

# cunnane

## town planning

Our Ref: AB/5143/Brownlow Mews/LPA 230911

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Mr. J. Markwell  
Development Control  
London Borough of Camden  
5<sup>th</sup> Floor, Town Hall Extension  
Argyle Street  
London  
WC1H 8ND

RECEIVED  
26 SEP 2011

23<sup>rd</sup> September 2011

Dear Mr. Markwell,

**Section 73 application to vary condition 2 of planning application ref. 2003/0083/P  
21a Brownlow Mews, London, WC1N 2LA**

On behalf of our client G. Thompson Limited, I hereby enclose a application under Section 73 of the Town and Country Planning Act 1990 (as amended), proposing the variation of condition 2 imposed upon the granting of planning application ref. 2003/0083/P, relating to the premises at 21a Brownlow Mews, London, WC1N 2LA.

This Section 73 application comprises four copies of the following documents and drawings:

- Completed application form including ownership certificate.
- Supporting letter prepared by Cunnane Town Planning LLP.
- 1:1250 scale Ordnance Survey site plan with application site outlined in red.
- Drawing Number 06 – Ground Floor Plan Proposed

Relevant planning history

In August 2003, planning application ref. 2003/0083/P was granted by the London Borough of Camden for the following use of the premises at 21a Brownlow Mews, London :

*'Change of use to allow head office and control centre of a courier company to be used in conjunction with private hire vehicles business (chauffeurs).'*

This planning application was granted subject to the imposition of three restrictive conditions, and condition 2 stated :

*'The use of the property as a courier head office and control centre for both a courier and private hire vehicles (chauffeurs) business shall not operate and no deliveries shall be taken or goods dispatched from the site outside of the hours of 07.00 to 20.00 Monday to Friday nor at any time on Saturdays, Sundays, Bank Holidays or Public Holidays.'*

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As you are aware, in November 2010 a Section 73 application (ref. 2010/6406/P) proposing a variation of the same condition was submitted by this Practice. That application was refused by the Council on 25<sup>th</sup> January 2011, for the following reason;

*'The proposed variation of condition 2 of planning permission 2003/0083/P, by reason of the resultant increase in activities at the premises would result in a harmful intensification of the use outside of the previously approved hours, which would be detrimental to the residential amenity of local occupiers, contrary to policies CS5 (Managing the impact of growth and development) and CS9 (Achieving a successful Central London) of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.'*

Since the refusal of that application, in May 2011 our client's appeal was heard against the Council's decision to refuse to grant planning permission (application ref. 2009/5309/P) for the use of the adjoining premises, 22-23 Brownlow Mews, for B1 and D1 purposes. This appeal was allowed on 9<sup>th</sup> June 2011, with the Inspector not imposing any conditions restricting the hours of usage of those premises.

#### Application proposal

We now seek, by way of this application, the variation of Condition 2 imposed upon the granting of planning application ref. 2003/0083/P, to enable up to three staff to remain within the premises outside of the approved hours. Unlike our previous Section 73 application, and in accordance with our correspondence with the Council following the refusal of that application, we are not proposing to amend the condition to enable deliveries to be made to, or goods dispatched from, the premises outside of the already permitted hours.

We propose that the wording of the condition be varied to state :

*'No goods shall be delivered to, or goods be dispatched from, the premises outside of the hours of 07.00 to 20.00 Monday to Friday nor at any time on Saturdays, Sundays, Bank Holidays or Public Holidays. Not more than three people, who shall remain in the room shown on Drawing Number 06, apart from when patrolling the premises for security purposes, shall be permitted to remain within the premises outside of those hours.'*

There are a number of reasons, all relating to our client's business operation, behind this application for a variation of the currently imposed condition.

No packages are ever dispatched from the premises outside of the approved hours, as the movements of the couriers are all controlled by radio/telephone, with no couriers based at the site. Arrangements (namely the provision of an alternative depot) have been in place since November 2010 to prevent the repetition of past situations when couriers who could not deliver packages would return them to the premises outside of the permitted hours. Additionally, no private hire vehicles ever arrive at or depart from the premises outside of the currently permitted hours, as again their movements are all controlled by radio/telephone.

It is clear therefore that the business is wholly reliant upon radio and telephone communication, and whilst both couriers and private hire vehicle drivers do not need to be at the premises, and operate 'on the road' at all times of the day and night, they are reliant upon radio and telephone communication to function effectively and efficiently.

