

15 March 2019

**Delivered by Email**

Development Management  
2<sup>nd</sup> Floor  
5 Pancras Square  
c/ Town Hall, Judd Street  
London WC1H 9JE

Dear Mr Peres – Da Costa

**Workshop Rear of 36-52 Fortress Road, London NW5 2HB**  
**Planning Application Reference 2019/0819/P**  
**Certificate of Proposed Lawful Use**

We are instructed to act on behalf of the Railey Mews Resident Association and we have previously objected to certain elements proposed at the above site in previous planning applications.

We understand that the owner is seeking a Certificate of Lawfulness (CLOPUD) for the Proposed Use of the site as B1a Office Space with 'ancillary' parking in the Studio B space.

**Clarification of Proposals and Drawings**

The planning history for this site is convoluted and it is noted that the Cover Letter is seeking lawful confirmation of the layout shown in the proposed ground, first and second floor drawings. It is noted that the Existing Second Floor drawing which reveals the proposed second floor layout includes replacing the Studio A roof and roof lights and refurbishing the ground floor windows. The proposed drawings include elements from all approved planning decisions listed below:

- Studio A, 1st & 2nd floor, new mezzanines, roof and roof lights 2017/4731/P;
- Studio C, new mezzanine and plant - 2017/ 6027/P, no new roof; and
- Studio B new mezzanine.

The proposed layouts therefore are seeking approval for elements which would require implementation of one or more of the existing planning permissions. This is outside the scope of a CLOPUD application and we would request that any plans submitted in support of the CLOPUD application are amended to ensure that they refer to the existing situation and any proposed plans do not include elements which are subject or separate planning approval.

Further comments on the drawings include that Studio C layout shows new heating and air con plant for the development. The plant will require venting if the new louvred roof, part of app 6027 is not built.

Studio C has permission for a UKPN substation not Studio B (incorrectly stated in the letter).

The substation is not shown in the proposed layouts. Studio C, 6027 shows the substation with direct access to Railey mews. Is a substation still required and if so where will it be provided if not in the previous location.

### **Studio C**

The context of the application needs to reflect this history of the building and how it was used. Planning application 2017/6027/P clearly identifies Studio C as a separate planning unit which a separate red line around the building. The previous vehicular access to Unit C was to allow cars into a small area for car repairs. There is a significant level difference between this entrance and the rest of the building and therefore access was limited to only this part, **there was never access to other parts of the building internally** as these units formed separate planning units.

Studio B is a separate planning unit from Studio C, which has always had a separate access from Fortress Road and has never been access from Railey Mews. The proposals therefore seeks to create a new vehicular access to this unit. It should also be noted that in the proposed schemes the UKPN power station would be located at the entrance of the proposed access to Studio B.

### **Ancillary Use Definition**

We note the application states that the proposed area of floorspace to be used is around 15% of the total site area, the argument being that it is a small amount of space and therefore ancillary. However the term ancillary seeks to ensure that any operations are incidental to the existing use. Therefore size or percentage of floorspace is not an appropriate assessment. The case of 'Main V SOS (1998)' established that 'ancillary' does not necessarily mean 'small'.

Whilst any test for whether a use is ancillary or not is a matter of fact and degree, and is determined on its merits, there are two principal criteria. First, a severability test, and second, an environmental impact test. Applying the first test, one would ask whether the alleged ancillary use could practically and viably operate on its own were the primary use of the premises to cease. If it could, then the use is very unlikely to be ancillary as there is clearly no linkage or dependency. The second test would look to any outward effects of the use, in terms of the appearance of the premises, the amenity of the surrounding area or neighbourhood traffic conditions. If it could be shown that there would be a significantly greater impact following from the introduction of the alleged ancillary activity than one could reasonably expect from the existing use, then it is unlikely that the use could be so described.

There is significant case law on this last point notably Harrods v SOS (2001) where the court asserted that planning is concerned with balancing the interests of community with the interests of the landowner and that when a landowner seeks to introduce something not generally associated with the particular use which might severely impact on neighbours, those neighbours should have the opportunity to object to the grant of planning permission.

### **Planning Analysis**

The CLOPUD seeks to argue that 11 internal parking spaces in lieu of proposed B1a office space would be an ancillary element of the larger office scheme. This is clearly not the case for three reasons set out below:

**Severability**

The car parking provision could easily be sub-divided from the main property. The car parking provides its own access and is effectively a self contained unit (Studio B). It is noted there are proposed doors to the office element, but there would be no ability to control this area and the owner could quite easily use this area as car parking and potentially offer spaces to people not using the office space or even charge for car parking.

**Engineering Operation**

The proposed office building is to be accessed from Fortress Road as the principle access to the site. The provision for a new vehicular access to Studio B, as a separate planning unit, from the rear would result in the formation and laying out of means to access to highways and is therefore an engineering operation which would require planning permission.

**Environmental Impact**

It is noted that Mews is a small tight road which a number of residential properties. The entrance to this site under the extant planning permission was strongly objected to by the local residents as it is proposed to be used as an entrance to the bike parking at the rear of the wider scheme. As set out above this entrance was previously used for car to enter Studio C as a garage. Therefore the number of trips to and from this unit were limited and it was primarily used to get one or two cars into the building to be worked on. Now it is proposed to use this entrance to facilitate 11 parking spaces 'associated' with the offices. This would result in a significant increase in the number of trips to and from this element of the site. It will also result in an increase in traffic generation in and around the tight and small residential street of Railey Mews. This would result in significant environmental externalities of noise and disturbance at peak traffic hours. This significant impact should be subject to the appropriate assessments of traffic and noise as would be expected of any planning application. Such an application should be refused under Policy T2 of the Camden Local Plan which seeks to promote car free development:

*Policy T2 Parking and car-free development*

*The Council will limit the availability of parking and require all new developments in the borough to be car-free.*

*We will:*

- a. not issue on-street or on-site parking permits in connection with new developments and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits;*
- b. limit on-site parking to: i. spaces designated for disabled people where necessary, and/or ii. essential operational or servicing needs;*
- c. support the redevelopment of existing car parks for alternative uses; and*
- d. resist the development of boundary treatments and gardens to provide vehicle crossovers and on-site parking.*

**Conclusion**

On the basis of the above the CLOPUD is not considered lawful. The proposals would result in a loss of office floorspace in lieu of a car park which would be easily operated separately and independently of the main use. The creation of a new access to unit B, which has never previously existed, from Railey Mews to Studio B is considered an engineering operation in that is creating a new vehicular access from a highway, this requires planning permission. Lastly, there are significant environmental externalities as a result of this alteration by virtue of traffic impact, highway safety and noise.

Yours sincerely

**William Kumar MRTPI**  
**Five Development Consultancy LLP**