

## Contents

Contents .....	1
EXECUTIVE SUMMARY .....	4
BACKGROUND INFORMATION .....	5
Site location and description .....	5
Details of proposal .....	8
Planning history of the site .....	15
KEY ISSUES FOR CONSIDERATION .....	15
Summary of main issues.....	15
Legal context .....	16
Planning policy and material considerations.....	16
ASSESSMENT.....	17
Principle of the proposed development in terms of land use (and independent retail).....	17
Design, including layout, building heights, massing and heritage impact.....	29
Impact of proposed development on amenity of adjoining occupiers and surrounding area .....	33
Environmental matters .....	45
Energy and sustainability .....	46
Other matters.....	47
Planning obligations (S.106 agreement) .....	47
Mayoral and borough community infrastructure levy (CIL).....	48
Community involvement and engagement .....	49
Consultation responses to the first round of consultation from the ward councillors.....	49
Consultation responses to the first round of consultation from members of the public, businesses and local groups .....	53
Consultation responses from external and statutory consultees .....	63
Reconsultation responses from the ward councillors.....	64
Reconsultation responses from members of the public, businesses and local groups .....	64
Reconsultation responses from external and statutory consultees .....	69
Community impact and equalities assessment.....	70
Human rights implications .....	71
Positive and proactive statement .....	71
Positive and proactive engagement: summary table .....	71
CONCLUSION .....	71

BACKGROUND INFORMATION .....72

BACKGROUND DOCUMENTS .....72

APPENDICES.....73

AUDIT TRAIL.....73

<b>Item No.</b> 7.2	<b>Classification:</b> OPEN	<b>Date:</b> 20 July 2021	<b>Meeting Name:</b> Planning Committee
<b>Report title:</b>	<p><b>Development Management planning application:</b> Application 21/AP/0507 for: Full Planning Application and Application 21/AP/0326 for: Variation of Legal Agreement</p> <p><b>Address:</b> 1 BANK END (SITE INCLUDING RAILWAY ARCHES AND THAMES HOUSE BOUNDED BY STONEY STREET, CLINK STREET AND PARK STREET) SE1.</p> <p><b>Proposal:</b> <u>21/AP/0507</u> - Minor material amendments to planning permission 19/AP/1649 dated 2.10.2019 (which was a variation of permission 15/AP/3066) for "Redevelopment of 1 Bank End, including reuse of railway arches and rebuilding and extension of the rear of Thames House (behind retained facade); remodelling of Wine Wharf building and development of a two storey building at 16 Park Street, all to provide a development with a maximum height of 6 storeys (maximum building height 27.419m AOD) comprising retail units (flexible class A1 shops, A3 cafes/restaurants and A4 drinking establishments use) at ground and first floor levels, a gallery (Class D1 use) at ground floor level, office floorspace (Class B1 use) at ground up to fifth floor level, a cinema (Class D2 use) at ground floor and basement level, associated cycle parking spaces, new access routes and public open space"</p> <p>The amendments seek the following:</p> <ul style="list-style-type: none"> <li>- amendment to Condition 28 to allow for an increased amount of floorspace to be occupied by restaurants and cafes (Class A3) or pubs, wine bars or drinking establishments (Class A4) from 30% to 45% of the total retail area, with no more than 10% of the total retail area to be used for pubs, wine bars or drinking establishments, and with no more than 1 unit on Stoney Street to be used as a pub, wine bar and drinking establishment;</li> <li>- revised ground and first floorplan drawings showing amendments to unit layouts and sizes that have resulted from design development and construction.</li> </ul> <p><u>21/AP/0326</u> - Variation of the section 106 agreement relating to planning permission refs 15/AP/3006 and 19/AP/1649. The proposal seeks to amend the definition of 'Small Enterprises' to read as: "means small and medium sized enterprises that operate 10 or fewer retail outlets within the UK at the date that heads of terms for a lease of an Independent Retail Unit are agreed between the intended parties to such lease, and for the avoidance of doubt an Small Enterprise shall not include any Supermarket owner and/or operator".</p>		
<b>Ward(s) or</b>	Borough & Bankside		

<b>groups affected:</b>	
<b>From:</b>	Director of Planning and Growth
<b>Application Start Date</b>	15.02.2021
<b>PPA Expiry Date</b>	n/a
<b>Earliest Decision Date</b>	24.06.2021

## RECOMMENDATION

1.
  - a) For application 1 ref. 21/AP/0507 that an amended planning permission be granted subject to revised conditions, the completion of a deed of variation and the GLA confirming it does not wish to call the application in for its own determination; and
  - b) For application 2 ref. 21/AP/0326 that the variation of the legal agreement be agreed subject to the completion of a deed of variation.
2. In the event that the requirements of parts a) or b) above are not met by 31 December 2021, the director of planning and growth be authorised to refuse planning permission, if appropriate, for the reasons set out in paragraph 186.

## EXECUTIVE SUMMARY

3. These applications have been called in by two ward councillors, and received approximately 100 objections in response to the first consultation.
4. The applications relate to a large site in Bankside, close to Borough Market, for a development which is currently in advanced stage of construction. The site is within the Borough and Bankside town centre and part is within the Borough High Street Conservation Area. The approved development, predominantly on the site of the former Vinopolis Wine experience, would provide new shops, restaurants, bars and offices, in existing railway arches and new buildings, and create new pedestrian streets through the site. The scheme is known as 'Borough Yards'.
5. The minor material amendment application seeks to vary condition 28 of the original planning permission to allow a larger proportion of restaurant and drinking establishment uses in the approved Class A retail units across the Borough Yards site, while adding restrictions to the maximum proportion of floor area that can be used for drinking establishments and limiting these to a maximum of one unit on Stoney Street. The applicant also seeks to change the legal agreement's definition of a "small enterprise" which relates to the independent retailer units, and would allow them to be occupied by businesses with 10 or fewer retail outlets within the UK (rather than the current restriction of no more than 3 retail outlets).
6. The minor material amendment application was amended in response to the objections received and officer advice, and further information on the mitigation measures has been provided. The deed of variation application was amended

to no longer seek changes to the obligation relating to the gallery unit.

7. The proportion of restaurants (former Class A3) and drinking establishments (former Class A4) set in a revised condition 28 (at 45% of the total floor area, with not more than 10% used for drinking establishments) is considered to represent an appropriate mix of uses for this site within the CAZ, Opportunity Area, town centre and within the site's context, while continuing to protect neighbour amenity and character of the area (including the Borough High Street Conservation Area). In this case it is considered acceptable to loosen the restriction on the definition of small enterprises to improve the likelihood that the units which have been marketed and are nearing completion will be occupied. The limit of 10 trading outlets would still achieve the original aspiration to avoid the development becoming dominated by chain high street brands.
8. Both applications are recommended for approval. The minor material amendment application would result in a revised wording of condition 28 plus a new condition to secure the gate details and would require a deed of variation for updated management documents and to update details such as the time gates are locked. The variation of legal agreement application would similarly require a deed of variation, which can be the same deed as for the first application.
9. A third application (ref. 21/AP/1393) which is an approval of details type of application made pursuant to a condition and by a different applicant seeks to combine three of the retail units on this site, will be determined separately.

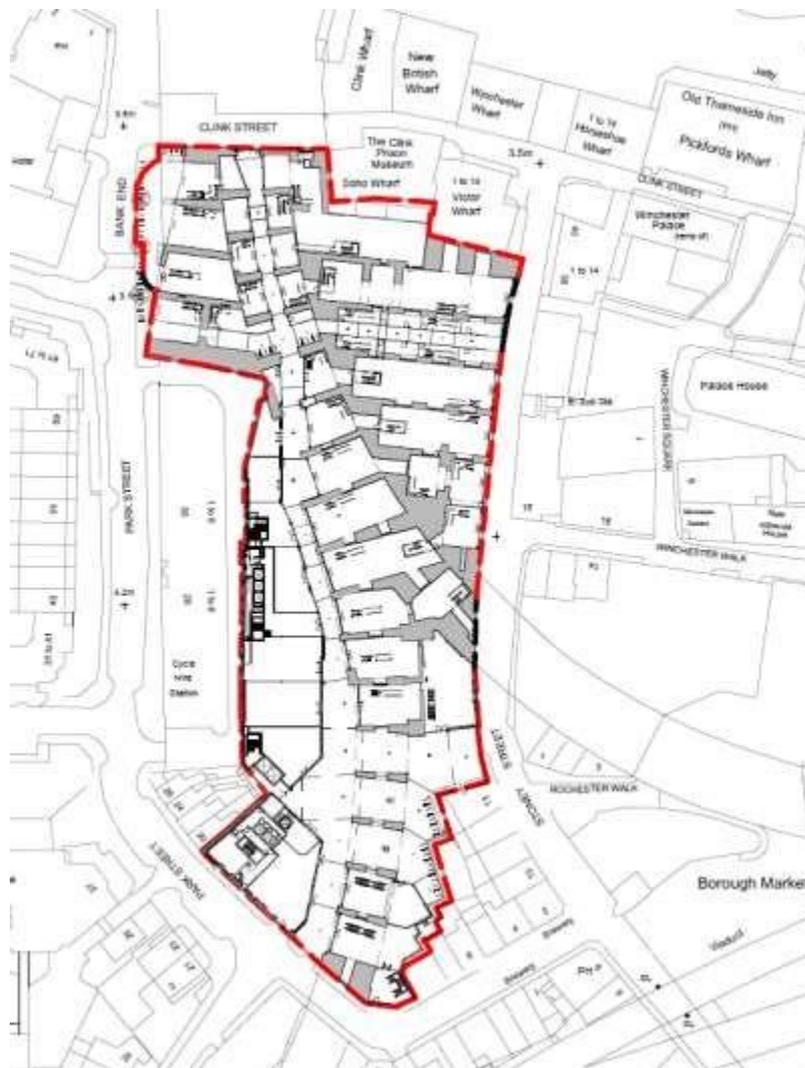
## **BACKGROUND INFORMATION**

### **Site location and description**

10. The site has a complex and irregular shape, and straddles the railway viaducts. It includes the former Thames House on Park Street and the former Vinopolis site which is located in the railway arches. It is bound by Park Street to the west and south, Stoney Street to the east and the railway arch and Clink Street to the north. Construction is well underway for the scheme approved in 2017, with the site enclosed by hoardings and construction vehicle entrances.
11. Thames House was a five storey office building that was substantially demolished with only its front façade retained and new building under construction. It had a car park area to the rear. Vinopolis comprised a mix of uses including shops, restaurants, bars, offices, commercial space for hire and wine tour space. It also included Wine Wharf, a bar and restaurant, which fronted Stoney Street.
12. No.16 Park Street was on the eastern side of the viaduct, and was a two-storey building known as Vinopolis Plaza which had Umbrella Alley, an open space, running alongside it. It has been replaced by a new two-storey building.
13. The southern part of the site, including the Park Street frontage sits within the

Borough High Street Conservation Area, while the eastern and north eastern parts of the site are immediately adjacent to the same conservation area along Stoney Street and Clink Street. The site is within the Borough, Bermondsey and Rivers archaeological priority zone, and is to the west of the remains of Winchester Palace.

14. There are no listed buildings within the application site, but there are several listed buildings close to the site. Nos 20-26 Park Street next to the site are grade II listed, along with other grade II listed buildings on the opposite side of the roads such as: Park Street (nos 1-11, 13, 21-23 and the posts in front of 21 and 23); Stoney Street (the floral hall portico of Borough Market); Clink Street (Winchester Wharf); and Bank End (Anchor public house and five posts outside it).
15. The surrounding area contains a mix of land uses including residential, commercial, cultural spaces, restaurants, cafes and public houses and a hotel. Borough Market lies to the east and south of the site, and contains a number of restaurants, cafes, public houses as well as the large market itself.
16. To the west, nos. 28 - 30 Park Street is an eight storey building providing offices at ground to fifth floor levels and residential at sixth and seventh floors. Nos. 20 - 26 Park Street is a terrace of four houses, which are grade II listed.



Existing site layout plan, under construction



Existing building – view looking north along Stoney Street, with site's arches on the left-hand side.



Existing building – view from Bank End of the north-western part of the site.



Existing building – the south-western Park Street frontage showing the new building (with retained façade) under construction on the left and arch units on the right.

## Details of proposal

17. The minor material amendment application (ref. 21/AP/0507) seeks to make changes to the wording of a condition on the implemented permission for the redevelopment of the site. The 2017 first permission (ref. 15/AP/3066) was implemented and later revised by an approved minor material amendment application ref. 19/AP/1649, therefore the relevant permission to be amended is 19/AP/1649. The current application is a section 73 minor material amendment application to vary condition 28 of the permission, and has an associated variation of s106 agreement submission (21/AP/0326) to make amendments to the section 106 legal agreement. Each application is summarised below.
18. The government's revisions to the Use Classes came into effect in September 2020. The former Class A3 restaurants and café use is now within Class E(b), and Class A4 drinking establishments are now a sui generis use. This report will mainly refer to Class A3 and A4 uses to align with the permissions granted, the assessment of the original application, and the relevant planning policies. Reference in the report to "restaurants" means the former Class A3 use for the sale of food and drink for consumption on the premises, i.e. restaurants, snack bars and cafes. Reference in the report to "bar" or "drinking establishment" mean the former Class A4 use of public houses, wine bars or other drinking establishments (but not night clubs) including drinking establishments with expanded food provision. Finally, references to "shop" means the former Class A1 use, i.e. the display or retail sale of goods other than hot food.

### Section 73 application – ref. 21/AP/0507

19. The section 73 application ref. 21/AP/0507 seeks to vary condition 28 from its current wording:

*Notwithstanding the details on the drawings hereby approved, at any time, no more than 30% of the retail floorspace at ground and first floor levels shall be used for Classes A3 (restaurants and cafes) and A4 (drinking establishments of the Town and Country Planning (Use Classes) Order (as amended)).*

*Reason:*

*In granting this permission the Local Planning Authority has had regard to the special circumstances of this case and wishes to have the opportunity of exercising control over concentrations of Class A3 and A4 uses in accordance with Strategic Policy 13 - High environmental standards of The Core Strategy 2011 and Saved Policy 3.2 Protection of Amenity of the Southwark Plan 2007 and the National Planning Policy Framework 2012.*

20. The application requests this condition be revised to read as follows (although this has been revised since for the recommendation version) to allow a higher percentage of the ground and first floor Class A retail floorspace to be used for restaurants, cafes and drinking establishments in part (a), and add a cap on the drinking establishments' floor area in part (b) and a maximum of one unit on Stoney Street to be used as a drinking establishment in part (c):

*Notwithstanding the details on the drawings hereby approved, at any time:*

*(a), no more than 45% of the retail floorspace hereby permitted at ground and first floor levels shall be used as restaurants and cafes (Class E(b)) and public houses, wine bars and drinking establishments (Sui Generis) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended);*

*(b) no more than 10% of the retail floorspace hereby permitted at ground and first floor levels shall be used as public houses, wine bars and drinking establishments (Sui Generis); and*

*(c) no more than one unit on Stoney Street shall be used as a public house, wine bar or drinking establishment (Sui Generis).*

*The Class E(b) and Sui Generis uses allowed by this condition will be located only in the units identified in green on drawing reference 1405-SS-20-0G-01-200-P\_1 unless otherwise agreed in writing with the Council.*

*Reason:*

*In granting this permission the Local Planning Authority has had regard to the special circumstances of this case and wishes to have the opportunity of exercising control over concentrations of Class A3 and A4 uses in accordance with Strategic Policy 13 - High environmental standards of The Core Strategy 2011 and Saved Policy 3.2 Protection of Amenity of the Southwark Plan 2007 and the National Planning Policy Framework 2012.*

21. An accompanying drawing has been submitted, as referenced at the end of the revised condition, which shows in green the location of the units to be in Class A3 restaurant or café use, and in yellow those to be used for Class A4 public house, wine bar, and drinking establishments. Together the Class A3 (shown in green) and Class A4 (shown in yellow) uses would be allowed to comprise up to 45% of the total retail floorspace, to align with the restriction in part (a) of the revised condition. The Class A4 drinking uses would be allowed up to a 10% of the total retail floorspace, (and this sits within the overall 45% cap, not additional to it) to align with the restriction in part (b) and with no more than one unit located on Stoney Street as restricted by part (c). The drinking establishments are shown for unit 192a on Park Street and unit 205 on Stoney Street. The other retail units (most of the white units) would be Class A1 shops. A larger form of this ground floor drawing and the first floor drawing are included as Appendix 2.



22. The areas indicated on this drawing and the accompanying floor area schedule show the following proposed site-wide split of Class A uses, with the proposed A3 and A4 floorspace on the above drawing totalling 44.7% of the floor area, slightly less than the proposed 45% cap (which would total 3,510sqm)

Use Class	Floor area (GIA sqm)	Percentage of Class A total
A1	4314.8	55.3%
A3	3157	40.5%
A4	327.5	4.2%
Site wide total of Class A	7799.3	100%

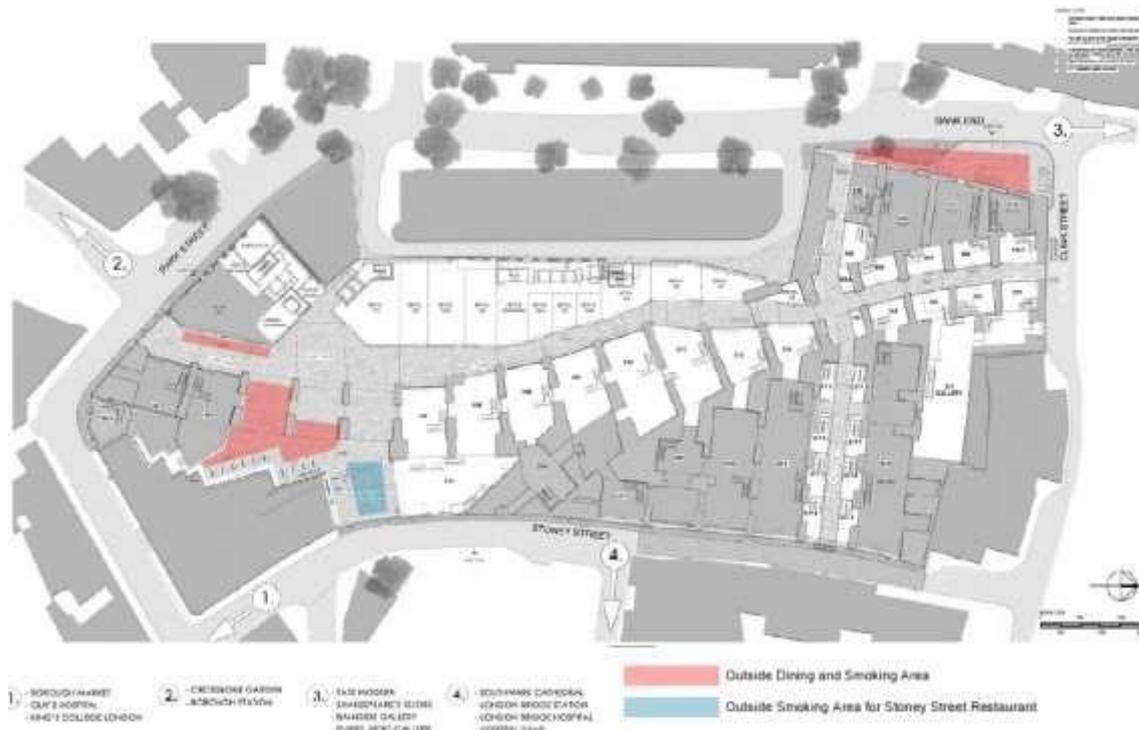
23. This can be compared with the approved scheme having 7,940sqm of Class A

uses, of which a 30% for A3 and A4 uses would total 2,382sqm. The current application's 45% cap represents an additional 1,128sqm being in restaurant or bar use on the site.

