

APPEAL BY UTOPIA PROPERTY SALES LTD

UTOPIA VILLAGE

Statement of Case

Introduction

1. The Statement of Common Ground sets the context for the appeal.
2. In August 2013 the Appellant submitted an earlier application for prior approval to the London Borough of Camden (LBC). LBC considered two of the units (Unit 11 and 11a) to not fall within the B1a Use Class and considered them to be in use as a recording studio. Whilst the appellant disputed this claim, an impasse was reached with LBC resulting in the application being withdrawn in order to avoid a refusal. However the application had progressed significantly enough to agree a draft Section 106 legal agreement with relevant obligations pertaining to highway and transport matters which are now identified as reasons for refusal 1 – 4.
3. The key dates and correspondence between the Appellant and LBC are set out below.
4. **8 August 2013** – First prior approval application submitted (ref: 2013/5111/P)
5. **27 August 2013** – Email correspondence between Applicant's planning agent (TA) and LBC agreeing S106 legal agreement to secure car capped units and the provision of Construction Management Plan (Essential Supporting Document 09).
6. **6 September 2013** – Email correspondence between TA and LBC confirming that cycle spaces will be provided on site and included as an ongoing compliance within the S106 legal agreement (Essential Supporting Document 09).
7. **30 September 2013** – Email correspondence between TA and LBC confirming that the application be withdrawn, despite submitting revised plans excluding Units 11 and 11a from the prior approval application by way of revised plans and submitting a draft S106 (Essential Supporting Document 09).
8. **9 October 2013** – Second prior approval application submitted (ref: 2013/6859/P) ((Essential Supporting Document 01 & 05).
9. **12 November 2013** – Email correspondence between TA and LBC regarding existing rooflight positions (Essential Supporting Document 09).
10. **14 November 2013** – Email correspondence from TA clarifying existing rooflight positions and submitting revised plans to reflect the exact positions of the fenestration (Essential Supporting Documents 06, 06i and 09).
11. **20 November 2013** – Email from LBC confirming acceptance of rooflight revisions and also advising that the application would be considered at Members Briefing Panel on Monday 25 November recommended for approval.
12. **25 November 2013** – Members Briefing Panel sat and reviewed the Officer's report which recommended that the prior approval application be approved subject to a S106 to secure 74 cycle spaces; Car capping; Construction Management Plan and Highways Contribution. The report included a draft decision notice granting prior approval (Essential Supporting Document 09).
13. **26 November 2013** – Email from LBC advising that the transport concerns were still be queried following Members Briefing Panel (Essential Supporting Document 09).

14. 27 November 2013 – Email from Applicant's solicitor confirming that LBC had received a signed S106 legal agreement and that the legal officer was awaiting authority to seal the deeds from the planning case officer (Essential Supporting Document 09).
15. **03 December 2013** – Email correspondence showing final attempt by TA to contact the officer following numerous emails sent to LBC from TA with no response (Essential Supporting Document 09).
16. **03 December 2013** – Email response from LBC to TA with attached prior approval application refusal notice (Essential Supporting Document 09).
17. **05 December 2013** – Email correspondence chasing copy of final officer's report for the refused prior approval application (Essential Supporting Document 09).
18. **10 December 2013** – Email from LBC providing copy of officer's delegated report for refused prior approval application (Essential Supporting Document 09).
19. **11 December 2013** – Letter from Applicant's solicitor to LBC setting out the main points of issue with LBC's interpretation of the relevant elements of the GPDO (Essential Supporting Document 09).
20. **8 January 2014** - Letter from Applicant's solicitor to LBC regarding advice given from DCLG to the Peak District National Authority (Essential Supporting Document 09).

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21. As set out fully below, the issues in this appeal relate to LBC's reasons for refusal 5-15. Prior to the determination of the application, the Appellant submitted to LBC an executed Section 106 obligation providing the matters sought in grounds 1-4. The final agreed draft of such an obligation is supplied with the appeal (see essential support documents 06. The case for the Appellant is that the resolution of grounds for refusal 5-15 is a matter of law.
22. It is proposed to change the use of the lower four floors of the appeal premises from Class B1(a) office use to Class C3 residential use. This proposal constitutes development for which planning permission is required. By section 58(1)(a) of the Town and Country Planning Act 1990, planning permission may be granted by a development order, which includes the Town and Country Planning (General Permitted Development) Order 1995 (as amended, most recently in 2013). Section 59(2)(a) of the Act provides that a development order may grant planning permission for development of any Class specified in the order.
23. Article 3(1) of the GPDO provides that:

"Subject to the provisions of this Order....planning permission is hereby granted for the classes of development described as permitted development in Schedule 2".
24. Article 3(2) provides that any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in schedule 2.
25. Part 3 of Schedule 2 (Changes of Use) specifies as Class J permitted development:

"Development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwellinghouses) of the schedule to the Use Classes Order from a use falling within Class B1(a) (offices) of that schedule".
26. Under the heading "Conditions" paragraph J.2. provides:

"Class J development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to –

- (a) transport and highways impacts of the development;*
 - (b) contamination risks on the site; and*
 - (c) flooding risks of the site,*
- and the provision of paragraph N shall apply in relation to any such application".*

27. The relevant provisions of paragraph N are as follows. Sub-paragraph (1) provides that "The following provisions apply..." in relation to an application with respect to (inter alia) Class J. Sub-paragraph (2) provides that the application is to be accompanied by a written description of the proposed development, a plan and contact details. Sub-paragraph (3) provides that where the application relates to prior approval as to the transport and highways impacts of the development, consultation with the relevant highway authority is to be undertaken when the local planning authority consider that the development "is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site". Paragraph 2.7 of the LBC Delegated Report refers to the criterion of having "a severe impact on the highway network (as set out in the GPDO)".

