

PINS31



The Planning Inspectorate

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Appeal
Allowed

Rolfe Judd Planning
Old Church Court
Claylands Road
The Oval
LONDON
SW8 1NZ

Your Ref:

P494

Our Ref:

T/APP/X5210/A/96/268790/P4

Date:

24 MAR 1997

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY SHAFTESBURY PLC
APPLICATION NO: P9600597

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the failure of the Council of the London Borough of Camden to give within the prescribed period notice of their decision in respect of an application for alterations and extensions, involving the infilling of a lightwell, in connection with the proposed change of use to dual A1/A3 use of the ground floor and basement; and to dual B1/A3 use at the first floor; and the continued B1 use at second and third floor levels at 50-52 Monmouth Street, London W2. I conducted a hearing into the appeal on 4 March 1997 and inspected the site on the same day.

2. From my inspection of the site and its surroundings, and my consideration of all the matters put to me at the hearing and in the written representations, I consider that the main issues for me to determine in this case are; first, the effect of the proposal on the retail character and function of the Seven Dials area in the light of the Council's planning policies; secondly, the implications for neighbours' living conditions, with particular reference to fumes, smells, noise and disturbance, and; thirdly, the impact on the Covent Garden Conservation Area and whether it would serve to preserve or enhance its character or appearance.

3. The appeal property is situated within the Covent Garden Conservation Area, designated in 1971, and is a vacant 4-storey building with an internal lightwell which forms part of a larger block bounded by Monmouth Street, Tower Street and Tower Court which lies in the southern part of Seven Dials. The building is situated on a prominent corner site at the junction of Monmouth Street and Tower Street. No 21 Tower Street and No 48 Monmouth Street, the adjoining premises, are also currently vacant but have use rights for

offices and retail and for offices and residential use, respectively. The remainder of the block has residential uses facing Tower Court and above the ground floor retail uses fronting Monmouth Street. To provide daylight to the rear of these premises there is a narrow court which runs down the centre of the block. There are no residential uses on the opposite side of Monmouth Street which is largely in retail use with office accommodation on the upper floors.

4. The Seven Dials area is characterised by a wide range of retail and entertainment uses generating a great deal of vehicular and pedestrian activity. These include St Martins and the Ambassador Theatres immediately opposite the appeal premises on Tower Street. Intermixed with these uses there is residential accommodation, mainly on the upper floors of buildings fronting the busy main streets, but also in relatively secluded backland areas such as Tower Court.

5. The appeal building has use rights for retail use (Class A1) in the basement and on the ground floor, and office use (Class B1) on the upper floors. In August 1996, planning permission was granted (Ref: P9600537R1) for the infilling of the internal lightwell at first, second and third floor levels to provide additional office space, together with the raising of the parapet wall at the rear of the building and alterations to the shop fronts. At the time of my site inspection these works were in progress.

6. The development plan for the area is the Greater London (Covent Garden) Action Area Plan, adopted in 1978. The Plan's policies for new cafes/restaurants/sandwich bars/wine bar uses state that, with the exception of the theatre entertainment route (which lies outside the borough within the City of Westminster) where such uses would be permitted, it will be the normal policy to prevent a change of use from retail shop to restaurants, especially in shopping streets. The Plan sets out criteria against which proposals for these uses will be assessed. These include the need for a location away from residential property in order to protect residential amenity.

7. The London Borough of Camden Unitary Development Plan (UDP) was placed on deposit in 1993. The inquiry into the objections to the UDP has been completed and the Council is considering the Inspector's recommendations. The UDP is therefore at an advanced stage in the process towards formal adoption and I have given some weight to the policies which are relevant to this case. In particular, The Council has drawn my attention to Policy SH15 (as recommended for modification) which restricts changes of use from retail to non-retail uses outside designated shopping centres unless the proposal would not adversely affect the character and function of the area or local amenity, environment or transport conditions. The remaining retail facilities should be sufficient to provide a wide choice to meet the needs of local residents, workers and visitors.

8. I have also had regard to Policy SH24 (as recommended for modification) which sets out the conditions which would be imposed where appropriate and necessary to control, among other things, the hours of operation and the potential loss of amenity through noise and disturbance arising from proposals for Class A3 development. The policy also states that the Council will take account of the number and distribution of A3 uses and their relationship with other uses and seek to avoid a cumulatively harmful effect upon the loss of retail outlets, traffic parking and local residential amenity.