24. There are some minor changes to the sizes of the ground and first floor retail units from those that have been previously approved by the council in the 15/AP/3066 permission, subsequent non-material amendments agreed and a 2019 minor material amendment. The proposed changes are to seven units and result in an overall reduction in Class A area across the site of 141sqm.

<b>Unit number</b>	<b>Unit approved Class A GIA sqm</b>	<b>Unit proposed Class A GIA sqm</b>	<b>Change in GIA Class A sqm</b>
192	171.5	233.5	+62
192a	182.5	120.5	-62
199	228.5	233.0	+4.5
206	231.0	195.0	-36
207	211.0	204.5	-6.5
213	325.5	283.0	-42.5
215	523.0	462.5	-60.5
<b>Site wide Class A total</b>	7940.3	7799.3	-141

25. There are no proposed changes to the floor area of the development's gallery, cinema or office uses which remain as previously approved. The ancillary floorspace on the ground floor would increase from 161.5sqm to 328sqm, due to changes primarily to provide larger fire escape routes within some of the arches. The total site-wide GIA floor area would increase by 25.5sqm to 16,356.3sqm. New floorplan drawings for the ground and first floor levels have been submitted.
26. While not submitted for planning approval but only for information (and instead controlled through the licences), the applicant has indicated three external areas for outside dining and smoking (in red) and one area for smoking for the Stoney Street restaurants (in blue) on the diagram below. The area beneath the arches was revised through the licensing applications.



27. The proposal does not seek to make changes to the appearance of the buildings and railway arches of the approved scheme. Part of the mitigation proposed by the applicant includes the addition of a gate to the Park Street entrance, however no information about this gate has been provided and a further condition would need to be imposed to secure the details.

Variation of legal agreement application – 21/AP/0326

28. The second application ref. 21/AP/0326 seeks to make changes using a deed of variation to the 2017 section 106 legal agreement that is associated with permission ref. 15/AP/3066. The applicant seeks to amend the section 106 agreement's "Small Enterprises" definition relating to small retail businesses from those with no more than 3 retail outlets to those with no more than 10 retail outlets. This would allow a wider range of retailers to occupy the independent retail units, which were secured in the permission and must comprise a minimum of 60% of the total retail floorspace within the development.
29. The original wording of the 2017 section 106 agreement defines "Small Enterprises" as:

*"means small and medium sized enterprises that operate 3 or fewer retail outlets within the UK at the date that heads of terms for a lease of an Independent Retail Unit are agreed between the intended parties to such lease, and for the avoidance of doubt a Small Enterprise shall not include any Supermarket owner and/or operator;"*

30. The applicant would like to vary that definition to be:

*"means small and medium sized enterprises that operate 10 or fewer retail outlets within the UK at the date that heads of terms for a lease of an Independent Retail Unit are agreed between the intended*

*parties to such lease, and for the avoidance of doubt an Small Enterprise shall not include any Supermarket owner and/or operator".*

31. There will be other changes needed to the 2017 section 106 agreement if the minor material application ref. 21/AP/0507 is approved, in order to secure the mitigation measures the applicant is proposing. For example, to require locking the gates at 10pm (rather than at 11pm as required by the section 106 agreement), and requiring updated versions of the servicing management plan and visitor management plan. These changes to the 2017 legal agreement could all be included in the same deed of variation.

### Amendments to the applications

32. The two applications have been revised in response to the objections received, consultee responses and officer advice.
33. As originally submitted, the applicant sought to vary condition 28 to allow:
- 1) 50% of the retail area at ground and first floor levels to be used for food and beverage - *this was reduced to 45%*;
  - 2) no more than 25% of the retail area at ground and first floor levels to be public houses, wine bars and drinking establishments - *this has been reduced to 10%*;
  - 3) and to allow no more than three units on Stoney Street to be public houses, wine bars and drinking establishments - *this has been reduced to one.*
34. These revised terms are set out as the three restrictions in a revised condition 28 described earlier in this report. The applicant has provided an additional plan showing the location of the restaurant and drinking establishment units and one Stoney Street drinking establishment unit, which would be referred to in the revised condition 28. The revised condition would require any future changes to the location of restaurant and drinking establishment units to need the approval of the council.
35. A supplementary planning statement with several supporting documents as appendices was provided to describe the revisions and provide more information, including the updated ground and first floor layout drawings and reference to the addition of a gate at the Park Street entrance. The supporting appendices aim to respond to the objections received to the original form of the application.
36. The applicant also sought originally to change more of the section 106 agreement's definitions and obligations, especially those relating to the gallery at the northern end of the site: to widen the definition of "cultural space" to include indoor sport, recreation or fitness; removal of the requirement for the gallery space to be available prior to the opening of the independent retail units; and relaxation of the obligations to allow the gallery/recreation space to be used for retail and commercial uses if there is demonstrated to be no demand after 12 months of marketing. These elements relating to the gallery unit have been removed from the s106 variation application, and so have not been considered in the Assessment section below.

37. The applicant provided an amended ground floor drawing and ground floor uses drawing (which corrected the wall dividing units 192 and 192a), and an additional drawing to show the proposed first floor uses that will be referenced in the revised condition 28.

### **Consultation responses from members of the public and local groups**

38. The consultation undertaken for the minor material amendment application and list of those who responded are set out in Appendix 5 and 6.
39. Approximately 100 objections were received, including from ward councillors, which raised the same principal topics, summarised as:
- The proposal is moving away from the approved scheme of high end retail and cultural uses on the site that would fit in with the area.
  - Harm to the character of the area.
  - No need for more restaurants and bars as the area is saturated with them.
  - Loss of the gallery being unacceptable in a strategic cultural area.
  - Harm to neighbour amenity from late night noise and disturbance, drunken and antisocial behaviour, taxi noise, shouting, extra rubbish.
  - Additional servicing, deliveries and takeaway traffic – which would raise safety concerns, worsen air quality, and cause further noise and disturbance.
  - Overdevelopment.
40. A detailed summary of the consultation responses received is set out in the later Community involvement and engagement topic of this report.
41. There were objections to the s106 application including from the ward councillors, and references in the objections to the minor material amendments application:
- Diluting the vision of the original scheme (sold as artisan, independent, small units to complement the offer in Borough Market, providing shopping opportunities for the local and wider community) by allowing large chains into the site.
  - It will lead to a different development, especially with the changes sought by varying condition 28.
  - The restriction should remain, and ideally for the spaces to be marketed as an opportunity to support Southwark based businesses to develop, at a price they can afford to pay.
42. Reconsultation was carried out on the revisions to the proposal on 3 June 2021, and approximately 50 further objections were received including from ward councillors:
- That the revisions do not do enough to address the original objections. Still adding too much food and beverage in an already saturated area.

Retail is badly needed. The Covid downturn is not enough reason to ignore planning policies and harm the character of the area.

- The offer of 45% dining and drinking would entail extra servicing, waste, more noisy and longer occupation, more highways congestion from taxis and Ubers, more smokers and more late-night disturbance, none of which has been sufficiently mitigated.
- Insufficient mitigation or technical assessment of the noise impacts.
- Would still erode the character of the approved scheme, and harm the character of the area.
- Would still harm neighbour amenity. The F&B units are too big and too close to residents, and weren't acceptable in the original scheme.
- The additional servicing traffic cannot be accommodated on site, and will block surrounding roads. Not enough information is provided on how taxis will be managed; taxis will cause further noise, disruption and congestion.
- No revision made to the definition of "small enterprise". Large chains are intending to move in.
- The licensing conditions should be replicated on any planning permission, plus additional restrictions.

## **Planning history of the site**

43. The decisions which are directly relevant to the consideration of the current applications are referred to within the appropriate sections of the report, especially the original 2017 permission. A fuller history of decisions relating to this site, is provided in Appendix 3, but does not list out the many submissions made to discharge conditions and planning obligations pursuant to the original permission or subsequent minor material amendment application. A recent screening opinion for the current scheme was issued in June 2021 to confirm that the proposal is not EIA development.

## **KEY ISSUES FOR CONSIDERATION**

### **Summary of main issues**

44. The ability to vary an extant planning permission is set out in section 73 of the Town and Country Planning Act 1990 (as amended). Unlike an application for 'non-material changes' (a section 96a application), an application under section 73 results in a new permission being issued, although the time given to implement the permission remains unchanged, and is not extended as a result of any section 73 permission. While a local planning authority should take into consideration all relevant matters, including current policies at the point it determines a section 73 application, it must also take into account the scope of the changes being requested, and the status of the permission in terms of how far construction has progressed.
45. The main issues to be considered in respect of these two applications are those set out in the report for the 2015 application listed below. However as a minor material amendment application to an implemented permission with construction nearly complete, the correct focus needs to be on the changes proposed, rather than reassessing the whole development against current

planning policies and material considerations. Section 73 requires the local planning authority to look at the changes proposed by the amendments to the conditions and not to 're-visit' the principles on which the original permission was determined and granted.

46. The issues to be assessed focus on those raised by the proposed changes:
- Principle of the proposed development in terms of land use (and independent retail)
  - Design, including layout, building heights, massing and heritage impact;
  - Impact of proposed development on amenity of adjoining occupiers and surrounding area
  - Transport and highways
  - Environmental matters
  - Energy and sustainability
  - Other matters - including archaeology and EIA
  - Planning obligations (S.106 undertaking or agreement)
  - Mayoral and borough community infrastructure levy (CIL)
  - Consultation responses and community engagement
  - Community impact, equalities assessment and human rights.
47. These matters are discussed in detail in the 'Assessment' section of this report.

### **Legal context**

48. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. In this instance the development plan comprises the London Plan (2021), the Core Strategy (2011), and the Saved Southwark Plan (2007). Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision-makers determining planning applications for development within conservation areas to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Section 66 of the Act also requires the local planning authority to pay special regard to the desirability of preserving listed buildings and their setting or any features of special architectural or historic interest which they possess.
49. There are also specific statutory duties in respect of the Public Sector Equalities Duty which are highlighted in the relevant sections below and in the overall assessment at the end of the report.

### **Planning policy and material considerations**

50. The statutory development plans for the borough comprise the London Plan (2021), Core Strategy (2011), and saved policies from the Southwark Plan (2007). The National Planning Policy Framework (2019) and emerging policies constitute material considerations but are not part of the statutory development plan. A list of policies and material considerations which are relevant to this application is provided at Appendix 4. The adopted and emerging planning policies which are particularly relevant to the consideration of this application

are highlighted in the Assessment section of the report below.

51. The site is located within the:
  - Central Activities Zone (CAZ)
  - Bankside, Borough and London Bridge Opportunity Area
  - Borough and Bankside district town centre
  - Bankside, Borough and London Bridge Strategic Cultural Area
  - Borough High Street Conservation Area
  - Borough, Bermondsey and Rivers archaeological priority zone
  - Air quality management area.
52. The site is located within flood zone 3 as identified by the Environment Agency flood map, which indicates a high probability of flooding, however it benefits from protection by the Thames Barrier.
53. There are grade II listed buildings adjacent and opposite the site:
  - nos. 1-11, 13, 21 and 23, 20-26 Park Street and the posts in front of 21 and 23;
  - the floral hall portico of Borough Market on Stoney Street;
  - Winchester Wharf on Clink Street; and
  - the Anchor public house and five posts outside it on Bank End.
54. The site is within the background of the LVMF view from Kenwood viewing gazebo to St Paul's Cathedral. The north-eastern corner of the site on the eastern side of the railway lines is also within the LVMF view from Parliament Hill summit to St Paul's Cathedral.
55. The site is not an allocated site in the adopted development plan, nor in the emerging New Southwark Plan.

## **ASSESSMENT**

### **Principle of the proposed development in terms of land use (and independent retail)**

#### **Relevant policy designations**

56. The application site is within the Central Activities Zone (CAZ). London Plan policy SD4 'The CAZ' seeks to promote and enhance the rich mix of strategic functions and local uses (in part A), to sustain and enhance the distinct environment and heritage of the CAZ (in part C), to promote and enhance the cultural, arts, entertainment, night-time economy and tourist functions (part E), and refers to supporting the vitality, viability, adaptation and diversification of CAZ retail clusters, including locally-oriented retail and related uses (part F). Strategic targets policy 2 of the Core Strategy sets out the vision of the CAZ with developments supporting the continued success of London as a world-class city as well as protecting and meeting the more local needs of the residential neighbourhoods.

57. The London Plan categorises the Bankside and Borough town centre as a “CAZ retail cluster”, which it considers to be “*significant mixed-use clusters with a predominant retail function and in terms of scale broadly comparable to Major or District centres in the London Plan town centre network*”. The London Plan acknowledges that wider trends in consumer expenditure and the emergence of multi-channel retailing present both challenges and opportunities for retailing within the CAZ, and gives support to adapting and diversifying the CAZ retail clusters.
58. The site is also within the Bankside, Borough and London Bridge Opportunity Area. London Plan policy SD1 ‘Opportunity areas’ seeks to encourage and deliver growth and regeneration potential for new homes and jobs along with investment and infrastructure. The vision for this opportunity area is to be “*home to a mix of uses providing high quality office accommodation alongside world-class retail, tourist, culture and entertainment facilities and public space*” in strategic targets policy 2 of the Core Strategy. Strategic policy 10 ‘Jobs and businesses’ of the Core Strategy protects existing business space and supports additional business (office) space within this opportunity area and the CAZ.
59. The site is within the Bankside and Borough designated town centre. This district town centre is mentioned in strategic policy 3 ‘Shopping, leisure and entertainment’ of the Core Strategy, with support for the provision of new shopping space which should include both food and non-food space, and aim to the meet the needs of local residents as well as visitors and businesses. Part 3 of the same policy seeks to protect and enhance town centres “*by ensuring that the scale of new development is appropriate to their role and character, that a balance of different uses, including shops, bars, restaurants and cafes is maintained, and that (the council) support the provision of markets*”.
60. As a town centre location, saved policy 1.7 ‘Development within town and local centres’ of the Southwark Plan is also relevant and states that within town centres the council “*will permit development providing a range of uses, including retail and services, leisure, entertainment and community, civic, cultural and tourism, residential and employment*” where nine criteria are met. These are considered later in this assessment. There is no protected shopping frontage in the application site.
61. For completeness, while the applications no longer seek to change the gallery use on the site, the site is within the strategic cultural area. This designation is referenced in strategic policy 10 of the Core Strategy (which protects creative, cultural and tourism facilities and encourages new facilities particularly in strategic cultural areas) and saved policy 1.11 of the Southwark Plan which protects existing facilities and sets criteria for new arts, culture and tourism facilities to be supported.
62. The part of the site to the north-east of the railway lines (along Stoney Street and a short frontage on Clink Street) is within the Thames Policy Area. Saved policy 3.29 ‘Development within the Thames Policy Area’ protects and enhances the Thames-side area, its historic character, appropriate waterside uses and requiring a particularly high standard and urban design. Core Strategy policy 12 states that the design of development in the Thames Policy

Area will be carefully managed to be sensitive to the many special qualities of the river.

63. The draft New Southwark Plan is not adopted policy but is a material consideration as it has reached its final stages towards adoption. The following draft NSP policies are relevant in terms of the revised proportion of Class A uses on the site:
- Draft policy P31 'Small shops' requires small shops (said to be all Class A) to be retained where at risk of displacement from a development, and for developments proposing 2,500sqm or more of retail space to provide at least 10% of the space as small shops (i.e. measuring less than 80sqm).
  - Draft policy P33 'Railway arches' requires development within railway arches to provide commercial activities including business uses (Class B), main town centre uses (Classes A1-A4) and community facilities (Class D) and to promote the delivery of the Low Line walking route by providing active frontages and safe, accessible spaces for pedestrians.
  - Draft policy P34 'Town and local centres' directs main town centre uses to town centres; requires the scale and nature to be appropriate to the role and catchment of the centre; retain Class A retail floorspace; not harm the amenity of surrounding occupiers nor result in a concentration of uses that harms the vitality and viability of the centre; provide an active use at ground floor in locations with high footfall and; large schemes for main town centre uses (1,000sqm or more) to provide free public toilets, public drinking fountains and public seating.
  - The AV.02 Bankside and Borough Area Vision states the area is at the heart of commercial and cultural life of the capital, a globally significant central London business district with the local economy notable for its diversity including arts, culture, specialist retail, small businesses and entertainment. It states that developments should continue to consolidate the area as part of central London, an international destination for business headquarters, small businesses, tourism and transportation that is entwined with historic communities with local services, open spaces and excellent transport links.

