



Appeal Decisions

Inquiry held from 15 – 17 March 2011

Site visit made on 15 March 2011

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 9 June 2011

Appeal A, Ref: APP/X5210/C/10/2138815

Appeal B, Ref: APP/X5210/C/10/2138816

70-72 Guilford Street, London WC1N 1DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Foulad (Appeal A) and Mr Khavari (Appeal B) against an enforcement notice issued by the Council of the London Borough of Camden.
 - The Council's reference is EN10/0486
 - The notice was dated 9 September 2010
 - The breach of planning control as alleged in the notice is *without planning permission the unauthorised use of 70-72 Guilford Street as a backpackers hostel*.
 - The requirements of the notice are *cease the unauthorised use and remove from the premises all temporary or movable fixtures and fittings directly associated with the current unlawful use*.
 - The period for compliance with the requirements is *6 months*.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (f), and (g) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (c), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Summary of Decisions

1. I dismiss the appeals in the terms set out in the Formal Decisions below.

Preliminary Matters

2. The Statement of Common Ground (SOCG) notes that the Appellants rely on grounds (a), (f) and (g) and do not intend to pursue ground (c).¹ I will deal with the appeals on this basis.
3. Numbers 70, 71 and 72 Guilford Street are listed Grade II and lie within the Bloomsbury Conservation Area.

Ground (a) - *planning permission should be granted*

Main Issues

4. The main issues are the effect of the use on:
 - (i) Sustainable housing supply
 - (ii) The living conditions of local residents

¹ Doc A14, para 3

Reasons

First Issue – Sustainable Housing Supply

Loss of Residential Floorspace

5. The development plan includes the Camden Core Strategy and Development Policies, adopted November 2010. Policy DP2: *Making full use of Camden's capacity for housing*, seeks to maximise the supply of additional houses in the borough and minimise the loss of housing. Criterion (d) aims to protect residential uses from development that would involve a net loss of residential floorspace, and criterion (e) to protect permanent housing from conversion to short stay accommodation intended for occupation for periods of less than 90 days.
6. Policy DP2 echoes Policy CS6: *Providing quality homes*. It is also consistent with the aims of London Plan Policies 3A.15: *Loss of housing and affordable housing*, and 3A.16: *Loss of hostels*, which seek to prevent the loss without replacement of residential accommodation.
7. The last lawful use of the site was as permanent housing in the form of a long stay nurses' hostel on the first, second and third floors, and offices with ancillary accommodation on the ground floor and lower ground floor levels.² The Council accepts that the residential element of the last lawful use falls into the category of student accommodation, rather than key worker housing which could be regarded as affordable housing. This use ceased some 20 years ago according to the Appellants or 6 years ago according to the Council.
8. The Council also accept that the nurses' hostel accommodation has been re-provided elsewhere but contend that the concept of net loss in Policy DP2 is not satisfied because of the gap of many years and the absence of a direct relationship of re-provision. It is not clear whether re-provision was achieved through the use of sites in existing residential use, which would involve a net loss of residential floorspace should the appeal site change from residential to commercial use, or through the use of non-residential sites. Nor is it clear whether the re-provision was made outside the borough, which might involve a net loss to the borough should the appeal site cease residential use.
9. The Appellants point to a recent grant of planning permission by the Council for the use of premises as a backpackers' hostel at Palmers Lodge, College Crescent, following previous use as a nurses' hostel. The committee report³ notes that in the 11 years between cessation of the use as a nurses' hostel and the current use, additional nurses' accommodation has been provided elsewhere. It also notes that, although Members had resolved to accept the use in 2005, this was on the basis of the UDP adopted in 2000 which sought to retain hostel accommodation but, unlike the Replacement UDP adopted in June 2006, did not distinguish between short stay and long stay hostel accommodation.
10. In the event, planning permission was not granted in 2005 because of the failure to complete a s106 agreement. The site was also the subject of an appeal in early 2007⁴ for a similar change of use. This was dismissed because of the effect on the listed building and highway safety. The principle of change of use was not addressed either at application stage (under the 2000 UDP) or

² Doc A14, para 1.4 and elsewhere.

³ Appendix 12 to Mr Ormonde's proof, paras 6.8 and 6.4

⁴ APP/X5210/A/06/2009104, Appendix 11 to Mr Ormonde's proof.

at appeal (even though the 2006 UDP had been adopted by then). Instead, change of use was permitted under current development plan policy, including the Camden Core Strategy and Development Plan Policies. It can, therefore, offer parallels to the present case through the indirect manner of housing re-provision and the time scale involved.

