



Appeal Decision

Hearing held on 2 May 2012

Site visit made on 2 May 2012

by C A Newmarch BA(Hons) MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 June 2012

Appeal Ref: APP/X5210/A/11/2167169

21a Brownlow Mews, London WC1N 2LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by G Thompson Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2011/4872/P, dated 23 September 2011, was refused by notice dated 21 November 2011.
 - The application sought planning permission for the change of use to allow a head office and control centre of a courier company to be used in conjunction with a private hire vehicles business (chauffeurs) without complying with a condition attached to planning permission Ref 2003/0083/P, dated 18 August 2003.
 - The condition in dispute is No 2 which states that: *The use of the property as a courier head office and control centre for both a courier and private hire vehicles (chauffeurs) business shall not operate, and no deliveries shall be taken at or despatched from the site, outside the hours of 07.00 to 20.00 Monday to Friday nor at any time on Saturdays, Sundays, Bank Holidays or Public Holidays.*
 - The reason given for the condition is: *In the interest of safeguarding the amenity of local residents in accordance with policies RE2 (Residential amenity and environment), EN1 (General environmental protection and improvement) and EN5 (Noise and Vibration) of the Camden Unitary Development Plan 2000.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the living conditions of the neighbouring residents if condition no 2 were to be varied to allow not more than 3 people to remain on the premises outside the approved hours of 07:00 to 20:00 on Mondays – Fridays nor at any time on Saturdays, Sundays, Bank Holidays or Public Holidays.

Background

3. The appellant controls the adjoining premises at Nos 22-23 Brownlow Mews, which have permission for mixed business (B1) and non-residential institution (Class D1) uses. However, the condition in dispute relates solely to No 21a, as does my consideration of the appeal.

4. The courier head office and control centre was allowed on appeal (Ref APP/X5210/A/01/1058101), subject to a condition to control the hours of operation in the interests of safeguarding the amenities of the local residents. The change of use to allow the head office and control centre of a courier company to be used in conjunction with a private hire vehicles business (chauffeurs) was permitted by the Council (Ref 2003/0083/P). The appeal relates to condition 2 of that planning permission.
5. The Council refused an application (Ref 2010/6406/P) to vary condition 2 of the above permission to allow not more than 4 deliveries on Mondays- Saturdays and up to 3 security staff to be permitted to remain outside the permitted hours. An appeal against the decision was withdrawn.
6. Some of the enforcement history on the site has also been brought to my attention. A Planning Contravention Notice was served on 17 November 2009, a Breach of Condition Notice was used on 26 January 2010, and there is an on-going investigation (Ref EN09/0496) into an alleged failure to comply with condition 2. While these are material considerations, they are not matters which are before me in determining this appeal.
7. The business has major clients who require private hire vehicles/chauffeurs at all times of the day and night, often at short notice. The appellant submits that it is essential for employees to be on site to co-ordinate and supervise such operations. The couriers and the private hire vehicle drivers are reliant upon communication with their base at the appeal premises outside the permitted hours.
8. The appellant operates a shift-based system with 3 employees remaining until midnight. One employee leaves at midnight, a second leaves at 01:00hours and the other remains until 07:00hours. At weekends 2 employees are on the premises from 07:00hours until 19:00 hours on Saturdays. Another employee arrives at this time, and then remains on the premises until 07:00 hours on Sunday mornings. A further employee arrives at 19:00hours on Sundays.
9. The appellant contends that there has been a low key on site presence outside the permitted hours since 2003. Whether or not this is so is not a matter for me in considering this appeal.
10. The appellant does not seek a change to the condition to permit deliveries to, or the despatch of goods from, the premises outside the permitted hours. It has made arrangements for overnight safekeeping of parcels which cannot be delivered, which, it is submitted, have been in operation for around 18 months. They are either taken to CYC Couriers in London SE1, or courier drivers take them home. The proposal is, therefore, that condition 2 is varied to state:

'No goods shall be delivered to, or goods despatched from, the premises outside the hours of 07.00 to 20.00 Monday to Friday nor at any time on Saturdays, Sundays, Bank Holidays or Public holidays. Not more than 3 people, who shall remain in the room shown in Drawing Number 06, apart from when patrolling the premises for security purposes, shall be permitted to remain within the premises outside of those hours.'