9. The appeal premises is situated on a shopping street identified in the adopted local plan. It is not, however, immediately adjacent to residential uses in Tower Court, being separated from 5 Tower Court by 21 Tower Street. It is similarly separated from the dwellings on the upper floors of buildings facing Monmouth Street by 48 Monmouth Street which although currently vacant is proposed for office use. Facing the appeal property on the opposite side of Tower Street and Monmouth Street there are entertainment, retail and office uses.

10. The proposal would lie outside the shopping centres designated in the emerging UDP and thus be subject to Policy SH15. It was contended that because of its prominent location on the approach to Seven Dials, and the specialised character of the shops in the locality, the current use of the premises should be retained in order to widen the range of retail choice. However, strategic planning policy guidance for London set out in RPG3 stresses the importance of the tourism industry in locations such as Covent Garden. I accept that there is a significant number of restaurants, bars and public houses in the vicinity of the appeal premises but it seems to me that they are not so numerous as to unduly distort the character of the area which attracts large numbers of visitors because of its vibrant mix of residential, specialist retail and entertainment uses. I observed on my visit to the site that a substantial amount of redevelopment was taking place in the area, including the provision of new retail units in Earlham Street close by, and a new restaurant development with residential accommodation above in Tower Street. I therefore conclude that the proposal would not upset the balance of uses in the area and would be in keeping with its developing character and function.

11. I now turn to the second issue. The proposed restaurant would provide between 100-140 covers by opening up the ground and first floors of the building and infilling the existing lightwell up to second floor level. The ventilation plant and extract vent for the restaurant would be sunk below the main roof level and sited above the infilled lightwell where it would be enclosed by the third floor accommodation. A new enclosed passageway and raised parapet would be erected at third floor level on the north side of the building which would screen the plant and extract vent from the dwellings in Tower Court and Monmouth Street which face into the internal court at the rear.

12. A noise survey undertaken on behalf of the appellant assessed the impact of noise arising from the use of the proposed restaurant and the mechanical plant on the nearest noise sensitive properties at 5 Tower Court and 46 Monmouth Street. Although 48 Monmouth Street is currently proposed for office use it has an extant permission for residential use and measures to achieve the necessary levels of noise attenuation on this property were also assessed. The study concluded, that provided the recommended measures to control plant noise emissions and install sound insulation within the building were carried out, the proposal would meet the Council's noise standards.

13. It was contended that the proposed restaurant would be likely to operate for longer hours than retail uses and the proposed measures to deal with environmental nuisance would not control noise and disturbance in the street as customers arrived and left the building. While I accept that this might be the case if the proposed A3 use was unrestricted and operated as a bar or club where customers could spill out onto the pavement, I have no reason to assume that the restaurant's customers would behave any differently from the large numbers of people who walk along Monmouth Street to visit the theatres and other retail and entertainment facilities in the area.

14. The kitchen and refuse store for the restaurant would be within the basement and there would be no possibility of smells or fumes escaping from open windows to create a nuisance for the occupants of the residential accommodation facing into the internal court at the rear of the building. The Council contended that even when conditions are imposed to control smells and fumes they often fail to eliminate smells completely. I accept that this would be more likely if the extract vent was located on an external wall and unacceptably close to residential accommodation. However, in this case the extract vent would be contained within the building up to roof level and, in my opinion, a modern system which is well maintained would deal satisfactorily with fumes from the restaurant. For these reasons, I consider that the proposed measures to eliminate noise and smells would ensure that the living conditions of the residents in Tower Court and Monmouth Street would not be unduly affected.

15. Nevertheless, to ensure that this would be the case I shall impose conditions along the lines of those suggested by the Council, which I have considered in the light of advice set out Circular 11/95. To protect residential amenity, I shall impose conditions to deal with noise, fumes and smells. You suggested that the condition suggested by the Council to limit the use of the basement, ground and first floors to a restaurant use only was unduly restrictive but, for the reason set out above, I consider that a restaurant would be less likely to give rise to noise and disturbance in the street than other A3 uses. However, I agree that the condition suggested by the Council relating to the hours of operation would be over-restrictive in that it would exclude customers who wished to have a meal after the theatre, which for many is one of the highlights of a visit to the area. The Council also suggested a condition to control the audibility of music outside the premises but it seems to me that the condition is imprecise and would be difficult to enforce. In my opinion, this potential problem is best addressed by a condition which would control all noise emanating from the proposal (see Condition 4 below).

