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Your reference
JC/WN/M/59
Our reference
T/APP/5008/C/80/3046/G4
Date

26 NOV 1981

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
APPEAL BY MARBLE MOUNT LTD (TRADING AS M AND M SPANISH HOMES)
LAND AND BUILDINGS AT 8/9 ST CHAD'S STREET, CAMDEN

1. I refer to the appeal, which I have been appointed to determine, against an enforcement notice served by the London Borough of Camden Council, concerning the above-mentioned land and buildings. I held an inquiry into the appeal on 27 October 1981.

2. a. The date of the notice is 5 June 1980.

b. The breach of planning control alleged in the notice is failure to comply with a condition subject to which planning permission was granted.

c. The permission was granted on 28 January 1971 and was for the use of a basement room at 8/9 St Chad's Street, Camden as a Welfare Office.

d. The condition which is alleged not to have been complied with is "This permission shall be personal to the Zenith Housing Association during their occupation and shall not ensure for the benefit of the land and is in addition to the authorised use of the premises for residential purposes".

e. The requirements of the notice are to cease the use of the said land for office purposes and to remove all office equipment in connection with that use.

f. The period for compliance with the notice is 90 days.

g. The appeal was made on grounds 88(2)(a), (b), (g) and (h) of the Town and Country Planning Act 1971 as amended by the Local Government and Planning (Amendment) Act 1981. Grounds (g) and (h) are equivalent to grounds (f) and (g) on which your clients' appeal was originally made.



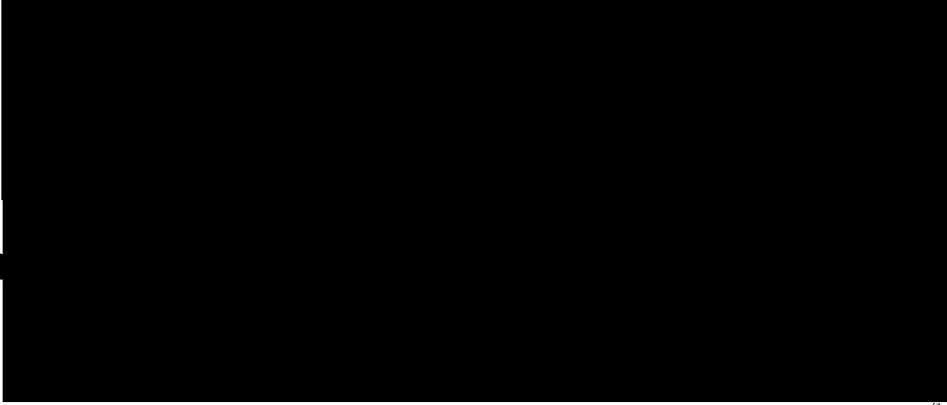
3. The evidence was not taken on oath.

