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| <b>LDC Report</b>   |                            | 01/12/2010                          |
| <b>Officer</b>  |                            | <b>Application Number</b>           |
| Jonathan Markwell   |                            | 2010/5251/P                         |
| <b>Application Address</b>  |                            | <b>Drawing Numbers</b>              |
| 67-74 Saffron Hill<br>London<br>EC1N 8QX  |                            | Please see decision notice          |
| <b>PO 3/4</b>   | <b>Area Team Signature</b> | <b>Authorised Officer Signature</b> |
|   |                            |                                     |
| <b>Proposal</b>   |                            |                                     |
| Retention of roller shutter to front (Saffron Hill) elevation of office building at ground floor level.   |                            |                                     |
| <b>Recommendation: Refer to Draft Decision Notice</b>   |                            |                                     |
| <p><b>Introduction</b></p> <p>The application site is a four storey commercial building located within the Hatton Garden Conservation Area. The property has 4 different occupiers on the ground and upper floors, all of which operate within a Class B1 use. The basement is used by Cameron Mackintosh for the storage of clothing.</p> <p>The building is located within a distinctly mixed use area, comprising; offices, research and development space, studios, light industrial units, public houses, shops, a multi-storey car park and residential apartments. It is considered that the area comprises a densely knit urban environment. The neighbouring Ziggurat Building (No 60-66 Saffron Hill) has been converted to residential and a number of flats have principle habitable windows looking towards the application site building and light well area at ground floor level.</p> <p>This lawful development certificate (existing) application concerns solely to roller shutter area on the front (Saffron Hill) elevation of the office building at ground floor level.</p> <p><b>Relevant Planning/Enforcement History</b></p> <p><b>EN09/0860</b> - Enforcement case (logged 30/09/2010) relating to unauthorised works - the insertion of a roller shutter and associated infill extension on the south side elevation of the property, a pedestrian door on the Saffron Hill frontage, the provision of cycle parking stands in the service yard and the erection of two box signs. An enforcement notice was served on 29/07/2010 for the following reason:</p> <p>The infilling of the former undercover yard area and the retention of the roller shutter within the south elevation is detrimental to the amenity of the residents at the Ziggurat, 60-66 Saffron Hill. This is by reason of noise and disturbance directly caused by the operation of the roller shutter and pedestrian entrance and consequential noise and disturbance arising from the impact of the unauthorised development (in such a confined location) including the effect of operation of the roller shutter and the effect of activities displaced from the former undercover yard area to the open area of the courtyard.</p> |                            |                                     |

An appeal has been submitted against (Ref: APP/X5210/C/10/2135649) this enforcement notice. At this point in time the appeal is under consideration but yet to be determined by The Planning Inspectorate.

**2010/0941/P** - Retention of roller shutter doors with pedestrian gates on the front and side elevation and windows at the side elevation, and infill extension at side elevation over part of the service yard at ground floor level. Refused and warning of enforcement action 08/07/2010.

Reason for refusal: The infilling of the former undercover yard area and the retention of the roller shutter within the south elevation is detrimental to the amenity of the residents at the Ziggurat, 60-66 Saffron Hill. This is by reason of noise and disturbance directly caused by the operation of the roller shutter and pedestrian entrance and consequential noise and disturbance arising from the impact of the unauthorised development (in such a confined location) including the effect of operation of the roller shutter and the effect of activities displaced from the former undercover yard area to the open area of the courtyard.

An informative was added to the decision notice stating: The Director of Culture and Environment will instruct the Director of Law and Environment to issue an Enforcement Notice alleging a breach of planning control.

**Public consultation responses:**

Owing to the recent planning/enforcement history of the application site (outlined above), it was considered appropriate by the Council to formally consult 66 neighbouring occupiers, including the residential units at The Ziggurat building (No's 60-66 Saffron Hill). A total of **five** objections have been received from the occupiers of the following properties at **The Ziggurat: Flats 3.6, 3.9, 4.9, 6.5 and 7.1** (this occupier is also the director of Ziggurat Freehold Limited, the freeholder of the building). A summary of the issues raised are as follows:

- The shutter is now blue, whereas the previous one was grey. One objector notes the previous shutter was only used sparingly, had no pedestrian door and caused no disturbance during the previous 13 years.
- Shutter now incorporates a pedestrian door which can be opened and shut at all hours, causing noise disturbance to neighbouring occupiers by the metal pedestrian door slamming against the metal of the shutter. "The suggestion that the addition of a pedestrian door is 'de minimis' is simply wrong".
- Pedestrian door will not reduce disturbance (as suggested by the applicant) but increases it, the suggestion of it being 'practically silent' is not correct (noise reverberates in the lightwell). One objector notes that prior to the installation of the door there was less of a disturbance as either (i) the shutter was not shut, so no slamming of doors occurred or (ii) the shutter was closed, so there was no door to slam. Amenity impact (predominantly noise/disturbance) to nearby residents at Ziggurat.
- Suggestion by the applicant that the door is not opened until 8am is not correct (it is used at all hours)
- No noise tests have been carried out by the applicant
- Since Callprint's occupation "there has been a fundamental change of use which constitutes material development"
- The proposed application is a "cynical procedural tactic which seeks to circumvent the appeal procedure initiated by the applicant against the previous rejection by the Council of its previous, broader application. The approval of this application would therefore undermine the appeal process.

