

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

UNIVERSITY COLLEGE LONDON HOSPITAL CHARITY

**ARTHUR STANLEY HOUSE, 40 TOTTENHAM STREET, LONDON W1T 4RN (PLANNING
APPLICATION REFERENCE 2015/0391/P)**

APPEAL PROCEDURE STATEMENT

DATE: DECEMBER 2015



Pinsent Masons

1. INTRODUCTION

- 1.1 This Appeal Procedure Statement ("**APS**") has been prepared by Pinsent Masons LLP acting on behalf of 1921 Mortimer Investments Limited which has been appointed as agent for University College London Hospital Charity ("**Appellant**") in relation to the planning appeal ("**Appeal**") submitted by the Appellant against the London Borough of Camden's ("**Council**") refusal of planning application 2015/0391/P for development at Arthur Stanley House, 40 Tottenham Street, London W1T 4RN ("**Site**").
- 1.2 The development proposed by the planning application consists of the refurbishment of the existing eight storey Arthur Stanley House and new build element to the rear facing Tottenham Mews to enable a change of use from health care (Class D1) to a mixed use development comprising office floor space (Class B1), flexible office (Class B1)/health care (Class D1) floorspace at ground floor level and 12 residential units (Class C3) (market units: 1 x 1bed, 8 x 2bed, 1 x 3bed; affordable units: 2 x 3 beds) and associated landscaping fronting Tottenham Mews (the "**Appeal Scheme**").
- 1.3 In this APS the Appellant's Statement of Case which has been prepared in support of the Appeal is referred to as the "**SoC**".

2. LEGAL AND POLICY CONTEXT

- 2.1 Section 319A(6) of the Town and Country Planning Act 1990 provides that the Secretary of State must publish the criteria that are to be applied in making determinations as to the procedure by way appeal proceedings are to be considered.
- 2.2 These criteria are currently set out in Annexe K of the Planning Inspectorate's Procedural Guide for Planning Appeals in England (10 July 2015). It is clear from the wording of Section 319A(6) that these and these alone are the criteria to be applied.
- 2.3 The preamble to Annexe K confirms as follows: "The criteria for each procedure cannot be fully prescriptive or entirely determinative: they require judgement to be applied using common sense. More than one criterion may apply."
- 2.4 Annexe K sets out five situations when a hearing would be appropriate for a planning appeal:¹
- 2.4.1 the Inspector is likely to need to test the evidence by questioning or to clarify matters; or
 - 2.4.2 the status or personal circumstances of the appellant are at issue; or
 - 2.4.3 there is no need for evidence to be tested through formal questioning by an advocate or given on oath; or
 - 2.4.4 the case has generated a level of local interest such as to warrant a hearing; or
 - 2.4.5 it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them².
- 2.5 It is clear from the use of the word "or" that any one of these criteria is sufficient in itself to require a hearing. The criteria are not cumulative.

¹ No reference is made to other criteria which only relate to enforcement appeals.

² Although note paragraph E.1.2 of Annexe E (Hearings procedure) which states that statutory parties may be represented by an advocate but that this is not essential. Note also that the advocate may be legally qualified but this also is not essential.

3. APPELLANT'S SUBMISSIONS

Appropriateness of a Hearing

- 3.1 The Appellant submits that the Inspector will need to test some of the evidence by questioning and will need to clarify matters with relevant experts (see paragraph 2.4.1 above). This will be particularly in the context of understanding the interpretation and application of the development plan policies to the Appeal proposals. There is a major difference of approach between the parties on this fundamental issue.
- 3.2 Given the Council's reasons for refusing the planning application which is the subject of the Appeal, the Appellant's SoC contains detailed arguments on the correct interpretation of the development plan, which is a matter of law to demonstrate the Appeal Scheme's compliance with the development plan when considered as a whole and the demand for office space in the Fitzrovia area. It is reasonable to anticipate that the Council will adopt a similar approach in its SoC.
- 3.3 The Inspector will need to test the conflicting evidence and contentions of the respective parties in order to make a properly informed determination of the Appeal. This is particularly critical in this Appeal, given the fundamentally different approaches to the interpretation and application of the development plan in this case. In doing so the Inspector is likely to need to clarify issues in relation to the following matters, by way of example only:
- 3.3.1 the interpretation of the policies and supporting text in the Fitzrovia Area Action Plan ("**FAAP**"), particularly the section that identifies the Site as an 'opportunity site'. This matter is particularly important given that the Council has adopted an alternative (and incorrect) interpretation of the FAAP policies³;
 - 3.3.2 the Appeal Scheme's compliance with relevant policies across the various development plan documents including the FAAP, the Core Strategy 2010-2025 and Development Policies 2010; and
 - 3.3.3 the demand for office space in the Fitzrovia area and the need to support Central London's importance as an economic area and its role as a capital city.
- 3.4 The Appellant submits that the Inspector is best placed to lead this Appeal in an inquisitorial way but with the assistance of the parties as to the meaning of the policies and their application to this Appeal.
- 3.5 Although this case has not generated a level of local interest such as itself to warrant a hearing, (see paragraph 2.4.4 above), the nature of the representations reinforces the need for careful investigation into the development plan issue through a Hearing as indicated above. Both the Charlotte Street Association and the Fitzrovia Neighbourhood Association (who made representations on the planning application) apply a meaning to the FAAP which the Appellant considers is incorrect.

Inappropriateness for Written Representations

- 3.6 The Appellant considers that written representations would not be appropriate for the Appeal, having regard to the relevant criteria in the Planning Inspectorate's Procedural Guide.
- 3.7 For the reasons given above the Appellant considers that the issues are such that the Inspector will need to test them via informal questioning and this cannot be achieved by written representations. There has also been some local interest in the Appeal.

³ See reason for refusal 1.

4. **CONCLUSIONS**

- 4.1 The Appellant requests that the Appeal is determined by way of the hearing procedure.
- 4.2 The Appellant has provided compelling submissions in this APS in support of this request. A hearing would clearly be the most appropriate procedure for considering the Appeal, having regard to the latest applicable policy criteria.