would not result in an unjustified loss of guaranteed business floorspace at the site (including the lawful B8 use). The development therefore complies with the requirements of policy CS13 of the Core Strategy 2011, policy DM5.2 of the Development Management Policies 2013, and policy BC8 of the Finsbury Local Plan 2013.

#### *Proposed Flexible A3/A4/D2 Use*

- 10.16 The application proposes the change of use to flexible A3/A4/D2 use. It is noted that the application does not involve a proposed mixed A3/A4/D2 use, and therefore the officer assessment must take into consideration that the entirety of the planning unit would be used as either A3, A4 or D2 (rather than a mix of the three). Consideration of the proposed uses is undertaken below.
- 10.17 Policy DM4.2 states that '*entertainment and night-time activities are generally inappropriate outside Town Centres.*' However, the policy notes that an exception applies to the area covered by the Finsbury Local Plan (Area Action Plan for Bunhill and Clerkenwell). Part G of policy BC8 of the Finsbury Local Plan, which applies to the site, stipulates that '*new entertainment uses will only be allowed within the designated Employment Priority Areas.*' Therefore, the principle of an A3 or A4 use may be acceptable, subject to details.
- 10.18 The proposed flexible use, should it result in either an A3 or A4 unit, would constitute an 'entertainment use' under the Finsbury Local Plan (Glossary). Whilst the site is not within a designated Town Centre, it is located within an Employment Priority Area (Finsbury Local Plan) and therefore the restrictions on entertainment and night-time activities noted within policy DM4.2 do not apply. Policy BC8, Part G of the plan notes that Employment Priority Areas may be suitable for new entertainment uses. Development Management Policies will be used to assess applications for new entertainment uses, in order to avoid an unacceptable concentration of such uses.
- 10.19 Paragraph 12.1.7 of the Finsbury Local Plan advises that, within the Central Activities Zone, in order to support and retain the area's nighttime economy whilst safeguarding residential amenity, policy BC8 restricts entertainment uses (i.e. A3, A4 and A5 uses, as well as nightclubs) to Employment Priority Areas. However, as a significant number of people live in these areas, applications for entertainment uses must meet the criteria set out in the relevant Development Management Policies. In its Licensing Policy (2011 to

2014), the council has identified an area around Farringdon that is subject to significant concentration of late-licensed premises. Figure 16 of the Finsbury Local Plan (shown below, Figure 1) identifies this area and other locations which have a high concentration of alcohol licensed premises, and which are therefore particularly prone to adverse impacts from night-time uses (e.g. pubs, bars, clubs and off-licenses). The application site at no. 74-76 St John Street is identified within Figure 16 as forming part of this area.



- 10.20 Policy DM4.3 assesses the location and concentration of uses in the borough and considers whether they would result in an unacceptable concentration of such uses in one area or would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area. This policy considers types of use, size of premises, hours of opening, operation and servicing and odour and noise issues and cumulative impacts within 500m radius of the site
- 10.21 Given that it is not located within a Town Centre or a Local Shopping Area, detailed land use surveys of this part of St John Street have not been undertaken. However, as part of the assessment of the application, planning officers have undertaken a land use survey of the ground floor units of the buildings fronting St Johns Street between Clerkenwell Road in the north and St Johns Lane in the south (the relevant section of which the application site forms a part). The frontage stretches 80m to the north, and 110m to the south of the application site.

- 10.22 The survey demonstrates that there are 39 ground floor units fronting St John Street in this vicinity. Of these, 1no. ground floor unit operates exclusively within the A4 use class (approximately 2.5% of units). An additional 6no. units operated within the A3 use class (approximately 15.3% of units). The remainder of the units are within the A1, A2 or B1 use classes. In accordance with policies DM4.3 of the Development Management Policies and paragraph 12.1.7 of the Finsbury Local Plan, it is therefore not considered that there is an over-concentration of either A3 restaurant/café, or A4 drinking establishments within this section of St John Street.
- 10.23 The proposed flexible A3/A4/D2 unit would have a floorspace of approximately 585 square metres. Whilst it is noted that there are some A3 and A4 units fronting this section of St John Street (approximately 17.8% of units in total), it is not considered that this would represent an over-concentration and it is considered that the proposed use would complement the existing mix of uses within the vicinity, subject to appropriate management.
- 10.24 The applicant has submitted an Outline Operational Management Plan, which outlines the principles for the good management of the premises for each of the proposed uses, having regard to the amenity of existing and future neighbours. As the final end-use or users of the unit is yet to be determined, the plan is designed to act as a framework to outline how the future operational details of the unit would be addressed, including the future provision of details with regard to licensing, noise, ventilation and extraction, hours of operation, servicing and delivery, capacity and door policy, management of external area (including smoking areas), close-down and dispersal policies, and measure to ensure public safety is not jeopardised.
- 10.25 Officers note that the Outline Operational Management Plan submitted does not provide a great level of detail. It relies heavily on the provision of further information following a grant of permission, to be required as per recommended conditions. Whilst officers consider that it would be beneficial for the proposal were this information to be provided upfront, it is accepted that the specific future management of each of the uses would only be confirmed once a tenant was selected. Officers are however confident that such measures are feasible.
- 10.26 Application for planning permission ref P2016/4605/FUL was refused under delegation on 06/02/2017. The application, which also included the change of use of the basement levels to a flexible use that incorporates A3, A4 and D2 uses, provided no detail as to how the impact of the proposed uses upon neighbouring amenity would be managed during operation. The Reason for Refusal 2 states that *'the proposal has failed to demonstrate how the proposed uses can be accommodated without adverse impact on the amenities of neighbouring residential occupiers.'* The application was subsequently upheld at appeal (appeal ref: APP/V5570/W/17/3171820 dated 5 July 2017). However, whilst the Inspector upheld the Council's decision to refuse the application, with regard to the impact of the proposed A3/A4/D2 uses on neighbouring amenity, she concluded that these could be addressed via condition (if the proposal were otherwise acceptable).
- 10.27 The Appeal Decision states:
- 'The nature of the proposed uses, in particular the A3 (restaurants and cafes), A4 (drinking establishments) and D2 (assembly and leisure) use classes, have the potential to adversely affect the living conditions of nearby residents by virtue of noise arising from congregations of customers, music and any extraction equipment. Odour caused by cooking inside the premises may also be an issue. There may also be noise and general disturbance caused by customers and delivery vehicles coming and going outside the premises. Such effects can be particularly intrusive when they take place late into the evening when other background noise levels generally diminish. Proposed uses falling**

within D1 use class may also have the potential for traffic generation, although I note that highway safety is not included as a reason for refusal.

