

B778/MC/P



Planning Inspectorate
Department of the Environment

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N13/37/A/8800313 [2519]
ALLOWED

Recd

11/6/89

LONDON BOROUGH OF CAMDEN

PLANNING A
927
DEPT. OF THE ENVIRONMENT

1 OCT 1989

RECEIVED

The Warner Partnership
116 Long Acre
LONDON
WC2E 9PA

Your reference

249/88

Our reference

T/APP/X5210/A/88/104111/P2

Date

: - 2 AUG 89

FILE COPY

REF: South

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY AUDIT AND GENERAL DEVELOPMENTS LTD
APPLICATION NO:- PL 8800313

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the failures of the Camden London Borough Council to determine planning permission for the change of use from Class D1 to Class B1 of No 103 Great Russell Street and to determine outline planning permission for the refurbishment and partial redevelopment of Nos 100-103 inclusive Great Russell Street, WC1. I held a local inquiry into the appeal on 13 July 1989 and visited the site and surroundings on the same day.
2. From my consideration of the representations made both before and during the inquiry I have concluded that there are 3 main issues in this particular case. First, whether the change of use of No 103 is contrary to the objectives of Approved Development Plan policies. Second, whether there are adequate reasons for overruling such policies. Third, whether the proposal to add an attic storey to Nos 100-102 would seriously affect the privacy of neighbours and materially affect the standards of daylighting and sunlighting within their dwellings.
3. In regard to all issues I appreciate that certain additional drawings, numbered 4320/1-5, were submitted at the inquiry. These were said to be drawings which formed part of a separate application for listed building consent. While it was requested that these be considered as forming part of the present application I do not consider that this is permissible - given the nature of the application. I have therefore concluded that these drawings provide no more than an indication of what may be possible should outline permission be granted.
4. In regard to my first issue I am satisfied that the council provided adequate evidence to justify their claim that recent appeal decisions have shown that the Secretary of State fully supports the imposition of strict Borough Plan policies aimed at preventing the spread of office development within the locality of the site. Thus, even though I accept that your clients rightly argued that the Local Plan Inspector recommended that adherence to a strict policy should be modified, I do not accept the validity of their related argument that, because of this, Borough Plan Policy EM22 must be considered unduly restrictive and contrary to Government policy. Indeed it seems to me that the opposite is true and that the special circumstances relating to Camden's Community Areas fully justify the maintenance of such a strict policy. Consequently, I find that the proposed change of use of No 103 can reasonably be held to be contrary to the objectives of Approved Development Plan Policies.
5. Notwithstanding this however I consider that your clients did produce cogent arguments for accepting that the special nature of No 103 raised doubts as to

whether such necessarily strict policies should be rigorously pursued in their particular case. For this reason therefore I consider that it is the second of my 2 main issues which is of prime importance in determining the case for the change of use.

6. In regard to this issue the council readily accepted that your clients had now produced sufficient evidence to show that No 103 was much more important and interesting than its neighbours. This was because while it had a Georgian facade above a modern ground floor, its interior incorporated many earlier features which English Heritage clearly wished to see preserved. Particular features of interest were the 17 Century staircase, the 17 Century ceiling to the first floor, front room and the even earlier basement kitchen - which were all features of a house type now rarely found in Central London. Having now been made aware of English Heritage's wishes it seemed to me that the council now accepted that No 103 contained internal features which were well worth preserving - more or less regardless of the 'cost'. Consequently, because I also accept the logic of your clients' contention that Policy PY56 of the Borough Plan effectively states that preservation of a listed building can, in exceptional circumstances, provide grounds for allowing a use which does not accord with the other policies of the plan it seems to me that the key question to be resolved is whether, in this particular case, such exceptional circumstances can reasonably be held to exist.

