
Statement of Case

Planning Appeal: Variation of condition 2 of planning permission PS9904721 dated 21/07/2000 to allow for flexible B1(a) and B1(c) use across all floors at 26-29 St Cross Street, London, EC1N 8UH

PINS Ref: TBC

LPA Ref: 2017/3650/P

On behalf of Takara Trading Limited



Birketts

**Birketts LLP
22 Station Road
Cambridge
CB1 2JD**

**Tel: 01223 326612
Email: philip-kratz@birketts.co.uk
Birketts LLP Ref: 318446.0001**

Contents

1. Introduction and background
2. The Site
3. The appeal proposal
4. Planning history
5. National and local planning policy
6. The Appellants' case
7. Reasons for requesting hearing procedure
8. Summary and conclusion

1. Introduction and background

1.1 In April 2017 Takara Trading Limited ("the Applicant") applied to the London Borough of Camden ("the Council") for the variation of condition 2 of planning permission PS9904721 ("the Original Permission") dated 21/07/2000 (granted by the Council and supported by section 106 planning obligations), to allow for flexible B1(a) and B1(c) use across all floors ("the Application") at 26-29 St Cross Street, London, EC1N 8UH ("the Site").

1.2 The Application was refused by the officers under delegated powers, the decision notice dated 15th November 2017 citing a single reason for refusal, as follows:-

1. The proposed development would result in an unacceptable loss of employment floorspace (Light Industry) to the detriment of the loss of continued occupation by the Jewellery Industry, contrary to policies E1 and E2 of the London Borough of Camden Local Plan 2017.

There was also an "informative" added to the decision notice, as follows:-

Please note that this application is solely considered to vary condition 2 which restricted the third floor only. As for the second floor restricted under the S106 legal agreement this would have to be considered under:

1. a deed of variation to vary the s106 agreement, rather than condition 2 of the permission as condition 2 relates to the third floor only; and

2. if such an application was made then the Council would need to consider whether comparable floor space in the basement has been secured for B1c use (as per the agreement).

1.3 This Statement of Case has been prepared by Philip Kratz, a consultant with Birketts LLP. Mr Kratz is a former local government chief officer; he is accredited as a planning specialist by the Law Society, a legal associate member of the Royal Town Planning Institute, a member of NAPE, a former Director of an Historic Buildings Preservation Trust, and a current member of the Law Society's Planning and Environmental Law Committee. He is well acquainted with the Site, the history of it and the surrounding area, and the planning policy background.

2. The Site

2.1 The Site contains a five storey building (plus basement), shown in the photograph on the front of this Statement of Case, which was constructed as offices. The authorised use of the building comprises office space (B1(a)) in the basement and on the ground, first and fourth floors, with unrestricted light industrial (B1(c)) on the second and third floors.

2.2 The Site is in the Hatton Garden Conservation Area, but the building is not listed nor a “positive contributor” (and is recognised in the new Conservation Area appraisal as making a “negative contribution”, as to which see below).

3. The appeal proposal

3.1 The appeal proposal is to vary condition 2 of the Original Permission to allow for flexible B1(a) and B1(c) use across all floors.

3.2 As is apparent from the application documents, the Original Permission was supported by s.106 planning obligations; the Council mistakenly (and unilaterally) decided that the Application should solely be considered to vary condition 2 which restricted the third floor only, as the second floor was restricted under a s.106 legal agreement. There is an element of “chicken and egg” about the approach in these circumstances, but if the planning application for the change of use was acceptable then it would be **Wednesbury** unreasonable to refuse to vary the obligations. For the avoidance of doubt, the Application relates to **both** floors (albeit it is open to the decision maker to limit the decision to one floor).

