

RE: LAND AT PERRINS COURT

NOTE ADVISING

1. On 17th October 2013 Mr Inspector McGurk dismissed an appeal by Savills (L&P) against the decision of Camden LBC ('LPA') to refuse permission to change the use of a retail unit in Hamstead Town Centre from retail (in use class A1) to Estate Agency (in use class A2).
2. The Appellant operated an Estate Agency next door to the appeal site and expressed an intention to amalgamate the two shop units so as to facilitate an expansion of that business. However at paragraph 7 of his decision the Inspector points out that no physical works were proposed so as to facilitate such an amalgamation, and thus he determined the appeal on the basis that such an amalgamation might not happen if the appeal was allowed thereby facilitating the prospect of two estate agencies operating side by side.
3. The policy context within Camden Planning Guidance 5 seeks to resist a deleterious reduction of retail uses within primary shopping frontages, such that at least 75% of units are required to be in use for retail purposes. Proposals which would result in that proportion falling below 75% will be resisted.
4. Those instructing me have agreed with the LPA that within the relevant frontage there are six units and currently five of those units are in use for retail (83%). The effect of amalgamating the two units would be to reduce the total number of units to five, four of which will be in use for retail (80%). Those instructing me therefore conclude that the proposal remains in accordance with the policy test in CPG5 and is therefore acceptable.
5. The LPA, by contrast is seeking to argue that one has to undertake the assessment based on the current configuration of the floorspace (i.e. ignoring the proposed amalgamation). The effect of which is that four of six units

would be non-retail (66%) and thus below the minimum threshold. This was precisely the eventuality which faced the Inspector in 2013 who concluded that there was indeed such a breach of policy, but made it clear that the basis of that decision was that an amalgamation was not secured within the proposals before him.

6. The simple question raised in my instructions is whether one has to judge whether the proposed development is policy compliant by reference to the existing configuration or the future configuration?
7. In my opinion the answer is necessarily highly fact sensitive. If the proposal is expressly based upon a change of use so as to facilitate an amalgamation of the two units into one and provided that an enforceable means is proposed to ensure that the newly combined unit could only operate as a single unit and could not be subdivided without the requirement for further planning permission to be secured – then the only lawful basis upon which the LPA should determine the application is on the basis of the proposed configuration and not the current.
8. That of course begs the question as to how such a mechanism can be lawfully secured, upon which I would be happy to advise further. Suffice to say that there are a number of different approaches that could be taken, but those instructing me will be well aware that conditions which restrict sub-division of newly created retail units are encountered throughout the United Kingdom.
9. I advise accordingly, should anything else arise please do not hesitate to contact me further.

Kings Chambers
Manchester, Birmingham, Leeds

Paul G Tucker QC
12th September 2014