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GTN 2074

N16/2/4/8800366

ALLOWED

[2559] Rec'd
25/9/89
SA

Messrs Lovell White Durrant
21, Holborn Viaduct,
LONDON,
EC1A 2DY.

Your Reference:
P2/MG/2315
Our Reference
T/APP/X5210/A/88/109040/P3
Date:

19 SEP 89

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY SHAFTESBURY plc
APPLICATION NO :- PL/8800366

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal against the decision of the Council for the London Borough of Camden to refuse to permit the use of a building to be constructed or finally constructed at 127, Clerkenwell Road, EC1, pursuant to a planning permission dated 6 June 1988 reference PL/8800046/R1 comprising a basement, ground and 6 floors over, for unrestricted use within Class B1 of the Town and Country Planning Use Classes Order 1987, and accordingly the removal of condition 2 of the said planning permission. I held a local inquiry into the appeal on Thursday 27 July 1989.

2. The planning application reference PL/8800046/R1 was submitted for the redevelopment of the site wholly for office purposes but this was amended prior to the Council's decision and new floor plans submitted, without prejudice to a duplicate office redevelopment application, to provide for showroom use at the basement and ground floors. Condition 02 of the amended application stated:

"The proposed showrooms at basement and ground floors, shall not be used for purposes other than the display, or the sale of goods by retail or wholesale, including ancillary storage and administration".

Shortly after the issue of this decision your client submitted an application in the terms quoted in my paragraph 1 above and it is against the refusal of that application that this appeal relates. The duplicate office redevelopment application referred to above was refused planning permission by the Council.

3 The building at 127, Clerkenwell Road is now partly erected. The application was made in two parts: one for the unrestricted Class B1 use of the property and the other for the removal of condition 2 from the existing permission. The latter adds nothing to the proposal for Class B1 use of the whole building and it introduces a complicating factor: any permission from a successful appeal would be terms of granting planning permission for offices and showroom, in accordance with the content of the amended application PL/8800046/R1, but with the exclusion of the condition which requires the use of the ground floor and basement showrooms. That part of the decision would still relate to showroom use of the parts of the building which your client is seeking to use for offices within Class B1. To simplify matters I propose

therefore to deal with this application as being for the Class B1 use of the whole building which is in the course of erection at the site.

4 The appeal property is located on the south side of Clerkenwell Road between Holborn Hall, an office building with a bank at ground floor, and the Griffin public house, in an area which is mainly commercial and residential in character, with a mix of retail units.

5 I consider that the policies of most significance to this proposal are those contained in the adopted (1987) Borough Plan. The appeal site is shown in the Plan to lie within a Community Area which serves as a buffer zone where pressures for commercial development will be restricted and local communities protected by encouraging the creation of jobs and community facilities which meet the needs of local people. Policy EM22 states that "In the Community Area, the development of office floorspace, either by new building or change of use, will not be permitted". Policy SH21 of the Borough Plan states that there is a general presumption against the change of use of shops to non-retail use in the Community Area, subject to specific criteria; Policy SH33 sets out the criteria for allowing showrooms in the Community Area and in major shopping centres outside the core retail frontages and Policy PS4 seeks to create a diverse and varied economic base. The draft Strategic Guidance for London has been issued on a consultative basis and as such it cannot be considered a statement of Central Government policy.

6 Clearly Policy EM22 is prohibitive in that it provides for no exceptions. But the Council itself has granted permission, since the adoption of the policy, for the erection of the office building at the appeal site, a building which is somewhat larger than the one it replaced. The application of the policy, as distinct from its content, has a degree of flexibility. Thus while I am mindful of the advice in PPG1 that where the plan is up to date and relevant to the proposal it should normally be given considerable weight in the decision and strong contrary planning grounds will have to be demonstrated to justify a proposal which conflicts with it, it is also necessary to examine the extent of any harm to interests of acknowledged importance which the policy seeks to protect.

7 From my inspection of the site and surroundings and consideration of the evidence given I take the view that the main issue in this case is whether there would be harm to any of the interests identified by the Council in support of its policy stance.

8 The Council states that it wishes to see a mixed use building on the site consistent with the use of the building which occupied the land until last year and that there should not be a loss of retail floorspace. Also the Council advises that the showroom could provide a valuable support service for business activities in the area, and I note in this context that condition number 2 provides for a wholesale use of the showroom. However I consider that the Council has no substantial evidence to counter the information, from its own Rating Records and from the previous occupier of the premises, that the permitted ground floor showroom use of the recently demolished building at the appeal site was never implemented and that office use appears to have continued in the whole of the former premises from the date of their construction in late 1963/early 1964 for nearly 25 years. While it would be wrong to use a past breach of a planning condition to justify another development it is relevant that there would be no actual loss or displacement of any previously existing showroom use if this appeal were allowed.