3.3 The Applicant has occupied most of the building since acquiring the freehold in 2001, with the benefit of the Original Permission. The building consists of six floors (basement, ground and 1st to 4th); the existing authorised use and, for ease of reference, the proposed authorised use, are therefore as follows:-

Floor	Existing authorised uses	Proposed authorised uses
Basement	B1(a) Office	Flexible B1(a) Office or B1(c) Light Industrial
Ground	B1(a) Office	Flexible B1(a) Office or B1(c) Light Industrial
First	B1(a) Office	Flexible B1(a) Office or B1(c) Light Industrial
Second	B1(c) Light Industrial	Flexible B1(a) Office or B1(c) Light Industrial
Third	B1(c) Light Industrial	Flexible B1(a) Office or B1(c) Light Industrial
Fourth	B1(a) Office	Flexible B1(a) Office or B1(c) Light Industrial

3.4 There are four floors where the only existing authorised use is B1(a); for the two floors where the authorised use is B1(c) there is no tie to jewellery-related use.

4. Planning history

4.1 The internal Delegation Report by the case officer confirms the relevant planning history, which briefly is:-

- 4.1.1 PSX0204106: Installation of windows to the rear elevation, together with the installation of 2 air conditioning condenser to the rear at second floor level and 1 at third floor level (approved 11/03/2003);
 - 4.1.2 PS9904721 (the Original Application): External alterations including the replacement of existing shutters and existing entrance with new glazed entrances and a folding security grille in association with the use of the property as offices (class B1) for the basement, garage, ground and first floors together with the change of use of the third floor from the assembly and sale of diamond jewellery to light industrial (class B1c use (approved 21/07/2000);
 - 4.1.3 PS9905039: Lawful use of the first floor for B1 use (certified 16/11/1999);
 - 4.1.4 PS9905040: Lawful use of the second floor for a use falling within B1 of the Use Classes Order (certified 16/11/1999); and
 - 4.1.5 PS9904722: Change of use of the ground and mezzanine floors to restaurant (A3) use and the continued use of the remainder of the building for offices (class B1) purposes (refused 14/09/1999).
- 4.2 The earlier planning history is not available from public sources, but it is understood that the building was erected as offices (as corroborated by 4.1.5 above, where the building was described as being used for offices in 1999).

5. National and local planning policy

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications and appeals are determined in accordance with the development plan unless material considerations indicate otherwise.

National planning policy

- 5.2 National planning policy is now contained in the National Planning Policy Framework ("NPPF").
- 5.3 Paragraph 2 of the NPPF reflects the statutory position, and states that planning decisions should be taken in accordance with the development plan, unless "other material considerations indicate otherwise"; this is reiterated in paragraphs 12 to 14.
- 5.4 Paragraph 7 identifies three dimensions to sustainable development: economic, social and environmental:-
- 5.4.1 The ***economic*** role ensures the availability of land to support growth and innovation and contributes to a strong, responsive and competitive economy.

- 5.4.2 The **social** role supports “strong, vibrant and healthy communities by (amongst other things) “creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being”;
- 5.4.3 The **environmental** role contributes to protecting and enhancing the natural, built and historic environment and seeks to “mitigate and adapt to climate change including moving to a low carbon economy.”
- 5.5 Paragraph 8 of the NPPF states that the three roles “...should not be undertaken in isolation because they are mutually dependent”.
- 5.6 Paragraph 17 contains the core planning principles, including a requirement for local planning authorities to proactively drive and support sustainable economic development to deliver the business units that the country needs, and requiring plans to take account of market signals, taking account of the needs of the business community.
- 5.7 Paragraph 21 requires local planning authorities to (inter alia) support business. Paragraph 186 requires local planning authorities to approach decision-taking in a positive way, and paragraph 187 to look for solutions rather than problems, stating that decision-takers at every level should seek to approve applications for sustainable development where possible; indeed, the presumption in favour of sustainable development (paragraph 14), the requirement for Local Planning Authorities to look for solutions not problems and for decision takers at every level to seek to approve applications for sustainable development where possible (paragraph 187), all apply regardless of the spatial context of the proposal.

