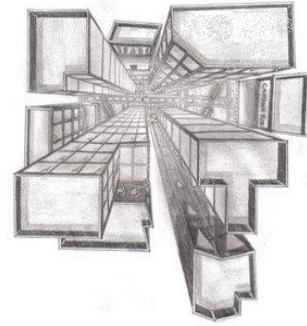


KR PLANNING

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REF: L/66CNA

4 September 2011

Planning Services
London Borough of Camden.
Camden Town Hall
Argyll Street
LONDON
WC1H 8EQ

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990 APPLICATION FOR CERTIFICATE OF LAWFULNESS SITE AT 66 CHARLOTTE STREET W1T 4QE

Please find enclosed an application for a Certificate of Lawfulness of existing use under Section 191 (1) (A) of the Town & Country Planning Act 1990 (as amended) in respect of the use of the existing external cupboards and awning structure at the above address. The Applicant is leaseholder of the site. The application includes the following :

1. The requisite application form
2. The requisite site location plan
3. A copy of a Statutory Declaration by the owner of the site
4. A copy of a Statutory Declaration by the most recent occupant of the site
5. A copy of the documentary evidence listed below
6. The relevant fee

Background

As advised to Officers previously, it was my Client's error for not speaking with the Council in the past. In his defence, he advises that he had liaised with the scheme's architect who had agreed to handle the matter, but regrets not chasing up that consultant.

The notice alleges that the structure has been affixed to the building within the last four years, but it is my instruction that the works, specifically the external cupboards actually occurred in 1999, and therefore these

works are now exempt from enforcement proceedings. It is accepted that the external covering has been changed within the past 4 years. No approval is sought for the external canvas covers, nor the structure which underpins the side part of the awnings, but a planning application will be made to legitimise these works.

An appeal was submitted against the enforcement notice, but was outside the effective date and was therefore invalid.

The Statutory Framework

Section 171A(1) of the 1990 Act, under the side heading 'Expressions used in connection with enforcement', identifies two categories of breach of 'planning control', the first of which, development without required permission, embraces both forms of controllable development identified in section 55(1), and the second of which may or may not result in such development, failure to comply with a condition to or limitation on permitted development:

'For the purposes of this Act -

*(a) carrying out development without the required planning permission; or
(b) failing to comply with a condition or limitation subject to which planning permission has been granted;
constitutes a breach of planning control'*

Section 171B provides two different time-bars for enforcement action for 'breach of planning control' according to different forms of breach whether in the form of impermissible development or for failure to comply with a condition to or limitation on permitted development. In summary, it provides: a time-bar of four years from substantial completion of works for breach by way of operational development; four years from breach for one particular category only of change of use, namely 'of any building to use as a single dwelling house'; and ten years from breach for 'any other breach of planning control'. The section reads as follows:

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of four years beginning with the date of the breach.*

S.171B(2) does not specify what the change of use has to be from (i.e. whether a nil use or permitted use qualifies)

When an application for a CLEUD is made, the Council is required under S191(4) of the 1990 Act to consider the lawfulness of the use at the time of the application and to issue a certificate if it is satisfied that it should do so. Lawfulness is defined by S191(2) of the Act as follows:

'uses (and operations) are lawful at any time if:

- a) No enforcement action may then be taken in respect of them because the time for enforcement action has then expired*
- b) They do constitute a contravention of the requirements of any enforcement notice then in force'*

The Application Site

The application site is the ground floor premises in a four storey building, and is used as a News Agency. The site lies within a Conservation Area.

The Evidence

The application is supported by the following materials (with commentary in italics):

- Letter from Foliage Investments

The signatory to this letter is the freeholder of my Client's premises. The letter demonstrates that my Client sought and received the freeholders consent back in 1999.

- Email from KP Engineering Ltd

It is the lack of content to this email that is persuasive, as the signatory advises that they do not keep records beyond 6 years, strongly suggesting that the work occurred outside the 4 years alleged.

- Letter from MMS Ltd

It is my understanding that this is the firm which contracts for the livery of the blinds. You will note that it refers to a minimum 5 year time period, and notes that the branding has changed across the years.

- Letter from Monocle Ltd

This correspondence advises that the canvas awnings were last updated in 2008 with their present appearance. You may suggest that this brings it back within the 4 year period, but the letter states that the existing structure was used to hold up the re-branded canvas.

This is backed up by the birds eye image from Bing Maps. Although not the best image, it can be clearly seen that the structure which is now black was yellow at the time this photograph was taken, lending credence to the suggestion that the existing canvas was indeed erected onto an existing structure



- Architect Drawings

These are the original drawings prepared for the construction and installation of the awning. I would ask you to note that the date on the drawings is 1999.

- Excerpt from Financial Times dated 4 September 2006.

The image from this national newspaper, includes a date reference and clear images of the cupboards allege to have been installed in the past four years. This publication is an independent source providing categorical proof that the cupboards pre-date this application by more than 5 years.

- Excerpt from 125 Magazine Issue 8 2006

As above, this is a picture of the external cupboards dating from 2006. Published in an independent source, it provides inscrutable evidence as to the date of this fixture and that they are now exempt from enforcement action.

Officers of the Borough have supplied photographs which show the same fixtures in place outside of the 4 year enforcement period.

Summary of Lawfulness

In this case we can demonstrate the following:

- i. That external cupboards were affixed to the site frontage;
- ii. That the initial breach occurred more than 4 years ago;
- iii. That these cupboards have been affixed for more than 4 years with no intervening use that would have brought the unauthorised use to an end;

- iv. That a period of over 4 years has since expired since the breach began; and
- v. The LPA has never issued an enforcement notice in this respect.

By virtue of s. 55 of the 1990 Act that fixtures are development, and was therefore development without planning permission within the meaning of s.171A(1)(a)

Conclusion

We believe that the evidence we have produced has discharged the onus on the applicant to prove, on the balance of probabilities, that this claim for the Certificate is correct. The evidence is both clear and unambiguous, and trust that a favourable decision can be issued.

Should you require anything further in the meantime, please do not hesitate to contact me on 07545 264 252 or at Kieran@krplanning.com.

Yours Faithfully

Kieran Rafferty
BA(URP) CUKPL MPIA MRTPI

Encl:

CC: Mr Thaker, 66 Charlotte St, W1T