9 While I agree in principle with the Council that a retail/showroom use would be compatible with and add to the character of the surrounding area, that there is concern over the pressure for local shops to change to non-retail uses, and that the maintenance of a range of shopping facilities in the area is an important element of policies to protect the residential community, the Borough Plan confirms that showrooms do not normally contribute to the retail service offered to shoppers and your survey illustrates the wide range of shops and local services in the area. Also I find it difficult to see how the floor area controlled by the condition could function effectively for retail purposes. The ground floor showroom space would be located away from the frontage, separated by the office reception area, entrance lobby, stairs, lifts and the like from the front window and double entrance doors and with only a limited possibility that passers-by would be aware, other than by some form of advertisement, of the existence of a retail unit. A retail unit would not operate if it were not profitable. Hence I am not convinced that there would be any loss of retail facilities to the local community if this appeal were to succeed.

10 As to the claim that offices create areas with a sterile character, the office frontage to the appeal building has been granted planning permission already. Whether or not the rear of the ground floor and the basement were to be used for showroom purposes with display facilities or for offices would make little difference to the level of interest generated or the amount of activity at and near the site, other than possibly at weekends, albeit that I consider it unlikely that a wholesale showroom would contribute much to the character of the local area even during normal hours of opening.

11 The Council is concerned that high land values are associated with office uses which force out local less profitable activities such as retailing. However the office use for the major part of the new building has been permitted and the floor area which is subject to the restrictive condition is about 240 sq m or a little over 10% of the gross floor area of the building when completed. I consider that demand would be limited for an ancillary showroom use for office premises in all or part of the remainder of the building. Furthermore, for the reasons stated above relating to the difficulty for a retail use to operate and the past wholly office use of the previous building on the site I am not convinced that the removal of the showroom condition would force out less profitable retailing uses or have any significant effect on local land values.

12 As to the question of job creation in retailing being of more value to local residents than office jobs, which attract commuters, I find the Council's figures unconvincing. The statement is made that only 8% of office employees in the Borough are Camden residents as compared with 21% of those in the retailing sector. In the absence of information on actual numbers, percentages can be misleading: in numerical terms there could be more Camden residents working in the Borough in offices than in retailing. Also it is noteworthy that the Borough Plan records that more than half of the economically active residents of the Borough are employed in offices, mostly outside Camden. It is quite possible that the additional jobs to be created in the building by an office use of the basement and half of the ground floor could be several times more than from a showroom use; while the proportion of jobs for local residents may be more from the latter use the Council concedes that no clear cut harm has been demonstrated.

13 In conclusion therefore, while I support the principles which underlie the Council's relevant office and shopping policies I am convinced that they would not be damaged to any significant degree by a permission in this case.

14 I have carefully considered all other matters raised, including the question of precedent, the other appeal decisions submitted and the Council's concern that it was deliberately misled during the negotiations and amendment to the application for the erection of the building, but I am of the opinion that they are not of sufficient strength to outweigh the considerations that have led me to my conclusion.

15 For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for the unrestricted Class B1 use of premises at 127, Clerkenwell Road, EC1 subject to the condition that the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter.

16 The developer's attention is drawn to the enclosed Note relating to the requirements of The Buildings (Disabled People) Regulations 1987.

17 This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

I am Gentlemen
Your obedient Servant

K.G. Smith.

K G SMITH BSc (Hons) MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mr R Barratt QC

Instructed by Messrs Lovell
White Durrant, Solicitors of
21, Holborn Viaduct, London,
EC1A 2DY.

He called:

Mr R F H Sharpley MA FRICS

Equity Partner of Messrs D E
& J Levy of Estate House,
130, Jermyn Street, London,
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Mr N Thompson BA(Hons) BPl MA(Urban Design)
MRTPI

Associate of Messrs Nathaniel
and Partners of Star House,
104/108, Grafton Road,
London, NW5 4BD

FOR THE LOCAL PLANNING AUTHORITY

Mr S P Randle, of Counsel

Instructed by Mr F E Nixon,
Camden Town Hall, Judd Street,
London WC1H 8EQ.

He called:

Mr B Smith BA(Hons) DipEP DipTP MA

Planning Officer in the
Department of Planning and
Transport for the London
Borough of Camden.

DOCUMENTS

- Doc 1 List of persons present at the inquiry
- Doc 2 Booklet of plans and appendices to proof of evidence of N Thompson
- Doc 3 Booklet of appendices to proof of evidence of B Smith

PLANS

- Plan A Site location plan, drawing 100
- Plan B Basement, ground and first floor plans, drawing 01
- Plan C Basement, ground and first floor plans, drawing 01A
- Plan D Basement, ground and first floor plans, drawing 01C
- Plan E Floor plans, drawing 02

Plan F Floor plans, drawing 02A
Plan G Elevation to Clerkenwell Road, drawing 03
Plan H East elevation, drawing 04
Plan I South elevation, section A-A, drawing 05
Plan J West elevation, section B-B, drawing 06.