### Assessment from the Committee report on 15/AP/3066

64. Referring back to the report to Planning Committee in 2016 for the original application ref. 15/AP/3066, there are two paragraphs that are repeated here which summarised officers' assessment of that proposal in recommending the scheme for approval at that time. These two paragraphs are relevant to the changes the applicant is now seeking.
65. Paragraph 186 of the report to Planning Committee stated:

*"The closure of Vinopolis has allowed for a re-use and redevelopment of this large and enclosed site. The provision of office and retail uses would be appropriate given the town centre location and would support up to 1,100 new jobs as well as providing a diverse range of retail uses which would complement Borough Market. Importantly, the majority of the new retail floorspace would be secured as independent units, with a smaller proportion*

*secured as affordable retail space. Conditions would be attached limiting the amount of Class A3 and A4 uses, as well as opening times which should satisfactorily protect neighbouring amenities as well as the character of the area. Overall, the mix of uses would add to the vibrancy of the area and reinforce its character as a distinctive and interesting retail and visitor destination.”*

66. Paragraph 57 stated:

*“The applicant has also agreed to accept a condition to prevent high street supermarkets from occupying the retail spaces, again to protect the special character of the area. In order to protect the amenities of the area, it is recommended that a cap be placed on the amount of floorspace that could be used for class A3 and class A4 uses (restaurants and drinking establishments). A cap of 30% of the total floorspace has been agreed by the applicant, which is in line with the suggestion from the Borough Market Trustees. The applicant has also agreed a plan showing the location of the potential class A3 and A4 units, in order to allay the concerns of residents in Clink Street about the impact of these uses on residential amenity. Conditions will also be attached to control opening and servicing hours for the retail units, and to prevent units from being combined to create larger retail or bar formats which could affect the character of the area. Visitor management and service management plans would be required through the s106 agreement to address concerns expressed by residents and other neighbours, including the Borough Market Trustees, about the wider impacts of the scale of the development if it is not properly managed and controlled.”*

67. It must be noted that despite the wording in paragraph 57, the plan showing the location of the potential Class A3 and A4 units was described by the applicant as ‘illustrative’ and so not conditioned or included as a restriction on the permission subsequently issued. This drawing will be referred to later in this report as an indicative plan. The other conditions and section 106 obligations referenced in the paragraph were imposed on the permission.

68. Condition 28 limited the maximum percentage of Class A3 and A4 floorspace within the development. It was imposed by the council in order to protect the amenities of the area, and as noted in its reason, as set out below, the policies referred to relate to the environmental and amenity impacts (rather than policies relating to the principle of uses or town centres, for example):

*“Notwithstanding the details on the drawings hereby approved, at any time, no more than 30% of the retail floorspace at ground and first floor levels shall be used for Classes A3 (restaurants and cafes) and A4 (drinking establishments of the Town and Country Planning (Use Classes) Order (as amended).*

#### *Reason*

*In granting this permission the Local Planning Authority has had regard to the special circumstances of this case and wishes to have the opportunity of exercising control over concentrations of Class A3 and A4 uses in accordance with Strategic Policy 13 - High environmental standards of The Core Strategy 2011 and Saved Policy 3.2 Protection of Amenity of the Southwark Plan 2007 and the National Planning Policy Framework 2012.*

69. In submitting this minor material amendment application, the applicant has followed the correct process to propose varying the percentage restriction to the local planning authority. The reason for the condition forms the main focus of the assessment of the current application. The separate definition within the 2017 planning agreement for the businesses eligible to occupy the independent retail units would need to be amended through a deed of variation to the planning agreement, so again the applicant has followed the correct procedure to seek that amendment. The consideration of this request for variation follows later in this report.

### Proposed amendments to condition 28

70. The 2017 permission ref. 15/AP/3066 has been implemented, with construction across the site nearing completion. The permission approved Class A1, A3 and A4 uses across the ground and mezzanine levels, Class B1 office use in a new building, a Class D2 cinema mainly within the basement and a Class D2 gallery within an arch unit at the northern end of the site. Subsequent to the 2017 permission there have been non-material amendments and a minor material amendment agreed that have resulted in changes to the precise floor areas of the different uses. This application seeks to make variations to a 2019 planning permission (before the introduction of Class E nationwide in 2020 that moved A1, A3 and A4 uses into Class E(a), Class E(b) and sui generis uses respectively), and this report will refer mainly to the approved Use Classes. Planning policies, including those in the emerging New Southwark Plan refer to the Class A uses.
71. The approved scale and layout of the office, cinema and gallery uses of the implemented scheme remain, and the retail layout is also unchanged except for a small reduction of 141sqm in the GIA retail area (to provide fire escape corridors). The Class A retail use of the units across the ground and first floors, primarily within the railway arches would remain broadly as previously approved with this reduction, but it is the quantum of specific uses within Class A that the applicant is seeking to change by revising condition 28 to allow more Class A3 and A4 use (to increase from the approved maximum of 30% of the floorspace to 45%), and a corresponding reduction Class A1 use (from a minimum of 70% to a minimum of 55%). Using the applicant's submitted layout of how the A1 shops, A3 restaurants and A4 drinking establishments would be apportioned across the site's units and comparing it with the indicative drawing from the original application, this would result in 14 potential restaurants and bars, up from 11 restaurants and bars on the indicative drawing of the approved scheme (although it involves the two very largest units, and another unit that has been subdivided into two since the 2017 permission).
72. The proposed change needs to be seen in the broad context of planning changes made by government in the last year. The nation-wide changes to the Use Classes Order in 2020 that created a new Class E "Commercial, business and service" category mean that Class A1, A2, A3, B1, and many D1 uses now fall within the same broad Class E, and mean that it is no longer 'development' to move between these former use classes. This allows shops (formerly Class A1) to change to restaurants (formerly Class A3) and vice versa across the country without needing permission, unless there is a site-specific restriction.

This change in the government's approach to how retail, commercial, indoor sport and medical uses are now viewed as one planning use class should be borne in mind in the assessment of this application, as an indication of the expectation to allow diversification across town centres without requiring permission from the local planning authority. However, a planning application is needed for this Borough Yards site as the uses are specifically restricted by the 2017 planning permission.

73. The policies within the London Plan, Core Strategy and saved Southwark Plan policies regarding land uses mainly use the term "retail" to mean all Class A uses, rather than specifying A1 shops, A3 restaurants and cafes etc. They do not support specific uses within Class A retail functions over others within the CAZ, Opportunity Area or town centres, but support retail and shopping functions. The exception is for protected shopping frontages, where specific proportions of Class A1 are required to be maintained, with the reason stated as being to protect a mix of local services. As the site is not within a protected shopping frontage, the proportion of Class A1 shops is not specified in relevant planning policies.
74. The London Plan 2021 as the most recently adopted part of the development plan acknowledges the wider trends affecting retail across London (particularly online shopping) even before the pandemic. In part F of policy SD4 the London Plan gives support to adapting and diversifying CAZ retail clusters, including locally-oriented retail and related uses. The proposed change within the Class A range of uses (which would change 1,128sqm from shop use to A3 and A4) to allow more restaurants and bars would align with this policy.
75. The Core Strategy in policy strategic policy 3 'Shopping, leisure and entertainment' part 1) says that in the Bankside and Borough district town centre "*We will support the provision of new shopping space in Bankside, Borough and London Bridge. This should include both food and non-food space and aim to meet the needs of local residents, as well as visitors and businesses*". The approved redevelopment of the former Vinopolis site met this section of the town centres policy by providing new shopping space, in a range of Class A1, A3 and A4 uses, and would continue to do so with the revised proportions of these same uses. A minimum of 55% of the Class A floorspace would remain in shop use and so could provide shops that meet the shopping needs of local residents. The proposed mix within the site is also considered to comply with part 3) of the same policy which ensures "*that the scale of new development is appropriate to their role and character, that a balance of different uses, including shops, bars, restaurants and cafes is maintained*" by keeping a minimum of 55% of the floorspace as shops, and adding a restriction on the proportion of A4 drinking establishment use. The change to allow three more restaurant and drinking units (albeit two very large units) is considered not to result in a harmful balance of uses within the Borough Yards site, nor within the site's context, nor the wider town centre designation across Bankside and Borough.
76. Turning to the Southwark Plan, the proposal has been assessed against the nine criteria of saved policy 1.7 'Development within town and local centres' of the Southwark Plan as it is within a town centre. The proposed variation of condition is considered to comply with the policies for the following reasons:

- i) The scale and nature of the proposal is appropriate to the character and function of the centre and the catchment area it seeks to serve, by remaining in Class A use and a variety of unit sizes, with the continued restrictions to prevent a supermarket from occupying and requiring any merging of units to be approved by the council.
- ii) The proposal will not harm the vitality and viability of the centre. The change is sought by the applicant to respond to the market conditions where there has been interest from restaurant and drinking establishment operators wanting to move to the site, but fewer shop operators (see later in the assessment). The proposed change would make it more likely that this new development would be occupied, rather than risk empty units.
- iii) A mix of uses is provided both within the split of the Class A uses as well as the offices, gallery and cinema on the application site.
- iv) The floorspace approved to be Class A use would be retained with a very small reduction in GIA of 141sqm (representing 1.7% of the approved retail area) following the scheme's detailed design revisions.
- v) The impact on neighbour amenity is a later assessment topic, but in summary is found to be acceptable subject to securing the proposed additional mitigation measures.
- vi) The site is highly accessible by public transport with a PTAL of 6b (the highest).
- vii) The additional traffic and servicing requirements of changing from shops to restaurants and bars is considered later in the Assessment, but in summary is found to be acceptable.
- viii) The units across the site would maintain their frontages onto the surrounding streets or onto the new pedestrian routes through the site alongside and within the railway arches.
- ix) The proposal does not provide public toilets, nor was this a requirement of the 2017 permission.

77. There is policy support for responding to the wider retail market decline of A1 shopping space. There is no policy requirement for this site to provide a certain percentage of A1 shop use nor to discourage A3 and A4 uses in principle, and therefore the consideration of this application is focussed on the extent to which the restriction remains justified and an assessment of any harm which would arise from the changes.

78. The applicant has carried out its own study of uses in the area. The diagram below was provided as part of the supplementary Planning Statement. It shows the prevalence of restaurant and drinking establishments (shown in dark green), and Borough Market in the brighter green on the western side of Borough High Street and northern side of Southwark Street, and how the proposed 45% scenario of restaurants (in green) and bars (in yellow) on the application site would appear within this context. With the approved scheme in place (using the indicative plan) there would be 73 cafes, restaurants and bars in the area, with the proposed scheme in place this would rise to 76.



79. Officers consider that the proposed change to increase the proportion of restaurants and drinking establishments would be appropriate within the context of the site which is opposite or close to nearby properties that are in the same uses, and by concentrating the shops along the new routes through the site to cluster them and help focus their footfall. The mix of uses within the proposed variation of condition 28 would comply with the land uses policies in the development plan, but to refer back to the reason for condition 28, it is important that the environmental impacts and amenity impacts are considered against the policies referred to in the reason, and this is carried out in later stages of this assessment.
80. Officers have considered whether there are material considerations that should override the usual expectation that decisions are made in line with the development plan policies. In terms of draft policy P34 'Town and local centres' of the emerging New Southwark Plan, the proposed revisions would retain at least 55% Class A retail floorspace within this town centre location, and it would be of the scale previously approved by the original permission in a series of retail units of varying sizes. The change to increase the number of restaurant and drinking establishments on the site would not lead to a concentration that would harm the vitality and viability of the town centre. The impact upon the amenity of surrounding occupiers is set out in a later topic. Active ground floor uses are provided across the site. While no public toilets, drinking fountains or seating are proposed (as required by part 6 of this draft policy), these were not requirements of the approved scheme. Toilets would be provided by the individual occupiers.
81. It would accord with the AV02 area vision for Bankside and the Borough, which recognises the very central location within London and the diversity of the local economy by continuing to provide 60% of the retail space to smaller businesses, and providing the Low Line extension adjacent to the retained

railway arches with lively accessible spaces for retail. The proposal would accord with draft policy P33 'Railway arches' of the New Southwark Plan which allows for main town centre uses of Class A1-A4 within railway arches. The public route through the centre of the site as an extension of the Low Line would continue to be provided (flanked by shop units on either side for most of its length), in line with draft policy P51 'Low Line'.

82. Draft policy P36 'Protected shopping frontages' does not designate the site as a new protected shopping frontage and so is not a material consideration for this application, however officers note that the protected CAZ primary shopping frontages within the Bankside, Borough and London Bridge Opportunity Area are to be at least 40% Class A1 shop units, which is the lowest proportion for shops within the borough's primary shopping frontages. This suggests the proposal for the application site's A1 area is 15% above the minimum that the local planning authority seeks to protect in the protected primary shopping frontages near to the site.

### Marketing information

83. Aside from the policy support set out above, officers have given consideration to the marketing information submitted by the applicant to give the reasoning for the requested changes to condition 28, and to the definition of "small enterprises" in the section 106 agreement, based upon their experience of the market in recent years.

84. The applicant has provided quarterly marketing updates to the council since early 2019, as required by a planning obligation, to demonstrate the marketing undertaken to seek tenants for the independent retail units (which comprise a minimum of 60% of the Class A floorspace, and so applies to A3 and A4 uses as well as shops). Two short leasing updates were provided with the supplementary Planning Statement where the applicant has provided some background to why the minor material amendment application has been submitted, and the wider retail market changes.

85. The applicant's view is that:

*"The planning application to amend Condition 28 is to help mitigate the impact the current leasing market is having on leasing progress, to enable the successful opening of the scheme on time, and to mitigate the risk of high vacancy. The crux of our challenge is to convince retailers to commit to a new retail development in the most challenging of times. The area has an established food & beverage offer however it is a new retail destination and therefore perceived with some risk from occupiers. A false start for Borough Yards would take years to redeem."*

86. The applicant found that from 2017 onwards the retail sector was being affected by the well-reported impacts on high streets across the country such as: the rise of online shopping; brands reducing the number of stores; retailers going into administration; Brexit uncertainty; the growth of retail experiences with more restaurants and leisure to attract people; and retailers looking for more flexibility in leases. Despite these wider challenges in the retail sector, the applicant states it was confident that its leasing targets and timescales would

be met given the demand and interest in Borough Yards.

87. The impact of the Covid pandemic and lockdowns meant that London's retail leasing activity significantly slowed as businesses used their resources to keeping trading rather than opening new stores, and social distancing measures affected trading in the months that stores have allowed to be open. Central London saw reduced numbers of office workers and tourists, with a large amount of retail space available and little demand. The applicant has signed only one retail lease, for Paul Smith to move into unit 010 on a short-term lease. Other potential leases fell through for the applicant in 2020 as retailers have not been prepared to commit, citing to the applicant concerns of the return of office workers being needed to make Borough Yards a success, and concerns for retail after two more lockdowns. Another lease for a houseplant retailer for a small unit is on-going.
88. As lockdown restrictions and the pandemic ease, the applicant has found the letting market to be more difficult as pre-Covid trends have accelerated with more online shopping, more high street brands closing or moving online, resulting in an oversupply of retail space and reduced rents, and retailers finding it difficult to find funding for expansion. Retail demand has shrunk considerably. Retailers require more comfort from the applicant that Borough Yards will be a vibrant and successful scheme, more capital or a higher specification of fit out as they have difficulty sourcing funding, and wanting more flexible terms; the applicant has found this is particularly the case for independent retailers. The applicant sees their proposed scheme as a necessary adjustment to their approach to create the conditions that would encourage retailers to the site for the later phase of opening the site.
89. The applicant has found the food and beverage sector has been more resilient. Restaurants and bar operators have shown more interest in the external facing units with established footfall, and operators are willing to commit to Borough Yards now. The applicant is in legal negotiations for nine units, with the association with the established Borough Market food destination making a better link than other shopping types, and should attract shoppers, office workers and tourists to the site.
90. The applicant considers that progress with shop tenants is not at the pace necessary to ensure that Borough Yards opens with fully let retail units at the end of 2021. The supporting information states "*Opening a partially let scheme would not only discourage the current retail interest we have from committing but also would disappoint the consumer if we have a limited number of stores and restaurants open in a new retail destination. It is extremely difficult for new destinations to recover from a false start in the minds of the general public.*"
91. The applicant aims to open the Borough Yards site in two phases, with most of the restaurant units in late 2021 (focusing on Stoney Street, Bank End and Soap Yard, having secured tenants in summer 2021) and then the retail in spring 2022 (mainly along Dirty Lane within the site), and hopes that by opening the restaurants first it will "promote confidence" in the Borough Yards project, establish footfall, act as a catalyst to secure more retail lettings, and prevent vacant units. By focusing the retail in the centre of the site, the applicant aims to create a critical mass of shops, and allowing retailers to group

together in this pedestrianised new street. These occupiers would be in addition to the new cinema (Everyman) and office tenants that add to the mix of uses on the site.

92. The above sections summarise the applicant's reasons for the current application and is based on the applicant's reporting of the marking interest it has received. The decline of shops has been well reported, with high streets and town centres needing to diversify to attract people in, with restaurants and bars as a more leisure element within the retail use class playing a key role in this. The last year has impacted significantly on shops and has been unfortunately timed with the intended opening of this large development in a prominent part of the borough. The applicant's concern that without a successful first phase of opening to generate interest and business for the first units, the rest of the site may struggle to attract tenants for the second phase within the central part of the site appears reasonable in the circumstances.

### Proposed change to independent retail criteria

93. The 2017 section 106 agreement requires a minimum of 60% of the Class A retail floorspace to be provided for and made available to small enterprises. It therefore applies across all Class A uses, not only to A1 shops. The 60% minimum includes the affordable independent retail units which are to be 15% of the retail floorspace, and provided for 40 years from the first letting. The applicant is not seeking to change these requirements as a result of the change in the proportion of shops, restaurants and bars, so the requirements for independent retail units and affordable retail units will continue to apply. What the applicant does want to change is the definition of "small enterprise" to allow flexibility for companies with more existing stores to move to the site.
94. The proposed change from small enterprises that operate no more than 3 stores to those with no more than 10 stores would allow larger businesses to move into Borough Yards (into the 60% of the Class A retail floorspace required to be independent retail units) and broaden the range of companies eligible to occupy the independent units in Borough Yards. There is no clear definition of an "independent" or "small enterprise" in terms of retail use in the development plan nor the NSP. The intention of the restriction was to avoid the site being dominated by "high street" brands and maintain the character of the Borough Market area as one with a distinctive retail offer. The expanded definition would allow businesses with some wider brand recognition to trade from the independent units, however, the limit of 10 current outlets would still exclude larger chains or national brands. On balance, and recognising that 10 existing outlets is an upper limit and many new occupiers could be much smaller or new traders, it is considered the limit would still maintain a diversity of retailers on the site and retain the local character. The proposed amendment to the definition is therefore considered to be acceptable.
95. The Core Strategy policy 3 refers to new shopping space within the Bankside and Borough district centre "*should include both food and non-food space and aim to meet the needs of local residents, as well as visitors and businesses*". The change to the definition of small enterprise would not necessarily affect whether a business is food or non-food retail, and given the economic impact of the pandemic would allow a wider range of businesses to take on the units

in this new development, and reduce the risk of having empty units. The proposal is considered to be consistent with this Core Strategy policy.

96. In terms of draft policy P31 of the New Southwark Plan, the small shops in the approved layout would be retained with the units (under 80sqm) of the proposed layout comprising 10.6% of the Class A retail floorspace. The proposal would accord with this draft policy as a material consideration.