The presence of up to three staff based within one room of the premises outside of the permitted hours would not cause any material harm or loss of residential amenity. With no goods being delivered to or dispatched from the premises, those staff would only perform administrative and security functions, including radio and telephone communication with couriers, private hire vehicle drivers and customers, the use of computers, and occasionally circulate inside the premises for security. The staff would usually operate on a shift-based system, so it not envisaged at anytime that there would be three staff present, but the suggested wording of the condition makes provision for 'handover' times when shifts start/end.

Furthermore, when assessing the merits of this application, the planning history of the current condition, and its wording, must be carefully considered. This condition was first imposed upon the application premises when an appeal (application ref. PSX 0004899) was allowed relating to the use of the premises as a courier head office and control centre, with the Inspector stating;

*'The evidence presented to the inquiry suggests to me that the present use probably involves a greater volume of activity outside the building than would normally occur with a Class B1 use. This activity apparently includes the movement of vans and motorcycles to and from the premises and the congregation of small groups of employees within the Mews for short periods.'*

The proposed variation to the condition would retain the currently lawful position, i.e. it would ensure that no movements of vans or motorcycles to or from the premises would occur outside of the permitted hours. By ensuring that a maximum of three staff are present within the premises at any time, and also by identifying a room where those staff will be based overnight, the proposed variation to the condition also ensures that there will be no congregation of employees within the Mews outside of the permitted hours.

In planning terms, the proposed variation to the condition would essentially result in an overnight B1 usage, given the lack of deliveries or dispatches outside of the permitted hours. The presence of three staff solely carrying out administrative and security duties within one room of the premises outside of the permitted hours, with no deliveries to or dispatched from the premises outside of those hours, is no different from the typical occupation of residential properties within the Mews, where members of the household will make telephone calls, use computers and occasionally circulate inside the premises from room to room.

This is recognised by the Inspector's recent (June 2011) appeal decision in respect of the mixed B1 and D1 use of 22-23 Brownlow Mews, with the Inspector concluding that the proposed uses would not cause any significant harm to the living conditions of neighbouring residents. Particular attention is drawn to how that Inspector confirmed, in light of that conclusion, that the imposition of any conditions limiting the hours of operation "*would be neither necessary nor reasonable here.*"

However, that Inspector did impose a condition to prevent the possibility of the B1 floorspace being used for storage and distribution (Use Class B8) purposes, which could otherwise have occurred without planning permission being required. The Inspector's reasoning for imposing that condition, as set out in paragraph 21 of his decision, was that storage and distribution use "*would be likely to have a greater impact than B1.*"

Thus, both the 2001 and 2011 Inspectors recognised that the only significant harm to the living conditions of neighbouring residents resulting from the use of either the application premises or 22-23 Brownlow Mews would be generated by deliveries to, or dispatches from, the appeal site, and our proposed variation of the condition would retain the status quo by continuing to restrict deliveries and dispatches to the approved hours only.

In addition, and as recognised by the Inspector who determined the recent appeal in respect of 22-23 Brownlow Mews, there are numerous other B1 uses within Brownlow Mews which are unrestricted in terms of their hours of operation. Indeed, prior to the 2001 application/appeal, the application premises was previously used for B1 uses and was not the subject of any hours of operation restrictions.

Other premises, such as the Blue Lion Public House at 133 Grays Inn Road (the back entrance of which backs onto Brownlow Mews), remain open until late in the evenings and the nature of their usage, with patrons frequently entering and leaving the public house, or congregating within Brownlow Mews whilst smoking, drinking and talking, have a far greater impact upon the amenities of residential occupiers of the Mews than any impact of this proposed variation of condition.

Additionally, the Mews is a public highway, and is in regular use by pedestrians, cyclists and motorcyclists (all unrelated to either the application premises or any other premises within Brownlow Mews) as a cut through at all hours of the day and night. Unimpeded vehicle access along the whole length of the Mews for the same purpose has only recently been prevented by way of the placement of a temporary bollard (for a 6 month trial period) at the northern end of the Mews, but at the expiry of that trial period unimpeded vehicle access, allowing vehicles to cut through the Mews, may return.