7. In regard to this matter inspection revealed that your clients had correctly argued that the size, location and nature of the pre 18 Century features clearly ruled out any change to residential (Class C) or industrial (Class B2-B8) types of use. Furthermore, because I also consider that your clients rightly argued that a need to restore the staircase to its original form dictated that the building should be occupied by a single user, I have also concluded that it would be unsuitable for Class A or D2 use. It thus follows that preservation of the building's features of important historic and architectural interest can only be assured by either a continuation of its present D1 use or by a change, as proposed, to a B1 use - as was, by implication at least, agreed at the inquiry.

8. The council, who held that a continuation of the established, though presently defunct, educational use provided the best solution to the problem, produced what was, in my opinion, adequate evidence to show that the property was suitable for use as a language school. Furthermore, they also showed that such a user would be quickly found and would provide a useful employment and training service - in line with Policies EM6 and EM10 of the Borough Plan. Notwithstanding this however it seemed to me that your clients produced 3 cogent arguments in support of their contention that educational use did not provide an answer to the problem. First, because it was extremely unlikely that any educational user would be willing or able to spend the necessarily large sums of money which were required to effect the proper repair, restoration and renovation of the building. Second, because the building's present poor state of repair arose from years of neglect and misuse while in educational use. Third, because the building only provided a financially viable proposition to educational users while it was in its present, and therefore cheap, condition.

9. Consequently, given that inspection confirmed that the council had rightly accepted the results of your clients' structural and architectural surveys it seems to me that anything other than a change to Class B1 use would be unlikely to realise sufficient funds to enable proper preservation to be undertaken. Therefore, as inspection showed that the condition of the 17 Century ceiling gives rise to such concern as not to allow a lengthy delay in restoration, it seems to me that your clients have shown that a relaxation of a necessarily strict policy is justified, on balance, in their particular case.

10. In regard to my third main issue I, like the council, do not consider that the proposed increase in the height of the roof to Nos 100-102 would materially affect daylighting and sunlighting standards within adjoining dwellings. Although I would accept that some of those living in the top flats of Bedford Court Mansions would have a modest curtailment, or small loss, of view and an increase in the degree of overlooking such an increase would not be sufficiently great as to justify refusal of the application. This is because I consider that use of the proposed attic flats would not give rise to an unacceptably high level of overlooking of existing dwellings given their location within the central area of the capital city.

11. In regard to the question of conditions it seems to me that those proposed by the council, while acceptable to your clients, failed to take account of the outline nature of the application and the standard conditions attached to any such permission. I therefore propose to attach only one extra condition to the permission - to ensure that the benefits arising from the change of use are only acquired after the expensive and necessary works of preservation, which alone justify such a change, have been completed.

12. I have considered all the other matters raised both before and during the inquiry but have concluded, having regard to the advice contained in Circulars 22/80 and 14/85, that these lack sufficient strength to outweigh the considerations which had led to my decision.

13. For the above reasons, and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the change of use from Class D1 to Class B1 of No 103 Great Russell Street and grant outline planning permission for the refurbishment and partial redevelopment of Nos 100-103 inclusive Great Russell Street WC1 in accordance with the terms of the application (No PL 800313) dated 8 July 1988 and the plans submitted therewith, subject to the following conditions:

1. a. approval of the details of the siting design and external appearance of the buildings, the means of access thereto and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the local planning authority;
- b. application for approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this letter;
2. the development hereby permitted shall be begun either before the expiration of 5 years from the date of this letter, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later;
3. the change of use hereby permitted shall not commence until a scheme of works fully approved by the local planning authority has been completed to the satisfaction of that authority

14. An applicant for any consent, agreement or approval required by a condition of this permission and for approval of the reserved matters referred to in this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period. The developer's attention is drawn to the enclosed note relating to the requirements of The Buildings (Disabled People) Regulations 1987.

15. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 23 of The Town and

Country Planning Act 1971. Your attention is drawn to the provision of Section 277A of The Town and Country Planning Act 1971 (inserted into the Act by the Town and Country Amenities Act 1974) as amended by paragraph 26(2) of Schedule 15 of the Local Government Planning and Land Act 1980 which requires consent to be obtained prior to the demolition of buildings in a conservation area. Your attention is also drawn to the provisions of Section 55 of The Town and Country Planning Act 1971 which requires consent to be obtained for works for the demolition, alteration or extension of a listed building.