### Additional restrictions to be added to condition 28

97. Condition 28 limits the amount of Class A floor space that can be used for restaurant (Class A3) and drinking uses (Class A4) within the application site, but it does not restrict the proportion of A3 or A4 within that 30% limit, nor the number of units, nor their locations:
- It does not restrict how much of that 30% total retail floor space can be used by drinking establishments or restaurants, i.e. all 30% could be used for bars with 0% as restaurant use or vice versa, and still comply with the condition.
  - The condition does not restrict the location of the restaurant and drinking uses to particular units. While a drawing was shared with the local community at the time of the Planning Committee for the 15/AP/3066 application which showed the suggested locations and further potential locations of restaurants and drinking establishments, and was referenced in the report to the Committee, this drawing was supplied for illustrative purposes only and not referenced on the decision notice nor made the subject of a condition that would restrict or fix the use of the units.
  - Condition 28 does not restrict how many individual restaurants or drinking establishments there could be within the 30% floorspace. With a large range of unit sizes (from 12.5sqm to 767sqm) the 30% floorspace maximum could be accommodated across the site in numerous ways, without the council controlling which unit is used for which use.
98. Therefore the 15/AP/3066 permission leaves the applicant with flexibility in terms of the total number of restaurants and drinking establishments, and their locations up to the overall cap of 30% of retail area. This is an important point when considering the neighbour amenity impacts later in this Assessment, and is the applicant's fall-back position should the current applications be refused.
99. The submitted floorplan drawing that the applicant is proposing be included in the revised condition 28 shows how the units across the site can be arranged to fit within the proposed restrictions, with 55.3% shops, 40.5% restaurants and 4.2% drinking establishments (including one unit on Stoney Street).
100. The proposed amendments to condition 28 would allow the council more control over the number, floorspace area and location of the drinking establishments than the existing condition wording. This, as set out in more detail in the neighbour amenity section, gives additional controls which balance the larger overall proportion of A3 and A4 uses.

## Conclusion on land use

101. Class A uses are supported in principle within the CAZ, Opportunity Area and town centre locations such as this application site. The proportion of A1 shops compared with other Class A uses is not set out in policies (other than for protected shopping frontages), but most instead refer to achieving a mix or balance of town centre/retail uses. The proposal seeks to change approximately 1,128sqm of approved Class A floorspace from shop use to restaurants and bar uses. The proposed variation of condition 28 would still achieve a mix of uses and retail types across the site, which is considered appropriate for this site, its context and character of the area, for the wider Bankside and Borough town centre, and noting the encouragement within the London Plan for diversifying retail centres within the CAZ. The office, gallery and cinema uses within the site would remain as approved. In principle, the increased proportion of restaurant and bar use on the site, and resulting decrease in shop floorspace is considered to comply with land use policies and the material consideration of the New Southwark Plan, with shop floorspace retaining a majority percentage. The consideration of the resulting impacts on neighbour amenity and the environment (with reference to the policies included in the reason for the imposition of condition 28) is set out in later topic sections.

## **Design, including layout, building heights, massing and heritage impact**

102. The NPPF stresses the importance of good design, which is a key aspect of sustainable development, and the requirement to conserve and enhance the historic environment. Policy SP12 of the Core strategy states that “Development will achieve the highest possible standards of design for buildings and public spaces to help create attractive and distinctive places which are safe, easy to get around and a pleasure to be in.” Saved policies 3.12, 3.13, 3.15 and 3.16 of the Southwark Plan require high quality developments, that preserve or enhance the historic character of buildings or areas, including conservation areas.

## Site context

103. The townscape and heritage context of the site remains very similar to that of the original application. Work is well advanced on site to restore the railway arches, open up the routes through, construct the new Park Street office building behind the retained Thames House façade, and the new 16 Park Street retail building. The site faces onto a mix of neighbouring sites in residential, retail and office use, and close to Borough Market to the south-east. The southern part of the site is within the Borough High Street Conservation Area.
104. The site sits within the background assessment area for protected view 3A.1 from Kenwood viewing gazebo to St Paul’s Cathedral, and the north-eastern corner is within the LVMF view from Parliament Hill summit to St Paul’s Cathedral. The site is within the Southwark Bridge river prospect view 12 of the London View Management Framework. The heritage assets in the area are considered below.

## Site layout

105. The site layout remains the same as previously approved with the retained railway arches, new Park Street buildings, and public routes across the site that would form part of the Low Line to open up a site that was not publicly accessible previously. The 2016 report to Planning Committee concluded that *“the proposed site layout and arrangement of buildings within the site would improve accessibility as well as creating active frontages which would enhance the pedestrian environment”*. This remains with the current proposal.

## Height, scale and massing

106. The heights, scale and massing of the buildings and retained arches are not changing from those of the approved scheme. The revisions to the floor areas of the retail units are internal to the site and so no raise issues of height, scale or massing.

## Architectural design and materials

107. Similarly, the proposed changes would not affect the appearance or architecture of the office building under construction nor the retained arches. In this regard the proposal would not affect the built environment of the site or its townscape context.

## Landscaping, trees and urban greening

108. The only change to the approved landscaping would be the addition of a gate on Park Street. This would not significantly change the overall landscaping scheme of the site which is subject to condition 16 of the original permission, along with the green roof details for condition 15.

## Designing out crime

109. Saved policy 3.14 ‘Designing out crime’ of the Southwark Plan requires developments to be designed to improve community safety and crime prevention. Condition 10 on the original permission required further details of the security measures to be incorporated in the development, and has been discharged.
110. Many of the objections received referred to the increase in anti-social behaviour and crime for the increase in restaurant and drinking establishment uses.
111. The Met Police were consulted on the application and other than passing the application to the council’s Licensing team, the Police had no comment to make with regards to security and Secured By Design measures. The security standards and requirements previously discussed and agreed with the development team for this project would apply to the proposed amendment, and condition 10 would become a compliance condition.

## Heritage impacts

112. The site is within the Borough High Street Conservation Area at its southern end and immediately adjacent to it on the eastern side. The Borough High Street Conservation Area Appraisal shows the site is within and adjacent to sub area 3 which extends from the riverside down to the east-west railway lines. The appraisal in paragraph 1.2.7 notes for this sub-area:

*“At the northern end of Borough High Street, movement of people and traffic dominates the environment, related especially to London Bridge, the junctions of Southwark Street and Tooley Street (Duke Street Hill) and London Bridge Station. By comparison, the environs of the Cathedral, below the busy level of London Bridge, are astonishingly quiet. Again in strong contrast, the narrow wharfside character of Clink Street lies immediately beside the Cathedral: it has now become a commercialised tourist area, popularising its sometimes grim social and industrial past. The narrow streets of the old warehouse area extend into the bustling, robust environment of Borough Market: there can be few markets left with such a powerful townscape form”.*

113. In describing the character and appearance of the area for sub-area 3, Borough Market is referenced as contributing to the character of the streets as follows:

*“The functioning market influences every aspect of the physical character of the area between Southwark Street and Borough High Street. It contributes fundamentally to the special quality of Park Street, Stoney Street and Bedale Street. It generates the atmosphere of the pubs, the early morning cafés, the lock-up shop-fronts and street activity. Only this active market function can truly preserve its unique structures and setting and the character they create.”*

114. Similarly the character and appearance of Park Street is noted in paragraph 3.4.15 of the appraisal:

*“West of the market, the angular street pattern continues into Stoney Street and Park Street, and Park Street is crossed by the western arc of the railway viaduct. On the south side, Park Street has a particularly good line of early 19th century houses (designed by Henry Rose, 1831), converted later in the 19th century to shops: these include some good traditional shop fronts. The strong line of the three-storey façade turns sharply and passes below the railway, closing the westward view, and the viaduct completes the enclosure of the street space. Lively retail businesses related to the market occupy shops on both sides of the street, and the corner buildings onto Stoney Street are particularly strong (no. 9 is the Market Porter pub, brightly decorated and decked out in flowering hanging baskets).”*

115. The site is within a mixed use area that includes residential (a variety of houses, flats, converted wharf buildings and new developments) and a substantial proportion of commercial uses, shops, restaurants, bars and pubs including Borough Market, along with offices, Clink Prison Museum and education uses. These uses are noted in the sections of the conservation area appraisal as adding to the special quality of the streets, with lively retail businesses. The prevalence of other restaurant and drinking establishment

uses within the area, including this sub-area of the much larger conservation area, is indicated by the applicant's diagram included at paragraph 78 above. The change within the Class A use category to add more restaurants and drinking establishments on the site is considered to preserve the character and appearance of this part of the Borough High Street Conservation Area, and cause no harm.

116. As the only change to the physical appearance of the approved development, details of the additional gate would be required by a proposed condition to ensure they are appropriate for this townscape and conservation area, and setting of the grade II listed buildings on the opposite side of Park Street.
117. Objection comments refer to the increased number of chain brands on the site harming the character of the area with its independent retailers; the planning obligation requirements regarding independent retail units to a minimum of 60% of the Class A floorspace would continue to apply, and for the reasons set out above the change to allow larger businesses (that have up to 10 stores) is considered on balance to be acceptable. These would remain relatively small brands and would not allow the larger high street retailers to take on more than 40% of the floorspace. Supermarkets are not allowed by an existing condition and planning obligation which would continue to apply.
118. As well as the physical appearance of a property or the area, the character of a property or an area is influenced by the type of the occupying businesses. Once planning permission is granted for the land use, and in the case of this site the requirement for independent retail units, the local planning authority cannot control the specific occupier or business that moves into a unit, how "upmarket", "high-end" or "tasteful" (or not) it is. That would be for the owner of the properties to consider when offering leases to new tenants. The applicant has not provided details of the potential occupiers in its planning application, although in the Licensing Sub-Committee meeting the applicant referred to Dishoom, Vinoteca, Happiness Forgets, Pizza Pilgrims, Burger and Beyond and Barrafina (who have submitted a separate application to merge three units). Other than restricting the proportion of use classes, and continuing to require independent retail units to be let to relatively small enterprises, the local planning authority cannot further control the chosen tenants to curate the development.
119. Allowing more units to be in restaurant and bar use within this mixed use site (that has permission for Class A uses) and with no significant changes to the external appearance of the development (with the exception of adding a gate with further details to be conditioned), is considered to cause no harm to the setting of surrounding grade II listed buildings.
120. The application site is within the background of the LVMF view from Kenwood viewing gazebo to St Paul's Cathedral, and the north-eastern corner is within the LVMF view from Parliament Hill summit to St Paul's Cathedral. It is also visible from the Southwark Bridge river prospect view 12 of the London View Management Framework. As no changes are proposed to the height or external appearance of the approved scheme, the proposal would have no impact on these LVMF views.

## **Impact of proposed development on amenity of adjoining occupiers and surrounding area**

121. Core Strategy strategic policy 13 'High environmental standards' in part 8 refers to setting high standards and supporting measures for reducing air, land, water, noise and light pollution, avoiding amenity and environmental problems that affect the enjoyment of the environment in we live and work. This policy is referenced in the reason for condition 28. Saved policy 3.2 'Protection of amenity' of Southwark Plan is also referred to in the condition's reason. This policy states that permission will not be granted where it would cause loss of amenity including disturbance from noise, to present and future occupiers in the surrounding area. London Plan policy D14 'Noise' requires proposal to avoid significant adverse noise impacts on health and quality of life, mitigate and minimise the adverse impacts of noise in the vicinity of new development.

### Outlook and privacy

122. The site is very close to residential properties on the opposite sides of Stoney Street (5-6m) and Clink Street (8m) and immediately adjacent to nos 20-26 and 12-14 Park Street.
123. The relationship between the retail units on the site and the surrounding properties would remain as there are no proposed amendments to windows or to the form of the approved buildings that are under construction. Condition 26 of the 2017 permission requires the Stoney Street railway arches on the first floor elevation to be obscure glazed and fixed shut in order to protect the privacy and amenity of the neighbouring properties on the eastern side of Stoney Street. This requirement would remain and is not sought to be varied by the applicant, who has acknowledged that the upper windows are currently clear glazed. They have confirmed that these windows will be obscured prior to occupation. The condition would be reimposed on any new permission. A condition of the licence for unit 192A is that the first floor flat roof area is not used as a terrace; the applicant has agreed for this to be an additional condition of any new permission.

### Daylight, sunlight and overshadowing

124. The only change to the external appearance of the scheme is the gate to the Park Street entrance. While no detail of its location, height or design has been provided, with the entrance being alongside the 5-storey Park Street building and opposite the Redcross Way highway it is unlikely to harm neighbour amenity. Its precise siting, height and form would need to be secured by an additional condition.

### Odour

125. The higher proportion of restaurants and bars would likely result in more commercial kitchens on the site. Condition 21 relating to commercial kitchen extract equipment would be reimposed on any new permission to allow the

environmental protection team to consider the submitted technical details for each restaurant unit, and prevent significant odour issues to surrounding properties.

### Noise and vibration

126. The objections received refer to the harm to residential amenity from additional noise - particularly late at night - by including more food and drinking uses on the site, from the kitchen equipment, music and the comings and goings of people and vehicles on the surrounding streets, and antisocial behaviour, which the approved shop use would not cause.
127. The proposed plan to control the location of the A3 and A4 units shows all but two to be located on the external-facing sides of the application site, opening onto Stoney Street, Park Street and Bank End. This means, with the exception of a couple that open onto Soap Yard, the proposed units would face onto neighbouring properties. The neighbouring properties are within a central location, near the railway viaducts and road. As set out in the many objections received they currently experience levels of noise and anti-social behaviour from visitors to the area's shops, food and drink outlets, particularly at weekends.
128. The approved 2017 scheme (and its later approved amendments) came with an acknowledged associated level of noise and disturbance for nearby residential properties. The mitigation measures secured in the original permission sought to reduce these to an acceptable level such as conditioning: the opening hours; servicing hours; the proportion of retail floorspace to be A3 and A4 uses; and the planning obligation requirement for a visitor management plan. Condition 28 of the 2017 permission restricts the overall proportion of unit floorspace that can be used by A3 and A4, but does not restrict where on the site these uses could go; the restaurants and bars can be located in any retail unit of the scheme at ground and mezzanine levels, and comply with the permission up to the site-wide cap of 30%. The 30% floorspace cap of the original permission allows for all of the Stoney Street units to be occupied as restaurants and drinking establishments.
129. As the permission does not restrict the use of the retail units within Class A aside from the site-wide cap, it is not possible to make a direct comparison in terms of the number of units in any particular use or whether any particular unit would turn from a shop to a restaurant or bar. In the current submission, the applicant has compared the indicative plan of the approved scheme to the current plan. The two diagrams are set out below. While comparing them provides an indication of the changes, with multiple combinations of how the 30% cap could be accommodated in the approved scheme it cannot give definitive unit numbers or locations.



Indicative drawing from the 15/AP/3066 application showing restaurants in green, “potential A3 units” in turquoise, shops in light blue and gallery in dark blue. The office entrances are shown in pink, the cinema entrance in orange. NB the left-hand most unit comprises two units (192a and 192) on the approved floorplans, but the division is not shown on the drawing above.



Submitted drawing for current application ref. 21/AP/0507 showing restaurants in green, drinking establishments in yellow.

130. The main changes are at the northern end of Stoney Street (the bottom right hand side of the diagrams) where a row of restaurants is proposed, including changing two large units that were indicated as shops into restaurants. These units face onto residential properties on the eastern side of Stoney Street. Some of these residential neighbours are sited above a restaurant and a coffee

shop, and look onto another restaurant at the corner of Clink Street and Stoney Street. One other additional restaurant unit is proposed on Bank End (at the top right hand corner of the drawings) opposite a hotel and The Anchor pub. A bar unit is proposed on Park Street (at the left hand side of the drawings) which was previously indicated to be a restaurant, next to and opposite residential properties, and at the end of a section of Park Street that contains shops, a coffee shop and the Market Porter pub. Within the centre of the site, the units are all to become shops.

131. The comparison indicates the number of restaurants increasing from the indicative 11 shown in green, to 14 in the current scheme, and a decrease in the number of A1 shop units from 41 to 39. The numbers do not completely align as one indicative restaurant unit (unit 229) was agreed to be subdivided in two since the 2017 permission to be now a restaurant and a shop. The proposed units range in size, with two of the “additional” proposed restaurant units being the largest on the site; this is an important caveat when comparing the number of units. Two units on Stoney Street were indicated in turquoise as “potential A3 units” that might have been used as restaurants if other units were changed to shops to stay within the site-wide limit. These two potential units were in addition to two A3 units to give a total of four non-retail units on this road in the indicative drawing, compared with the six now proposed (five restaurants, 1 bar).
132. With the additional restaurant and drinking establishment floorspace now proposed in the identified units, the applicant has proposed additional mitigation measures on top of those secured in the 2017 permission and section 106 agreement which would continue to apply as well as the revised condition 28.
  1. Closing the gates within the site at 10pm, including a new gate at the Park Street access next to the railway lines. After 10pm this would leave only the Soap Yard access onto the southern end of Stoney Street open for the central part of the site, and the majority of the individual units that open directly onto the streets. This would assist in stopping some people working south through to Park Street next to Thames House and instead direct them through the southern end of Stoney Street towards Borough Market (in the direction of the stations and main Borough High Street and Southwark Street roads). The majority of the proposed restaurant and bar units would still open onto the surrounding streets (public highways).
  2. The applicant will require all tenants to comply with a “Tenants Handbook”, which will be appended to the Visitor Management Plan that is required by the section 106 agreement. The Tenants Handbook will include controls relating to the management of deliveries (including the hours restricted by a planning condition), the role of the site management team in escorting any drunken visitors or people loitering, the management’s ability to ban customers who continually cause trouble within the site. It would also detail:
    - A postcode to give patrons for booking taxis to direct taxis to the Soap Yard entrance on Stoney Street.

- Require occupiers to display a sign within their unit which asks patrons to leave quietly and respect the surrounding residents.
- Prohibit outdoor drinking, unless authorised by appropriate licencing.
- Reflect the dispersal policy within the licensing applications.

3. Outdoor dining would be controlled through the licenses, to be only in the areas shown in Bank End and Soap Yard up to 10pm.
4. Security guards on the application site will be SIA accredited. These guards would stop people loitering, ask disruptive visitors to leave, usher smokers towards the dedicated area in Soap Yard. The applicant has set out their intended rota but this would be reviewed after a period of operation. There will be three guards to help manage the deliveries in the mornings, two guards on patrol until 18:30 and minimum of two guards on patrol from 18:30 to 00:30. The bars will be required to have their own SIA accredited security guard, from 21:00 to 00:30 on Thursdays, Fridays and Saturdays, and the applicant will undertake a risk assessment for whether there is the need for guards at other times. The site's CCTV would be monitored 24hrs 7 days a week to look for issues. Each tenant and the security team will assist with the overall site dispersal at the end of each day, asking people to leave quietly. There is an estate manager for the site, with part of the role ensuring the site is safe by working with the security guards to prepare a plan to minimise disturbance in the area, acting as a point of contact for residents, and keeping a complaints record. If multiple complaints are received for one occupier, an action plan will be created.