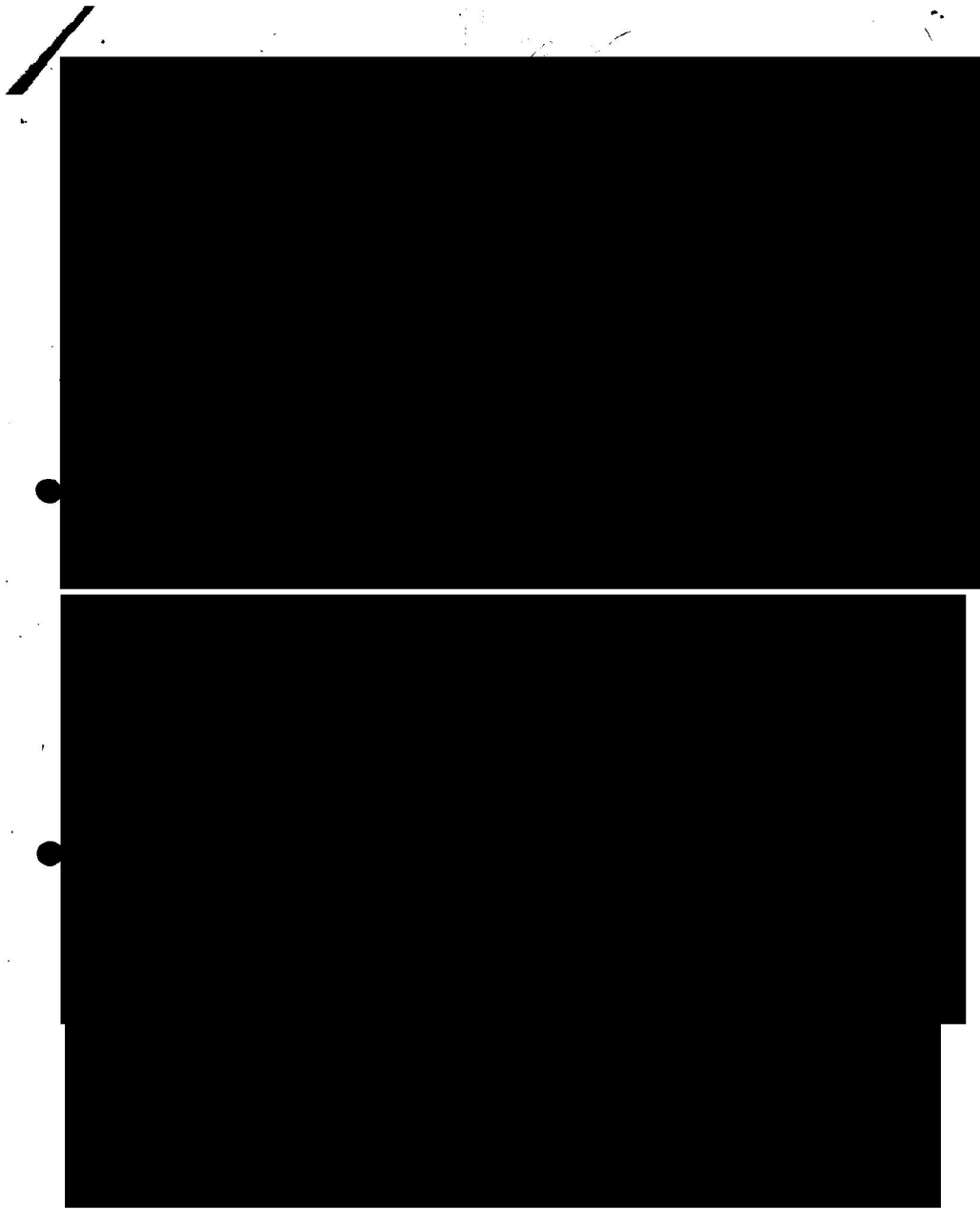
4. The enforcement notice refers to the greater part of the basement (alternatively termed the lower ground) floor of a 4-storey block of flats at the corner of St Chad's Street and Birkenhead Street. There are 2 flats on each of these 4 floors. The area occupied by your client, some 325 sq ft, is divided into 2 rooms, both used as offices, together with sanitary facilities. There are 3 desks in the offices and

the floorspace is fully taken up with office furniture and fittings. The remainder of the basement is largely occupied by locked cubicles used as stores by the flats tenants and, in respect of one cubicle, by the appellants.

THE CASE FOR THE APPELLANTS

The material points are:-





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19. The area is one characterised by hotel, hostel and residential uses. On the opposite side of St Chad's Road to the appeal site is one of four large neighbouring blocks of council flats, themselves part of a residential estate stretching southwards to Sidmouth Street and Regent Square. Some of the notations shown on Plan B, submitted by the appellants, are incorrect:- Nos 2, 3 and 4 Birkenhead Street is a hostel for single women, not offices, and 1 St Chad's Street although presently vacant was last used as 5 bed-sitters, not as a hotel. Gray's Inn Road and Euston Road are busy commercial streets but the area west and south of them, including the appeal site, is primarily in hotel or domestic residential use.

20. The appeal site now lies within the preferred option for the Kings Cross Action Area Plan. The particular block (No. 32) is proposed for retention and rehabilitation. Until the Action Area Plan is approved the Statutory District Plan remains the District Plan read in conjunction with the Greater London Development Plan.

21. In 1946 and 1951 plans for licensed premises on the site were approved (Document 3) but neither was implemented. In December 1968 permission was granted for 8, 2-bedroomed flats with parking for 2 cars (Document 4) the plans showing the basement as a store. This too was not implemented. From August to December 1969 several revised submissions were made in which the basement was variously shown as "part store", "store" and "possible welfare centre or meeting room", and "office accommodation". Permission was granted on 1 January 1970, again for 8, 2-roomed flats and 2 parking spaces (Document 6) and one of the approved drawings was that on which the basement was shown as being for "office accommodation". Details of the reserved matters were approved by letter dated 7 January 1971 (Document 8).

22. A further application was made on 17 December 1970 for 8, 2-person flats, welfare office for Zenith Housing Association and 2 car spaces (Document 7). A letter was attached to the application apologising for not previously specifically identifying the use of part of the basement and indicating that the new application was made to rectify the misunderstanding. The letter (Document 7) explained that the proposed office would "provide a central information and welfare facility for tenants and prospective tenants of Zenith Housing Association projects" and went on to detail where these were. Planning permission was granted on 28 January 1971 (Document 9) and the condition appealed against was attached because although the council considered the proposed office would, in the light of the explanation proffered, be of value to Zenith tenants, they wished to ensure that they could exercise control over any subsequent use should Zenith vacate the premises.

23. When in late 1978 it was found that the basement was in use as a general office by the appellants they were informed of the restrictive condition and invited to submit a planning application for relaxation of the condition (Document 13). This was not an intimation that such use would be viewed favourably but was done because the council would have been open to criticism if they had not invited an application for consideration by members. No application was made.