Local planning policy

- 5.8 The development plan comprises the London Plan and the Camden Local Plan.
- 5.9 The Site is in the London Central Activities Zone (“CAZ”), as defined in the London Plan. The London Plan deals with the strategic functions of the CAZ, and seeks to prevent the further loss of “office and employment” floorspace; the relevant provisions of the Plan are very supportive of B1 office use in this location, reflecting (as did the previous UDP) the decrease in availability of B1(a) offices in the Hatton Garden area (mainly because of residential pressure).
- 5.10 The Camden Local Plan was adopted on 3rd July 2017, replacing the adopted Core Strategy and Camden Development Policies documents.
- 5.11 Policy E1 addresses **Economic Development**; it provides:-

The Council will secure a successful and inclusive economy in Camden by creating the conditions for economic growth and harnessing the benefits for local residents and businesses.

We will:

- a. support businesses of all sizes, in particular start-ups, small and medium-sized enterprises;**
- b. maintain a stock of premises that are suitable for a variety of business activities, for firms of differing sizes, and available on a range of terms and conditions for firms with differing resources;**
- c. support local enterprise development, employment and training schemes for Camden residents;**
- d. encourage the concentrations of professional and technical services, creative and cultural businesses and science growth sectors in the borough;**
- e. support the development of Camden's health and education sectors and promote the development of the Knowledge Quarter around Euston and King's Cross while ensuring that any new facilities meet the other strategic objectives of this Local Plan;**
- f. direct new office development to the growth areas, Central London, and the town centres in order to meet the forecast demand of 695,000m² of office floorspace between 2014 and 2031;**
- g. support Camden's industries by:**
 - i. safeguarding existing employment sites and premises in the borough that meet the needs of industry and other employers;**
 - ii. supporting proposals for the intensification of employment sites and premises where these provide additional employment and other benefits in line with Policy E2 Employment premises and sites;**
 - iii. safeguarding the Kentish Town Industry Area;**
 - iv. promoting and protecting the jewellery industry in Hatton Garden;**
- h. expect the provision of high speed digital infrastructure in all employment developments; and**
- i. recognise the importance of other employment generating uses, including retail, education, health, markets, leisure and tourism.**

- 5.12 Paragraph 5.6 of the explanatory text states, "***In order to secure a strong and successful economy, the Council will support businesses of all sizes, particularly start-ups, and small and medium-sized enterprises. Camden has a large proportion of small businesses, with 83% employing less than nine people and a further 14% employing between 10 and 49 employees. However, premises suitable for small businesses as well as medium sized enterprises are currently under pressure from rising land values, limited land availability and 'permitted development' rights which allow the change of use from offices (B1(a)) to housing (C3) without the need for planning permission and therefore without assessment against our planning policies***". This last point reveals a telling issue, the permanent loss of employment premises to residential use, and because of this much of the borough is covered by Article 4 directions, preventing the loss of B1(a) office space to residential use through permitted development rights.

5.13 Hatton Garden is described at paragraph 5.32 of the explanatory text; this explains that it “...***has been an established centre for the jewellery industry since the 19th Century and today the area is home to nearly 500 businesses and over 50 shops related to the industry. In order to promote Hatton Garden as a location for jewellery related uses, the Council will seek to secure and retain premises suitable for use as jewellery workshops and related uses through planning obligations. Please see Policy E2 Employment premises and sites for our detailed approach***”, and further explanation of the Council’s approach is given at paragraphs 5.47 to 5.52 (discussed below) and in policies addressing the potential loss of A1 retail frontages in Hatton Garden.

5.14 Policy E2 deals with ***Employment Premises and Sites***; it provides:-

The Council will encourage the provision of employment premises and sites in the borough. We will protect premises or sites that are suitable for continued business use, in particular premises for small businesses, businesses and services that provide employment for Camden residents and those that support the functioning of the Central Activities Zone (CAZ) or the local economy.

