



Appeal Decision

Inquiry held on 21 April 2009

Accompanied site visit made on 21 April 2009

by **P E Dobsen MA (Oxon) DipTP MRTPI FRGS**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
10 June 2009

Appeal Ref: APP/X5210/A/08/2089789

60-72 Shorts Gardens and 14-16 Betterton Street, London WC2H 9AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Shorts Gardens LLP against the Council of the London Borough of Camden.
- The application (Ref 2008/1401/P), is dated 12 March 2008.
- The development proposed is "alterations, extension and refurbishment of existing buildings at 60-72 Shorts Gardens and 14-16 Betterton Street for commercial use (class B1). Change of use of ground floor of Shorts Gardens to create small scale units (class A1/A2 and D1). Change of use of basement to either B1/D1 or D2 use."

Application for costs

1. At the Inquiry an application for costs was made by Shorts Gardens LLP against the Council of LB Camden. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for alterations, extension and refurbishment of existing buildings at 60-72 Shorts Gardens and 14-16 Betterton Street for commercial use (class B1); change of use of ground floor of Shorts Gardens to create small scale units (class A1/A2 and D1); change of use of basement to either B1/D1 or D2 use; in accordance with the terms of the application, Ref 2008/1401/P, dated 12 March 2008, and the plans submitted with it (and as amended), subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Notwithstanding the provisions of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision in any statutory instrument revoking and re-enacting that Order with or without modification, the basement area shall only be used for class B1 or class D1 use, or as a swimming bath, skating rink, gymnasium or area for other indoor sports or recreations, not involving motorised vehicles or firearms, and not for any other purpose within class D2 (assembly and leisure) of the Order.

- 3) Prior to the commencement of the development, a scheme for the provision of a CCTV/security system in connection with the uses hereby permitted shall be submitted to and approved in writing by the local planning authority, and the development shall not be carried out otherwise than in accordance with these approved details.
- 4) Before any use of the basement area commences sound insulation shall be provided in accordance with a scheme to be approved in writing by the local planning authority which complies with PPG 24 and Appendix 1 of the Camden Replacement UDP 2006. The basement use shall not thereafter be carried out other than in accordance with the approved sound insulation scheme.
- 5) The level of noise emitted from the site shall not exceed 5dB above existing background noise level (LAeq) during the daytime and evening (0700-2300 hrs.) The noise level emitted from the site shall not exceed 3dB above existing background noise level during the night (2300-0700 hrs.) The noise levels should be measured at one metre external to the nearest noise sensitive premises to the site. The noise level inside any living room or bedroom of the nearest noise sensitive premises shall not exceed existing noise levels when measured using Leq 5m (in the 63 Hz octave band measured using the "fast" time constant) during the night. All noise measurements shall be taken according to BS4142:1990.
- 6) Prior to the commencement of development, details of cycle storage areas for 16 cycles in total, including the allocation of spaces to the different uses hereby permitted, shall be submitted to and approved in writing by the local planning authority. The approved cycle storage facilities shall be provided prior to the first occupation of the relevant part of the development, and shall be permanently retained and maintained thereafter.
- 7) Prior to the commencement of development, details of waste storage and removal shall be submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of development, a sample panel of the facing brickwork showing the brick type, face bond, and pointing shall be submitted to and approved in writing by the local planning authority, and the sample shall be retained on site for the duration of the building works. Development shall be carried out in accordance with the approved details.
- 9) Detailed drawings (plans, elevations and sections as appropriate) at a scale of 1:10 and/or 1:20 in respect of the following items shall be submitted to and approved in writing by the local planning authority before the relevant part of the building work is begun: a) the new roof extensions; b) new slab levels of the building in relation to surrounding land; c) typical details of the new shop-fronts; d) all new external doors and windows; e) new rainwater pipes and gutters; f) the replacement glass within the existing arches in Shorts Gardens, demonstrating the relationship with the brick surrounds. Development shall be carried out in accordance with the approved details.

- 10) The class D1 and/or D2 uses hereby permitted shall only be operated between the following times: 08.00 -17.00 hrs. Sundays and Bank Holidays; 0800 -22.30 hrs. Mondays-Thursdays; and 08.00-23.30 hrs. Fridays and Saturdays, and on any day all visiting clients/customers shall have left the premises by the later specified time.
- 11) Prior to the commencement of development, details of a management plan for the basement use(s), specifying the capacity (persons), access arrangements (including locations of entrance and exits), and management of persons entering and leaving the building, shall be submitted to and approved in writing by the local planning authority, and the basement uses shall thereafter be operated in accordance with the approved details. The plan shall include measures for the avoidance of queuing on the public highway in Shorts Gardens and surrounding streets.
- 12) No external doors other than fire doors shall open onto the public highway.