24. It is accepted that for the purposes of the Use Classes Order a "welfare" office falls within the general Class II category of office. The notice clearly alleges that the breach of planning control is non-compliance with a condition subject to which planning permission was granted, not a material change of use, and there is no doubt as to the intention of the notice.

25. Had it not been for the special reasons advanced by Zenith no permission would have been granted for an office use of this basement as the site was allocated in the Initial Development Plan for residential purposes. It was thought that the amenity to be provided for existing and prospective tenants outweighed the sound reasons underlying the normal policies applying to new office uses in this area. The condition was applied to ensure that if and when the special circumstances of the case no longer existed the office use would cease.

26. The appellants' use of the basement conflicts with Section 2.26 of the District Plan as it is not one which needs to be located within or is of use to a residential community.

27. The council accept the basement was not designed for residential use and that inadequate daylighting is an objection to such use. Nevertheless it could provide a meeting and recreation room or a laundry/drawing room for the benefit of residential occupiers and there could be other appropriate uses. There is no external amenity space to the building.

28. In line with Section 3.15 of the District Plan the council's office development policy is one of restraint in the area south of Euston Road except where certain specified planning advantages would otherwise accrue. None of these apply here. The council are consistent in the actions they are taking to apply their office policy and 3 other enforcement notices are currently in being where premises have been converted to an office use. It is not denied that the present use is preferable to having on the site licensed premises such as the council thought permissible in 1991, but that does not mean it is acceptable in present circumstances.

29. The steps required by the notice are not excessive but they agree that the premises could again be used as a welfare office by Zenith. The time allowed for taking these steps is, in their view, reasonable. The draft lease, which although never completed appears to have been acceptable to the appellants, would have allowed their tenancy to be terminated on 6 months notice.

30. The 2 parking spaces for which the appellants say they pay rent were provided in connection with the residential use of the whole block, not for use by persons using the basement as an office.

31. The appellants stated belief that office use of the premises was permissible was not based on any proper investigation as this would have disclosed the existence of the condition restricting occupation to the Zenith Housing Association.

CONCLUSIONS

32. I have considered your submission that the notice is invalid because of doubt as to whether the breach of planning control alleged is the making of a material change of use without permission or non-compliance with a condition subject to which the permission was granted. That the notice must make clear which is being alleged, and what is to be done to remedy the breach is, as was submitted, laid down in *Miller-Mead v MCHALG*. In my opinion the allegation is a simple one of non-compliance with a condition and can only be understood in that context. The requirements, too, are unambiguous on this point. There is no doubt that the condition has been broken and your appeal on ground (b) therefore fails.

33. I accept that the council in granting permission for office use of the basement did so because they felt that in this particular case it would be a useful facility for tenants of the Zenith Housing Association and therefore be closely related to what they regard as the primarily residential character of the neighbourhood. Of the residential units let and to be let by Zenith as listed in Document 7, however, the majority are at Epping and others are a considerable distance from the appeal site. It cannot be said, therefore, that the office use would have assisted in the furtherance of policies similar to 3.15 and 3.16 of the District Plan, which, of course, came into being after the planning permission was granted. Certainly the present office use is, to quote the words of paragraph 2.26 of the District Plan "on a limited scale" as it is only some 325 sq ft in area but it is not, in my view, "beneficial to the local community". Furthermore, although I accept that the present location has certain advantages from the appellants' point of view I do not regard these as being unavailable elsewhere in the city.

34. However, it is my view that the absence of any express desire or need for any other use related to the housing needs of the locality, and more particularly the tenants of the remainder of this building, together with the fact that it is in itself unsuitable for residential occupation must support your clients' case for continuation of the present use. That use has been carried on without detriment to existing residential amenities and has not caused the loss of any residential accommodation. I accept that this particular business, relying heavily as it does on printed publicity and telephone communications, would suffer severe, if temporary, dislocation if it were required to move to other premises.

35. I have therefore come to the conclusion on the balance of circumstances in this particular case that use of part of the basement floor for office purposes should be permitted and that this should be granted without the attachment of a personal condition. Having come to this decision grounds (g) and (h) do not fall to be considered.

36. I have taken into account all the other matters that have been raised but none is so weighty as to affect my decision.

FORMAL DECISION

37. For the above reasons and in exercise of the powers transferred to me I hereby allow your appeal, quash the notice and grant planning permission on the application deemed to have been made under Section 88B(3) of the 1971 Act as amended by the Act of 1981 for continuation of the office use of that part of the basement of 8/9 St Chad's Street so indicated on Plan C (your reference Drawing PD177/1).

RIGHTS OF APPEAL

38. This letter is issued as the determination of the appeal before me. Particulars of the right of appeal against the decision to the High Court are enclosed for those concerned.

39. This letter does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971 as amended.

I am Gentlemen

Your obedient servant

L DEARDEN, JP, Barrister, FIAS, FIPHE
Inspector

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