Paragraph 4.21 of the DMP states that in assessing the likely impacts of a proposal, regard will be had to the type of use, proposed hours of opening, size of premises, operation and servicing and measures to mitigate odour and noise from the premises. I have regard to the conditions proposed by the appellant and also the Council. I consider that conditions relating to opening hours, submission and approval of extract and ventilation equipment, noise arising from music, customers or ventilation and extraction equipment, the timing of deliveries etc, potentially tailored to each specific use could have been imposed to address concerns had I decided to allow the appeal.

For the reasons stated above, I, therefore, conclude that with the suggested conditions, the proposal would not have a harmful effect on the living conditions of neighbouring occupiers. The proposal would not, therefore, be contrary to Criterion ii of Part B of Policy DM4.4 of the DMP or Policy DM4.3 of the DMP.'

- 10.28 The survey undertaken demonstrates that the location of the site within an area that does not contain any discernible clusters of A3 units. Given the nature of the Central Activities Zone and the suitability of night time economy uses, overconcentration on a purely quantitative basis is considered unlikely. Whilst officers believe that the provision of operational management details upfront would allow for a greater level of assessment and scrutiny of the application, given the conclusion of the Planning Inspector with regard to the previously refused application, overall it is considered that subject to conditions, the proposal would not have a harmful effect on the living conditions of neighbouring occupiers. As such, conditions have been attached to ensure that the information is provided to and approved by the Local Planning Authority prior to the commencement of relevant operations at the site.
- 10.29 Officers also note that the second reason for the refusal of the previous planning application ref: P2016/4605/FUL stipulated that the applicant had failed to provide a Sequential Test to support the location of the proposed A uses and D2 use in an out of Town Centre location. Therefore, the proposal was considered to have failed to demonstrate that it would not individually, or cumulatively with other developments, have a detrimental impact on the vitality and viability of the Borough's Town Centres. As part of this application, the applicant has provided additional information regarding the Town Centre impact of the proposal (noting that Angel is the closest Town Centre, which states that:
- the previous concern regarding A uses at the site was largely based upon the potential for an A1 unit, which would be large enough to accommodate a supermarket. A1 use has been removed from the current application.
  - an analysis of the Angel Town Centre suggests that food-led bar and restaurant businesses within the Town Centre made an average total of £18,000 in weekly sales, and that expenditure on eating and drinking out will grow by £89.6m by 2021 (from 2016) and almost £200m by 2026. Should permission be granted for an A3/A4 use at the application site, the forecast turnover would be only 1.1% of the growth expected between 2016 and 2021 in the Angel Town Centre. This would be below that which could be considered a "significant adverse impact".
  - should the site be used as a D2 use, this would likely be a gym. 3no. gyms currently operate within the Angel Town Centre, all of which rely on a subscription model. It is not considered that another gym, approximately 1.3km south of the Town Centre, would cause such a drop in membership to these gyms that they would harm the future operations of the Angel Town Centre.
  - It is noted that 'gym' uses are not mentioned in the 2017 Retail and Leisure Study, and are not a primary function of the Town Centre.

- 10.30 The Council's Planning Policy officer has reviewed the information provided with regard to the impact of the proposal on the Angel Town Centre, and has advised that whilst the proposal is for a significant quantum of floorspace, a large proportion of this is basement floor and most significantly the proposal does not include the A1 retail use class. Therefore, the use will not be an 'anchor' retail unit which would draw significant expenditure and footfall away from a Town Centre.
- 10.31 Further, the Policy officer notes that there is a cluster of food, drink and entertainment uses around the Smithfield Market, which is 5 minutes' walk away from the application site. The proposed unit would be accessible to this cluster and may strengthen the offer of the cluster. Given that population growth in central London will also drive increased demand for food, drink, entertainment, and leisure uses within the Central Activities Zone, it is considered that there is demand for additional premises within these use classes. Overall, officers are satisfied that the proposed uses are likely to complement this central London mix of uses and contribute to the vitality and viability of the Central Activities Zone.
- 10.32 Overall, it is considered that the information provided it is sufficient to demonstrate that a proposed A3/A4/D2 flexible use at the site would not individually, or cumulatively with other development, have a detrimental impact on the vitality and viability of the borough's Town Centres or of the Central Activities Zone.
- 10.33 Therefore, officers consider that the flexible A3/A4/D2 uses would be acceptable in principle, subject to conditions. Further detail regarding the assessment of the proposal with regard to neighbouring amenity is provided in paragraphs 10.39-10.53.

### **Design and Conservation**

- 10.34 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.
- 10.35 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.
- 10.36 Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 Act requires the Local Authority to pay special attention to the desirability of preserving or enhancing the character and appearance of Conservation Areas within their area. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Authorities to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural interest which it possesses.
- 10.37 The application proposes the replacement of the existing ramp and doors to stairwell at the ground floor street elevation with a glazed aluminium framed shopfront with bi-folding doors and a fixed glazed entrance door. The building's street frontage is set back further from the pavement than the adjoining Grade II listed buildings on either side, and therefore is not prevalent within the streetscene. Officers note that the existing frontage is largely blank and does not make a positive contribution to the streetscene, and its removal is considered to be acceptable in principle.

- 10.38 Whilst traditional materials are generally required to be used for developments within conservation areas, given the nature of the existing building it is not considered that a traditional shopfront would be appropriate in this instance. The proposed glazed aluminium elevation is considered to be acceptable in this instance, and it is considered that it would result in a more active and positive street frontage. Further, officers note that there are a number of glazed frontages to modern buildings along this section of St John Street, including (but not limited to) buildings at nos. 70 and 52. Overall, it is considered that the proposed ground floor elevation changes are acceptable. The alterations would not harm the character or appearance or the wider conservation area, nor would they cause harm to the setting of the adjoining Grade II listed buildings.
- 10.39 The application also proposes the installation of a glazed roof above the access ramp, within an open-roofed courtyard area at the rear of the primary seven storey frontage building and the two storey rear podium element; and the installation of louvres along the northern flank elevation of the site where it fronts an enclosed fire escape area, where AC condenser units and bin stores would be located. These would be minor alterations to allow for the full enclosure of the basement levels and the enclosure of servicing equipment, and would not be visible from public sightlines nor prominent in private views. No further alterations to the rear of the site have been proposed as part of this application. Whilst it is noted that a condition (Condition 9) has been recommended requiring the lodgement of separate planning applications should extractor units be required at the rear of the site, these details have not been provided as part of this application. Therefore, the proposal under consideration would not harm the setting of the Grade I and Grade II listed Charterhouse buildings at the rear of the site, nor the Grade II listed buildings immediately adjoining at nos. 72 and 78-80 St John Street.
- 10.40 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 to the desirability of preserving or enhancing the character or appearance of the Clerkenwell Green Conservation Area. Further, in accordance with Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposal hereby under consideration, special regard has been given to the desirability of preserving the adjacent listed buildings, their setting and any of their features of special architectural or historic interest. It is considered that the proposal accords with policies CS8 and CS9 of the Core Strategy 2011, policies DM2.1 and DM2.3 of the Development Management Policies 2013, the Islington Urban Design Guide 2017 and the Conservation Area Design Guideline.