11. In the last few years, nurses' accommodation, operated by a housing association, has been built in various locations, including the Colonnade, the mews at the rear of Guilford Street. It is possible that this, and other sites, replaced the nurses' hostel accommodation at the appeal site by creating new residential uses.
12. Moreover, it is probable that the last lawful use was mixed residential and commercial, since the uses on the ground and lower ground floor would have been far in excess of that necessary to service the residential element and therefore could not be regarded as ancillary to the residential use. If so, the residential floorspace to be protected would comprise only the floorspace of the upper levels.
13. Although not clear cut, on balance it is likely that a net loss of residential floorspace has not taken place. The present use, therefore, meets Policy DP2 and associated policies.

Mixed Use Development

14. Policy DP1 seeks a mix of uses where appropriate. It states that, where more than 200 sq m of additional floorspace is provided, up to 50% should be housing. Also, that the secondary use should be provided on site, particularly with 1,000 sq m or more of additional floorspace, as in this case.
15. The Policy sets out criteria for the Council to take into account in considering whether a mix of uses should be sought, and the scale and nature of the mix. Considering each criterion in turn, nothing associated with the character of the development, the site, or the area prevents or limits the inclusion of housing. This includes the nature of the listed building, which could be returned to residential use without material harm to its special interest. Such re-use, in various alternative forms, is frequently seen in many Georgian buildings of this type.
16. Nor is there any constraint arising from the site size, extent of additional floorspace, or mix of uses. Moreover, housing would provide a sufficiently active street frontage and an adequate degree of natural surveillance in this location for the type of built form involved.
17. Regarding financial viability, the Appellants have provided brief analyses of the viability of various forms of housing uses occupying the whole site. These have not been presented through a recognised framework, such as the Three Dragons tool kit, which would include all relevant considerations and test the values used. In these circumstances I am not persuaded that housing, included as part of a mix of uses, would lack viability. Further, Mr Foulad conceded that housing use of part of the site could be viable based on cross subsidy from backpackers' use of the remainder of the site.
18. The criteria do not indicate any other significant constraints. A mix of uses including a housing element would, therefore, be appropriate. Without it, the existing use fails to meet Policy DP1. Overall, therefore, the effect of the present use on sustainable housing supply is unacceptable.

Second Issue – Living Conditions of Local residents

19. The effect on living conditions of the use of the premises is not part of the Council's case. However, local residents have expressed concerns. Amongst other matters, these are in relation to noise and disturbance, especially that arising from groups congregating in the street to smoke, often in the early hours of the morning; and parking violations by coaches and delivery vehicles, causing noise and disruption.
20. These objections are to be taken very seriously. However, it is conceded by some objectors that the situation has improved since the hostel management introduced its own rules and system of control. Moreover, the completed s106 Agreement⁵ incorporates a Hostel Management Plan setting out a package of measures to be adopted including a code of conduct which occupants of the hostel must follow, provision for a community contact within the hostel management, a reporting procedure, 24 hour staffing, the presence of a security guard, and so on. It also incorporates a Service Management Plan, for the management of deliveries and servicing to the development, aimed at minimising conflicts between delivery or service vehicles and car or pedestrian movements.
21. The s106 Agreement meets the tests in paragraph B5 of ODPM Circular 05/2005. It is necessary to mitigate the effects of the use on residents' living conditions, and I consider it would be effective in doing so. In these circumstances, the effect of the use on the living conditions of local residents would be acceptable subject to the s106 Agreement.

Other Matters

22. The Appellants took great pains to preserve the special interest of the listed building in the works carried out to prepare for the present use. Listed building consent was granted for these works. The buildings retain their role within the Bloomsbury Conservation Area, being materially unchanged in character and appearance. Moreover, the Appellants would be content to be bound by a condition which requires the carrying out of an approved scheme of refurbishment of the front elevations should planning permission be granted.
23. In these circumstances, the building, its setting and features of special architectural or historic interest have been preserved. The character and appearance of the Conservation Area has also been preserved.

Conclusion

24. The present use as a backpackers' hostel is not contentious in terms of tourism policy and its effect on the living conditions of local residents would be acceptable subject to the s106 Agreement. However, because of the failure to provide a mixed use, including housing, it is not acceptable overall. Appeal A fails on ground (a).

Ground (f) – the steps required are excessive

25. The requirements of the notice include the removal from the premises of all temporary or movable fixtures and fittings directly associated with the current unlawful use. At the Inquiry, the main parties agreed that this should refer only to the bunk beds, which are substantial items with lockers incorporated.