133. If the minor material amendment application is approved, some of these mitigation measures would be secured in an updated Visitor Management Plan (which would have the Tenants Handbook appended) and updated Site Wide Servicing Management Plan pursuant to planning obligations. Others would be addressed through the licensing conditions instead.

134. The applicant submitted 14 licensing applications for the restaurant and bars uses on the site. The licensing regime is separate to planning controls. It is another form of regulation that the council has in addition to its planning enforcement powers. Licences for the site's restaurants and bars were approved by the Licensing Sub-Committee in June 2021. The licences include several conditions as licensing mitigation measures including: the hours of operation; hours of takeaways; no customers drinking alcohol outside units on the streets; requiring lobbies to the two largest restaurant units; taxi marshalling; management of people at closing time with security staff. If a tenant is found to be not operating the restaurant or bar in accordance with the licence, then the licence can be reviewed with revised conditions put on or revoked. The applicant will set up a residents forum and provide a residents liaison contact to report issues.

135. A noise impact statement was provided as part of the Planning Statement addendum. This is based upon an increase from the 11 restaurants suggested on the indicative drawing to the 14 restaurants and bars now shown. The document reads as more of a review of potential noise issues and how they would be managed through conditions or management procedures, and less of

an assessment. The noise impact statement considers five principal areas of noise impact associated with food and beverage uses:

1. Noise “break-out” from units including general customer conversational noise and amplified music;
2. Noise associated with the use of external areas used ancillary to F&B units (e.g. for outside dining, drinking or smoking);
3. Noise associated with mechanical plant (e.g. kitchen extract systems);
4. Noise associated with servicing activities;
5. Noise associated with general comings and goings (including pedestrian activity and associated vehicle movements, taxis, etc.)

136. Taking each in turn:

1 - The drinking establishment units were indicated to be restaurant use on the indicative drawing, and would have the same opening hours. The applicant concludes the potential noise impact from these A4 units (noise break out) would not give rise to any greater noise impact that considered during the determination of the original application where the noise breakout from the A3 units would have been mitigated through appropriate management and/or engineering controls, as required by licensing conditions.

137. 2 – Three external seating areas are shown for dining and smoking (two in Soap Yard, one on Bank End), and one more area in Clink Yard for smoking. They would not be used for standing drinking. Use of these areas would end at 10pm, as required in the licences.

138. 3 – Conditions on the original permission provide controls and restrictions from plant noise and kitchen extract. These conditions would be carried over to any new permission and would apply to any additional kitchen extract equipment needed for the additional restaurant and bar units.

139. 4 – The applicant estimates the increase from 30% to 45% would result in an additional 8 servicing deliveries per day in a “worst case” scenario, which is a 10% increased compared with the approved scheme. The applicant’s noise assessment considers this to result in a negligible increase in servicing noise. The servicing arrangements on the site would remain the same as approved, and the condition regarding the hours of delivery and servicing would continue to apply on any new decision.

140. 5 – In terms of customer noise, appendix L of the supplementary Planning Statement addendum estimates the additional number of people who would visit the site with the increased proportion of restaurants and drinking establishments. These figures are then compared with the numbers of daily visitors to the area established by surveys undertaken by the Trustees of Borough Market in November 2019 as a baseline. The applicant’s estimates for the total capacity of the restaurants and bars at any one time (based on the fire capacity for customers and staff of the units identified as restaurants and bars) would increase from an estimate of 1,740 people with the approved 30% cap up to an estimated 2,756 with the proposed 45% cap, i.e. an additional 1,016 people at any time. This is likely to be an overestimate of the approved and proposed capacity as the fire capacity is likely to be higher than the number of

covers these businesses will operate at. Assuming full occupation of all these units three times during the day and twice at night, this would result in the following estimates of additional visitors:

<b>Time of day</b>	<b>Total visitors to Borough Market area from a November 2019 survey</b>	<b>Predicted visitors with 30% F&amp;B</b>	<b>Predicted visitors with 45% F&amp;B</b>	<b>Increase between 30% and 45% scenarios (as a percentage of 2019 visitor numbers)</b>
Friday 29 November daytime	90,863	96,083	99,131	3,048 (3.4%)
Friday 29 November evening	16,082	19,562	21,594	2,032 (12.6%)
Saturday 30 November daytime	127,191	132,411	135,459	3,048 (2.4%)

141. These numbers assume that the additional visitors are not making linked trips to visit other parts of the application site or the Borough Market area, although in practice some visitors are likely to go to other shops or attractions. The applicant suggests these conservative assumptions would result in an average additional 339 visitors per hour to the site (as an increase from 580 people per hour to 919 people per hour) due to the increased proportion of restaurants and bars. The additional restaurant and bar capacity represents an increase in hourly numbers of 2-3% during the Friday daytime, and a 13% increase on Friday evenings. No comparison was provided by the applicant for Saturday evening, but this is likely to be of a similar order to the Friday night increase.
142. The applicant's noise impact assessment considers this to equate to a sound level increase from people of 0.1dB on Friday daytime and 0.5dB on Friday evening. As the applicant's transport statement does not predict a material increase in expected taxi movements, the noise consultant concludes that any additional taxi movements should not have any significant additional adverse noise impact. Therefore the applicant concludes that the proposed change to the proportion of restaurants and bars should not give rise to *"any additional, unacceptable adverse noise impact on existing neighbouring dwellings in the vicinity of the site"*.
143. When compared with the flexibility allowed by the 2017 permission, officers consider that the change of the maximum cap from 30% to 45% restaurants and bars would not to cause significant additional harm to the amenity of surrounding properties providing the extra mitigation measures are secured, for the following reasons. The reader is reminded that:
- a direct comparison between the approved restaurant and bar units and those now proposed is not possible, a comparison of the new drawing and the indicative plan can be used as a guide for where the additional

restaurant and bar floorspace is proposed.

- the 2017 permission did not restrict the proportion of drinking establishments within the 30% cap.

144. The site and its context are located within a very central part of London (with the associated planning policy designations), and in a mixed use area with rail services between London Bridge and Cannon Street crossing above the site. The objections received from local residents refer to the existing problems and disturbance from people at all times of day, drunken and sometimes violent behaviour that requires regular attendance by the police, and weekly street cleaning. With the application site currently a construction site, its occupation for the approved scheme (office, shops, restaurants, bars, gallery and cinema) will increase the numbers of people in the area, but also add to the surveillance of surrounding streets and estate management/staff monitoring the site. The proposed changes from the indicative drawing are considered for three areas of the site as follows.
145. The restaurant units in a row on Bank End would be opposite a hotel, and close to The Anchor pub and two existing restaurants within the adjacent railway arches (Wagamamas and Nandos). There would be one more restaurant than suggested by the indicative drawing. Licensing controls apply to the use of the outdoor dining area. Subject to closing at midnight and the other conditions of the original permission being carried over, they are considered not to cause additional harm to the amenity of the area.
146. The units within the new Park Street building and two adjacent railway arches would change from the indicated three restaurants, to be two restaurants and a bar in the current scheme. A third current planning application (21/AP/1393) by a different applicant seeks the council's consent pursuant to condition 30 to merge these three units to share toilet facilities, kitchen, staff rooms and storage. The change of one unit from a suggested restaurant on the indicative drawing to a bar, which would be lawfully used as such within the approved scheme and would be subject to the re-imposed planning conditions is not considered to create noise and disturbance that would cause significant harm to the amenity of adjacent and nearby residential properties.
147. The five Stoney Street railway arch units (207, 208, 213, 215 and 219) could each be occupied as a restaurant or bar as approved uses in the original permission. The five units could all be occupied as restaurants along with unit 205 as a bar within the existing 30% floorspace cap on restaurants and bars (at 28.3% of the approved Class A floorspace) and be open until midnight. This could be the applicant's fall back position if the current application is refused and has to be a material consideration in the assessment of the current scheme. When compared with the current construction site that has been vacant for a number of years, the introduction of shops, restaurants and a bar to Stoney Street would bring an increased level of noise and disturbance to the nearby residential units. The two largest units (units 215 and 219) were indicated to be shops in the indicative drawing and would now be restaurants that together could accommodate hundreds of people (according to the licensing figures, maximum capacity for 420). The amount of noise and disturbance from the proposed restaurant and bar uses of these units is considered not to be significantly more harmful when compared with what

might occur from the implemented permission and its flexibility to locate food and beverage uses. The licensing conditions which require the addition of lobbies to units 215 and 219, that the bifold doors be closed (except for access) after 10pm, and no takeaway collections after 10pm would add further non-planning controls to the operation of the restaurants and bars. An additional condition regarding noise levels of amplified and non-amplified music and speech is proposed, which was suggested by the environmental protection team (EPT) as a further planning restriction.

148. Many of the objections received refer to increased anti-social behaviour in the streets around the site when restaurants and bars close. The police have not raised objection to the minor material amendment application on this basis.
149. The suggested revisions to condition 28 would add further restrictions to limit the impact of the changed proportion of restaurants and drinking establishments. The maximum of one bar on Stoney Street is a welcomed additional restriction that was not included on the original permission. The bar unit shown (unit 205) is towards the southern end of the row of arches, furthest from the Stoney Street northern neighbours, and with the smallest frontage which would assist in protecting neighbour amenity. One other drinking establishment is shown in unit 192A at the southern end of the site (which ties in with the third current application to merge units for Barrafinna) that was shown on the indicative plan to be a restaurant. Together these two units take up 4% of the Class A floorspace and so sit well within the suggested 10% maximum cap on drinking establishments. When compared with the potential for the maximum of 30% of the Class A floorspace being used as bars, in any of the retail units, the proposed modifications to condition 28 in terms of drinking establishment use are acceptable in neighbour amenity terms, and would give the council control on any future revisions to the units in drinking establishment use.

### Conclusion on neighbour amenity

150. The proposed minor material amendments would not cause impacts to the outlook, privacy, daylight and sunlight of surrounding properties. The additional kitchen equipment to serve the restaurant units would continue to be the subject of re-imposed conditions relating to kitchen extract equipment and plant noise to reduce noise and odour issues. The original permission allowed the applicant a lot of flexibility in the number and location of restaurant and bar units. The likely noise and disturbance from the greater proportion of restaurant and bar use, and potential increase in antisocial behaviour in the surrounding streets has been considered, and found to not result in significant additional harm to the amenity of neighbouring properties to warrant the refusal of the application. EPT had concerns over the increase of A3 and A4 units and potential for additional cumulative impact on residential amenity. Having regard to the premises licences granted with a suite of conditions to address noise and prevention of public nuisance objectives, EPT has suggested an additional planning condition regarding noise levels on any planning permission is needed. This additional condition has been included in the recommendation. The Met Police raise no objection.
151. The proposed revisions to condition 28 are considered to be acceptable in the

context of the character and location of the site and with the benefit of the additional restrictions to be added into a revised condition 28 and additional mitigation measures. The recent licences granted for the restaurant and bars include additional controls beyond those of the planning decisions.

152. The revisions proposed by the minor material amendment application are considered to comply with saved policy 3.2 'Protection of amenity' of the Southwark Plan and Core Strategy policy 13 'High environmental standards' part 8 in particular which refers to avoiding amenity problems. These two policies are those referred to in the reason for condition 28. The proposal is considered to also comply with part v of saved policy 1.7 'Development within town and local centres' of the Southwark Plan that relates to neighbour amenity impacts, and with London Plan policy D14 'Noise'.

## **Transport and highways**

153. London Plan policies on transport seek to ensure developments are integrated with current and planned transport access and capacity, to provide mitigation where necessary and focus on sustainable modes. Core Strategy policy 2 encourages sustainable transport to reduce congestion, traffic and pollution. Southwark Plan saved policies 5.1 "Locating developments", 5.2 "Transport impacts", 5.3 "Walking and cycling", 5.6 "Car parking" and 5.7 "Parking standards for disabled people and the mobility impaired" seek to direct major developments towards transport nodes, provide adequate access, servicing, facilities for pedestrians and cyclists, and to minimise car parking provision while providing adequate parking for disabled people.

## **Site layout**

154. The site layout in terms of its accesses, unit entrances off the surrounding streets and new public routes running north-south and east-west would not change in the proposed amendments. The hours of the access routes closing would be changed to 10pm rather than 11pm as secured in the section 106 agreement as part of the mitigation measures. This is considered acceptable given the existing, public highway routes around the site's perimeters that would provide similar connections after the new routes close at 10pm, while still enhancing the Low Line route through the day and evening.

## **Trip generation**

155. In terms of taxi trips, the applicant's transport note considers the proposed to change to increase the potential number of taxi trips. The Transport Assessment of the 2015 application did not include an estimate of taxi trips as it assumed this was unlikely to be material different from taxi use for Vinopolis. The applicant considers that the additional three restaurant and bar units of the current proposal "*would not necessarily translate into significant numbers of taxis on the streets surrounding the site*" as these visitors often share taxis, and "*in locations where there are multiple restaurants and bars taxis often pick up a new fare shortly or immediately after they have dropped off their previous fare at busy times*" so that these additional visitors would likely hail a taxi that is

already on nearby streets. The applicant concludes the proposal is “*unlikely to result in a material increase in the number of taxis accessing the site and therefore would have no significant effect on the local road network*”.

156. The transport policy team has considered the impact on vehicle movements from the proposed change in Class A uses. Comparison of comparable sites’ travel surveys within TRICS travel database has revealed that it would create net reductions of 12 and 7 two-way vehicle movements in the morning and evening peak hours respectively.
157. The number of taxi movements per day is estimated by officers to rise by 6 two-way movements, equating to an upturn of around 1 taxi every 4 hours in a 12 hour-period, although in practice these may be concentrated more in the evening than throughout the day. Officers consider that this development proposal would not have an adverse impact on the existing vehicular traffic on the adjoining roads. The highways team has no objection to the proposal.

### Servicing and deliveries

158. The applicant has provided a note on the potential transport effects from changing the proportion of restaurant and bars. This would result in an estimated 88 deliveries per day, an additional 8 compared with the 80 per day of the approved scheme. The 7 loading bays on the site, open for three hours with an assumed turnaround time of 15 minutes per delivery could accommodate 84 deliveries per day. This assumes that delivery drivers would take the goods to the units. Therefore the predicted number of deliveries would exceed the capacity of the on-site loading bays. However, the applicant is now proposing through the site-wide servicing management strategy (currently under consideration in ref. 21/AP/1580) that instead tenants would have to collect deliveries from the loading bays rather than having the deliveries to their units, which would speed up delivery times and allow more capacity in the loading bays. There is another loading bay designated for refuse collections which would be available for general deliveries when not booked for refuse.
159. The applicant’s consultant also has refined the assumptions of generic trip rates of the original scheme (which assumed each restaurant and drinking unit would generate 4 deliveries irrespective of its precise operation), as four prospective tenants provided more detail on their delivery requirements and average 3.3 deliveries per day. If this is extended across the whole site, and taking account of the suggested merging of units 192, 192A and 193, the predicted number of total deliveries would reduce to 72-80 per day, and would be within the assumed capacity of the on-site bays.
160. The highways team raise no objection to the proposal. The transport policy team has reviewed this information and compared the revised Class A uses with comparable sites’ travel surveys within TRICS travel database. The associated number of deliveries would increase by 7 two-way vehicle movements per day, a lower figure than projected by the applicant’s consultants. Officers estimated number would mean the number of deliveries to the whole development would rise by 4 from the original 80 to 84, which is similar to the 88 predicted by the applicant. The numbers officers have calculated are 4 less than the applicant. Taking account of the additional

research by the applicant with future tenants of the restaurant and bar units, which could result in 78 deliveries per day, and with three units proposing to be merged could reduce this by 2 per day. Officers consider that the proposal would not have any noticeable adverse impact on the adjoining roads as a result of servicing demand. The transport policy team has no objections from the highway and transportation perspectives providing that a DSP deposit is paid to the council of £16,356 (indexed) along with a monitoring fee. This would allow for monitoring of the site once it has been occupied, and for measures to be put in place if the servicing operation of the site are found to not be in accordance with the approved servicing plan and are causing transport issues.

### Refuse storage arrangements

161. There would be no change to the approved refuse storage arrangements, which are mainly within the basement of the development, and brought up by a lift for collection from the dedicated loading bay during the conditioned hours for servicing.

### Car parking

162. There is no on-site car parking. With the excellent public transport services in the area, this is again considered to be acceptable.

### Cycle parking and cycling facilities

163. The long stay cycle parking standards within the London Plan are the same for Class A1 food retail and A2-A5 (of 1 space per 175sqm) which match the draft NSP ratios, while A1 non-food retail has a lower ratio for cycle parking (at 1 space per 250sqm for the first 1,000sqm and then 1 space per 1,000sqm). These are the same ratios as the previous London Plan in place when the original planning permission was granted. The long-stay requirements are broadly the same as for the approved scheme, and with 92 spaces for Class A staff proposed within the basement of the scheme, the revised proposal is considered acceptable.
164. For short stay cycle parking, the standard in the London Plan for Class A2-A5 uses (at 1 space per 20sqm) requires more cycle parking than for Class A1 food or non-food retail. The new London Plan short-stay cycle parking requirements are more onerous than the previous London Plan and the draft New Southwark Plan standards. The applicant has proposed five more Sheffield stands (to give 10 more spaces) within Soap Yard, near to other 114 short-stay cycle parking within the approved scheme. This is considered to be an acceptable contribution for the change in the proportion of retail types, considering the constraints of the site with limited opportunities to include more Sheffield stands. The installation of the additional cycle stands would be conditioned on any new permission.

### Other transport and highway topics

165. Reference was made in the objections that the extra vehicles and people

resulting from the proposal would block or hinder access to the blue badge parking bays used by disabled residents. Two bays on Clink Street and one on Park Street are available without time restriction, and the three bays on Stoney Street are available for stays of up to 4 hours. These bays are available for any blue badge user, a visitor, worker or resident. The scale of increase in traffic from the proposal within a busy area with multiple other shops, restaurants, attractions and residential properties on these streets, and when subject to the same highway enforcement regime, is considered not to significantly reduce the access to these blue badge spaces surrounding the site.