### **Neighbouring Amenity**

- 10.41 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, overshadowing, overlooking, privacy, sunlight and day light receipt, over-dominance, sense of enclosure and outlook.

- 10.42 Policy DM6.1G of the Development Management Policies 2013 states that noise generating uses should, where possible, be sited away from noise sensitive uses.
- 10.43 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, schools 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 nuisance.
- 10.44 The proposed flexible A3/A4/D2 flexible use unit would cover the (part) ground floor, and basement and lower basement levels. Given the large size of the unit at approximately 585 square metres and the objections received by neighbouring residents, consideration must be given to the impact of the proposed uses on neighbouring amenity. The amenity impacts relating to A3 and A4 uses primarily relate to noise and potential anti-social behaviour late at night. The amenity impacts relating to D2 use primarily relate to noise.
- 10.45 The Council previously raised concerns that the proposal did not provide any details on how the higher sound levels generated within a typical restaurant and bar with longer operating hours would be mitigated for neighbouring residents, along with the noise of patrons coming and going and deliveries. Whilst no detailed plans have been provided regarding a suitable extract system for a A3/A4 use, the site currently hosts an existing extractor system from basement level, which is located within the (currently) open rear internal courtyard between the primary seven storey building and the rear two storey element of the site. The applicant has indicated that any future kitchen extractor unit could be accommodated within this existing extractor route. The outline details provided as part of the application advise that the system would be complete with commercial fine filtration followed by activated carbon filters (grade 20) to provide odour reduction in accordance with Defra guidance, with pre-filtration of grade M5 to EN779 to be included prior to activated carbon filters. The system would utilise ultra violet (uv-c) lamps and cartridges to reduce airborne grease particles and odour; these would break down the long chain hydro carbon molecules in the extract airstream by photolysis. Rigid pack filters would also be installed for the removal of any smoke.
- 10.46 The submitted information demonstrates that a system could be accommodated at the site without causing harm to neighbouring amenity, however officers do note that the information is limited with regard to detail. Whilst officers consider that the it would be beneficial for the proposal were this information to be provided upfront, it is accepted that the specific future management of each of the uses would only be confirmed once a tenant was selected, and therefore the provision of detailed extractor details at this stage is not possible in this instance. The presence of an existing extractor unit further demonstrates that the site can accommodate such a system. Significant material weight is also given to the Planning Inspectorate decision dated 5 July 2017, which concluded that neighbouring amenity concerns with regard to potential A3/A4/D2 uses at the site could be addressed via condition. Officers are therefore confident that such equipment can be feasibly accommodated at the site.

- 10.47 Further, the Council's Environmental Health officer advises that, should an extractor system be required, full details of the system must be submitted to and approved by the Local Planning Authority prior to its installation as there is a potential for odour impact on the offices above. She has recommended that any grant of permission should be subject to a condition requiring the submission of details of the plant and extract equipment to be installed, including details to ensure that the system meets stipulated minimum requirements including height of discharge and the provision of a filtration system. Whilst such equipment would generally be expected to terminate 1m above the eaves of the building (to avoid impact upon the offices above), officers note the presence of the existing extractor system at lower floor levels, and therefore considers that this sets a precedent for a replacement system to be installed at this location in this instance.
- 10.48 Therefore, the proposed extractor location is considered to be acceptable, subject to a condition (Condition 9) requiring the submission and approval of details of any kitchen and/or bathroom flues/extraction systems required, prior to the first occupation of the A3/A4/D2 uses hereby approved.
- 10.49 The Council's Public Protection Team does not object to the application, however notes that the proposed flexible use could allow for restaurants, pubs and gyms at the site, all of which are potentially high noise generating uses with late night operation. Officers note that the Outline Operational Management Plan submitted does not provide a great level of detail. It relies heavily on the provision of further information following a grant of permission, to be required as per recommended condition (Condition 8). Whilst officers consider that the provision of more detailed information would be beneficial for the assessment of the proposal, as discussed in paragraphs 10.25-10.28, the previous planning history at the site must be taken into consideration.
- 10.50 The applicant has also demonstrated that there would be sufficient space for the provision of AC condenser units at lower ground floor level, where these would open onto the escape route along the northern boundary of the site. These would be set behind louvres. No further information has been submitted, however officers are satisfied that the plans demonstrate that condenser units could be accommodated at the site. In order to ensure that the proposal would not result in harmful impacts to neighbouring amenity with regard to noise, conditions 6 and 7 have been included to ensure that the applicant submit for the approval of the LPA a report noting compliance with noise limits for all mechanical plant equipment required.
- 10.51 Overall, given that the Planning Inspectorate in its decision dated 5 July 2017, concluded that neighbouring amenity concerns with regard to potential A3/A4/D2 uses at the site could be addressed via condition, officers consider that the proposal would be acceptable subject to the inclusion of such detailed conditions (Conditions 3, 4, 5, 6, 7, 8 and 9).
- 10.52 The Council's Licensing Officer advises that, as the application site lies within the Clerkenwell Cumulative Impact area, the applicant would have to prove that they would not add to the cumulative impact. Any licence would limit the hours of operation to 8AM to 11PM Sunday to Thursday, and 8AM to 11PM Fridays and Saturdays.
- 10.53 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 noise sources.

10.54 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 8) requiring the submission and approval of a Scheme of Management prior to the first occupation of the flexible A3/A4/D2 unit has also been recommended. This plan would include details of mitigation measures in order to protect residential amenity with regard to noise, waste and anti-social behaviour, notably:

For A3/A4 uses

- sound insulation measures
- a full dispersal policy and procedure;
- a door policy;
- signs to request patrons to leave in a quiet manner and not loiter in the surrounding streets;
- servicing and delivery times/arrangements;
- bottling out and waste management noise and times;
- control and levels of noise from amplified music;
- control of any noise from any designated smoking area;
- close down policy with amplified music shut-off and increased lighting;
- security, including any additional proposed CCTV;
- any additional external or security lighting;
- capacity (of each use); and
- private hire facilities/functions.

