From:	[redacted]
Sent:	19 November 2021 18:39
To:	Fergus Wong; Planning Planning
Subject:	81 Belsize Park Gardens London NW3 4NJ - Planning Application - 2021/4743/P - Letter of objection
Attachments:	Letter to Fergus Wong re. development at 81 Belsize Park Gardens .pdf; Scott v. Secretary of State for Housing - Approved Judgment - 06.12.19 V1(9478333.1) (003).pdf
Importance:	High

Dear Mr Wong,

Please find attached our letter of objection submitted on behalf of our clients, Mr Arnon and Mrs Sarah Rubinstein. We also attach an unreported court judgment we wish to draw to your attention to.

We ask that you please kindly take these self-explanatory comments into account and also ask that you please confirm safe receipt.

With best wishes,

David Evans

David Evans | **Consultant Solicitor**

[redacted]

KEYSTONE LAW [redacted]

Our ref: RUB/19

Mr Fergus Wong
Planning Department
London Borough of Camden
5 Pancras Square
London
N1C 4AG

[redacted]

19 November 2021

Dear Mr Wong,

81 Belsize Park Gardens, London NW3 4NJ
Planning Application ref. no. 2021/4743/P

[redacted]

Our clients object to the above mentioned application for "prior approval" application for the reasons detailed below.

1. First and foremost it is considered that the proposed development does not benefit from rights under the amended Town and Country Planning (General Permitted Development) Order 2015 Part 3 Class MA to convert the building from a Class E use to a Class C3 use. The reason for this view is as follows:

    i) Condition MA.1(b) requires that any development seeking to utilise this route must have been in one of a number of specified use classes for a continuous

period of at least two years prior to the date of the application. It is acknowledged that one of the specified uses included here is the former Use Class D2(e), in which a gym or health club would usually fall. However as officers are well aware the building has not been used for this purpose for a continuous period of at least 2 years prior to the date of the application. The Building was used as a performance art space and artists studios from the start of 2020 to May 2021. There were artists working there during all of this time, apart from a break during the first lock down during late March and April 2020.

ii) It is considered that such use is not within any of the classes specified in sub-paragraphs found at MA.1(2) of the revised order. Such use as a "performative art space" and artists studios is either a sui-generis use, rather like a concert hall, which was formerly in the D2(b) use class but now falls within a (defined) sui-generis use. Alternatively, such a use might be regarded as falling within Class F.1(b), which is the Use Class for "the display of artwork (not for sale or hire)". In any event the use the building was put to during most of 2020 and much of 2021 was certainly not a D2(e) use.

iii) The applicant claims this was merely a temporary use which did not amount to a material change of use. With respect whether the use was "temporary" or the change "non-material" is not strictly relevant to the qualifying criteria. The legislation in this case through the use of the word "unless" at the start of paragraph MA.1(b) requires that the building must be used for a continuous period of two years for one of the qualifying uses prior to the date of the application. This did not happen in this case and the intervening use means the building cannot benefit from these provisions.

iv) The courts are clear that when it comes to this legislation the correct approach is to follow the wording of the legislation to the letter; see for instance *Rugby Football Union v Secretary of State for Transport, Local*

Government and the Regions [2002] EWCA Civ 1169 at para. 16. An example of this approach is found in the case of *Scott v Secretary of State* Case No: CO/3196/2019 (Unreported) a copy of which we enclose. The case itself concerned agricultural conversions but the basic principles are the same here, namely that an intervening and non-qualifying use has the effect of disapplying the provisions of the Order. Moreover such a change does not have to temporary or even non-material. Any different use which, providing it is not de minimis and not within the scope of the uses mentioned at para. MA.1(2)(a), would have the effect of preventing the operation of the Order.

v) Finally, the wider point here is that this truncated process risks Belzise Park losing a beneficial community asset without a proper consideration of the planning merits, including a consideration of whether the use as a community asset should be retained and not lost to an entirely private use.

2. In the event that notwithstanding these concerns, should the Council be minded to grant its approval our clients respectfully ask that the following matters are addressed by way of planning conditions or, alternatively, by way of planning obligations. It should be stressed that the planning conditions and obligations suggested here are put forward on a without prejudice to the view that the development is not "permitted development" for the reasons detailed above.

3. The power for the Council to impose conditions is limited to those which are "reasonably related to the subject matter of the prior approval"; see Schedule 2, Part 3 paragraph W(11) of the Order. In this case, given that the building is located in a conservation area, the scope of any conditions is quite broad given that paragraph MA.2(e) requires the Council to consider the effect of the change on the character of the conservation area. These conditions will protect the amenities of neighbours in what is a tight and constrained site and therefore protect the character of the conservation area.

4. The conditions we ask that the Council impose on any grant of approval are as follows:

   i) A condition should be imposed relating to the use of the flat roof areas the effect of which is to prevent their use as amenity areas and restrict this use to emergency or maintenance access only.

   ii) All permitted development rights should be removed.

   iii) Details relating to noise, including noise from plant, such as heating or cooling units, should be imposed. A separate condition should also be imposed relating to sound insulation.

   iv) There should also be a scheme in place to control the use of artificial lighting on the external fabric of the building.