The (deemed) Reasons for Refusal etc.

3. Although the Council did not determine the application within the prescribed period, it subsequently indicated that it would have refused it for 10 reasons, which are stated in full in the SCG (Statement of Common Ground, [Doc 6]).
4. In brief summary, these refer to: i) the unacceptability of certain uses within use class D2 (assembly and leisure); ii) the limited provision of on-site cycle storage; iii) the lack of provision of a contribution to off-site affordable housing; iv) the lack of provision of housing as part of the use-mix; v) the lack of sufficient information regarding energy and resources; vi) the absence of a planning obligation to secure a car-free development; vii) the absence of a planning obligation to secure a Construction Management Plan; viii) the absence of a planning obligation to secure a Service Management Plan; ix) the absence of a planning obligation to secure financial contributions to highways works; and x) the absence of a Business Travel Plan.
5. By the time of the inquiry, the Council and the appellants had agreed that matters ii) to x) (incl.) could be satisfactorily resolved by a combination of amended drawings already received, planning conditions, and a S106 planning obligation. Having heard and read the evidence to the inquiry on these matters, I too agree with that. In accordance with my request, an acceptable signed and completed planning obligation was submitted shortly after the inquiry [Doc 5].
6. The revised drawings mentioned above were submitted in response to certain suggestions and requests by the Council, and are included in the bundle of drawings at [Drawings A] as recorded on the appearances sheet appended to this decision. At the Inquiry, the Council confirmed that it had no objection to the substitution of these drawings for the earlier, superseded versions.
7. Owing to the pre-Inquiry resolution of all these matters, certain witnesses for both main parties, who had prepared proofs of evidence, were not called to give that evidence. I have nevertheless taken it into account.

Main issue

8. From the above, from the evidence and representations, and from my inspection of the site and its surroundings, I consider that there is only one main issue outstanding in the appeal. This is whether it would be appropriate to permit an unrestricted use class D2 (assembly and leisure) use in the basement of the appeal site, or whether - in the alternative - that use class should be i) restricted by means of a planning condition or conditions, or ii) precluded altogether.
9. It follows - and both parties agree - that the first 2 of these 3 courses/alternatives would both imply that the appeal should be allowed, and that conditional planning permission should be granted. The 3rd course would lead logically to the dismissal of the appeal.

Reasons

10. The appeal site, formerly known as the London Electricity Site, is located within that part of Covent Garden which lies in LB Camden. It is an "L" shaped plot of some 0.08 ha, comprising 2 separate but adjoining buildings, with frontages to Shorts Gardens and Betterton Street. The 2 buildings have 3 and 4 storeys respectively, plus a high-ceilinged basement, and date back to the late 19th/early 20th century. Both were used formerly by LEB/EDF for an electricity substation and ancillary use, and later for a variety of non-residential mixed uses (mainly B1 offices, and including car parking). The site lies within the Central Activities Zone, as defined in the London Plan, and the Seven Dials Conservation Area.
11. Shorts Gardens and Betterton Street lie within a mixed use area between Endell Street and Drury Lane. The former contains a Travelodge multi-storey modern hotel and a large residential block of flats, Dudley Court, both of them opposite and in close proximity to the site. There are other residential uses in the vicinity, and a variety of commercial uses. The area also displays an eclectic variety of building types, of varying age, frontage widths, heights and massing, and external materials.
12. The proposals are summarised in Doc. 6, and include the flexible use of the basement for either B1 (office), D1 (non-residential institution) or D2 (assembly and leisure) uses. Overall, the proposed development would result in an increase in floorspace from 3,302 sq.m. to 4,065 sq.m. There would be some internal demolition, and extensions at roof level to both buildings. No car parking is included, but the scheme would incorporate cycle storage in accordance with UDP policy.
13. The development plan comprises the London Plan (February 2008) and the Camden Replacement Unitary Development Plan (UDP, 2006). Relevant policies from both are listed in Doc 6. This also lists relevant supplementary planning guidance, and national policy guidance. I have taken all the relevant policies and guidance into account.
14. The application was the subject of protracted but somewhat intermittent discussions and negotiations with the Council's officers. As a result, despite the deemed reasons for refusal most of the outstanding planning matters had been resolved before the inquiry opened. They are now the subject of largely

agreed planning conditions, and a S106 planning obligation. Since they are no longer in dispute, I make no further reference to these matters. The only substantive outstanding matter at the inquiry was the acceptability or otherwise of use class D2 uses in the basement.