166. The off-site highway works secured by the 2017 section 106 agreement would remain as a planning obligation for any revised permission. A section 278 highways agreement has recently been reached with the highway authority. The new public access routes across the site that form part of the Low Line would remain as approved, except that their opening hours would be shorted by one hour from 11pm to 10pm.
167. A travel plan was required by condition 17 of the original permission, and a document has been approved pursuant to part a) of the condition. The requirement in part b) of the condition for a survey of visitors and review of the travel plan measures would continue to apply on any new permission issued.

## **Environmental matters**

168. The reason for condition 28 refers to strategic policy 13 'High environmental standards' of the Core Strategy. This policy contains 10 parts including BREEAM, carbon emissions, waste reduction, minimising water use and addressing flooding by requiring developments to help us live and work in a way that respects the planet's resources, reduces pollution and damage to the environment, and adapt to climate change.

## **Construction management**

169. The increased proportion of restaurant and bar use of the units within the site would not significantly extend the construction programme of the Borough Yards development, nor new raise construction traffic issues compared with those considered in the 2015 application.

## **Water resources**

170. The revisions would not significantly affect the water demand of the site. The BREEAM requirements would continue to apply.

## **Flood risk**

171. The changes to the mix of retail uses across the site do not affect the flooding risk of the site nor the surrounding area.

## **Sustainable urban drainage**

172. There would be no change to the surface water drainage strategy approved pursuant to a condition on the original permission.

### Land contamination

173. The changes sought do not change the characteristics of the end users of the site, nor affect the remediation work to be undertaken and the verification of the works undertaken which were required by conditions on the original permission.

### Air quality

174. The site is within the air quality management zone and a central area of London near to busy roads (Borough High Street and Southwark Street). Many of the objections refer to the increased traffic from taxis and servicing from having more restaurant and bars on the site, which would impact on air quality.
175. The site benefits from the highest PTAL level of 6b, and has excellent public transport services, including bus, train and Underground services that visitors can use to travel to and from the site. While there may be more taxi use associated with the increased number of restaurants and bars, many private hire taxis are now electric. The applicant, through its Tenants Handbook would require tenants to direct taxis to the Soap Yard end of Stoney Street to try to keep waiting vehicles away from most of the neighbouring residents and the narrowest streets.
176. The servicing hours for the site would remain as per the condition on the original permission. The change from retail shops to more restaurants and bars would not significantly change vehicle numbers travelling to the site to warrant a refusal of the application on air quality grounds.

### Wind

177. With no amendments to the external appearance of the site, other than the addition of a gate, the proposal would not change the wind environment in or around the site.

### Light pollution

178. The revisions would not significantly increase the lighting levels in and around the site. Details of the external lighting are required to be submitted and approved by the council by condition 33 of the original permission and this requirement would continue to apply.

### **Energy and sustainability**

179. The proposed changes to the mix of uses within the development would not affect the sustainability considerations of the original application in terms of carbon emissions and BREEAM ratings. While there are now additional policy

requirements of the London Plan on zero carbon, whole life-cycle carbon and the circular economy, when the nature of the proposed changes are considered it would not be reasonable to apply these policy requirements to this section 73 application.

### **Other matters**

180. The proposed amendment would not affect the archaeological impacts of the approved scheme.
181. The original application was considered not to be EIA development, and a negative screening opinion was issued in ref. 15/AP/0806. The proposed changes to the development have been considered in a recent screening opinion ref. 21/AP/1998. A screening opinion was issued in June 2021 to confirm that the proposed development is not EIA development.
182. The current minor material amendment application primarily seeks to vary condition 28 of permission ref. 19/AP1649 (itself a minor material amendment to the original permission 15/AP/3066). The recommended wording of a revised condition 28 has been amended from that originally sought by the applicant, in order to refer to a submitted first floor drawing, and to remove reference to specific use classes given the potential for further change to the Use Classes Order. The other conditions from the previous permissions would be carried over to a new decision notice, and their recommended wording has been updated to reflect submissions already made to approve details and the non-material amendments agreed. The approved drawings condition would also be updated to include the new floorplan drawings provided.
183. Other than those paragraphs that require amending to secure the mitigation measures necessary for the proposed revisions (as detailed below), the majority of the section 106 agreement associated with permission ref. 15/AP/3066 would continue to apply. For example, the end use job requirements to ensure new jobs and training opportunities for local people would not be affected by the suggested revisions, so the proposal would remain in accordance with strategic policy 10 of the Core Strategy and in line with the Section 106 and CIL SPD.

### **Planning obligations (S.106 agreement)**

184. The existing s106 agreement was secured with reference to saved policy 2.5 of the Southwark Plan that advises that planning obligations can be secured to overcome the negative impacts of a generally acceptable proposal.
185. There have been no other deeds of variation to the March 2017 legal agreement. Many of the obligations have been discharged having had acceptable details and documents submitted, and the on-going requirements in the agreement would continue to apply. Only the obligations of the March 2017 legal agreement that are sought to be amended, or require updating to reflect the necessary mitigation for the minor material amendment application, would be altered.

Planning Obligation	Mitigation	Applicant Position
Notify the council ahead of implementing the new permission	To clarify which permission the applicant is operating within	Agreed
Definition of "Small Enterprises"	To be revised to refer to small and medium sized enterprises that operate 10 or fewer retail outlets within the UK	Agreed
Revised hours of the Access Routes being available to pedestrians and cyclists	To amend Schedule 4, part 2, paragraphs 5 and 6 to refer to 10pm closure and locking of the gates.	Agreed
Revised Site Wide Servicing Management Strategy	To add a requirement in Schedule 5 part 2 to require an amended site-wide servicing management strategy to be submitted and approved (in consultation with TfL and Borough Market) ahead of a permission for ref. 21/AP/0507 being implemented.	Agreed
Payment of a delivery and servicing deposit, and associated monitoring fee	Payment of a financial deposit of £16,356 (indexed) and monitoring fee of £1,600 (indexed).	Agreed
Revised Visitor Management Plan	To add a requirement in Schedule 5 part 3 to require an amended visitor management plan ahead of a permission for ref. 21/AP/0507 being implemented.	Agreed

186. In the event that an agreement has not been completed by 31 December 2021, the committee is asked to authorise the director of planning and growth to refuse permission, if appropriate, for both applications for the following reason:

*In the absence of a signed deed of variation there is no mechanism in place to mitigate the adverse impacts of the proposed minor material amendments and variations sought by the applicant, and it would therefore be contrary to saved policies 2.5 Planning Obligations of the Southwark Plan (2007), Strategic Policy 14 Delivery and Implementation of the Core Strategy (2011) Policy DF1 Delivery of the Plan and Planning Obligations of the London Plan (2021) and the Southwark Section 106 Planning Obligations and Community Infrastructure Levy SPD (2015 with 2020 addendum).*

## **Mayoral and borough community infrastructure levy (CIL)**

187. Section 143 of the Localism Act states that any financial contribution received as community infrastructure levy (CIL) is a material 'local financial consideration' in planning decisions. The requirement for payment of the Mayoral or Southwark CIL is therefore a material consideration. However, the weight attached is determined by the decision maker. The Mayoral CIL is required to contribute towards strategic transport invests in London as a whole, primarily Crossrail. Southwark's CIL will provide for infrastructure that supports growth in Southwark.
188. The 2017 section 106 agreement secured a Crossrail contribution of £1.1m (indexed) and any Mayoral CIL contribution was to be deducted from the Crossrail contribution. The revised floor area and different split of uses across the site may affect the amount of CIL liability in accordance to CIL Regulations Schedule 1 Part 2. This would be calculated in more detail when CIL Additional Information and Assumption of Liability forms are submitted prior to implementation of any new permission. After the new liability notice is issued, CIL abatement request should be submitted by the applicant as per CIL Regulation 74A, in order to credit the £649,133 (paid for permission ref. 15/AP/3066 in August 2017) against the revised liability notice.

### **Community involvement and engagement**

189. The applicant has provided a completed Engagement Summary for the Development Consultation Charter which summarises the meetings held. The applicant engaged in informal pre-application discussion with officers, and with councillors, some residents and Borough Market prior to the February submission. The applicant distributed leaflets to approximately 500 nearby properties. A further community online meeting was held in March where many concerns were raised regarding gates, security guards, noise, opening hours, outdoor drinking, bars on Stoney Street, night time exit strategies, lack of public toilets, the lack of transport mitigation measures particularly for taxi movements, and antisocial behaviour.
190. The council advertised the application by posting neighbour letters, site notices and a newspaper advert. This exceeded the statutory requirements for consulting on a minor material amendment application, and the consultation referenced the separate s106 variation application too. Approximately 100 objections were received in response from local residents, businesses, ward councillors and organisations, which are summarised below. Those who had written in on the planning application were reconsulted by the council in June 2021 in relation to the submitted amendments and additional documents.
191. When considering the amendments to the current application to respond to the objections received, the applicant met with residents, ward councillors and Living Bankside. A leaflet to update local properties on the revisions to the planning applications and to update on the licensing applications was distributed to approximately 500 properties in May 2021.

### **Consultation responses to the first round of consultation from the ward councillors**

## Ward Councillors

192. The three ward councillors object to both the s73 application and to the s106 details application.

- This is not a “minor” amendment, and would change the intended character of the development, harm neighbour amenity and harm the operations of Borough Market.
- The views of local councillors, residents and other stakeholders may not have been accurately reflected, and the submission was made prior to a meeting with a wider group of residents who do not support the proposal.
- While Covid has presented some challenges to the retail sector, they do not accept this as a reason for a permanent increase in A3/A4 units to 50% of the retail floorspace.
- Encourage officers and the Committee members to visit the site.

193. Restriction of A3/A4 uses in original application:

- The original redevelopment of this site was “sold” to the local community as an improvement on the previous use, and took into consideration the concerns raised by local residents about the noise and antisocial behaviour associated with the previous use of the site. It was conditioned that no more than 30% of the retail floorspace would be used for A3/A4. A plan was submitted showing the suggested uses for each space, which was all believed to be the actual plans but which turns out to have only been an “indicative” plan, despite being referred to in the officer report as a definite layout. In that plan, the two northernmost units on Stoney St were not designated as A3/A4. Images submitted with the original application also showed at least one restaurant/cafe opening out into Dirty Lane.
- The glazing condition of the permission is not being complied with as windows have not been obscured.

194. Current application:

- The current application wants to increase the amount of floorspace used by A3/A4 (or the equivalent new use class) from 30% to 50%. The applicant has only talked about “indicative” uses, however the plans that have been submitted for the licensing applications show A3/A4 uses all along Stoney St, opening out directly onto the street. All the units along Stoney St are double height, open directly onto the narrowest part of the street and those at the top end are directly opposite residential properties. Unlike the original images that residents were shown by the applicants, no A3/A4 units exit internally into Dirty Lane.
- There has also been a licensing application for A3 use of the gallery, and already been granted for A3/4 use of the ground floor of the cinema. Some licensing applications also include outdoor spaces for dining/drinking, and unit 192a shows a terrace that can only be accessed from within that F&B unit (and which does not have planning permission). While we are aware that the two regimes are separate, we

are including the map which was sent in with the actual licence applications as this cannot be considered to be indicative.



- This plan differs from that which has been submitted with the current planning application. The applicant's table shows the gallery as retail space, and ignores the F&B offer in the cinema.
- It also differs from the illustration that was sent out on the consultation leaflet (and which only talks about ground floor uses when all of these units have upper levels, and only talks about restaurants when we know some will be bars):



- Given the confusion that has been created by the use of “indicative” and “actual” plans in the original consent, in the event that this application is granted in any form, we would want to see a definitive plan this time that sets out the exact locations for each A3/A4 (or new equivalent use class) unit.

195. Large units:

- The permission prevents the merging of units without prior consent from the planning authority due to the “special circumstances of this case” and “to preserve the special and unique character of the area”. Yet the applicant has confirmed units 192a, 192 and 193 are to be merged into a large restaurant with a bar exiting directly onto Park St. Patrons will pass under the windows of multiple residents, no matter which way they head towards their route home. Units 205 and 207 appear to be merged into one. The unique character of the area has not changed, and the proposal should not be approved.

196. Hours of operation:

- The licensing applications are requesting opening hours later than those restricted by planning conditions. The licensing regime must not be used to undermine planning. The applicants must not be allowed to come back in the future to extend the hours of use of these premises. The residential nature and the pattern of the surrounding streets have not changed.

197. Loss of the Vinopolis complex:

- The cinema and gallery were intended as a little compensation for the loss of cultural space with the redevelopment of Vinopolis. The current proposal seeks to change the gallery to another use, with licence application showing it marked as a restaurant, which is strongly objected to.

198. Impact on local residents:

- The area has over 50 bars and restaurants. The addition of another 16 will contribute to the existing issues of anti-social behaviour which impacts on the local residential population (including long-standing residents, a council owned and managed estate and sheltered housing). Even with Covid restrictions the area and its residents have experienced considerable anti-social behaviour. The noise is compounded by the narrow streets and the railway arches, both from the premises when open and people leaving past residential properties. The increased numbers of cabs and private hire vehicles circling streets that are already crowded with people and traffic to a dangerous level.

199. Officer response: The planning policy considerations of having more A3 and A4 use and less A1 shopping, and the impact on local residents are considered in detail in the Assessment above. The amended submission by the applicant which provides a drawing to confirm the location of restaurants and bars, removes the suggested changes to the gallery space, addresses some elements of these objections. The applicant has confirmed that the first floor windows on Stoney Street will be obscured as required by the permission. The applicant has amended its licensing applications to align with the planning permission. There is a separate application by Barrafinna to merge three units

(ref. 21/AP/1393) which will be considered and determined separately.

## **Consultation responses to the first round of consultation from members of the public, businesses and local groups**

200. NB - Many of the objections use the term “F&B” which is short for food and beverage to mean the Class A3 (restaurants and cafes) and A4 (drinking establishment) uses, and this is used below for brevity.
201. Better Bankside: objects.
- Diluting the retail mix of the scheme will be counter to the Low Line’s ambition for a diverse economic mix within railway arches, and the London Plan’s classification of Bankside/London Bridge as a specialist retail destination. There is demand for a more varied retail offer in Bankside, and the original proposal was welcomed as it would help fulfil the local need. There are already many F&B venues in the area. Changing to 50% would skew the diversity of activity, put pressure on the public realm to the detriment of the area’s amenity. F&B will add pressure for al fresco dining and drinking.
  - Significant increase in delivery and servicing compared with retail, in an area where noise and air pollution is intense. A transport assessment and delivery and servicing plan should be submitted. The medieval street pattern is heavily used by pedestrians and vehicles.
  - Object to the loss of the gallery use, which was included to mitigate the loss of Vinopolis and support the wider cultural and visitor offer.
202. Borough Market: objects to both applications.
- The increase in the proportion of F&B would move away from a healthy balance of uses and control, and will impact on the established special character of the Market and the conservation area.
  - The marketing evidence the applicant refers to as demonstrating the difficulty securing interest from retail occupiers has not been made available. Covid and Brexit will have skewed the market, but the amendments are not appropriate or proportionate in these unusual times.
  - Saturation of F&B in the area and increased footfall. The proposal will create an over-supply. F&B can operate as takeaways; fast food is not in keeping with the character of the conservation area.
  - Setting the upper limit on A4 uses at 25% of total retail floorspace is still a significant A4 presence and will create tension with other uses in the area.
  - Increased servicing from F&B.
  - The proposed concentration of these uses on Stoney Street and Park Street will impact on the Market.
  - Customers spilling out onto the street frontage of heavily trafficked streets would be a hazard.
  - The upper limit of drinking establishments on Stoney Street should be lower than three if not zero.
  - The cumulative impact of the current applications on the likely profile of future tenants, and the resulting impact on the character of the surrounding area. Large units being created without permission, and are

more likely to end up with chain occupiers, eroding the character of the area.

- Question whether the changes are materially altering the permission, and needs a more fundamental review of the carefully negotiated principles of the original scheme than a s73 application allows.

203. Borough Market Environs Group: objects to both applications.

- The successive amendments are slowly and incrementally changing to a significant degree the carefully negotiated uses of the original planning permission. They would further dilute the original permission, with cumulative, negative impacts on the scheme and surrounding area.
- The balance of uses and impact on the unique and special character of the area, through an increase in F&B floorspace, dilution of the cultural space, and permitting larger chains to occupy the units. The original mix added to the daytime economy, which the revisions would not.
- The loss of the gallery would further upset the local balance of uses, and along with the change to the definition of independent retailers would fundamentally alter the scheme and its impact on the character of the Market environs. It would not longer contribute to the wider visitor offer, nor bring public benefits or provide a diverse offering.
- The amendments are premature. The last year is not a reasonable period to use to benchmark such significant long-term changes. Other members of the Group have slightly lowered rental rates to achieve high quality tenants, renewing leases and fitting out shops in the last year.
- The negative amenity impact, including the increase in drinking uses to 25% of the site and the effects this will have on residential occupiers and on the public realm (and servicing) in the special area around Borough Market. The use of the Stoney Street and Park Street units for restaurants and drinking establishments are closest to residents. Streets would be crowded by customers and traffic. The servicing strategy should be considered alongside the s73 application.

204. Living Bankside: a solicitor provided an objection on behalf of Living Bankside to both applications.

- Significant irreparable harm to the amenity of approximately 1,000 residents and the world-famous cultural hub of Borough Market.
- The changes are a substantial loss of vision of the original culture and non-chain retail regeneration that was supported by residents.
- This application must be withdrawn. With 13 separate amendments since the permission, a new full planning application is needed, addressing the paucity of information to explain the reasoning behind the changes, provide marketing evidence and other alterations needed.
- The change from retail to night time development requires this Schedule 2 development to be rescreened as EIA development as it would have significantly different environmental impact, e.g. noise, servicing, taxis, inferring it is now EIA development. To not do so would be vulnerable to challenge.
- Lack of mitigation to the additional noise, taxis, servicing from the proposed changes.
- The changes are contrary to the plan agreed between residents and the applicant in the previous permission. This drawing was not conditioned

despite the officer's report and committee resolution, without explanation. The F&B units are those most detrimental to residential amenity and at a higher density.

- Recent changes to Class E would enable the office to be changed to restaurants without permission; the protections of the mixed use development should not be weakened by altering the approved conditions. The licenses applied for suggest the applicant considers the condition restricting hours do not apply to drinking establishments. Soap Yard could become a beer garden for drinkers, and a terrace to unit 192A which are not restricted by planning condition.
- The change to the s106 obligation on the gallery use requires a planning permission for the change of use to allow analysis against policy, marketing information for a gallery or alternative cultural uses. Class E use would allow F&B use of the gallery unit. The loss of cultural use would be of concern to the GLA.
- Severe transport impacts from the increase in F&B.
- Contradictory information and non-compliance with conditions indicate a lack of regard for planning requirements.
- Cumulative incremental changes to the permission have resulted in a fundamental change. Inadequate conditions would allow F&B units to be combined and occupied by large chain businesses. No noise limitation condition was imposed to provide security for residents and allow monitoring of nuisance.
- The change the definition of small and medium enterprises is a further change from that approved and would allow a generic appearance of the development.

