



Appeal Decision

Hearing conducted on 6 June 2001

by **G B Stead MA (Cantab)**, Chartered Civil Engineer

an Inspector appointed by the Secretary of State for Transport,
Local Government and the Regions

CASE COPIED BY
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27 JUL 2001

Appeal Ref: APP/X5990/A/01/1059794
104-108 Bolsover Street, London

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Wereldhave Property Management Co. Ltd. against the decision of Westminster City Council.
- The application ref: PT/00/02169/FULL, dated 25 February 2000, was refused by notice dated 24 August 2000.
- The development proposed is retention of residential use on 5th floor, reversion of balance of building to commercial use class B1.

Summary of Decision: The appeal is dismissed.

Preliminary Points

1. Planning permission for the erection of the building was granted in 1959 for use as showrooms and offices with four self-contained flats on the fifth floor and car parking on the ground floor. Both parties agree that this would have allowed class B1 use. However, it appears that the building was not constructed until about 1971. The parties' records on this do not appear to be entirely clear but this was agreed at the Hearing as being the likely time of construction. The Polytechnic of Central London (now the University of Westminster) obtained a temporary permission for change of use to Students' Union with ancillary residential and office accommodation in 1972.
2. The temporary permission was for a limited period of twenty years. In 1989, the Polytechnic of Central London obtained permission, personal to the Polytechnic, to continue the use of the building as a Students' Union, without a time limit. In 1998, the Students' Union vacated the building, which has remained unoccupied since. Planning permission is required for any other use of the building.

Main Issue

3. The main issue is the effect of the proposal on the character and function of the surrounding area.

Development Plan and other Planning Policies

4. The development plan includes the adopted City of Westminster Unitary Development Plan (UDP) 1997. The UDP defines central London activities as those of international, national and regional importance. Policy CAZ1 indicates that central London activities will normally only be granted permission within the Central Activities Zone (CAZ), whilst policy STRA2 seeks to enhance the character of the CAZ, within the context of other policies in the plan, rather than extending it over a wider area.

5. Policy ECON1 provides for regeneration and growth and indicates those areas where office development will normally be acceptable. Outside the CAZ (and the Paddington Special Policy Area), permission will only be granted in exceptional circumstances for increases in office floor space, other than for local service offices. The policy indicates that such exceptional circumstances might include sites with lawful B1 use outside the Light Industrial Special Policy Area (LIPSA). The policy further requires all such proposals to make maximum possible provision of new residential floorspace, or of other uses serving the local community, within the constraints of the site. The policy requires all such proposals to have no material impact on residential amenity.
6. Policy ECON8 allows for the provision of local service offices outside the CAZ. These offices would either provide a local service to residents or would support other activities. They might include branches of banks and building societies, solicitors, information and advice centres and DSS offices. Policy ECON12 deals with the provision of light industrial floorspace outside the LIPSA. It indicates that permission may be granted where the City Council is satisfied that by virtue of design, location and layout, the development is particularly suited for industrial or warehouse use and likely to be so occupied.
7. There is also an emerging development plan. The first deposit draft was placed on deposit in January 2001. Two policies were drawn to my attention. Policy COM1 reflects policy ECON1 of the adopted UDP but is more restrictive on where permission for offices will be given outside the CAZ. Policy COM9 expands on policy ECON12 of the adopted UDP. At this early stage of preparation of the emerging plan, only limited weight can be given to its policies.