We will resist development of business premises and sites for non-business use unless it is demonstrated to the Council’s satisfaction:

- a. the site or building is no longer suitable for its existing business use; and***
- b. that the possibility of retaining, reusing or redeveloping the site or building for similar or alternative type and size of business use has been fully explored over an appropriate period of time.***

We will consider higher intensity redevelopment of premises or sites that are suitable for continued business provided that:

- c. the level of employment floorspace is increased or at least maintained;***
- d. the redevelopment retains existing businesses on the site as far as possible, and in particular industry, light industry, and warehouse/logistic uses that support the functioning of the CAZ or the local economy;***
- e. it is demonstrated to the Council’s satisfaction that any relocation of businesses supporting the CAZ or the local economy will not cause harm to CAZ functions or Camden’s local economy and will be to a sustainable location;***
- f. the proposed premises include floorspace suitable for start-ups, small and medium-sized enterprises, such as managed affordable workspace where viable;***
- g. the scheme would increase employment opportunities for local residents, including training and apprenticeships;***
- h. the scheme includes other priority uses, such as housing, affordable housing and open space, where relevant, and where this would not prejudice the continued operation of businesses on the site; and***
- i. for larger employment sites, any redevelopment is part of a comprehensive scheme.***

Hatton Garden

The Council will seek to secure and retain premises suitable for use as jewellery workshops and related uses in Hatton Garden. We will also resist development of business premises and sites for a non-business use.

Where the applicant can demonstrate criterion a. and b. above we will expect the proposals to provide a mix of uses that include premises suitable for use as jewellery workshops.

We will consider redevelopment of premises or sites that are suitable for continued jewellery workshops provided that:

- j. the level of jewellery workshop space is increased or at least maintained;*
- k. the redevelopment retains existing businesses on the site as far as possible; and*
- l. the relocation of businesses will not cause harm to CAZ functions or Camden's local economy.*

Where proposals in Hatton Garden would increase total gross internal floorspace by more than 200m², we will seek 50% of the additional floorspace as affordable premises suitable for the jewellery sector.

- 5.15 The **Hatton Garden Conservation Area Statement** dates back to 1999, and thus predates the NPPF. Paragraph 7.19 recognises the pressures for changes of use to **residential**, and paragraph 7.20 identifies three issues when considering proposals: (1) recognising the importance of the area's specialist **retail** function, (2) the need to maintain a stock of "**small**" industrial premises, and (3) the need to maintain a **balance** between residential and commercial development.
- 5.16 A **draft** Conservation Area Appraisal and Management Strategy has been the subject of consultation; the Site is within the "**Trading Centre**" identified in the Appraisal, and is identified in "The Audit" (at 6.0) as a building that makes a **negative contribution** to the area. At Paragraph 9.5 the Council recognises that there are commercial pressures for change of use, e.g. to workshops, restaurants and offices. In determining applications for change of use the Council will have regard to the effect on the balance of uses in the Area and on the distinctiveness that stems from the continuation of traditional activities associated with the Area, particularly jewellery manufacture.

6. The Appellants' case

- 6.1 Colliers International, a specialist firm of chartered commercial property surveyors based in London, with offices at 27 Old Street, London, EC1V 9HL, were instructed to advise on the marketing of the Property in June 2016, with a request to market vigorously and to consider flexible terms; they were made aware of the authorised planning use of the Property, including the predominant B1(a) office use, and the restriction requiring the use of the second and third floors (subject to detailed provisions) for B1(c) light industrial purposes (albeit not limited to the jewellery sector).