For D2 uses

- sound insulation measures;
- control and levels of noise from any amplified music within the unit;
- treatment of structureborne noise & vibration transmission from impact noise, i.e. free weights, kettlebells, weights machines, treadmills etc.; and
- servicing and delivery times/arrangements.

10.55 Further, a condition (Condition 3) has been recommended limiting the hours of operation of flexible A3/A4/D2 unit to between 07:00 and 23:00 Monday to Thursday, 07:00 and Midnight Friday to Saturday (in accordance with licensing requirements), and 8:00 and 22:00 on Sundays and Bank Holidays.

10.56 Overall, subject to conditions, the change of use of the (part) ground floor, basement and lower basement level unit to flexible A3/A4/D2 use class is not considered to likely result in unacceptable material amenity impacts to neighbouring occupiers. The proposal therefore complies with policies DM2.1, DM4.3 and DM6.1G of the Development Management Policies 2013.

**Servicing and Delivery**

10.57 Policy DM8.6 of the Development Management Policies states that delivery and servicing should be provided off-street, particularly for commercial developments over 200m<sup>2</sup> gross floor area, that details of the delivery and servicing needs for new developments should be submitted, and that delivery and servicing bays should be strictly controlled. Owing to the constraints of the site on St John Street, an Islington controlled road that is part of a Major Cycle Route, an appropriate off street location for deliveries is not available.

- 10.58 Due to the indicative nature of the needs associated with the end-users of the site, limited information has been provided with regard to the future delivery and servicing requirements of the proposed uses. Officers previously raised concern that the potential servicing requirements may cause harm to the efficient function of St John Street. The applicant has therefore provided further information prepared by a qualified transport planning professional, which advises that there will likely be a low number of servicing movements associated with the development (likely to be smaller vehicles rather than large HGVs). The existing access to the car park (which is kept clear to allow vehicles to enter and exit the site) will no longer be required following the implementation of the scheme, and the double lines directly outside the site could therefore be used by a van for loading/unloading purposes. It is noted that servicing for a number of the existing units along this section of St John Street takes place in a similar manner, i.e. on the yellow line waiting restrictions.
- 10.59 The Council's Highways officer has reviewed the additional submitted information, and considers that the servicing and delivery of the site could be accommodated in the manner proposed (parking on the yellow lines); no concerns were raised with regard to the impact of the proposal upon the safe and efficient operation of the highway. The officer does however note that the existing vehicle crossover will be made redundant following the implementation of the development, and that a smaller crossover will be required in order to allow for the on-street refuse collection. The costs of these works are to be borne by the applicant; therefore, the applicant has agreed to enter into a Section 106 agreement in order to provide the funds for such works, prior to the implementation of the permission. This negotiation and preparation of the agreement is currently being undertaken by the Council's Legal Team and the Applicant's legal representation; therefore, it is recommended that this application is approved subject to conditions and the completion of the legal agreement.
- 10.60 With regard to specific servicing and delivery arrangements, it is important to ensure that deliveries do not conflict with servicing arrangements of neighbouring users and to ensure that the process is effectively managed to ensure safe manoeuvres. Therefore, a condition (Condition 4) has been recommended requiring that details of delivery and servicing to be approved by the Local Planning Authority prior to the first occupation of the flexible A3/A4/D2 unit at the site. A condition (Condition 5) 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.

### **Refuse**

- 10.61 The proposed plans include a details of a dedicated refuse and recycling store, which would be located at lower ground floor level along the emergency escape route from the rear of the building. Access to the store from the pavement at St John Street would be provided via the escape route. Islington's Recycling and Refuse Storage Requirements require the provision of 1.5 cubic metres of commercial waste storage per 20 dining spaces. The store would provide space for 4no. 240L bins, however as the final use of the unit is not confirmed (i.e. no dining space figures provided), it is difficult to determine whether this would be sufficient. Further, no comments have been received from the Council's waste and recycling team. It is however considered that the storage would be sufficient for a D2 gym use. However, given the scale of the unit, it is considered that there is scope for the appropriate management of refuse for an A3 or A4 unit to be accommodated. Therefore, a condition (Condition 11) has been recommended requiring details of proposed refuse and recycling to be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the unit should it be used for either A3 or A4 purposes.

### **Cycle Parking**

- 10.62 In accordance with policy DM8.4 and Appendix 6 of the Development Management Policies 2013, the proposed development should provide 1 cycle parking space per each 60 sqm of A3/A4 floorspace; and 1 space per each 275 sqm of 'Leisure and sports' floorspace (i.e. a gym). In this instance, 10no. cycle parking spaces should be provided for an A3 or A4 unit, and either 3no. or 12no. for a D2 unit (depending on the final end use). Although no cycle parking is proposed, the property is significant in size and therefore it is considered that there is sufficient space to securely store that number of cycles. Therefore, a condition (Condition 10) has been included requiring details of cycle storage for the appropriate number of bicycles (depending on the final end use) to be submitted and approved in writing by the LPA prior to the first occupation of the flexible A3/A4/D2 unit.

### **Accessibility**

- 10.63 Policy DM2.2 DM2.2 seeks to ensure 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 proposal would be positioned over three floors. It is acknowledged that the only access to the lower floor levels would likely be via a staircase, and therefore would 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 building and its resulting restricted layout. However, a condition (Condition 12) has been included requiring an access strategy to be submitted to and approved in writing the LPA prior to the commencement of works.

### **Other matters**

- 10.64 Concern has been raised by neighbouring residents that the proposal would result in the use of the site as a nightclub, noting the disturbance caused by other existing nightclubs within the Farringdon area. Officers note that the application proposes the flexible use of the site as A3/A4/D2, neither of which allow for the operation of a nightclub which falls under the 'Sui Generis' use class. Whilst officers are satisfied that the proposal would not result in the use of the unit as a nightclub, specific restrictions on use within D2 are secured by condition. This would ensure that the proposed use would only be a gym, so as to avoid the additional potential issues of more noise and disturbance to residents through large gatherings of people resulting from other D2 uses.