Reasons

Hours of operation:

11. The buildings within Brownlow Mews contain a mix of residential and commercial uses. The proportion of residential uses has increased since the head office and control centre was permitted, but the mews also contains several commercial uses which are not subject to planning conditions and can, therefore, operate lawfully at all hours of the day and night. Furthermore, there is no restriction on the hours of operation of the mixed use/non-residential institution use in the adjoining property at Nos 22-23.
12. I have had regard to Government advice in Circular 11/95 *The Use of Conditions in Planning Permissions* concerning the unacceptability of conditions aimed at controlling the number of persons occupying a building. While monitoring the comings and goings from a workplace might not give rise to the intolerable degree of supervision which would occur in a residential setting, frequent inspections of the premises would be unreasonable and impractical. CCTV recordings of those arriving at and leaving the premises could be kept and made available to the Council upon request, but this would introduce a level of complexity which would make it difficult to prove whether breaches of the suggested condition were taking place.
13. The condition would also require the employees to remain in the room shown in Drawing Number 06, apart from when patrolling the premises for security purposes. I accept that the workers would primarily be seated at their computer terminals, but the condition is vague, as no timing or frequency for security patrols is stipulated. Furthermore, as the appellant conceded at the hearing, the staff would need to move around within the building for toilet and refreshment breaks. It would be impractical to monitor.
14. In the absence of deliveries to and despatches from the site, it is submitted that the out of hours use as a head office and control centre for both courier and private hire vehicles would be akin to a B1 use. This may be so, but since the suggested condition would not be enforceable, there could be no effective control over number of people on the premises and the frequency or timings of comings and goings along Brownlow Mews.
15. Although local people refer to being able to overhear telephone conversations at the premises from their homes, I was unable to hear any from the street, and give this little weight. Anti-slam devices had been fitted to all the external doors, at the time of my visit. I am satisfied that, even within the confined environment of the mews, closing the external doors would not be likely to give rise to an unacceptable degree of disturbance. My greater concern relates to the disturbance which could arise within the street from uncontrolled numbers of employees coming and going from the premises, possibly talking, walking noisily over the cobbles or, despite the appellant's submission that most staff arrive on foot, the use of motorised transport. Smoking breaks in the mews could cause further disturbance.
16. Brownlow Mews is an adopted highway, where people may come and go at any time. Even though taxis may arrive for the residents of Nos 21b-21e, and milk deliveries, brewery deliveries to the Blue Lion Public House, deliveries by City Post and food delivery vans may all occur early in the mornings, the comings and goings of employees would add to the general disturbance during the

hours when people may reasonably be expected to wish to sleep. I accept that the level of business on the appeal site may currently be somewhat reduced due to economic circumstances, but the effect of varying the condition in the terms requested would pertain long after economic circumstances change.

17. I agree with my colleague, who allowed the earlier appeal on the site, and the Council who imposed condition 2 when granting planning permission Ref 2003/0083/P, that it is necessary to protect residential amenity in the late evenings, early mornings and at weekends, when ambient noise levels are likely to be low. The proposed variation of the condition would not provide this safeguard and, moreover, Government advice in Circular 11/95 is that a condition should not be imposed if it cannot be enforced.

Security:

18. The appellant's business is dependent on its specialised computer equipment, which is installed on the appeal premises. While some off-site back-up exists, it would not be able to function if the computers were to be stolen or vandalised. Computer equipment has been taken from other business premises within the mews which are not occupied at night, but there is no information before me regarding the security arrangements, if any, which had been put in place in those premises. Furthermore, the appellant has not provided any professional security assessment regarding arrangements which could be put in place at No 21a. Consequently, I give this matter limited weight.

Conclusions on main issue:

19. The appellant maintains that an on site presence outside the previously approved hours is crucial to the continuing success of the business operations. However, if the condition were to be varied as sought by the appellant, it would not meet the tests set out in Circular 11/95. There would be a materially harmful effect on the living conditions of the neighbouring residents if condition no 2 were to be varied to allow not more than 3 people to remain on the premises outside the approved hours of 07:00 to 20:00 on Mondays – Fridays, nor at any time on Saturdays, Sundays, Bank Holidays or Public Holidays. It would conflict with policies CS5 and CS9 of the London Borough of Camden Local Development Framework Core Strategy, 2010, and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies. These policies have superseded, but maintain the thrust of, the policies referenced in condition 2. They are broadly supported by the more recent advice in the National Planning Policy Framework.