Furthermore, the Inspector who determined the recent appeal relating to 22-23 Brownlow Mews also emphasises, in paragraph 9 of his decision notice, that *"the mixture of different uses within the Mews is an important element of its overall character. The Class B1 business use for which permission is now sought would be consistent with the range of uses already found within the Mews itself and in the surrounding area. The appeal site is close to residential accommodation, but by definition, B1 uses can be carried on in such a location without detriment to amenity by reason of noise, vibration, smell, or other emissions. The proposed use would thus be compatible with its surroundings, including the nearby residential properties, as well as with the Mews' mixed use character."*

Given our client's willingness to retain the existing restriction on deliveries and dispatches outside of the permitted hours, we contend that the overnight occupation of one room of the premises by not more than three staff carrying out administrative and security functions would essentially result in the premises being used, on a very limited scale, for B1 purposes overnight. Consequently the conclusions of the Inspector, as outlined above, equally apply to this current variation of condition application, and also, as emphasised earlier in this supporting letter, attention is drawn to the Inspector's conclusions regarding the lack of need for the imposition of hours of operations conditions.

Finally, as a business which is largely reliant upon computer equipment and telecoms, any burglary, vandalism or similar crime would have a disastrous impact upon the operation of our client's business. Other nearby premises in Brownlow Mews have been subject to ram-raiding attacks in order to steal computer equipment, and in the last three months the architects' practice at 6 Brownlow Mews has twice been burgled overnight and had all its computers

stolen. Our client has joined the Local Neighbourhood Watch Scheme, and has been asked to monitor the Mews 24/7 utilising its CCTV equipment.

Accordingly, our client maintains a 24 hour security presence within the premises, and indeed has done so since 2003, and the three staff proposed to occupy the premises overnight would occupy a small windowless room within the premises (location shown on the accompanying plan) from where, in addition to using radios, telephones and computers to communicate with couriers, private hire vehicle drivers and customers, they are able to monitor CCTV to maintain a secure environment, both to the benefit of our client's business operation, and also to the broader safety of all occupiers within, and passers-by utilising, the Mews.

### Enforceability

In terms of the enforceability of the proposed variation to this condition, it is considered that this proposed variation would wholly accord with the 'six tests' set out within Paragraph 14 of Circular 11/95, entitled '*The Use of Conditions in Planning Permissions.*'

We recognise it would be extremely difficult for the Council to distinguish between security personnel and operational staff. Accordingly this revised application simply proposes that up to three staff can be present, within a clearly identified room within the premises, outside of the permitted hours.

Consequently, it would be relatively straightforward for the Council, or third parties, to monitor compliance with the suggested condition as varied, as if an inspection takes place outside of permitted hours, the Officer will be able to count the number of staff present within the premises, and also check where they are positioned within the premises. Equally, should they wish to do so, third parties could easily create a log recording any times when someone enters or departs from the premises outside of the permitted hours. Furthermore the premises are fitted with CCTV on a 24/7 basis, with cameras covering both the main office at 21a and also the Mews itself, so the recordings would always be available to the Council as a further documentary aid to monitoring compliance with conditions.

It is inevitable that the three staff cannot remain within the identified room within the premises from 20.00 to 07.00 continuously, as the staff will work in shift patterns, so during the night they will arrive at or depart from the premises on foot, and also will occasionally circulate within the premises to carry out the security function, or prepare food/hot drinks or go to the toilet. However, the identification of the room where the three staff will remain for the vast majority of the hours between 20.00 and 07.00 is considered sufficiently precise for this condition to accord with the guidance set out within Circular 11/95.

### Conclusion

Consequently, within this overall context and for the reasons set out in this supporting letter, we contend there are no justifiable planning reasons why the presence of up to three staff within a designated room within the premises would cause any material harm to the residential amenities of the occupiers of residential properties within the Mews.

Accordingly the proposed variation to condition 2 of planning application ref. 2003/0083/P would fully accord with the provisions of policies CS5 and CS9 of the Council's Core Strategy DPD, and policy DP26 of the Development Policies DPD.

For those reasons it is concluded that this application should be approved and the relevant condition varied as suggested by this application. I can confirm that our client would be content to discuss any matters arising from the proposal which the Council considers should be addressed by either planning condition or obligation.

I trust that the accompanying documentation is sufficient for this application to be validated, and look forward to receiving a formal acknowledgement of this application and a receipt for the statutory fee cheque in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adam Beamish', with a horizontal line drawn underneath it.

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[Enc.]