## **11. SUMMARY AND CONCLUSION**

### **Summary**

- 11.1 The proposed change of use of the (part) ground floor, basement and lower basement levels from an existing B8 (storage) use to a self-contained flexible A3/A4/D2 use unit is considered acceptable, on balance, in land use terms given the supporting documentation provided, and the inclusion of conditions for the management of operations, servicing and delivery, extract and plant equipment, and neighbouring amenity impacts (such as noise). The proposed loss of the B8 use and the proposed flexible use is considered to be acceptable and would not result in an overconcentration of drinking establishments/licensed premises.

- 11.2 In line with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Further, in accordance with Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposal hereby under consideration, special regard has been given to the desirability of preserving the adjacent listed buildings, their setting and any of their features of special architectural or historic interest. Overall, the external alterations are not considered to materially harm the character or appearance of the host building, the wider conservation area, or the setting of the adjoining and adjacent statutorily listed buildings.
- 11.3 Subject to conditions, the proposed flexible A3/A4/D2 unit is not considered to result in unacceptable significant harm to the amenity of occupiers of neighbouring properties.
- 11.4 As such, the proposed development is considered to accord with the policies of the National Planning Policy Framework 2012, the London Plan 2016, the Islington Core Strategy 2011, the Development Management Policies 2013, the Finsbury Local Plan 2013, and Supplementary Planning Documents and as such is recommended for approval subject to appropriate conditions.

### **Conclusion**

- 11.5 It is recommended that planning permission be granted subject to conditions as set out in Appendix 1 – RECOMMENDATION.

## APPENDIX 1 – RECOMMENDATIONS

### RECOMMENDATION

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>Change of Use Design Statement dated 28 January 2019; Email from Kamran Haider dated 02 July 2019; Covering letter dated 9 May 2018; Demand Analysis prepared by Richard Susskind and Company dated October 2017; Richard Susskind and Company – Marketing Particulars; Assessment of Marketing letter from Pater Johnson Merriman dated 1 November 2017; Letter from Howell Brooks and Partners LLP dated 20 July 2017; Letter from Jarvis Keller Stephens dated 20 September 2017; Letter from Imogen Blanning dated 20 July 2018 regarding quality of marketing evidence and Town Centre impact; Letter from Stephen Rose dated 12 February 2019; and Drawing Numbers: Location Plan, GA 01/F, GA 02/E, GA 03/C, GA 04/A, GA 05, GA 06, M-4761-XX-(57)-001 Rev P4, M-4761-XX-(57)-002 Rev P0, and M-4761-XX-(57)-003 Rev P4.</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 A3, A4 or D2 unit hereby approved 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>4</b>	<b>Delivery and Servicing</b>
	<p>CONDITION: Details of delivery and servicing of the A3, A4 or D2 unit hereby approved 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</p>

	<p>hereby 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>5</b>	<b>Hours of delivery and servicing</b>
	<p>HOURS OF DELIVERY AND SERVICING: Deliveries, collections, unloading, loading for the A3, A4 or D2 unit hereby approved shall only be carried out between the following hours:</p> <ul style="list-style-type: none"> <li>- Monday to Saturday - (08:00 - 20:00)</li> <li>- Sundays/Bank Holidays - not at all.</li> </ul> <p>REASON: To minimise the impact of deliveries and servicing on neighbour amenity.</p>
<b>6</b>	<b>Noise</b>
	<p>CONDITION: The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level LAeq Tr 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 5dB(A) below the background noise level LAF90 Tbg. 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 extract, toilet extract and air conditioning units.</p>
<b>7</b>	<b>Mechanical Plant Compliance Report</b>
	<p>CONDITION: A report is to be commissioned by the applicant, using an appropriately experienced &amp; competent person, to assess the noise from required mechanical plant to demonstrate full compliance with condition 6. The report shall include measurement of the new plant following installation. The report shall be submitted to and approved in writing by the Local Planning Authority within 10 weeks of the commencement of the relevant use hereby permitted, and maintained as such thereafter.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>8</b>	<b>Scheme of Management</b>
	<p>CONDITION: A scheme for the management of the A3, A4 or D2 unit hereby approved hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the units hereby approved. The Scheme of Management shall include:</p> <p><u>A3/A4 uses</u></p> <ul style="list-style-type: none"> <li>a) sound insulation measures</li> <li>b) a full dispersal policy and procedure;</li> <li>c) a door policy;</li> <li>d) signs to request patrons to leave in a quiet manner and not to loiter in the surrounding streets;</li> <li>e) servicing and delivery times/arrangements;</li> <li>f) bottling out and waste management noise and times;</li> <li>g) control and levels of noise from any amplified music within the unit;</li> <li>h) control of any noise from any designated smoking areas;</li> <li>i) close down policy with amplified music shut-off and increased lighting;</li> </ul>

	<p>j) security, including any additional proposed CCTV;</p> <p>k) any additional external or security lighting;</p> <p>l) capacity (of each use);</p> <p>m) private hire facilities/functions;</p> <p><u>D2 use</u></p> <p>n) sound insulation measures;</p> <p>o) control and levels of noise from any amplified music within the unit;</p> <p>p) treatment of structureborne noise &amp; vibration transmission from impact noise i.e. free weights, kettlebells, weights machines, treadmills etc;</p> <p>q) servicing and delivery times/arrangements</p> <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 residential amenity, including cumulative impacts given the location of the site within a 'high concentration of alcohol licensed premises (2010)'.</p>
<b>9</b>	<b>Flues/Extraction Systems (Details)</b>
	<p>CONDITION: Details of any proposed kitchen and/or bathroom flues/extraction systems for the A3/A4/D2 unit hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the use to which they relate.</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>The flues/extraction systems shall be carried out strictly in accordance with the details so approved, installed and operational prior to the first occupation of the use to which they relate and maintained as such thereafter.</p> <p>REASON: In the interest of protecting future residential amenity and the appearance of the resulting building(s).</p>
<b>10</b>	<b>Details of cycle storage</b>
	<p>CONDITION: Prior to the first occupation of the A3, A4 or D2 unit hereby approved details of cycle storage 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. The proposed cycle storage must accommodate:</p> <p>(a) 10no. cycle parking spaces in the case of A3/A4 use; or</p> <p>(b) 3no. cycle parking spaces in the case of D2 use.</p> <p>REASON: To provide adequate cycle storage.</p>
<b>11</b>	<b>Details of refuse and recycling</b>
	<p>CONDITION: Should the hereby approved unit be occupied for a use under the A3 or A4 use class, details of how the proposed refuse and recycling storage provision would meet the minimum requirements of 1.5 cubic metres per 20 dining spaces 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</p>