- 6.2 The report of Colliers accompanied the Application; it analysed the marketing exercise and concluded (reflecting their experience over the previous few years) that it would now be reasonable to consider alternative uses. Whilst the demand for B1(c) light industrial space has been non-existent, the demand for flexible office space has risen over the last few years, reflecting the pressures to redevelop for residential purposes, and the permanent loss of such space. The market for B1(c) accommodation has probably changed on a permanent basis and in any event they conclude that there is no current demand. Further, they do not see any reasonable prospect of finding a B1(c) occupier in the foreseeable future. This is not least because the premises are inherently unsuitable for light industrial use of any sort, but in particular jewellery related workshop use; such premises tended to be small, closely associated with retail and residential use, and recognised the use of Bunsen burners and other equipment requiring good ventilation and chimneys, which would not be possible in a large floor plate of premises built as offices.
- 6.3 In this context, condition 2 of the Permission provides, “Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) or any order revoking and re-enacting that provision with or without modification, the use herein permitted for the third floor shall be restricted to light industrial purposes falling within class Bi c of the above Order and no other use in class B1 of that order”. Without this condition, it would be permissible to switch between the uses allowed by the B1 use class (which would not otherwise be “development”).
- 6.4 The variation of condition 2 in the Permission to allow other B1 uses throughout the Property would be consistent with the NPPF, the London Plan, the previous UDP and the Local Plan; it gives rise to no “harm”, and in any event would be justifiable on its own merits both within the terms of the relevant policies and as a case where material considerations indicate that permission should be granted (there being no material considerations that would justify refusal).
- 6.5 The proposal is compliant with Local Plan policy E1:-
- 6.5.1 It will be supportive of business;
 - 6.5.2 It will help to maintain a stock of premises that are suitable for a variety of business activities;
 - 6.5.3 The whole of the premises is floorspace suitable for start-ups, small and medium-sized enterprises, and managed affordable workspace if viable;
 - 6.5.4 It will support Camden’s industries by safeguarding existing employment sites and premises in the borough that meet the needs of employers; and
 - 6.5.5 It will cause no harm to the jewellery industry in Hatton Garden.

- 6.6 The proposal is compliant with policy E2:-
- 6.6.1 It retains premises in continued business use, supporting the functioning of the Central Activities Zone (CAZ) and the local economy;
 - 6.6.2 The building was never “suitable” for workshop use and the existing authorised use is not tied to the jewellery trade;
 - 6.6.3 There is no loss of employment floorspace;
 - 6.6.4 The proposed flexible use means that the premises will respond to market need; and
 - 6.6.5 There is the possibility of s.106 planning obligations ensuring that the Site meets employment need permanently.
- 6.7 The major problem in the locality is the loss of business floorspace to residential use. By allowing B1 use, the premises would be available for B1(a) or B1(c) use (and potentially B1(b), if thought appropriate), and the danger of permanent loss to residential use would be avoided; this could be reinforced by fresh s.106 planning obligations to prevent a change to residential use, thus providing a real planning benefit.
- 6.8 It was suggested that condition 2 of the Permission be varied so that it reads:-
- 6.9 “Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting those Orders with or without modification), the use of the premises shall be restricted to uses falling within class B1 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and no other use unless expressly authorised by planning permission granted by the Local Planning Authority in that behalf”, the reason for the condition being, “In order to safeguard business floorspace and prevent its loss to other uses”.
- 6.10 It was also suggested that new s.106 planning obligations be entered into, requiring that the whole of the Property be used for B1 uses and no other use (which will be followed up with the Council during the appeal process).
- 6.11 It is apparent from the marketing exercise over a period of one-and-a-half years that there is no prospect of letting the premises for workshop use; the fall-back is that there will be employment space that is not occupied at all.

7. Reasons for requesting hearing procedure

- 7.1 The Applicant has requested the hearing procedure; this is because:-

- 7.1.1 The policy background is complex, and the Inspector is likely to need to test the Council's evidence orally;
 - 7.1.2 Nonetheless, there is no need for evidence to be tested through formal questioning by an advocate, or to be given on oath;
 - 7.1.3 There would be a real risk of injustice to the Applicant if unable to question the Council on their approach to the Application; and
 - 7.1.4 It might be necessary to scrutinise the terms of s.106 planning obligations.
- 7.2 A draft statement of common ground is enclosed.

8. Summary and conclusions

- 8.1 The proposal is acceptable in the context of national and local planning policy.
- 8.2 The Council have failed to properly consider the Application. There are real benefits; however, there is no significant or demonstrable harm to outweigh those benefits, and in particular no harm caused to the interests of Hatton Garden.
- 8.3 The Application gives rise to no other material considerations which are sufficient to justify refusal.

***Philip Kratz
Birketts LLP
November 2017***