⁵ Document A11

They are unlikely to be suitable for any form of permanent residential use, including long term student hostel use, and should be removed.

26. In the interests of clarity, I will correct the notice to specify removal of the bunk beds only. Subject to this correction, the appeals fail on ground (f).

Ground (g) – the time given to comply with the notice is too short

27. The 6 months compliance period specified in the notice is sufficient time to carry out the requirements of the notice, given the very short term nature of occupation. However, to draw up a scheme of mixed use with a permanent housing element, obtain planning permission and listed building consent, and to carry out the works, would clearly take longer.
28. There is no persuasive reason to force the Appellants to suspend operation of the backpackers' hostel in the interim. Although lacking the necessary housing element, the present use as a backpackers' hostel meets a significant need which will be particularly acute during the London Olympic Games of 2012. I will, therefore, vary the compliance period to 18 months to allow time for an alternative scheme to be processed and implemented, and to cover short stay accommodation requirements during the Olympic Games.

Formal Decisions

29. I direct that the enforcement notice be corrected by deleting from paragraph 5, the requirements, "...temporary or movable fixtures and fittings directly associated with the current unlawful use" and substituting "...bunk beds".
30. I also direct that the enforcement notice be varied by the deletion of 6 months from paragraph 5, and the substitution of 18 months as the period for compliance.
31. Subject to this correction and variation I dismiss the appeals, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made in Appeal A under section 177(5) of the 1990 Act as amended.

Alan Novitzky

Inspector

APPEARANCES

FOR THE APPELLANT

Anthony Dinkin QC and
Alun Alesbury of Counsel

Instructed by Planning and Project Management
Services

Called:

Joseph Khavari

Appellant

Afsin Foulad

Appellant

Dr Henry Farmer

Listed Buildings Consultant

Alvin Ormonde

Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY

Giles Atkinson of Counsel

Instructed by the Head of Legal Services, Council
of the LB of Camden

Called:

Charles Rose

Conservation and Design Officer

Neil Cleary

Senior Planning Officer (Policy and Information)

Eimear Heavey

Planning Officer (Enforcement)

FOR GUILFORD COURT FREEHOLD LTD, Rule 6(6) Party

Professor Mark Nash

Director

INTERESTED PERSONS:

Gilead Rosenheimer

Representing the freeholder of no 73

Mia Holman

Local Resident

Serdar Ahsak

Local Businessman

Ricci de Freitas

Representing the Marchmont Association

Jim Murray

Chair of the Bloomsbury Association

DOCUMENTS submitted by the Appellant

- A1 Letter from Smart dated 7.5.09 to Neighbours
- A2 Reservation contract, Europe Incoming dated 26.3.09
- A3 Reservation, Axis Globe dated 18.11.10
- A4 Article, Property Week, 21.1.11
- A5 Tourism in Camden: borough level estimates
- A6 Bloomsbury Assn's Letter of support for COU, dated 18.2.10
- A7 Email response to PCN, dated 29.6.09
- A8 C6 overmarked in response

- A9 Notes to A8
- A10 Camden Replacement UDP. Policy C5 – Tourism uses
- A11 S106 Agreement dated 16.3.11
- A12 Appellants' Opening Statement
- A13 Appellant's Closing Submissions
- A14 Statement of Common Ground

DOCUMENTS submitted by the Council

- C1 LBC ref: 2008/0949/L
- C2 Application for LBC dated 8.2.08
- C3 Decision Notice ref:2010/0395/P
- C4 PCN 71, May 2009
- C5 LPA & 70-72 Guilford Street - Timeline
- C6 Development Options - Impact of Options on special Interest
- C7 Delegated Report – Retention of COU
- C8 Council's Closing Submissions

DOCUMENTS submitted by Guilford Court Freehold Ltd

- GC1 Mark Nash's email dated 7.4.09
- GC2 Letter, Mark Nash to Moira Gibb, Council's CE, dated 5.4.09
- GC3 Response to Mark Nash's report of an EH problem, 28.7.09
- GC4 Mark Nash's letter to Env't Health team, dated 18.3.09
- GC5 Letter, James McCrone to Env't Health dated 16.11.09
- GC6 Letter, James McCrone to Gary Bakall dated 22.6.09
- GC7 Smart Russell Square website reviews
- GC8 Smart Russell Square website extract
- GC9 EH Heritage at Risk Register, entry for 70-72 Guilford Street
- GC10 Letter, Mark Nash dated 14.2.10 objecting to COU
- GC11 Comments Form, Mark Nash objecting to COU