	facilities.
<b>12</b>	<b>Inclusive Design</b>
	<p>CONDITION: An access strategy detailing the means of access and egress for people with disabilities and older people to all parts of the A3, A4 or D2 unit hereby approved shall be to submitted to and approved in writing by the Local Planning Authority prior to the commencement of works.</p> <p>REASON: To ensure that adequate access is provided to the development for people of all abilities, in line with policies 4.6, 7.1 and 7.2 of the London Plan 2016, policy CS7 of the Core Strategy 2011, and policies DM2.1, DM2.2, DM4.12 and DM8.2 of the Development Management Policies 2013.</p>
<b>13</b>	<b>D2 Use</b>
	<p>CONDITION: Notwithstanding the use class order, the flexible A3/A4/D2 unit hereby approved shall not be occupied by any other uses within the D2 use class order (assembly and leisure) other than as a gym.</p> <p>REASON: To avoid the additional potential issues of more noise and disturbance to adjoining residents through large gatherings of people resulting from other more intensive D2 uses.</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.</p> <p>Further information and all CIL forms are available on the Planning Portal at <a href="http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil">www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil</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>
<b>3</b>	<b>D2 Gym Use</b>
	<p>No permission is granted for the use of the flexible unit for any other purposes which fall within the D2 use class other than a gym. Should you wish to use the unit for any other D2 purposes other than a gym, separate planning permission must be sought.</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 2012 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**

- Chapter 4: London's Economy
- Policy 4.1 Developing London's economy
- Policy 4.4 Promoting Town Centres
- Policy 4.3 Mixed use development and offices

**b. Islington Core Strategy 2011**

- Policy CS 7 – Bunhill and Clerkenwell
- Policy CS 13 – Employment Spaces
- Policy CS 14 – Retail and services

**c. Development Management Policies June 2013**

- Policy DM2.1 – Design
- Policy DM2.3 – Heritage
- Policy DM4.2 – Entertainment and the night-time economy
- Policy DM4.3 – Location and concentration of uses
- Policy DM5.2 – Loss of existing business floorspace
- Policy DM6.1 – Healthy development
- Policy DM8.2 – Managing transport impacts
- Policy DM8.4 – Walking and cycling
- Policy DM8.6 - Delivery and servicing for new developments
- Appendix 6 – Cycling

**d. Finsbury Local Plan 2013**

- Policy BC8 – Achieving a balanced mix of uses

### **3. Designations**

- Clerkenwell Green Conservation Area (and Article 4 Direction)
- Within 50m of Charterhouse Square Conservation Area
- Core Strategy Key Area – Bunhill & Clerkenwell
- Central Activities Zone
- Employment Priority Area (General)
- Clerkenwell Archeological Priority Area
- Major Cycle Route
- Finsbury Local Plan Area – Bunhill & Clerkenwell
- Mayor's Protected Vistas – Alexandra Palace viewing terrace to St Paul's Cathedral
- Local views from St John Street

- Local view from Angel
- Local view from Archway Road
- Local view from Archway Bridge
- Article 4 Direction (A1-A2)
- Article 4 Direction (B1(c) to C3)
- Adjoining Grade II listed building – No. 72 St John Street
- Adjoining Grade II listed building – No. 78 St John Street

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

- Urban Design Guide 2017
- Conservation Area Design Guidelines



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## Appeal Decision

Site visit made on 5 June 2017

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

**Decision date: 5 July 2017**

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**Appeal Ref: APP/V5570/W/17/3171820**  
**74-76 St John Street, Islington, London EC1M 4DZ**

- 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 David Rogers, Venaglass Haymarket Limited against the decision of the Council of the London Borough of Islington.
  - The application Ref P2016/4605/FUL, dated 22 November 2016, was refused by notice dated 6 February 2017.
  - The development proposed is change of use of part ground floor, basement and lower basement from Use Class B8 (storage) to flexible commercial use within Use Classes A1/A2/A3/A4/B1/D1/D2) Use, replacement of ground floor façade and entrance doors and fenestration to enclose existing ramp.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr David Rogers, Venaglass Haymarket Limited against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

### Main Issues

3. The main issues in this case are:
  - Whether the loss of the business floor space is justified;
  - Whether the proposal would harm the vitality and viability of neighbouring town centres; and
  - The effect of the proposal on the living conditions of existing occupiers.

### Reasons

#### *Loss of Class B8 (Storage or Distribution)*

4. The appeal site comprises two levels at lower ground floor and basement level within a seven-storey office on St John Street. The site is situated within an Employment Priority Area (General). The ground floor is used for access, the first basement level for car parking and the lower basement level is currently vacant, but previously used for storage. The surrounding area is characterised by a mix of 3-7 storey buildings in a range of uses, typically with ground floor retail, café and showroom uses and office and residential uses on the upper floors.
-

5. Criterion B of Policy CS13 of the Council's Core Strategy 2011 seeks to safeguard existing business spaces throughout the Borough by protecting against change of use to non-business uses, particularly in the Central Activities Zone (CAZ). The supporting text explains that there is continuing pressure on employment floor space from other uses.
6. Criterion A i of Policy BC8 of the Finsbury Local Plan (FLP)–Area Action Plan for Bunhill and Clerkenwell 2013 states that within the Employment Priority Areas (General and Offices) no net loss in business floor space will be permitted, either through change of use or redevelopment, unless exceptional circumstances can be demonstrated, including through the submission of clear and robust evidence which shows that there is no demand for the floor space. This evidence must demonstrate that the floor space has been vacant and continuously marketed for a period of at least two years.
7. In addition, the loss of business floor space will only be permitted where the proposal would not have a detrimental individual or cumulative impact on the area's primary business role and would not compromise economic function/growth, or it can be demonstrated that the site is no longer suitable for the provision of similar uses. Appendix 11 of the Council's Development Management Policies sets out the evidence which is required to adequately demonstrate marketing and market demand.
8. The approach set out in Policy CS13 of the Core Strategy and Criterion A i of Policy BC8 of the FLP is consistent with paragraphs 18 and 19 of the National Planning Policy Framework (the Framework) which seeks to support sustainable economic growth. Furthermore, the approach provides the flexibility required by paragraph 22 of the Framework which seeks to avoid long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose, subject to the submission of evidence. I can, therefore, attach significant weight to those policies in my Decision.
9. The site includes a car park at 262m<sup>2</sup>; however, the application form indicates the established use is B8 (storage) of some 585m<sup>2</sup>. The appellant indicates that the basement levels have been under-used for many years and that the owners have marketed the premises without success. An email from the commercial agent stating that the premises has been marketed from June 2014 and that during the marketing campaign there were numerous viewings, mainly from the gym sector. A handful of offers from Gym users were received but they did not materialise.
10. The marketing particulars are also included which shows that the premises were marketed for all uses at a rent in excess of £130,000 per annum exclusive. In addition, it is stated that details were initially sent to those parties with a suitable requirement and then to all active London agents. The property was on the agent's website and periodically sent to all London agents. A 'sample' of parties that viewed the property is also included.
11. Additional information has been submitted which includes details of completed deals between 1 June 2014 and 30 June 2016. This shows that the majority of lettings (45 of 50) secured higher rental incomes than £34 per sq ft per annum. Rents ranged from approximately £20 per sq ft to £67.50 per sq ft. The average (median) rental income secured in these lettings was £48.23/sq ft. Thus the rent sought for the appeal property was at the lower end of the rates expected in this location. Further information relating to current 'market comparables' has also been submitted which shows that the rental rate of £34 per sq ft per annum would