Reasons

8. The appeal property is located some 250 metres north of, and outside, the boundary of the CAZ. It is also some 30 metres north of, and outside, the boundary of the LIPSA, which runs along New Cavendish Street.
9. The appellants advised that, in order to retain flexibility for possible future use of the building, they were seeking an unrestricted B1 use for the building, with the exception of the fifth floor where they plan to renovate the four residential flats. The result would be an additional 1452 square metres of B1 floorspace outside both the CAZ and the LIPSA.
10. Although the appellants indicated that they had had negotiations with potential tenants, they have not brought forward any specific evidence of the need for offices whereas the local planning authority advised that there are 400,000 square metres of office floorspace in large schemes under construction in the city, with a further 493,000 square metres with planning permission. The local planning authority estimate that inside the CAZ, the supply of office floorspace, including those schemes with permission, is sufficient to accommodate general office development until 2006.
11. Whilst an unrestricted B1 use might allow occupation of the appeal premises as local service offices, it would also enable central London activities to occupy the building. If this were to happen, it would contribute to a dispersal of those activities from the CAZ and be contrary to the policies designed to restrict the extension of the CAZ.
12. The parties agreed at the Hearing that the basement and ground floor of the building have greater floor to ceiling heights than the other floors. The appellants suggested that

it would thus be possible to consider use of the lower floors for light industry, with the upper floors being used for subsidiary offices. There are film, music and media businesses in the area and in the appellants' view, these would provide appropriate forms of light industrial use for the lower parts of the building. However, in the view of the local planning authority, the building does not meet the requirements of particular suitability for industrial use, in terms of design, location and layout, as set out in policy ECON12. Whilst the lower floors of the building could accommodate light industrial use because of the extra floor to ceiling heights, I do not consider that the building is particularly suited for such use. Therefore, in my view, the proposal would also be contrary to the policy on light industrial floorspace.

13. The appellants suggest that there are material considerations why the proposal should be determined otherwise than in accordance with the development plan. These include the peculiar history of the building, the predominantly commercial character of the immediately surrounding area, the remaining economic life of the building which would not require major expenditure to bring it back into use, the reinstatement of the residential units and the fact that, in the view of the appellants, no material harm would be caused by the proposal. I do not consider that these considerations are sufficient to outweigh up-to-date UDP policies for the reasons given below.
14. In my view, it is reasonable to consider the proposal in the light of current policies, even though the building was originally designed for office use. In spite of the reference in the appellants' statement to it being an established fact that the premises were occupied as mixed commercial and residential use, discussion at the Hearing leads me to conclude that there is doubt over whether the building was ever occupied as offices prior to occupation by the Students' Union.
15. The use of the building as a Students' Union was a sui generis use and although parts of the building were used as office space, for example for the provision of welfare services and the production of a student magazine, I consider that these were reasonable ancillary uses associated with a Students' Union building and did not in any sense establish a class B1 office use.
16. Whilst the immediate area surrounding the appeal property is in mixed use, the wider area contains a substantial number of residential units. The buildings in the immediate area are, in general, purpose built commercial buildings with large frontages, but there are a number of local support activities, such as shops and cafes. Within a short distance, in the area to the south of New Cavendish Street, there are substantial numbers of townhouses. There is one other property with a residential content in the section of Bolsover Street which includes the appeal property. In my view, the proposal would represent a lost opportunity to reinforce residential use in this part of Westminster.
17. The residential element of the proposal would result in the renovation of the four flats on the fifth floor. Although the appellants indicated that the flats were occasionally occupied, some of them were used for other purposes by the Students' Union and had kitchen and bathroom fittings removed. However, the basic layout of individual flats remains. The appellants indicated at the Hearing that the provision of additional residential units on other floors would require significant structural change to the building. However, neither the appellants nor the local planning authority produced any specific evidence on the feasibility of converting the building, or part of it, to alternative

uses, such as additional residential units or other uses serving the local community. I have not been convinced that such conversion would be impractical.

