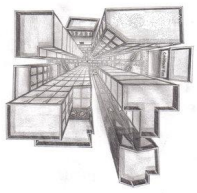
KR PLANNING
CHARTERED TOWN PLANNER
183 SEAFIELD ROAD, BOURNEMOUTH, DORSET, BH6 5LJ
Kieran@krplanning.com
07545264252



26 February 2015

Alex McDougall
London Borough of Camden
Argyll Street
LONDON
WC1H 8EQ

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 CHANGE OF USE FROM OFFICES & CAR SHOWROOM TO PROVIDE FLEXIBLE B1 SPACE AT BASEMENT AND GROUND FLOOR LEVELS AND 16 UNITS ON UPPER FLOORS INCLUDING AN EXTENSION TO CREATE 4, 5 AND 6TH FLOORS & RECLADIING OF THE BUILDING

The Application for full permission is made as it seeks to vary the obligation in the S106 Agreement to remove the affordable housing requirement. The application has come about because of the material change of policy since the determination to exempt empty buildings from affordable housing requirements.

History

There are numerous consents on the site, but the relevant determinations for this application are:

Change of use from offices (Class B1a) & car showroom (Sui Generis) uses to provide flexible B1 space at basement and ground floor levels, and 16 residential units on upper floors, including extension to create 4th, 5th & 6th floors and recladding of the building.

This is the consent which established the principle of residential use for the building, and creates the planning units with which the extension were to be associated

It is noteworthy that the report to Committee at para 1.2 reads:

The building is vacant but the upper floors were last used as offices (B1a) with the ground and basement floors previously used as a car showroom (sui-generis

NPPF

The National Planning Policy Framework (adopted March 2012) sets out the Government's planning policies for England and how these are expected to be applied. This document constitutes a material consideration in the determination of planning applications.

The National Planning Policy Guidance ("NPPG") was updated on 28 November 2014 to introduce guidance on the level of affordable housing that vacant buildings being brought back into use should require. The NPPG sets this out at Paragraph: 022 of the Planning Obligations chapter (Reference ID: 23b-022-20141128).

Paragraph 21 reads:

Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions would be required for any increase in floorspace.

Paragraph 22 reads as follows:
"Where there is an overall increase in floorspace in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A 'credit' should then be applied which is the equivalent of the gross floorspace of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation."

Para 23 advises that the credit is to be applied to any vacant building which is bought back into use, unless the building has been abandoned.

Material Change of Policy

The Secretary of State made his policy change on 28th November 2014, and intended that the policy should be applied overnight (albeit this was including in the press release which accompanied the policy release).

Policies additional to those contained in the statutory plans are adopted both by local planning authorities and the Secretary of State as a guide to the exercise of discretion. The function and purpose of planning policy has been re-examined by the courts in a number of cases, not least in the light of Government policies on housing land supply.

It is settled judicial authority that Central government policy is clearly capable of being taken into account as a material consideration in development control. His policies filter through to local planning authorities both through the forward planning system and through development control.

Furthermore, the provisions of a development plan may become outdated as national policy changes, or particular development plan policies may no longer meet current needs, or other changes may have occurred which make the particular provisions of the development plan less relevant. In such circumstances, other material considerations, such as more recent national policies, may assume greater importance and indicate that the application for planning permission should be approved (see the comments of Lord Hope of Craighead in City of Edinburgh v Secretary of State for Scotland [1997] 1 W.L.R. 1447 at 1450B-E)

It is accepted that the PPG is not formally binding on a local planning authority, but it is a material consideration that must be weighed in the balance when discharging their determinative duty pursuant to S70 of the 1990 Act. It will also be taken into account by the Secretary of State on appeal from their decision or on a called-in application, and the interpretation and application of the policy (although not its merits, nor the merits of the application) is liable to be reviewed in the courts.

The following propositions can be suggested:

(1) a local planning authority and the Secretary of State are entitled to adopt a policy and apply it in decision making as a material consideration under s.70, providing that it does not fetter their duty under that section as qualified by s.54A to determine the application in accordance with the development plan, except where material considerations indicate otherwise;

(2) a policy cannot convert an immaterial consideration into a material consideration, or vice versa: the language of the policy must always give way to the requirements of the statute;

(3) if a policy is a lawful policy, and its provisions are material to the application then the decision-making body must have regard to it;

(4) a policy need not be promulgated in any particular fashion for it to be taken into account. Any statement of policy may be taken into account, the weight to be attached to it may vary in accordance with the formality of its expression.

The Policy as it Applies to the Circumstance

The following should be common ground between the parties:

- The building was, and remains vacant
- The extant planning permission has not been implemented.
- No other issue of principle or policy would prevent the beneficial grant of permission if the vacant building credit were to be applied.

Para 6.25 of the report to Committee advises that 406sqm should be sought from the development. As the existing building is 1141sqm metres being returned to beneficial use, no affordable contribution is required.

In light of the material change of policy prior since the determination, my Client is entitled to review the Planning Obligations sought. It is readily apparent that the Secretary of State no longer saw any circumstance where affordable contributions should be sought where:

- A vacant building was being bought into use, and where
- The contribution would be made to general funds rather than to a site specific circumstance
- And that he intended this policy to apply from the time of its introduction.

The Variations Sought

The applicant is satisfied to remain bound by the other elements of the S106, such as parking permit restrictions

Conclusion

We assume that a Deed of Variation will be required to the existing S106, and advised that the Applicant is willing to underwrite the Borough's reasonable legal costs.

Should you have any queries regarding the application, please do not hesitate to contact me on 07545 264 252 or at Kieran@krplanning.com

Yours Sincerely

Kieran Rafferty
BA(URP) CUKPL MPIA MRTPI

Encl:

CC: Client