be below the rates asked in the EC1M postcode. However, this information does not amount to a professional valuation from at least three agents to confirm that the asking price is reasonable. Furthermore, the submitted information does not include any basement offices or any B8 spaces as there were none available for comparison. Consequently, I cannot be certain that the property was marketed at a reasonable price which takes account of the basement location and the nature of the premises.

12. Furthermore, the value of offers, the reasons why any offers fell through, why it was not possible to agree terms and why offers were refused are not included. Also no details are included as to why the property is 'not of interest'. Consequently, the evidence falls short of that required by Appendix 11 of the DMP. Due to the limited evidence before me, I cannot, therefore, be certain that the property has been marketed on appropriate terms at a reasonable asking price which reflects the nature of the property.
13. I have had regard to the fact that the property is currently vacant and as such there would not be the loss of an actual B8 or business use. However, there would be the loss of business floor space which Policy BC8 of the FLP seeks to protect.
14. The appellant draws attention to paragraph 11.1.3 of the FLP and suggests that the term business use is widely defined and covers all of the uses proposed. However, whilst Policy BC8 seeks to achieve a balanced mix of uses, including a wider range of employment generating uses, Criterion A i specifically refers to business floor space. Business floor space/buildings/development/uses are defined in the glossary as activities or uses that fall within the B-Use Class (i.e. offices, industry, or warehousing). Furthermore, there is insufficient evidence before me to conclude that there would be no demand for B8 or other business uses either now or in the future.
15. The appellant also suggests that the proposal is consistent with the underlying purpose of policy which is to promote employment growth and jobs. However, paragraph 3.47 of the Core Strategy states that the principle will be to continue to protect a variety of spaces and to achieve this, the Core Strategy protects specific types of business floor space where appropriate (B-use classes) within the more general definition of employment floor space. Criterion A i of Policy BC8 seeks to protect business floor space as part of a balanced mix of uses.
16. Attention is also drawn to Criterion B which states that within the Employment Priority Area (general) the employment floor space component of a development or change of use proposal should not be unfettered commercial (B1a) uses, but where appropriate must also include retail or leisure uses at ground floor alongside. Nonetheless, given the flexible nature of the proposal it may be implemented within a single use class resulting in the loss of all the business floor space which would be contrary to Criterion A i of the Policy.
17. For the reasons stated, there is insufficient evidence before me to conclude that the loss of business floor space is justified. The proposal is, therefore, contrary to Policy CS13 of the Core Strategy and Policy BC8 of the FLP.

#### *Vitality and Viability of Town Centres*

18. Policy DM4.4 of the DMP seeks to maintain and enhance the retail and service function of Islington's four town centres. Part B states that applications proposing more than 80m<sup>2</sup> of floor space for uses within the A Use Classes, D2 Use Class and for Sui Generis main town centre uses within the Central Activities Zone, must

demonstrate that the development would not individually or cumulatively with other development have a detrimental impact on the vitality and viability of Town Centres within Islington or in adjacent boroughs, or prejudice the prospect for further investment needed to safeguard their vitality and viability; the proposed uses can be accommodated without adverse effect on amenity; and the proposal would support and complement existing clusters of similar uses within or adjacent to the Central Activities Zone, particularly important retail frontages.

19. Criterion B of Policy CS7 of the Core Strategy relating to Bunhill and Clerkenwell states that there are a number of local centres within the area which are a foci for shops, facilities and/or the evening economy, including amongst others, St. John Street. It goes on to say that these centres will be protected and enhanced in a manner that ensures their vitality and vibrancy, whilst safeguarding the amenity of residential uses. However, the appeal site is not situated within a designated town centre or a defined local centre allocated for retail purposes as defined in appendix 3 of the DMP. Criterion c of Policy 2.11 of the London Plan 2016 states that retail capacity will be focused on the CAZ frontages. However, St John Street is not allocated as a Central Activity Zone frontage as defined in Annex 2 of the London Plan.
20. The proposed A1 retail element and the D2 Assembly and Leisure element are classed as main town centre uses by the Framework. The proposal could accommodate 615m<sup>2</sup> of A1 retail floor space which would be equivalent to a large 'express/local' supermarket and could, therefore, have an impact on neighbouring town centres, in particular Angel Town Centre.
21. At the time the application was determined retail impact and sequential assessment had not been undertaken. Consequently, the Council considered that insufficient evidence had been submitted to demonstrate that the proposal would not have an impact either individually or cumulatively on nearby Town Centres, in particular Angel Town Centre.
22. A brief Retail Impact Assessment (RIA) has been submitted in support of the appeal. The RIA includes an assessment of Angel Town Centre which draws heavily on the Islington's Town Centres: Review and Health Check (Health Check) (2012) which found that Angel Town Centre was performing very strongly overall due to a combination of a high number of A1 units, alongside complementary vibrant cultural and entertainment uses. The Health Check also found a diversity of uses and a low vacancy rate. On the basis of my site visit, I have no reason to disagree with this assessment.
23. The RIA suggests that the appeal site is relatively small, equating to approximately 1% of the total floor space of 51,496m<sup>2</sup> of total retail, leisure, financial and business services floor space within Angel Town Centre and concludes that no significant impact is likely as a result of the proposal. Attention is also drawn to the forecast retail sales (2021) set out in the Islington Retail Study Update 2008 which shows the combined turnover of both convenience and comparison goods of £401.6m.
24. It is acknowledged that the proposed retail or D2 floor space would be a small percentage of the total commercial floor space within Angel town centre. However, the proposed floor space of 615m<sup>2</sup> is significantly above the Council's threshold of 80m<sup>2</sup> and whilst a brief qualitative analysis has been undertaken, there is no quantitative analysis. In the absence of such analysis, including information such as the turnover of the proposed use, surplus expenditure in Angel

Town Centre and the extent of any trade draw, it is not possible to determine whether the proposal would harm the viability of Angel Town Centre or prejudice the prospect for further investment needed to safeguard its viability.