18. In my view, the proposal would not reinforce the residential character of the area which UDP policies seek to achieve, in spite of bringing four units back into residential use. I consider that the balance in the property between B1 use and residential use (or other uses serving the community) would be too strongly in favour of the B1 use. In my view, therefore, the proposal would cause unacceptable harm to the character and function of the area by failing adequately to reinforce the residential nature of the area.
19. The proposal is outside the CAZ and, in my view, there are no exceptional circumstances to justify the increase in office floor space which would result, if the appeal were allowed. An unrestricted B1 use would allow central London activities to occupy the building and the proposal would thus be contrary to policies CAZ1 and STRA2. I do not consider that the proposal makes the maximum provision of residential floorspace possible within the constraints of the site, nor does it include other alternative uses serving the local community. In my view, therefore, the proposal would be contrary to policies ECON1 and ECON8. Further, I do not consider that the building is particularly suitable for industrial or warehouse use and, since it is located outside the LIPSA, the proposal would, in my view, be contrary to policy ECON12.

Other Matters

20. Class B1 uses can be carried out without detriment to the amenity of any residential area and thus, in my view, the proposed use could be introduced into Bolsover Street without harm to the residential amenity of the area. I consider that the proposal would be likely to be beneficial to residential amenity when compared to the previous use as a Students' Union, because of a likely reduction in noise and numbers of people associated with the appeal property. However, this benefit in terms of residential amenity is not sufficient, in my view, to outweigh the harm which would be caused to the character of the area.
21. The appellants expressed concern over the reasons why a personal permission was given in 1989 and the effect that this has had on the ability of the building to revert to its original uses. However, a personal permission was given and I have to deal with the application as submitted.
22. The appellants refer to earlier policy documents and to the basis for determination of the boundary of the Central Activities Zone. They also show how there had been an increase in Central London Activities between 1971 and 1990 in a grid square adjacent to that in which the appeal site is located but also outside the CAZ. They further draw attention to the wider Central London Policy Coordination Area defined in the Strategic Planning Guidance and shown on Map 3 in Appendix L of their statement. I do not consider that these matters are sufficient reason to decide other than in accordance with the Unitary Development Plan, adopted as recently as 1997, which post-dated publication of RPG3: Strategic Planning Guidance for London Planning Authorities.

Conclusion

23. I have considered all the other matters raised, but none is sufficient to outweigh the considerations which lead me to my conclusion.

Formal Decision

24. In exercise of the powers transferred to me I dismiss the appeal.

Information

25. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within 6 weeks from the date of this decision.

A handwritten signature in black ink, appearing to read "G. R. Stead". The signature is written in a cursive style with a long horizontal stroke at the end.

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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| Mr Peter Edwards BA (Hons) MRTPI | Planning Perspectives, 25 Bruton Street, London W1X 7DB |
| Mr Huw Williams MSc BSc MRTPI | Planning Perspectives |
| Mr Adam Hilton BA DipTP | Planning Consultant |
| Mr Nicholas True BSc (Hons) ARICS | Wereldhave Property Management Ltd, 39 Sloane Street, London SW1X 9WR |

FOR THE LOCAL PLANNING AUTHORITY:

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| Mr David Horkan BA (Hons) MRTPI | Westminster City Council |
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DOCUMENTS

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| Document | 1 | List of persons present at the hearing |
| Document | 2 | Council's letter of notification and list of addresses |
| Document | 3 | Planning Perspectives' Statement of Case and Appendices, on behalf of appellant |
| Document | 4 | Westminster City Council's Statement of Case and Appendices |
| Document | 5 | Residential Uses surrounding 104-108 Bolsover Street |
| Document | 6 | Adopted UDP – policy SS8: Retaining wholesale showrooms |
| Document | 7 | First Deposit Draft emerging UDP – policy COM12: retention of wholesale showrooms |
| Document | 8 | Summary Statement on Behalf of Wereldhave Property Management Co. Ltd. in respect of 104-108 Bolsover Street |

PLANS

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|-------|---|-------------|---|
| Plans | A | 812/100-P | Series of floor plans of building entitled 'Adaptations for use as student and welfare headquarters' – scale 1/8 inch to 1 foot |
| Plans | B | 1429/00 | Layout Plans as existing – scale 1:100 |
| Plan | C | Un-numbered | Appeal Site Location Plan – scale 1:2500 |