28. Sub-paragraph (7) provides:

"The local planning authority may require the developer to submit such information regarding the impacts and risks referred to in paragraph J.2...as the local planning authority may reasonably require in order to determine the application, which may include –

- (a) assessment of impacts or risks;*
- (b) statements setting out how impacts or risks are to be mitigated".*

29. Sub-paragraph (8) provides that the local planning authority shall, when determining an application:

- "(a) take into account any representations made as a result of consultation and a notice requirements; and*
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application..."*

30. Sub-paragraph (9) provides that the development shall not be begun until receipt of notice of the local planning authority's determination that prior approval is not required, or receipt of a written notice giving approval, or the expiry of 56 days without any notice from the authority. Sub-paragraph (10) provides:

"The development shall be carried out –

- (a) where prior approval is required, in accordance with the details approved by the local planning authority;*
- (b) where prior approval is not required, or where paragraph (9)(c) [failure to give any notice] applies, in accordance with the details provided in the application referred to in paragraph (1),*

unless the local planning authority and the developer agree otherwise in writing".

31. The Appellant accepts that it is appropriate that LBC require prior approval in the present case. The issue is whether that approval should be granted.
32. The scope of the material considerations under Class J must always take account of the context, that Parliament has decided that planning permission is granted for the development specified in Class J, save only in the case of the exceptions specified in J.1. None of these exceptions applies in the present case. As Collins J observed in London Borough of Islington v. Secretary of State for Communities and Local Government [2013] EWHC 4009 (Admin) – copy supplied herewith (core document 17) – at paragraph 21: “*The J.2 requirements are not likely to result in many possibilities of refusal within the Claimant’s areas*”. The determination by the local planning authority can only relate to a single category of impacts (transport and highways) and two categories of risk (contamination and flooding). So far as the two categories of risk are concerned, they do not arise as material considerations in the appeal. Accordingly, the sole relevant criterion is “(a) *transport and highways impacts of the development*”.
33. Matters relevant to the transports and highways impacts of the development are raised in grounds of refusal 1-4. The Appellant proposed a signed planning obligation under section 106 to address these matters before determination of the application. The draft planning obligation submitted with the appeal continues to address those matters, and will be executed in advance of the Inquiry.
34. As stated above, therefore, the issues in the appeal relate to grounds of refusal 5-15. The considerations which are raised fall outside the scope of paragraph J/N, and are not lawful considerations for the prior approval determination.
35. It is apparent that the principal consideration on which LBC base their position is paragraph N(8)(b), the reference to the NPPF. This reference is being wholly misapplied by LBC. First, the duty to have regard to the NPPF arises “when determining an application”. The determination in the present case relates solely to the transport and highways impacts of the development, the nature of those impacts being clarified in paragraph N(3). Accordingly, nothing in paragraph N(8)(b) arising from the NPPF can enlarge the scope of the lawful considerations which have been specifically prescribed. Second, it follows that the reference to the NPPF can only relate to those matters.
36. It may be noted that at paragraph 30 of the Islington case, Collins J referred, in the context of the scope of the Class J considerations, to “*the lack of any requirement for affordable housing*”.
37. The issues in the appeal being matters of law, the Appellant will not submit any proof of evidence.
38. In January 2014, the Appellant sought the advice of Leading Counsel on the position being adopted LBC, now reflected in the notice of refusal. Counsel advised that the LBC position was plainly wrong, for the reasons set out in this Statement. LBC have informed the Appellant that they have sought and obtained certain advice from Leading Counsel. LBC have not asserted that they have received advice to the effect that the requirements in grounds of refusal 5-15 are lawful. LBC have refused to supply a copy of the Opinion they have received.
39. By letter dated 8 August 2013 to the Peak District National Park Authority which was issued to LBC on 8 January 2014 (essential support document 09) , the DCLG stated (in relation to the scope of Class M) that the effect of paragraph N was that

“...prior approval only allows consideration of specified matters, and therefore only relevant parts of the NPPF can be taken into account. In the case of Class M permitted development rights, any parts of the NPPF referencing transport and highways impacts, noise impacts, contamination risks and flooding risks in relation to planning applications would be relevant”.

40. By letter dated 10 January 2014 to planning consultants DP9 in relation to a separate Prior Approval Application in Camden (LPA Ref: 20132/7415/P) (essential supporting document 09) the DCLG stated that:

"It is the intention of the legislation that a local authority should, when considering a prior approval application, have regard to those matters relevant to the prior approval. This covers transport and highways, flooding and contamination in relation to an office to residential change of use...."

41. For the reasons set out above, the matters raised in grounds of refusal 5-15 are clearly unlawful. As indicated above, it is the imposition of these grounds which have necessitated the appeal. It is contended that the conduct of LBC is unreasonable, and the Appellant will seek a full award of costs.