5. We also ask that the following matters are controlled by way of a planning obligation in accordance with the Council's policy on the use of planning obligations to control such matters like construction impacts. We ask therefore that before any grant of permission the owners of the building enter into a planning obligation which addresses the following two issues:

   i) First, that a construction management plan should be secured by way of a planning obligation to ensure that the building operations necessary to carry out the conversion works are done so responsibly and with due regard to protecting the amenities of neighbours. Such a plan should control construction vehicle parking along with hours of works as well as matters like dust and noise emissions. The plan should also require an asbestos check to be undertaken, so as to guard against potentially toxic waste.

   ii) Second, we also ask that the Council imposes a strict requirement by way of a planning obligation that the proposed exit into Lancaster Stables (which is a private road) can only be used as an emergency exit only and for no other purposes

whatsoever. This would protect the amenities of our clients and their neighbours, as well as maintain highway safety in Lancaster Stables.

In conclusion, our clients consider that the proposed development is not “permitted development”. Therefore the applicant must submit a full planning application if he wishes to convert it to residential use. In any event, should such a conversion be deemed appropriate, it should be strictly controlled by way of the appropriate planning conditions and/or planning obligations to safeguard the character of the area and the amenities of neighbouring occupiers, in respect of what is fundamentally a very tight and highly constrained site.

Finally, we ask that these comments are taken into account when making the determination and also ask that you please confirm safe receipt of this letter.

Yours sincerely,

David Evans
Consultant Solicitor
Keystone Law

Enc.

Case No: CO/3196/2019

IN THE QUEEN'S BENCH DIVISION (PLANNING COURT)
BIRMINGHAM ADMINISTRATIVE COURT

Priory Courts, 33 Bull Street,
Birmingham, West Midlands, B4 6DS

Date: Friday, 6th December 2019
Start Time: **12:06** Finish Time: **12:12**

Page Count: 3
Word Count: 1081
Number of Folios: 15

Before:

MR JUSTICE STUART-SMITH

- -

Between:

JASON NEIL SCOTT	**Applicant**
- and -	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT (1)	**Respondents**
SHROPSHIRE COUNCIL (2)	

- -

MR PETER DIXON (Counsel) appeared for the **Applicant**
MS VICTORIA HUTTON (Counsel) appeared for the **First Respondent**
THE SECOND RESPONDENT was not present or represented

- -

Approved Judgment

.....

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

MR JUSTICE STUART-SMITH:

1. This is a renewed application for permission to challenge a decision of Inspector Ford dated 4th July 2019. There are three grounds, and I can go straight to the decision letter. At paragraph 10 the inspector correctly identified the issues to be addressed. She addressed the question of sole agricultural use at paragraphs 11 to 17. In my judgment, although that is quite concise, the passage at paragraphs 11 to 17 is reasonably clear. She set out the test correctly at paragraph 11. She recorded the common ground about the use of the buildings up until 2001 at paragraph 13. At paragraph 14 she set out the uses that the claimant characterised as occasional and *de minimis*. Those uses were shortly stated, but included the storage of cars, for a period running to years in one shed, and the storage of firewood for domestic use in another.

2. Mr Dixon has made submissions seeking to attach a highly technical legal framework to the requirement that the site was not "used" solely for an agricultural use, but to my mind the response is short and was given by Ms Hutton. The storage was a use. It was not agricultural. It occurred after the agricultural use and was, in the case of each building, the last use of the building, and so the last use of the building was not solely agricultural, subject of course to the claimant's arguments about it being *de minimis*.

3. At paragraph 16 the inspector acknowledged that there had been no formal change of use, but she correctly observed that the storing of cars and wood for domestic burning would not be regarded as ancillary to agriculture. The critical paragraph, as so often, comes at the end. It is paragraph 17. In my judgment, on a fair reading, the inspector was clearly rejecting the claimant's submission that the use was to be ignored unless there had been a formal change of use. Secondly, by clear implication, she was rejecting the suggestion that the non-agricultural use was *de minimis*. She applied the right test as identified by the order, and, in my judgment, to suggest that in doing so she had either ignored or not dealt with the points the claimant had raised is to imply an unduly literal and legalistic approach. Permission on Ground 1 is therefore refused.

4. Ground 2 appears to hinge on a submission which is at paragraph 15 of the grounds that: "A proper application of paragraph Q.1(a) of the order requires the decision maker to determine whether there has been a use of the building or buildings concerned since a prior agricultural use and whether such a use entailed a material change of use from the prior agricultural use". As I understand it, this is the reverse side of the same coin and seeks to attach a particular and unduly restrictive meaning to the clear words of the order. The question for me is: is this ground reasonably arguable. The answer given by the Applicant's answer to this question is: "Well His Honour Judge Cooke thought so. See paragraph 3 of his order." I do not agree because the wording of the order is clear and unambiguous, and one can cater for transient use by the application of the *de minimis* principle.

5. However, even if that is an arguable point, there remains Ground 3. The decision letter at paragraphs 18 to 23 dealt with the requirements of Q.1(a) and Q.1(b). The burden of proof rested on the claimant. There was an expression of opinion by engineers that the works that would be necessary could fall within the paragraphs, but it is accepted by Mr Dixon that their statement of opinion is not determinative. The evidence from the engineer's report includes photographs and descriptions which clearly indicate the need for extensive works to turn the sites into habitable dwellings, and the inspector went and saw for herself what was involved.

6. I can accept that the evidence might have persuaded another inspector to reach a firm conclusion one way or the other, but that does not vitiate her conclusion that she was unable to do so. In those circumstances, the conclusion she set out in paragraph 24 was a conclusion she was entitled to reach. It was based on a paradigm planning judgment with which this court will not interfere unless it discloses an error of law which is not the case here. Permission is therefore refused on Grounds 2 and 3 also.

This Judgment has been approved by the Judge.