APPLICATION FOR COSTS

16. In support of their application for costs your clients argued that the council had acted unreasonably. The council's case was founded on an inflexible policy although they had admitted that each application needed to be considered on its own merits. The policy was wholly unreasonable and had not been amended in accordance with the Local Plan Inspector's recommendation. The council had failed to take notice of the listed building aspects of the case and had failed, despite requests, to discuss the case with the appellants' agents. It was totally unreasonable for the council to require the retention of educational use and they had not shown that failure to do so would conflict with policy. Furthermore, they had not provided evidence to show that such a use would continue although case law (Planning Encyclopaedia Vol 2 20519 para 2/876) showed that they could not base their case on the balance of probability.

17. In reply the council stated that they were surprised by an application for full costs. Much evidence had been accepted without question by the council because, in their opinion, it dealt with matters which were known not to have been in dispute. The case for the appellants was basically one against a policy which had obviously been supported by the Secretary of State. The appeal had been made against the failure to determine and the council had had to produce a case. They had therefore provided evidence to show that the proposals conflicted with office and educational policies contained within the Borough Plan adopted as recently as 1987. It was therefore apparent that the council could not be held to have acted unreasonably.

CONCLUSIONS

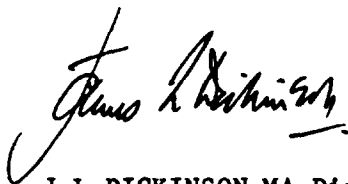
18. In determining your clients' application for costs I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are awarded only on grounds of unreasonable behaviour. Accordingly I have considered this application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances of the appeal.

19. It cannot be held that the council acted unreasonably in failing to determine the application. Nor, in my opinion, can it be held that they acted unreasonably in basing their case on policies contained within a recently approved Local Plan - more especially so when such policies had been shown to be fully supported by the Secretary of State. Indeed, it is apparent from my decision letter, that had not evidence regarding the architectural and historic value of the property been disclosed at the inquiry I would have found in favour of the council. It cannot therefore justifiably be held that the council's case reflects any degree of unreasonable or vexatious behaviour. I therefore do not consider that your clients incurred any unnecessary expense in the holding of this inquiry.

FORMAL DECISION ON COSTS

20. For the above reasons, and in exercise of the powers transferred to me, I hereby determine that your clients' application for an award of costs against the local planning authority be refused.

I am Gentlemen
Your obedient Servant

A handwritten signature in cursive script, appearing to read 'J L Dickinson'.

J L DICKINSON MA DiplArch
Inspector

ENC

APPEARANCES

FOR THE APPELLANTS

Mr A Dinkin

- of Counsel instructed by Brecker
& Co, Solicitors, 78 Brook
Street, London W1Y 2AD.

He called:

Mr R P Gosney DipAA

- Architect.

Mr A J N Warner DipTP FRICS

- Town Planner.

FOR THE LOCAL PLANNING AUTHORITY

Mr S Head -

- of Counsel instructed by the
Borough Solicitor.

He called:

Mr C E M Thwaire BA(Hons) DipTp
MRTPI

- Town Planner.

INTERESTED PERSONS

Dr P G Mundy

- Resident of 70 Bedford Court
Mansions, Bedford Avenue, WC1.

DOCUMENTS

Document 1 - Attendance List.

" 2 - Notice of Inquiry and circulation list.

" 3 - Proof of Evidence of Mr Gosney and supporting documents.

" 4 - " " " " Mr Warner " " "

" 5 - " " " " Mr Thwaire " " "

" 6 - Suggested Conditions.

PLANS

Plan A - Perspective of exterior.

" B - Drawing No 4320/1.

" C - Drawing No 4320/2.

" D - Drawing No 4320/3.

PLANS (CONT'D)

Plan E - Drawing No 4320/4.

" F - Drawing No 4320/5.

" G - Drawing No 4320/11.