S106 Agreement:

20. Although the appellant considers that the proposed amendment to condition 2 would be enforceable, it has, nonetheless entered into an agreement under section 106 of the Town and Country Planning Act 1990 (as amended). It includes an obligation on the appellant to implement a Management Plan to control the out of hours use of the premises. The Council has entered into the agreement without prejudice to its continuing opposition to the proposal.
21. In addition to formally implementing the shift pattern described above, the Management Plan would require :

- entry and exit from the property to be through a specified external door outside the approved hours;
 - that no employee be allowed to leave the property outside the approved hours, apart from at the conclusion of their shift;
 - that anti-slam door mechanisms will remain on all the external doors and be fully operational at all times;
 - the appointment of a representative as a point of contact for the owners and occupiers of the adjoining properties, and to convene a Residents' Liaison Group;
 - the retention of CCTV footage for inspection by the Council every 3 months;
 - access to the building for any Council Officer at any time outside the approved hours;
 - that no vehicles, including cars, vans, motorbikes or trolleys would arrive at or depart from the property outside the approved hours;
 - a review of the Management Plan with the Council in the event of problems arising.
22. The difficulties in monitoring the obligations regarding the number of people within the building, and their location within the building, and the restriction on employees leaving the property, except at the conclusion of their shifts, would be similar to those arising with the suggested variation of the condition. It is beyond the appellant's power to prevent any vehicles arriving, or attempting to arrive, at the premises as the mews is a public highway. Furthermore, as a Residents' Liaison Group is not a party to the Agreement, the obligation to convene with the residents could not be binding. As such, the S106 Agreement would not make the development acceptable in planning terms.
23. The S106 Agreement would not come into effect unless the appeal were to be allowed. Moreover, paragraph 3.7 of the S106 Agreement provides, among other things, that it would cease to have effect in the event of a condition being imposed instead of the Agreement. As I have decided not to impose the suggested condition, for the reasons explained above, the appeal will be dismissed, and the Agreement will have no effect. It is not, therefore, necessary to consider whether it accords with Regulation 122 of the Community Infrastructure Regulation 2010, and I have not taken account of the provisions of the S106 Agreement in reaching my decision.

Other matters

24. The site is within the Bloomsbury Conservation Area. It is a large Conservation Area, which covers approximately 160 hectares. Bloomsbury has maintained a notable consistency in its historic street pattern, spatial character and predominant building forms. It contains Georgian, Victorian, Edwardian and 20th century architecture, and a wide range of uses. It is culturally rich due to the presence of a range of institutions and small scale specialist retailers.
25. The distinctive, traditional form and scale of the mews prevails in Brownlow Mews. However, no alterations are proposed to the appeal premises and it is common ground between the parties that the proposal would have a neutral

effect on the Conservation Area. Its character and appearance would thus be preserved.

Conclusions

26. I have considered all other matters raised, but there are none which outweigh the harm identified or the conflict with the development plan.

CA Newmarch

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jeremy Thompson	Appellant
Mr Thomas Hill QC	Barrister for the appellant
Mr Adam Beamish BA Hons Dip TP MRTPI	Cunnane Town Planning LLP

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jonathan Markwell BSc(Hons) MSc Regeneration Studies, LRTPI	Senior Planning Officer
Mr Gary Bakall BA(Hons) Ms Jenny Lunn	Principal Planning Enforcement Officer London Borough of Camden Legal Services Department

INTERESTED PERSONS:

Mr Richard Simmonds BSc(Hons)	Local Resident
Mr Børge Madsen	Local Resident
Brit Mühleisen	Local Resident
Charlotte Leeming	Local Resident
Mr James Tomkinson	Local Resident

DOCUMENTS

- 1 Council's Notification Letter giving details of hearing, and distribution details
- 2 Council's response to consultation in relation to the NPPF
- 3 Letter from appellant's Night Time Controller, date 18 April 2012
- 4 Objection by Børge Madsen
- 5 Logbook of activity at appeal premises submitted by Børge Madsen
- 6 Statement from Mr Tomkinson
- 7 'Overnight Activity in Mews' schedule submitted by the appellant
- 8 Amended draft S106 agreement
- 9 Signed and dated S106 Agreement

PLANS

A Bloomsbury Conservation Area Sub Area 10 Townscape Appraisal

PHOTOGRAPHS

1 Photo Section 1-3 submitted by Børge Madsen