25. Attention is drawn to paragraph 4.27 of the DMP which states that proposals for retail, services, entertainment, assembly and leisure uses within the CAZ may be appropriate where these would not detrimentally affect the vitality and viability of town centres. It goes on to say that proposals involving these uses (especially those of a small scale) are unlikely to result in detrimental impacts and that the Policy, therefore, takes a flexible, judgement based approach as to whether a full impact assessment is required should be applied. However, in setting a threshold of 80m<sup>2</sup>, the Council clearly considers that proposals above this threshold may have the potential to impact on other centres. The proposal would be larger than the majority of retail units in the street and would be significantly above the threshold set out in Policy DM4.4. Given the scale of the proposal, I consider that in this case a quantitative assessment should be required.
26. Attention is drawn to an appeal decision<sup>1</sup> in which the inspector commented that it is difficult to see how the vitality and viability of Nags Head could be threatened given that it provides a much greater variety of outlets of greater size and as the Sainsbury's Local outlets are planned with a 500m catchment in mind. This case was not in the CAZ and thus engaged Part A of Policy DM4.4 of the DMP. Nevertheless, the floor space threshold set out in part A of the Policy is the same. I note that this case is significantly smaller than the appeal proposal and that the inspector concluded that an impact test would be required. Furthermore, the proposal in this case was for convenience retailing which would be likely to have a local catchment. The flexible nature of the appeal proposal could result in 615m<sup>2</sup> of comparison retailing which would likely have a wider catchment and could, therefore, have an impact on the viability of Angel Town Centre. This case is not, therefore, directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.
27. There is dispute between the parties as to whether a sequential assessment would be required to support the proposal. However, even were a sequential assessment required, in the absence of a quantitative retail assessment, I am unable to determine whether the proposal would have a detrimental impact on the viability of Angel Town Centre.
28. For the reasons stated, I conclude that there is insufficient evidence to determine whether the proposal would harm the vitality and viability of Angel Town Centre. The proposal is, therefore, contrary to Policy DM4.4B of the DMP. This conflict weighs against the scheme.

*Living conditions of existing residents*

29. The range of flexible uses proposed would permit occupiers such as a café, restaurant, drinking establishment, concert hall, dance hall, gymnasium and indoor sports or recreation. Such a range of uses could lead to potential noise, disturbance or odour for the occupiers of surrounding residential uses.
30. There is an existing void at the rear of the main building which sits adjacent to the rear of the residential properties at 66 St John Street. Indeed a number of objections have been received from occupiers of those units in terms of potential

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<sup>1</sup> Appeal reference: APP/V5570/A/13/2210830

noise and disturbance. There are also residential properties above commercial units along St John Street.

31. Criterion ii of Part B of Policy DM4.4 of the DMP requires that proposed uses can be accommodated without adverse impact on amenity. Policy DM4.3 of the DMP states that proposals for cafes, restaurants, drinking establishments, off-licences, hot food takeaways and other such uses will be resisted where they would result in negative cumulative impacts due to an unacceptable concentration of such uses in one area; would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area.
32. The Council considers that on the basis of an A3 use survey, the evidence suggests that there are no discernible clusters of A3 units in the area. Given the nature of the Central Activities Zone and the suitability of night time economy uses, overconcentration on a purely quantitative basis is considered unlikely. I noted on my site visit that A3 and A4 uses were well distributed along the street interspersed with office and commercial uses at ground floor level. However, this does not preclude the need to assess any potential effects arising from the proposal itself.
33. The nature of the proposed uses, in particular the A3 (restaurants and cafes), A4 (drinking establishments) and D2 (assembly and leisure) use classes, have the potential to adversely affect the living conditions of nearby residents by virtue of noise arising from congregations of customers, music and any extraction equipment. Odour caused by cooking inside the premises may also be an issue. There may also be noise and general disturbance caused by customers and delivery vehicles coming and going outside the premises. Such effects can be particularly intrusive when they take place late into the evening when other background noise levels generally diminish. Proposed uses falling within D1 use class may also have the potential for traffic generation, although I note that highway safety is not included as a reason for refusal.
34. Paragraph 4.21 of the DMP states that in assessing the likely impacts of a proposal, regard will be had to the type of use, proposed hours of opening, size of premises, operation and servicing and measures to mitigate odour and noise from the premises. I have regard to the conditions proposed by the appellant and also the Council. I consider that conditions relating to opening hours, submission and approval of extract and ventilation equipment, noise arising from music, customers or ventilation and extraction equipment, the timing of deliveries etc, potentially tailored to each specific use could have been imposed to address concerns had I decided to allow the appeal.
35. For the reasons stated above, I, therefore, conclude that with the suggested conditions, the proposal would not have a harmful effect on the living conditions of neighbouring occupiers. The proposal would not, therefore, be contrary to Criterion ii of Part B of Policy DM4.4 of the DMP or Policy DM4.3 of the DMP.

*Other matters*

36. The proposal is situated within the Clerkenwell Green Conservation Area and adjacent to Nos 72, 78 and 80 St John Street, which are grade II listed buildings. The existing frontage of the appeal property is largely blank and does not make a positive contribution to the street scene. The proposal would involve the creation of a new facade, entrance and aluminium framed window which would result in a more active and positive frontage. The proposal would not, therefore, harm the

character or appearance of the Conservation Area or the setting of neighbouring listed buildings. The Charterhouse Almhouse lies to the rear of the site and is a grade II listed building. No alterations are proposed to the rear and consequently, the proposal would not harm the setting of this listed building.

*Planning Balance*

37. I have identified that with conditions, the proposal would not have a harmful effect on the living conditions of neighbouring residents. Furthermore, the proposal would have some benefits in terms of improving the frontage of the site, bringing a vacant, underused unit back into use, promoting a car-free development and contributing to the local economy. However, these benefits could be achieved by other means. I have identified that the proposal would result in the loss of business floor space and have the potential to harm the vitality and viability of Angel Town Centre. I consider that the totality of this harm would outweigh the benefits of the proposal.

**Conclusion**

38. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

*Caroline Mulloy*

Inspector