**Councillors Olad and Fulbrook both object** to the application, noting that the previous retrospective planning application for the retention of the roller shutters, side elevations and windows prompted a unanimous rejection by the Development Control Committee. A subsequent enforcement notice was served by the Council to prevent further excessive noise and disturbance from the unauthorised development.

The Councillors state that “The LDC would be unlawful if granted, especially if the development is not permitted, and environmental assessments by the council have proven what 'the impact of the unauthorised development' of Omega House's existing roller shutters has had on the Ziggurat and other buildings in the area” It is also stated that “no notice was given to the Council when work was started on site. This in all respects is retrospective”.

Furthermore, it is noted that “Previously there was no pedestrian door within the metal shutter. This should therefore not receive a certificate given that there is clear material change and the development certificate should not be granted as this is not the original element of the door. Now that there is a pedestrian door, people open and shut it at all hours to get into/out of the lightwell causing noise nuisances”.

It is also mentioned in this objection that “the Council is currently serving an enforcement notice, which prevents the granting of this LDC, as long as the Council's enforcement adheres within the time-limits specified in Part VII of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, and would indeed be unlawful if the LDC was granted”.

#### **Information put forward in support by the applicant**

The applicant has submitted a supporting statement as part of the submission for this application which concludes that the replacement works to the roller shutter door does not constitute ‘development’, as defined by the Town and Country Planning Act 1990. This details that there has been a roller shutter in place at the site since the owners (Nyraff Ltd) purchased the building in 1994, although it has been replaced and altered on a number of occasions. In line with section 55 of the Town and Country Planning Act 1990, it is contended by the applicant that “the external appearance of the building has not significantly changed as a roller shutter door has remained in this exact location ever since the Applicant company purchased the building in 1994. Whilst the roller shutter has been repaired and replaced as required, the overall appearance of the building has not materially altered”.

In addition, it is stated that the works made by maintenance and improvement can be classified as de-minimis. Such works are considered by the applicant not to have materially altered the appearance of the appeal building. The applicant denotes “the only difference between the former roller shutter door and the existing roller shutter door is the inclusion of a pedestrian gate. This does not visually alter the appearance of the roller shutter door in relation to the entire building when viewed from the street scene”.

Furthermore, two statutory declarations have been submitted. One is from Agop Tanielian (Director of Nyraff Ltd – owners of the building) denoting that since owning the building (1994 onwards) there has always been a roller shutter at the site. It is also stated and shown that accounts indicate that works to repair the shutter were carried out in August 2000 and September 2006. Most recently in 2009 the tenants Callprint replaced the roller shutter, with the replacement shutter “also including a pedestrian door to stop the need for the entire roller shutter to be opened to let people in and out”.

The other statutory declaration is from Martin Johnson, architect at Geoff Beardsley & Partners

(UK). This shows photographs of the premises dating from August 2000. It is also stated that "Although the new door has a pedestrian gate in it, the overall appearance of the roller shutter, and its general use, has not appeared to change since I visited the site in August 2000 and was instructed by Nyraff to work on their behalf".

### **Assessment**

Based on all of the information submitted and the relevant history to this application site, it is considered that the new roller shutter constitutes 'development' under the meaning of development, as outlined in section 55 of the Town and Country Planning Act 1990.

This is demonstrated by the installed roller shutter not being a like for like replacement with that which existed previously. This is illustrated by the replacement shutter being powder coated blue, whereas the previous shutter was unpainted. Moreover, the roller shutter includes an integrated pedestrian access. This ensures that the light well area of the application site can be readily accessed by more occupiers of the building. This alteration is considered, on balance, to materially change the external appearance of the building and is not one which could be treated as de-minimis.

There is also a lack of clarity over the precise finish of the previous shutter when compared with that presently at the site. On the elevation plans submitted for consideration it is acknowledged that the applicant states that the roller shutter pre-existing and existing are both 'metal polyester powder coated'. In addition, the appellant's statement of case for the current appeal at the site (Ref: APP/X5210/C/10/2135649) states at paragraph 4.8 that "the only difference with this shutter door from the previous was the fact that it contained a pedestrian gate". This is also noted elsewhere in the appellant's statement of case, such as paragraph 5.4. Within the statement at paragraph 4.15 it is noted that the installed "shutter door was selected that enables air to pass through". Based on an officer site visit it is clear that the installed shutter is perforated. In respect of the pre-existing shutter, it is not clear and has not been explicitly referenced by the applicant in this submission whether this shutter was also perforated. Based on the plans submitted and the photographs submitted within the two statutory declarations it is not entirely clear whether the shutter at this point in time was perforated or solid in nature. It is considered that the information provided is not sufficient in this instance to provide the Council with the required level of information to support this application. The onus of proof in this instance is upon the applicant and this is not considered to have been addressed satisfactorily in this instance.

In conclusion, the provision of the pedestrian access is considered to be a material change, which cannot be considered to be de-minimis. Furthermore, insufficiently clear evidence has been provided to the Council to demonstrate on the balance of probabilities that the pre-existing and existing shutters at the site were/are perforated in nature. Therefore it is considered that a certificate of lawfulness is not able to be issued in this instance.

It is not considered necessary to take or warn of enforcement action, as a notice has already been served (see relevant history above) in relation to this matter and the appeal into this notice is currently under consideration and awaiting determination by The Planning Inspectorate.

**Recommendation:** Refuse Certificate of Lawfulness.

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