15. *Main issue - the acceptability of an unrestricted D2 use:* On this matter, the Council argued that an unrestricted use class D2 (assembly and leisure) use would be contrary principally to UDP policy SD6, *amenity for occupiers and neighbours*. While Covent Garden is characterised by an intricate mix of uses, it contains much residential use which is susceptible to noise and disturbance, especially by food, drink and entertainment (use class D2) uses. The Council's revised supplementary planning guidance for Central London (2007), seeks to control both the locations and the maximum floorspaces, of such uses. Indeed, outside certain designated commercial frontages the guidance contains a presumption against them. It also seeks to restrict them to a maximum of 100 sq. m. gross floorspace. These criteria have been recognised and supported by an Inspector in dismissing a recent (2006) appeal (ref: X5210/A/06/2017550) concerning an A3 use at 25 Shelton Street. This had features in common with the current appeal. Like the Shelton Street site, the current appeal site is both outside any designated commercial frontage, and, at 783 sq.m, its basement area is very much larger than the aforementioned 100 sq.m. threshold.
16. For their part, the appellants argued, in short, that at one stage the Council itself had suggested that a D2 use might be acceptable. More importantly, appropriate conditions and the provisions of a planning obligation could effectively control any undue noise and disturbance from any D2 use. Therefore, there need be no detriment to anyone's residential amenity, and the development would benefit from having a flexible choice of potential uses.
17. On balance, and having pondered it long and hard, I agree with the Council on this matter. It seems to me that the close proximity of residential uses to the appeal site – particularly at Dudley Court, a high density complex of flats – justifies the most careful scrutiny of the appellants' proposal to include the option of an unrestricted D2 use in the basement. At no stage has any particular D2 use, or occupier, been suggested. Nevertheless, I am not persuaded that the agreed conditions and other measures suggested would necessarily and always be sufficiently effective in controlling potential nuisance arising from such uses. Moreover, I find that such an unrestricted D2 use would be contrary to the Council's SPG, which was adopted fairly recently and is up to date, and to UDP policy SD6.
18. Nevertheless, these findings are not fatal to the appeal. Consistent with the options open to me as described in paragraph 9 of this decision, I have decided to allow the appeal, and to grant planning permission.
19. I do so subject to all of the planning conditions agreed by the parties at the inquiry, as well as an additional condition suggested by the Council which would preclude certain uses [in categories (a) to (d)] within the D2 use class. I am satisfied that these conditions (as amended by me) would comply with the tests for conditions set out in Circular 11/95, *The Use of Conditions in Planning Permissions*, and would also be in accordance with development plan policies.

20. I have added a standard time implementation condition (which was not included in the parties' agreed list), and have amended some of the other suggested conditions in the interests of clarity, economy and conciseness.
21. As mentioned above, this permission is also subject to a S106 Planning Obligation [Doc 5]. This includes certain agreed measures, relating to a construction management plan; highways works; a service management plan; a sustainability plan; a travel plan; and "car-free" development.
22. I have considered all the other matters raised at the inquiry, including references by one local resident to possible changes to local traffic and parking arrangements. However, there are none which alter or outweigh my conclusions on the main issue in the appeal.

Paul Dobsen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms. E. Lambert Of counsel, instructed by the Head of Legal
Services, LB Camden

She called:

Miss S. Whelan BA MA Senior planning officer, development control

FOR THE APPELLANT:

Mr. D. Forsdick

Of counsel, instructed by Nathaniel Lichfield and Partners

He called:

Mr. I. Rhind BA MPhil Nathaniel Lichfield and Partners
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INTERESTED PERSON:

Miss A. Adams Local resident, 16 Betterton House, Betterton
Street, London WC2H 9BT

DOCUMENTS

- 1 List of persons attending the inquiry
- 2 Letter of notification of inquiry (Tavistock Square venue)
- 3 Written response from Covent Garden Community Association
dated 19/12/08 to previous notification letter
- 4 Suggested/agreed list of planning conditions in the event of a
successful appeal
- 5 Completed S106 planning obligation
- 6 Statement of Common Ground

PLANS

- A The application plans (with previously submitted revisions) as contained in bundle put in by the appellants at the inquiry