205. Peer Group PLC – objects. It owns properties within Southwark including The Hop Exchange, and is a member of the Borough Market Environs Group.

- The proposed fundamental changes go to the heart of the original permission, as a significant change to the nature of the overall development and loss of cultural spaces. The changes are more than minor material in nature.
- The impact on the special character of the surrounding area, through a significant increase in the overall retail offer, dilution of the cultural space through its potential repurposing for retail use, allowing 25% drinking establishments (in an alcohol saturation zone) and permitting larger chains to occupy the units;
- Potential negative longer-term impacts around the Hop Exchange, including the impact on servicing and deliveries and public realm, caused by an increase of traffic. Putting increased strain on the established service routes and public realm in and around the site and Market.

206. United St Saviour's Charity – objects. It owns properties on Park Street and Stoney Street.

- The Borough Market and Cathedral area has a special and unique character made up not only by the historic buildings and street layout, but by the people living and working here who form the fabric of the community.
- The approved scheme was supported, and enhanced the unique character with an attractive, sustainable destination. The current

proposals seek to overturn all the good intentions.

- Objection to the increase in food and beverage as it would harm neighbour amenity, cause antisocial behaviour, traffic, litter and crime. Residents would be overlooked from the unobscured windows. Drinkers would exit onto streets opposite people's homes.
- Object to the consolidation of small units into larger units, which would be occupied by pub chains over two floors for thousands of drinkers.
- Object to loss of the gallery when the area is in high demand for community cultural art gallery type space.
- Covid and Brexit are not good reasons to make the suggested changes as a knee jerk reaction. There is demand from small retailers, which the charity has seen in its own lettings. The applicant should review its own letting priorities instead of profit led decisions that cause permanent harm.
- The charity was not consulted by the applicant.

207. 95 objections received to the first consultation raising the following summarised issues which are grouped into themes:

208. Change from the principles in the approved scheme

- This is not a minor amendment, changing many aspects of the first application and the officer assessment. It is a fundamental change to the uses that goes to the heart of the permission. The council imposed the restriction conditions for good reasons, with no justification for changing it now.
- The local community accepted the 2017 permission with specific restrictions and vision (with its 30% cap on drinking and dining, the vision to preserve and enhance the special character of this area with mostly non-chain fashion retail units, a gallery and cinema to provide local amenities) as it was sensitive to local concern and special character of the area. Retail was to be the core activity of the site. Fundamental to approved scheme were four things: 1) active consultation with community; 2) non-reliance on F&B; 3) a retail mix that was not high-street chains; and 4) contribution to 'culture'. These were all essential for ensuring the development would be "in keeping" with this unique/sensitive/important area and not too disruptive to residents/other businesses/visitors, with a critical servicing management plan, and rental agreements for small independent retailers. It was a policy compliant, sensitive regeneration in the strategic cultural area. Without these conditions there would have been opposition to the first scheme.
- The applicant now seeks to upset the balance, betray the vision, overturn all the key conditions that made the scheme acceptable, and create a party destination. Consultation thrown out the window; F&B becomes the dominant force; retail mix compromised; "culture" abandoned. With no analysis of the impact of all this on servicing demands, local amenity, preservation of unique historic sensitive area. It will destroy the character of this area, offering no more than a faceless series of chain restaurants and pubs for tourists with no benefits to the local community of 1,000 residents would be overwhelmed by late night noise and disturbance.
- The responsibility of getting the balance right between competing demands in a location - historical, cultural, residential, commercial,

security, etc. - is entrusted to the council. The approved predominantly retail purpose would be more in keeping with the remit of Borough Market and would contribute positively to the sustainable development of the area. There is a real danger now that these proposed changes will irreversibly damage the character of this area with a very special history.

- The council should not wish it being transformed from a diverse, vibrant, culturally distinct, community-friendly neighbourhood into just another overcrowded, uncontrolled drinking zone.
- Question if the applicant ever intended or believed in the original mixed-use retail plan, and instead wanted to create a F&B festival all along. Strayed so far from the original intent that it is no longer possible to read the decision as if it relates to the same project.
- The developer took the risk with a retail scheme and it is not for local residents to suffer the harms from the changes for the developer's profit and investment risk.
- While Covid has had a huge impact on so many aspects of commercial life, it should not be part of Covid's legacy that solid long-term planning protocols are abandoned. It is too soon to write off retail. The blight from the change of use would be permanent (15-25 year leases), while the applicant's reasons are only temporary market changes.
- The proposal raises the Agent of Change principle with night time entertainment, noise generating uses and the need for mitigation measures.
- Non-compliance with planning policies on many topics in the development plan, plus raise new policy areas of Agent of Change, air quality, sustainable development, crime, transport.
- A new full application is required. Inadequate information provided to justify the application, no marketing evidence; the application should be withdrawn. The proposal should be screened again under the EIA Regulations given the change to night time uses and additional transport movements will have significantly different environmental impacts to those assessed in 2015.

#### 209. The increase in restaurants and bars

- There is no need for additional restaurants and bars. There are already too many bars, restaurants and takeaway outlets in the area (over 250, the most of any ward in Southwark), another 17 are not needed. This takes it beyond a safe and sustainable balance of different use in this tightly packed urban area (which is a conservation area) and residents are suffering.
- Retail is what the area needs and is under-served in, not F&B.
- This area is already saturated with bars and restaurants and businesses are struggling. Further F&B would further dilute business for existing traders. A number of independent businesses have had to close due to the pandemic. The original intention was to create small independent retail shops in keeping with the special and unique character of the area.
- The community relied on a drawing that showed the location of F&B uses when concluding the approved scheme was on balance acceptable, however it is now clear that the council did not secure this drawing on the permission.
- Harm to local independent traders. Core customers of existing market businesses would likely be put off by the "drinking crowd".

- Chain restaurants will cheapen the area, and isn't the high standard of Borough Market.
- Disappointed with the change to the definition of independent retailers when there are few trading spaces for genuine independent businesses in central London without being pushed out by the larger retailers.
- Inadequate information provided to allow a full analysis, e.g. the floor space, what size units, how conditions would apply, servicing impacts, amenity impacts, conservation impacts, the 17 licensing applications submitted with off-site sales and outdoor drinking making Stoney Street an outdoor bar. The applicant's calculations have not been validated.
- Covid is a convenient excuse for the changes that would never be allowed in normal times.
- Without a planning permission in place, the applicant has applied for 17 licences, from 7.30am to 1.30am, with off sales and outdoor drinking (despite there being no outside space). Business names are not given on the licence applications to allow residents to know the style of hospitality.
- The units have first floor areas so it is not only a ground floor change. The number of customers in the restaurants and bars would outnumber local residents.
- The approved retail use would be silent at night time and not leave rubbish or have noisy groups of customers, unlike the eating and drinking uses.
- Object to consolidating the smaller units to make larger ones. Large units are more likely to be occupied by chain F&B businesses.
- The F&B units would not be subject to the independent retailer requirements.
- To allow more F&B would be inconsistent with the council's previous consideration and decision.
- The permission does not prevent other uses (now in Class E) being turned to restaurants and bars, such as the office. The condition on opening hours would not apply to sui generis drinking establishments.

210. Loss of the gallery and harm to the cultural heritage of the area

- The permission was originally proposed to be a carefully balanced, cultural mixed-use enhancement to the existing residential and business area. This current proposal represents a lost opportunity and undermines the approved scheme.
- Loss of the cultural gallery attraction in a designated strategic cultural area. License application suggests the gallery will become F&B.
- Substantial harm to the built and cultural heritage of this area of London and of Borough Market. Disastrous long term consequences for one of the UK's most important attractions and heritage sites.
- Policies emphasise the importance of "place making", respecting the character of an area and the "built heritage" in the quality of design, efficiency of land-use and attention to servicing. These changes fail against all those standards. This revised project which removes leisure, arts and cultural uses will manifestly not be better quantity and quality than what it replaces.
- The proposal does not comply with the development plan by removing conditions and mitigation, harming place making, removing arts and

culture.

- No planning application has been made for the other uses of the gallery; changing the s106 wording is not sufficient.

#### 211. Harm to residents' amenity

- Harm to the amenity of circa 1,000 residents in the area due to the proximity to adjoining properties, loss of privacy, noise nuisance from thousands of people on the application site units and exits only a few metres away. Allowing 5,000 additional people on site at any one time would add 25,000 drinkers and diners per day on small streets would outnumber the residents. The approved retail would be silent at night.
- There would be thousands more people in the area, 7 days a week, 19 hours a day, with the units hosting thousands of people. It will be similar to the impacts of ten cruise ships arriving each day, and similar to the harm visitors cause to Venice.
- This area is already in a cumulative impact zone, and cannot accommodate anything of the scale the applicant wishes. The proposal for more restaurants on this development and licensing for alcohol up to midnight (or licensing applications for 7am to 1.30am) is not compatible with co-existing in a residential area. The licensing applications already made do not respect the planning conditions.
- Bars and restaurants now being sited on the outer faces of the site, rather than being more contained on the internal Dirty Lane side. The units are very close to residential neighbours, separated by only narrow streets.
- The permission did not secure the drawing showing the location of A3/A4 uses despite this being what residents and the Committee expected.
- The bars and restaurants have large opening French doors that will let the noise escape, and have no outdoor space, so people will use the roads, walkways and sitting in doorways instead. The late night licences now submitted for by the applicants do not have any provision for outdoor space, and at capacity there could be thousands of patrons occupying the small area which would be unsafe given the current climate and push people onto the surrounding streets, causing social nuisances, including but not limited to excessive noise, urination and vomiting.
- The area suffers already from littering, rowdy behaviour and street drinking. Alcohol increases people's volume.
- The only way in and out of the site is past residential properties.
- Noise from people in the streets ebbs and flows continuously which is more upsetting and disruptive than continuous noise. It will affect people's mental and physical health from the stress of sustained noise in the home. No mitigation is proposed to deal with customers once they have left each unit.
- Noise echoes around the narrow streets and would increase with the additional restaurants and bars. Residents have bedrooms that look onto the streets and would not be able to open windows in summer. It is a conservation area and many of the properties have no way of insulating themselves from the noise (with double or triple glazing), so have no choice but to put up with the late night behaviour and more importantly the constant noise of drinking in the streets which will

reverberate from Dirty Lane into the surrounding neighbourhood.

- Off site drinking with people sitting in residents' doorways etc.
- There is no condition restricting use of the outdoor spaces which must be addressed in the new decision.
- Food odours and fumes from the extra F&B being unpleasant for residents, with no details of ducting etc provided.
- Lack of mitigation for the additional impacts. The mitigation measures suggested by residents have not been incorporated by the applicant.
- Children living nearby would hear bad language.
- Residents would have their sleep disturbed.
- The proposal will impact on residents' right to a peaceful existence within their homes.
- Impact on health from the noise and air pollution.
- The neighbouring residential properties are not shown on the applicant's information. Ask that the Committee visit the site to understand the proximity and relationship.
- Comparison with previous Vinopolis use is inappropriate as that was indoors, stood empty most of the time, large areas were storage or offices, and had no antisocial behaviour. Noise from the previous Vinopolis use caused noise levels that were completely unacceptable at times when late licences were granted. It led to loud music and antisocial behaviour, with smashed bottles, singing, shouting and other raucous behaviour in the streets affecting the ability of residents to sleep.
- Residents have put up with 4 years of construction noise, including during lockdown, and had expected the site to be quieter once finished.

#### 212. Antisocial behaviour and major incidents

- Increased antisocial behaviour, particularly with the alcohol related uses. There are already problems with people littering, shouting, fighting, urinating, defecating, vomiting and harassing residents, and increasing the numbers can only make this worse.
- No public toilets are proposed for the hundreds of drinkers and diners.
- Increased crime – pickpocketing and violent crimes.
- Alcohol is a serious problem in Southwark, more than most London boroughs, costing the health service and policing for incidents related to alcohol. Crime is highest in Borough and Bankside wards.
- The applicant's few/two marshals would have no statutory powers to deal with thousands of drinkers in such a large site with 16 exits around its perimeter in 4 streets. The council cannot protect against this "transient noise nuisance", and environmental officers, cleaning services, police, ambulance, fire and NHS will be further burdened. The Vinopolis "shadow licence" included far more protection.
- Increased litter without enough bins. Increased vermin.
- Increased opportunities for crime and disorder with so many people late at night.
- Lack of toilet facilities in the proposal for customers.
- More busking. More smoking on the outside streets.
- No mitigation proposed for these impacts.
- Terrorism is attracted to sites of intensive operation and iconic places.
- Increased risk of fire by more kitchens.

- The human and financial cost of an attack or major incident will fall on the council and emergency services.

#### 213. Transport and highways issues

- Restaurants and bars need more servicing than shops. No provision for the additional servicing needs of so many restaurants and bars on already congested streets which will significantly increase both noise and pollution in the area, affecting local residents. The assessment of the original application was finely balanced in terms of servicing; to have more vehicles should have tipped the balance to a refusal.
- The narrow pavements and streets won't cope with the increased footfall safely.
- The narrow roads won't cope with increased vans and lorries for servicing of the extra restaurants and bars. Roads are regularly blocked by vans, lorries and coaches already.
- Inadequate access and parking provision.
- Increase in traffic passing homes – accident risk and air quality impacts.
- Impact on traffic and highways.
- Harm to the servicing of other businesses in the area that use the same servicing routes and public realm.
- Increased traffic with taxis, Uber drivers, takeaway delivery bikes etc with no provisions for parking or waiting areas, and no restriction on hours they can operate. The historic narrow streets and surrounding areas would be unable to cope with extra footfall and residents would certainly suffer increased noise problems and issues associated with large groups of people leaving premises late at night looking for taxis or transportation. There are no locations where taxis can legally wait so they will keep their engines running. Taxis would circle around this confusing site to find their customers at the different exits, passing residents' windows.
- Additional Uber/Deliveroo Drivers picking up from the restaurants, with no additional access provided, they will have to go past and wait by the current residential areas at all hours of the day, disrupting the lives of the residents.
- Access to the blue badge parking spaces for disabled residents is already difficult with deliveries and taxis blocking the narrow roads. No mitigation is included for residents with disabilities.
- Inadequate public transport. Most has ended by the time the licensing hours end.
- No updated travel plan has been provided.
- No additional cycle parking proposed.

#### 214. Harm to the character of the area

- Out of keeping with special character of area and harmful to the unique, historic and exciting destination from changing the mix of uses (both increasing F&B and reducing cultural use).
- This intensive level of F&B activity will also degrade the unique historic feel of the area, which is part of our local amenity. Because these changes are proposed for a development on this huge scale, the neighbourhood will become unliveable and its unique historic feel is at risk of being obliterated.

- Increasing drinking in an alcohol saturation zone would reduce the currently balanced and diverse offering in the area.
- The joy of the area is its mixed use but these proposals take it into a majority use for a particular kind of entertainment. It is moving more into a night time entertainment development for hen and stag dos rather than retail day time. It would drain the charm, make for a soulless area that tourists won't come to.
- Substantial harm to the heritage of the area, London, and Borough Market. Disastrous consequences for one of the country's most important attractions and heritage sites.
- More F&B will drive away food shoppers from the Market area, as the area becomes a destination for people to drink and eat rather than shop.

#### 215. Scale and overdevelopment

- Development is too high.
- Over development. This is already an over-development which has taken our light, overlooks us and will generate noise and air pollution but now putting more restaurants, more alcohol it will make it incompatible with living cheek by jowl with residents, social housing and Lucy Brown House sheltered accommodation for elderly. This would be over redevelopment on an unprecedented scale which would bring a plethora of issues to a predominantly residential area.

#### 216. Other comments

- Support for the objections made by others, and by Borough Market.
- The proposal is in conflict with local plan and fails to comply with numerous policies of the development plan.
- The mitigation offered of conducting surveys is meaningless and toothless. Offering to lock gates would not mitigate the impact of thousands of people.
- Increase in pollution in an air quality management area. Air pollution is a public health emergency. An air quality assessment is needed given the thousands of extra vehicles the proposal would bring.
- Consideration of climate change is a legal requirement.
- Impact on the mental and physical health of residents, including children, elderly and vulnerable people living at Lucy Brown from the increased antisocial behaviour, noise, traffic and pollution. "The application will significantly affect protected characteristics in a negative way." Approval of the application will be a breach of the council's public sector equality duty.
- Unsafe for the council to approve F&B in narrow, crowded streets with Covid being a known risk, making it liable to action by anyone whose life is harmed by the development.
- Approving it will contribute to a loss of trust in the council.
- Strain on community facilities.
- Affect local ecology.
- Enforcement issues as the obscured glazing has not been installed, and a terrace has been constructed without permission.
- Poor consultation – local residents were missed out, or only contacted by the developer once the planning and licensing applications had been submitted. Leaflets weren't received. The applicant has misrepresented

the feedback given as support. The developers are not community minded, so are not good neighbours so have no trust that they value the great urban mix of the area and the delicate balance between resident and local business needs. The developers have so far failed to be transparent with their plans and hidden their true intentions from neighbours throughout the development.

#### Objection to the s106 change application ref. 21/AP/0326

217. Some who objected to the s73 application also made reference to the change to the s106 definition on independent retailers, with it diluting the vision of the original scheme, allowing large chains into the site.
218. The ward councillors object to the proposed change to the s106 agreement as follows:
- When this proposal was first given planning permission it had very specific conditions and S106 agreements about the type of premises that would be in the development. It was sold as artisan, independent, small retail units that would complement the existing offer in Borough Market and provide retail shopping opportunities for the local and wider community. This application to change the definition of "independent" to operators with up to 10 outlets does not fit that bill. Moreover, when it is coupled with the accompanying planning application 21/AP/0507 which seeks to decrease the amount of retail uses from 70% down to 50% (or less if you do the calculations differently and include the gallery and the outdoor drinking/dining floorspace as non retail) it would lead to a very different development than one which was first granted permission. We would like the restriction to remain, and ideally for the spaces to be marketed as an opportunity to support Southwark based businesses to develop, at a price they can afford to pay.

#### **Consultation responses from external and statutory consultees**

219. Metropolitan Police - do not believe that any of the changes will have a negative impact upon crime and ASB provided that the development is required to achieve SBD certification and the there is continued consultation between the developer and the SE designing out crime team.