16. Turning to the third issue, I have had regard to the duty set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires me when assessing proposals in conservation areas to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. It follows from my conclusions on the first two issues that the proposal would be not be out of place in this locality. The scheme would refurbish a run-down and neglected building in a key location. I also note your client's Unilateral Undertaking to carry out works in the form of pavement and hard landscaping improvements in the immediate vicinity of the appeal premises and, in my opinion, the character and appearance of the Covent Garden Conservation Area would be enhanced by the proposal.

17. I have considered all other matters raised at the hearing and in the written representations, including the outcome of appeals relating to other development proposals in the locality which were drawn to my attention, but have found nothing which outweighs the planning considerations which have led to my conclusions.

18. For the above reasons and in exercise of the powers transferred to me I hereby allow this appeal and grant planning permission for alterations and extensions, including the infilling of a lightwell, in connection with the change of use from A1 use to dual A1/A3 use of the basement and ground floor, and from B1 use to dual B1/A3 use of the first floor, and the continued B1 use of the second and third floors, at 50-52 Monmouth Street, London in accordance with the terms of the application (No: P9600597) dated 29/1/96 and the plans

submitted therewith (Ref Nos: 14390/6,7,8,9,10,11A,12,13,14,15A,16) subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;
 2. the basement, ground and first floors of the Class A3 use here permitted shall be used as a restaurant only and for no other purpose (including any other purpose within Class A3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification;
 3. the restaurant use hereby permitted shall not be open to customers outside the hours of 9.00am - 12.30am Mondays to Saturdays, and 11.00am - 11.00pm on Sundays;
 4. before the commencement of the restaurant use hereby permitted a scheme specifying the measures to be taken to control the noise emanating from the restaurant, including sound insulation works, shall be submitted to and approved in writing by the Council. The agreed scheme shall be implemented before the development hereby permitted is brought into use;
 5. before the commencement of the restaurant use hereby permitted a scheme specifying the details of the proposed extract ventilation system and associated air handling equipment, together with details of measures to provide sound attenuation and acoustic isolation to prevent the transmission of noise and/or vibration to any other part of the building or adjoining premises, shall be submitted to and approved in writing by the Council. The approved scheme shall be implemented before the development hereby permitted is brought into use and maintained in accordance with the manufacturers' instructions;
 6. at 1 metre outside the windows of any neighbouring habitable room the level of noise from all plant and machinery of the approved scheme shall be at all times at least 5 decibels below the existing ambient noise level, expressed in dB(A), at such locations. Where the noise from the plant and machinery is tonal in character the difference in these levels shall be at least 10 dB(A);
 7. before the commencement of the restaurant use hereby permitted a scheme specifying the details of the arrangements for the storage of refuse shall be submitted to and approved in writing by the Council. The approved scheme shall be implemented before the development hereby permitted is brought into use.
19. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period. The developer's attention is drawn to the enclosed note relating to the requirements of the Building Regulations 1991 with respect to access for disabled people.

20. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R C Maxwell'.

R C MAXWELL MSc DA(Edin) RIBA MRTPI
Inspector

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PERSONS SPEAKING AT THE HEARING

FOR THE APPELLANT

Mr P Atkins MRTPI	- Planning Consultant, Rolfe Judd Planning, Old Church Court, Claylands Road, The Oval, London.
Mr J S Lane MA FRICS	- Chief Executive, Shaftesbury PLC

FOR THE LOCAL PLANNING AUTHORITY

Mr S Hoets BSc DipTP ARICS MRTPI	- Development Control Area Manager, LB Camden.
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FOR COVENT GARDEN COMMUNITY ASSOCIATION (CGCA)

Mr J Monaghan RIBA	- 21 Macklin Street, London.
Mr J Bus	- CGCA.

ADDITIONAL DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

Document 1. - List of persons present at the hearing.

Document 2. - Copy of notification letter and list of addresses circulated.

Document 3. - Copy of Covent Garden in Camden (1988), submitted by the local planning authority.

Document 4. - Extract from the Covent Garden Action Area Plan, submitted by CGCA.

Document 5. - Extracts from the Camden UDP Inspector's Report, submitted by CGCA.

Document 6. - Bundle of letters submitted by the planning authority and CGCA.

Document 7. - Supplementary statement, dated 6 March 1997, submitted by CGCA.

Document 8 - Supplementary statement submitted on behalf of the appellant, dated 11 March 1997.

Document 9. - Copy of Unilateral Undertaking, submitted by the appellant.

Plan A. - Site location plan showing residential uses, submitted by CGCA.