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REF: L/MISC/AM

22 December 2016

Development Control
London Borough of Camden
5 Pancras Square
London
N1C 4AG

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990
APPLICATION FOR RESIDENTIAL DEVELOPMENT AND WORKS TO PUBLIC HOUSE
SITE AT 9 HARGRAVE PLACE, LONDON

Please find enclosed an application for full planning permission, submitted on behalf of my Client, Woodham Properties Ltd, for the permission at the above named site. The application is made via the Planning Portal and comprises the application form, the requisite fee and now this cover letter.

Drawing No	Title
GAL 220 (PC) 001 A	Location, Block, Site Plans
GAL 220 (PC) 002 C	Existing Elevations
GAL 220 (PC) 003 A	Existing Basement and GF Plans
GAL 220 (PC) 004 A	Existing Upper Floor Plans
GAL 220 (PC) 005 F	Proposed Ground and First Floor Plans
GAL 220 (PC) 006 D	Proposed Second and Third Floor Plans
GAL 220 (PC) 007 B	Proposed Basement and Roof Plans
GAL 220 (PC) 008 F	Proposed Elevations
GAL 220 (PC) 009 C	Proposed Section A-A

The Application is supported by a

- Design and Access Statement,
- Acoustic Assessment by 24 Acoustics.

It should be noted that 9A Hargrave Place is no longer part of the application site.

Commentary

Whilst my Client is obviously very disappointed with the outcome of the appeal, they are grateful for the Inspectors in-principle support of the further development on the site.

In the case of North Wiltshire DC v Secretary of State for the Environment [1991] 2 P.L.R. 67; [1991] E.G. 25 (C.S.) states that a decision in an earlier appeal relating to the same land is capable of being treated as a material consideration. The Court held the inspector has a duty to consider all material considerations and an earlier decision can be a material consideration since like cases should be decided in a like manner. It did not follow that like cases had to be decided in the same way, the inspector had to exercise his judgment but, where he chose not to follow an earlier decision, but he had to give his reasons for doing so.

This appeal decision, and moreover, its finding of facts and principles becomes a significant material consideration unless there is a material change in circumstance or policy. Although there has been a change to the Development Plan, the policy criteria regarding development control remains very similar as to that within the previous UDP, and the Borough's charge is to be deliver significantly more housing.

Having considered the appeal decision, it is considered that the Inspectors concerns with the scheme are limited to:

- Inadequate unit size on the top floor
- The quality of the accompanying acoustics report
- The cycle and refuse provision
- The works to the non-designated heritage asset
- The lack of food service reducing the quality of the offer for customers

In determining this harm, and whilst some of these elements were already common ground between the parties, the following principles can be elicited from the decision letter:

- The ACV listing only extended to the public parts of the pub

- There was no objection to toilets being provided within the basement
- There was no other objection to impacts on amenities of any surrounding property
- There was no objection to the mass or design of the proposal above the public house
- There is no objection to the proposed height of the development
- There is no requirement for staff accommodation to be provided on-site

The Amendments

The following changes have been made since the appeal dismissal:

- Basement Level

A food preparation area has been added.

- Ground Floor

The Cycle/refuse store have now been separated and there is reduction in the store area provided at ground floor level.

- First Floor & Second Floor

No change

- Third floor

The unit has been laid out as a one bedroom unit, with the study now provided as too small to even contain a bed.

- External alterations

The elevations for 9, including the mansard, remain the same as previous. The only external change, other than the retention of 9A, is the kitchen duct now proposed.

Response to the Inspectors criticisms

- Non-designated heritage assets

No change is proposed to 9A, so this concern falls away.

- Inadequate unit size on the top floor

The top floor has been reconfigured as an overly large one bed unit. A study is still provided, but the physical dimensions of the room would not permit a bed to fit into the space so this criticism is deemed to be accommodated.

- The quality of Public House

The Inspector recognised that the appeal proposal would have enlarged the seating area within the public house, and that basement toilets are common within pubs.

The most puzzling of the Inspector's conclusion was in relation to food service, given the strong factual evidence of the lack of a kitchen and agreed as common ground between the main parties in the CGS. However, it is now proposed to extend the basement area to include a food preparation area, subject the usual licensing requirements not relevant to this determination.

As an aside, dialogue has begun between the property owner and the objectors as to the identify of the landlord for the premises. Not that it is relevant to this determination, but it is likely that the previous landlord is to return, though not his manager!

- The cycle and refuse provision

These spaces have now been separated, and are provided off a ventilated lobby. Again, this concern falls away.

- Quality of the noise assessment

The most egregious of the Inspector's conclusion, given that it is contrary to judicial authority that he was directed to at the hearing. For the sake of completeness, it is repeated here as lifted directly from the 11/95 footnote:

British Railways Board v Secretary of State for the Environment and Hounslow LBC [1994] J.P.L. 32; [1993] 3 P.L.R.125-the House of Lords established that the mere fact that a desirable condition, worded in a negative form, appears to have no reasonable prospects of fulfillment does not mean that planning permission must necessarily be refused as a matter of law. However, the judgment leaves open the possibility for the Secretary of State, to maintain as a matter of policy that there should be at least reasonable prospects of the action in question being performed within the time-limit imposed by the permission.

His conclusions were even more puzzling when considered against his colleague's decision at the Leighton Arms which was reached without even the benefit of a noise assessment being submitted with the application or appeal.

However, the Applicant has instructed a new Acoustician who has liaised with the Environmental Health team prior to preparing their report. Their conclusions are that all noise matters can be resolved via the technical solutions being promoted, including that of external patrons as follows:

- No increase in measured music noise level in any residential area after 00:00 (ie, level to be at least 10 dB lower than the ambient level).
- Use of appropriate acoustic glazing to minimise the risk of noise break-in from people outside the premises
- Sound insulation of party floor between ground and first to achieve a minimum sound weighted difference of 65 dB DnTw.
- Use of fixed PA system, structurally isolated loudspeakers and noise limiter (calibrated to Camden's satisfaction) within the public house. A noise sensing limiter can be installed also to cover any equipment which is not amplifiede)
- All plant (principally a small kitchen extract) would be controlled in accordance with Camden's usual requirements

We would assume these controls would be achieved via condition, in accord with the judicial authority referred above.

Conclusion

The Applicant has responded positively to the Inspector's criticisms, and this further revised scheme must be considered in light of his findings of fact and principle. We trust that the above will prove sufficient for validation purpose. 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