#### **Consultation responses from internal consultees**

220. Environmental protection team (EPT) – recommend refusal of the condition 28 variation.
- Condition 28 was attached to control the concentration of Class A3 (now class E(b)) & A4 (now Sui Generis) in line with the reasons stated in the committee report for providing a diverse range of retail uses to complement Borough Market, protecting neighbour amenity and the character of the area.
  - EPT do not consider the applicant has adequately addressed the potential negative amenity impacts for the additional restaurant and bar units sought. Such premises attract numerous patrons, late in to the evening. The level of noise and amenity impact from the redevelopment was assessed under 15/AP/3066 and a specified level of restaurants

and bars were agreed upon based on limiting the amenity impacts on existing surrounding residents and occupiers of the surrounding area.

- The request for 50% of the total retail area to be bars and restaurants will mean that there will be nearly double the amount of visitors to this new development for restaurant and bar uses. EPT raise concerns that if this permission is granted, additional disturbance from noise will be caused to present and future occupiers of the surrounding area as well as loss of amenity.
- EPT have concerns that the proposal will likely cause increased noise disturbance and therefore does not comply with saved policy 3.2.

221. Highways development management – has no objection.

222. Local economy team – has no objection to the variation of condition or amendment to the definition of cultural space.

223. Transport policy – comments incorporated into the Transport and Highways topic section above regarding taxi and servicing numbers.

## **Reconsultation**

### **Reconsultation responses from the ward councillors**

224. Ward councillors maintain their objection:

- Despite the conditions agreed by the applicant at the licensing sub-committee, we still have concerns about the proposal to increase the percentage of F&B units. We do not think that amending from 50% to 45% sufficiently answers our concerns. We understand that the retail market may have changed, either temporarily or permanently, as a result of the Covid pandemic and we have some sympathy with the applicants on that. However, the impact on the amenity of the existing residential community, and on the operational ability of existing businesses – which was the reason the F&B floorspace was originally restricted to 30% - remains largely the same. In fact, there has been an increase in residential buildings in Stoney St since the first permission.
- It is also regrettable that all of the F&B units proposed face outwards onto the streets, rather than inwards into the development, and include the largest units.

### **Reconsultation responses from members of the public, businesses and local groups**

225. Better Bankside – continues to object to both applications.

- Incremental amendments to the permission are eroding the vision for Borough Yards being retail-led with a unique and special offer to complement the wider mix around the Market.
- There is demand for a more varied retail offer in Bankside.
- Concerns about the pressures that further drinking establishments will place on the public realm and street network. The servicing note shows the development's servicing capacity does not meet the projected

number, and does not consider the likely impact of taxis.

- Welcome the removal of the gallery change from the submission.

226. Borough Market – continues to object.

- The changes do not go far enough to address the objections to the first consultation.
- The percentage change is still a significant change to the nature of the approved development.
- Safety concerns about the location of drinking uses on the streets.
- Servicing and deliveries – the applicant's own numbers confirms the additional servicing trips per day that cannot be accommodated in the service yard.

227. Borough Market Environs Group – continues to object to both applications.

- The changes are not adequate to address the objections to the first consultation regarding the harm to the balance of uses and impact on the unique and special character of the area, dilution of the cultural space, allowing larger chains, and the negative amenity impacts.
- The revision to the percentage of F&B is minimal, and still represents a significant change to the balance of uses and nature of the approved development.
- Impact on air quality, noise and visual amenity (e.g. from plant).
- Welcome the reduction on proportion of drinking establishments to 10% and addition of a gate, but remain concerned at their locations with the resulting impact on residential amenity.
- Servicing and deliveries – the applicant's own numbers confirms the additional servicing trips per day that cannot be accommodated in the service yard.
- Incremental erosion of the original permission.

228. Southwark Cathedral – objects.

- Write both in capacity as a neighbour of the development and as the parish church; the residents are our parishioners.
- The new offer made by the developers of Borough Yards still represents just too much F&B in an already saturated area.
- The offer of 45% dining and drinking would entail extra servicing, waste, noisier and longer occupation, greater congestion of highways from taxis and Ubers, more smokers and more late-night disturbance, none of which has been sufficiently mitigated.
- Units 215, 219 are too big (14,000 square feet combined) and too close to too many residents for F&B; 192A is too close to too many residents for a bar. At least one unit on Bank End should be reserved for the retail recovery (suggest 232).
- Retail is badly needed here, and the huge footfall means that retail would work if retailers were given enough 'comfort' to come in.
- Disappointed that there is no revision offered regarding the redefinition of small enterprise from three to ten outlets, which would harm the special and unique character of the area. In any case, it appears that at least one of chains in question may already have more than ten outlets.

229. The Peer Group PLC – continues to object.

- The additional significant share of food and beverage is not an appropriate and balanced mix of uses that the approved scheme had. It will be an overprovision and a significant, fundamental change to the permission. Marketing evidence will have been skewed by the pandemic and unlikely to represent reliable data on which to base a long term strategy.
- Welcomes the 10% restriction on drinking establishments.
- The transport note provided does not consider the relevant issues or that concerns have been addressed. Additional servicing traffic will harm the surrounding area. The lower trip rates from examples of operators cannot be guaranteed, and will change over time. Taxi trips are not addressed adequately.
- The amendments are fundamental changes to the permission, question whether the s73 process is the correct way with the council needing to take care to avoid the risk of judicial review.

230. 48 objections maintaining the earlier objections to both the minor material amendments and the revision to the s106 definition:

#### The revisions made are not sufficient

- The revisions are still too much F&B in a saturated area (as shown by the applicant's drawing), cumulative impact area, and a conservation area that is primarily residential. They do not allay fears that the intensification of F&B is unsustainable with increased servicing, disturbance to residents and highway congestion, as well as the erosion of the unique and special character of the area and commodification of the public realm for drinkers, diners and smokers.
- The offer of 45% dining and drinking would entail extra servicing, waste, noisier and longer occupation, more highway congestion from taxis and Ubers, more smokers and more late-night disturbance, urination etc, none of which has been accurately detailed or sufficiently mitigated.
- The proposal undoes changes that were required by the GLA in the original application to comply with the London Plan for cultural offer, deliveries and servicing compromising the public realm (privatised for diners, drinkers and smokers in areas that were previously open), independent and affordable retail that was considered to reinforce the distinctive retail character of the Market area.
- Disappointed that there is no revision to the redefinition of small enterprise from three to ten outlets, which would harm the special and unique character of the area. It appears that at least one of chains in question may already have more than ten outlets.

#### Loss of shops

- Retail is badly needed here, and the huge footfall means that retail would work if retailers were given enough 'comfort' to come in. The applicant should think of other ways to attract them. Approving the loss of shops would redefine the area for a generation.
- Covid does not justify ignoring all planning policies. It is far too early to make fundamental, long-term planning changes based on the applicant's change of heart.
- Short-term changes to retail are being used to justify a permanent change to F&B in an inconsiderate scheme that would generations to

redeem. The applicant's documents on leasing and the applicant's original tenant mix aspiration are not accurate. A wellness centre was considered unsuitable, even though residents had asked for it. Suggest that there is not active marketing of the site for leases other than F&B.

- At least one unit on Bank End should be reserved for the retail recovery (suggest unit 232).

#### Harm to residents' amenity, and anti-social behaviour

- The revision of only 5% is slight, and still includes the largest units as F&B holding hundreds of people closest to the largest density of residents (units 215 and 219) and so will cause the most harm. Increased noise from voices, lingering under windows, chatting, obscene language near to children's homes, shouting, fighting, urination etc until after midnight. Transient noise, outdoor parties and music.
- Noise and smoke from outdoor drinkers and smokers (in the defined areas and the streets), which wouldn't have happened with shops. Unpleasant and unhealthy. Smokers will walk up and back down Stoney Street, will stand in doorways if its raining.
- The proposed mitigation is welcomed but insufficient. A gate won't prevent the units opening straight onto the street. Up to 1574 drinkers and diners could use the site at any one time, five times a day, plus those from the cinema who will be focused on the tiny streets under the windows of 900+ residents. The applicant's figures show 34% more drinkers and diners to the area at peak times.
- No technical noise assessment has been provided and no mitigation has been proposed for the F&B uses. The applicant's noise impact report is inadequate, partisan and misleading, and should be treated as invalid. No sound testing was undertaken from residents' homes. The noise expert and the licensing committee under-estimated the impacts.
- Units 215, 219 are too big (14,000 square feet combined) and too close to too many residents for F&B, on people's doorsteps.
- Units opening onto Dirty Lane in the centre of the site and away from residents would be better for F&B use, with no explanation given on why aside from size.
- The hybrid bar/restaurant licensed on Stoney Street will have the same impacts as a bar use. None should be allowed in Stoney Street.
- The 26 licensing conditions should be included in new planning applications (e.g. requiring double lobbies for noise containment).
- The plan on the original application was expected to be conditioned and had been developed after input from officers, residents and the applicant. It was supported because it showed units 215 and 219 to not be F&B.
- Residents cannot relocate their bedrooms away from noisy facades, nor keep windows closed all the time.
- Three security guards are not sufficient to prevent antisocial behaviour for this huge site with a large perimeter. Dispersal is toothless, especially with a mass exodus at the end of the night. Moving troublemakers off the site puts them onto the streets.
- It is not appropriate to compare numbers of covers or drinkers with Vinopolis.
- The suggested condition drawing should not be conditioned, as it would enshrine the massive unwelcome F&B presence for the life of the

scheme.

- Question the calculations of F&B activity, and the sqm used for the calculations. Cinema drinkers are still drinkers.
- Residents are moving away because of the Borough Yards proposal. Council tenants do not have that option.
- How “upmarket” an F&B occupier is doesn’t give reassurance.

#### Harm to the character of the area

- A retail mix that is interesting and diverse is needed. Permission was given on the basis of the development being a genuinely mixed retail/F&B scheme, with conditions designed to ensure that the retail and F&B offering would be individual, boutique and in keeping with the character of the area. The current proposals seek to change the nature of the scheme to one which focuses on F&B, and weakens the control on the nature of the outlets that are permitted to operate. This will be to the detriment of the environment, the residents and the character of the area.
- It will destroy the neighbourhood and create a shopping mall.
- Large chains would erode the special character of the area.
- The applicant didn’t make any effort to tailor its needs in the licensing hearing, e.g. all the units would be able to sell bottles for off premises consumption, all will be able to sell takeaway. The applicant has lost its supposedly clear vision about what a massive mixed-use development looks like so it’s going to fill the place with restaurants and bars. That is not a creative vision for what to do here. If we fill this development with F&B we will never know what the mixed-use potential of this space could be.

#### Transport and highways issues

- Use of the two largest units and the increased numbers of people and servicing vehicles could block access to the two disabled parking bays. Residents have difficulty arranging parking for contractors, moving vehicles etc from the council, yet servicing vehicles are allowed to clog up the roads; this will only get worse with more F&B.
- No mention of additional refuse from the F&B. The hours of deliveries and servicing should be moved later to protect resident amenity.
- A space for taxis is needed to accommodate the additional numbers.
- The submitted servicing strategy states that servicing vehicles arriving outside the site’s own servicing yard hours would be directed to Bank End, which is already used by other businesses’ deliveries causing distress, blocking the street, and access to garages. The strategy says that the office deliveries are not restricted and can be done any time on Park Street. Any new decision needs to define and restrict servicing.
- The largest F&B units will require more servicing.
- Taxi marshals are needed. The issue of taxis was not resolved by licensing. Taxis will be a popular transport option according to the applicant, on a site with no legal taxi parking. It would not be practical for hundreds of taxis to find their customers at midnight. Taxis will compete for space with Borough Market’s large lorries. The tube is closed by midnight with the night services not due to resume until at least 2022. The applicant suggests visitors would hail a black cab, but ignores the cost and shows a lack of understanding of the area’s one way streets

etc. Disabled residents need constant access to the disabled parking spaces.

- Impact on emergency access, fire risk of timber buildings in narrow streets. The applicant's fire and disaster recovery plans are blank.

#### Other

- The wording of condition 28 needs to allow for community involvement in any changes, not agreed solely with the council.
- Concern that licenses will be varied over time. The conditions should be attached to the physical buildings through planning too. Suggest that the licensing conditions be replicated on any planning decisions where relevant to planning. Plus additional conditions that units 215 and 219 be kept as shops, no queuing or street furniture be placed in the street or footpaths; identify where the taxi collection, waiting and drop off positions will be, away from residents; external lighting switched off at 10pm; no floodlights or flashing lights that can be seen from outside; limit music levels and to never be audible within homes (even with F&B windows/doors open); no set up/dismantling of event equipment after midnight; resident contact to a real person; no keys to be given to suppliers; no noisy cleaning between 10pm and 8am; no singing or shouting in the street outside premises; no heaters awnings or parasols to encourage patrons to linger; non-compliance with the Tenants Handbook be grounds for eviction; provision of public toilets on site; no filming, photography or special events after closing time.
- Question where the EIA screening opinion is. The proposal should be positively screened as EIA development.
- Support the letter by Richard Buxton solicitors and the representations of Better Bankside, the Borough Market and the Borough Market Environs Group.

### **Reconsultation responses from external and statutory consultees**

231. Met Police – The SE Designing Out Crime Unit do not have any comments to make at present with regards to security and Secured By Design measures. The security standards and requirements previously discussed and agreed with the development team for this project will also stand for this amendment. Has passed the minor material amendment application to the council's Licensing Team to see if they wish to comment either directly themselves or via the Met Police.

### **Reconsultation responses from internal consultees**

232. EPT – continues to have concerns over the increase of A3 and A4 units and the potential for additional cumulative impact on residential amenity. EPT has regard of the premises licence applications, submitted under the Licensing Act 2003, that were recently granted at a licensing sub-committee; the applications were granted with a suite of conditions attached to the units addressing the noise and prevention of public nuisance licensing objective. Having regard for the existing planning conditions and the premises licence conditions, concern is raised to there being no planning condition to address sound insulation/potential noise break out. If the planning division is minded to grant

approval for this minor material amendment, and continuing to have regard for the special circumstances of this case, EPT would request a condition be attached to ensure that operational noise from within the units will not cause a loss of amenity to the closest noise sensitive residents.

233. Local economy team – has no objection.

### **Community impact and equalities assessment**

234. The council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights

235. The council has given due regard to the above needs and rights where relevant or engaged throughout the course of determining this application.

236. The Public Sector Equality Duty (PSED) contained in Section 149 (1) of the Equality Act 2010 imposes a duty on public authorities to have, in the exercise of their functions, due regard to three "needs" which are central to the aims of the Act:

1. The need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
2. The need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
  - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
  - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
  - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
3. The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

237. The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership. The proposed changes to the proportion of retail uses and eligibility of small enterprises within the recently redeveloped scheme would not cause a fundamental inconsistency with the PSED. The equalities concern raised by objectors of impacts upon those with disabilities (a protected characteristic) has been considered, with officers concluding there is no expected effect to suggest that those with disabilities would be further impacted by the proposal with continued normal highway enforcement in place. The equalities concerns raised in the objections regarding the impact on children

and the elderly, particularly those who live in the area, was also considered with age being another protected characteristic. Officers conclude that the proposal as recommended for approval would not impact more upon those with protected characteristics that live, work and visit in the area. The proposal would not contribute to the discrimination, harassment, victimisation or any other conduct that is prohibited by or under this Act.

## **Human rights implications**

238. This planning application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
239. This application has the legitimate aim of seeking to vary a condition and make changes to the original section 106 legal agreement in relation to a retail-led development which is under construction. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

## **Positive and proactive statement**

240. The council has published its development plan on its website together with advice about how applications are considered and the information that needs to be submitted to ensure timely consideration of an application. Applicants are advised that planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
241. The council provides a pre-application advice service that is available to all applicants in order to assist applicants in formulating proposals that are in accordance with the development plan and submissions that are in accordance with the application requirements.

## **Positive and proactive engagement: summary table**

Was the pre-application service used for this application?	No
If the pre-application service was used for this application, was the advice given followed?	Yes
Was the application validated promptly?	Yes
If necessary/appropriate, did the case officer seek amendments to the scheme to improve its prospects of achieving approval?	Yes
To help secure a timely decision, did the case officer submit their recommendation in advance of the agreed Planning Performance Agreement date?	No

## **CONCLUSION**

242. The assessment of the section 73 minor material amendment application has focused on the changes proposed by the amendment to condition 28, and has not revisited the principles on which the original permission was determined and granted. The site is within the CAZ, an Opportunity Area and town centre where a mix of retail uses are encouraged by policies, as well as support in the recently adopted London Plan for adapting and diversifying town centres CAZ retail clusters in response to the wider trends affecting retail across London, even before the pandemic.
243. The proposed variation of condition 28 to allow a greater proportion of restaurant and bar use within the approved Class A retail units of the Borough Yards redevelopment is considered to accord with development plan policies, in terms of the impacts upon amenity and the environmental (the reasons given in the condition) as well as the town centre uses, design, heritage and transport aspects. Subject to the following points, the minor material amendment application to vary condition 28 is recommended for approval:
- the additional mitigation measures proposed by the applicant being secured through the revised condition and a deed of variation;
  - carrying over other conditions of the original permission, and adding new conditions; and
  - the GLA confirming it does not wish to call the application in for its own determination.
244. The changes to the 2017 section 106 agreement's definition of Small Enterprises would allow larger businesses to occupy the Class A units. The applicant has provided regular marketing reports to the council and has had little interest from shop tenants in the last year, which would affect the phased opening of this nearly-completed development. The cap of an eligible business having 10 other stores is considered an acceptable level that would keep them at a relatively small scale and prevent the large chains from moving into 60% of the site's retail space. The deed of variation would also secure the additional and revised mitigation measures. The second application is also recommended for approval, to be captured in a deed of variation.

## BACKGROUND INFORMATION

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Local Development Framework and Development Plan Documents	Chief Executive's Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 1412 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone: 0207 525 1412 Council website: www.southwark.gov.uk

## APPENDICES

No.	Title
Appendix 1	Recommendation (draft decision notice)
Appendix 2	Copy of the ground and first floor plans to be referenced in the revised condition
Appendix 3	Planning history of the site
Appendix 4	Relevant planning policy and material considerations
Appendix 5	Consultation undertaken
Appendix 6	Consultation responses received.

## AUDIT TRAIL

<b>Lead Officer</b>	Stephen Platts, Director of Planning and Growth	
<b>Report Author</b>	Victoria Crosby, Team Leader	
<b>Version</b>	Final	
<b>Dated</b>	6 July 2021	
<b>Key Decision</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	No	No
Strategic Director of Environment and Leisure	No	No
Strategic Director of Housing and Modernisation	No	No
Director of Regeneration	No	No
<b>Date final report sent to Constitutional Team</b>		7 <sup>th</sup> July 2021