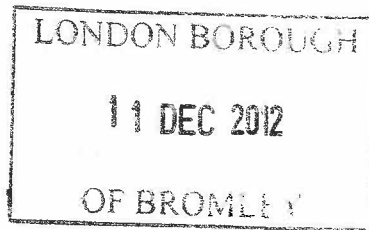




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Date 10 December 2012
Our ref 10194/03/JF/PS/3325763v1
Your ref

Dear Mr McQuillan

Town and Country Planning Act 1990 (As amended) and Planning (Listed Buildings and Conservation Area) Act 1990 – Appeals against the London Borough of Bromley's decision to refuse planning and listed building consent for development at Queen's Garden, Bromley (reference DC/2012/01339/FULL1 and 01340/LBC)

Our client, CSC Bromley Ltd (CSC), has today submitted two appeals against the London Borough of Bromley's (LBB's) decision to refuse planning permission and listed building consent for the above development at Queen's Garden. We write in respect of one matter which we would like to bring to the Council's attention.

The reason for refusal of planning permission cited on the planning decision notice, dated 2 July 2012 (ref. DC/2012/01339/FULL1), reads as follows:

*The proposal will be an over intensive development of the site, detrimental to the character and appearance of the Bromley Town Centre Conservation Area by reason of its size, site coverage, design, the loss of openness and public amenity to Queens Gardens, **and be detrimental to the amenities of residential properties in the vicinity of Queens Gardens, by reason of increased evening activity resulting in noise and disturbance**, contrary to Policies BE1 and BE11 of the Unitary Development Plan, Policy OSM of the Bromley Town Centre Area Action Plan and the Conservation Area Statement. (NLP emphasis)*

We note that the item in bold did not feature in the Council's earlier decision to refuse planning permission for a similar development at the same site in February 2011 (reference DC/2011/03466/FULL1), despite the fact that this earlier proposal comprised a larger scale of development in terms of the number of restaurant units and quantum of proposed floorspace.

This particular matter was raised by a small number of local residents in the immediate vicinity of the site and by Members at Committee despite the fact that the Council's Environmental Health Officer (EHO) did not object to the proposals, subject to conditions, and that there was a recommendation from Planning Officers to grant planning permission. The EHO's comment on the

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application was entirely consistent with guidance contained within the National Planning Policy Framework (NPPF) which states that planning decision should aim to avoid noise from giving rise to "significant adverse impacts" on health and quality of life as a result of new development and that the use of conditions should be used to mitigate other adverse impacts (para. 123).

We are also aware of the applications submitted in 2006 by Tragus Holdings in respect of an external restaurant seating proposal to the north-west corner of Queen's Garden to accommodate approximately 40 people at full capacity. This application was first refused by LBB in June 2006 in part due to the perceived "unacceptable increase in noise and disturbance harmful to the amenities of residents of these properties" (ref. DC/06/00916). This decision was subsequently dismissed in March 2007 following an appeal (ref. APP/G5108/A/06/0231438/NWF). The Inspector acknowledged in his decision that some noise was to be expected and that this would be acceptable given the public nature of the gardens and the town centre location of the site. Furthermore the Inspector noted that other forms of control are available to manage operational matters. The applicant submitted an application to LBB for the same development in October 2006 and given the appeal decision, this was subsequently approved in May 2007 (ref. DC/06/03751/FULL1) at committee.

It is also important to note that in the statutory development plan, a restaurant development along the edge of Queen's Garden is anticipated by Policy OSM of the Bromley Town Centre Area Action Plan (2010) in an area closer to adjacent residential occupiers than proposed by CSC.

It should also be remembered that CSC envisage A3 use rather than A4 (Drinking Establishments) or A5 (Hot Food Takeaway) outlets that occupy other parts of the town centre. As you will be aware to be classified as an A3 use the primary purpose must be the sale and consumption of food and drink on the premises.

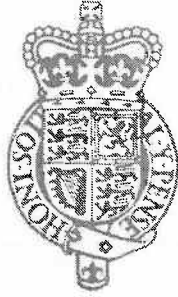
The Local Planning Authority is required to have evidence to substantiate each reason for refusal with reference to the statutory development plan and other material considerations and the introduction of fresh and substantial evidence at appeal can constitute unreasonable behaviour (Circular 03/2009). Given the nature of the proposed development, the development plan allocation for restaurant development at Queen's Garden (Policy OSM) and the proposed conditions and no objection from the Environmental Health Officer, it is our firm view that the Council's reason for refusal of the application on these amenity grounds cannot be reasonably upheld and evidenced at appeal. It is beneficial (and recommended by the Government and PINS) to focus on the material differences between the main parties thereby reducing the time and costs associated with the appeal. Having regard to this and the advice contained within Circular 03/2009 please can the Council confirm whether it intends to defend this particular aspect of the reason for refusal?

Yours sincerely

Pauline Stocker
Associate Director

Copy Karen Bradshaw
 Brett Harbutt
 Barry Jeeps

London Borough of Bromley
Capital Shopping Centres
Stephenson Harwood LLP



Appeal Decision

Site visit made on 7 March 2007

by **Rodney Baker** BSc MA MRICS MRTPI

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

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Date: 19 March 2007

Appeal Ref: APP/G5180/A/06/2031438/NWF

Land adjacent to Abbaye, Queens Gardens, Kentish Way, Lownds Avenue, Bromley, BR1 1NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tragus Holdings against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/06/00916/FULL1, dated 13 March 2006, was refused by notice dated 16 June 2006.
- The development proposed is installation of decking with umbrellas, lighting and fencing and use of the land for the placing of tables and chairs.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Main Issues

1. The main issues are the impact on the living conditions of the occupiers of flats near the site and the effect on the character of Queens Gardens which is in Bromley Town Centre Conservation Area.

Planning Policy

2. The Bromley Unitary Development Plan (UDP) was approved in July 2006. It forms part of the development plan for the area. The UDP includes a number of policies relating to conservation areas, landscape and the amenities of residents. Supplementary Planning Guidance has been published on Bromley Town Centre Conservation Area. The Bromley Town Centre Action Area Plan has been referred to, but I am not aware of the status of this document.

Reasons

Noise and disturbance

3. Abbaye is a public house/restaurant on the ground floor of The Glades shopping centre, it faces onto a walkway or colonnade which in turn gives onto Queens Gardens, a large open space with several imposing mature trees and grassed areas. Above the colonnade are flats which have windows and balconies which overlook Queens Gardens.
4. The appeal site is about 8.8m x 7m. It is within Queens Gardens adjacent to 2 bays of the colonnade. Part of the colonnade is used as a seating area for Abbaye and people were

space near the shops; a great deal of space would remain for other forms of relaxation and enjoyment. Consequently, I consider the scheme to be in accordance with conservation and open space policies and with the SPG on the conservation area. The proposals have the potential to enhance the character of this part of the conservation in accordance with Policy BE11. It also complies with Policy G8 on urban open space, as the use is related to the existing use and it is very small in scale.

Conditions

13. Although there are risks to the living conditions of the occupiers of the flats, the scheme has advantages for the town centre and for the conservation area. In these circumstances it is appropriate to examine whether a temporary permission would be acceptable as a trial run for the operation.
14. The Council officers have suggested a period of 3 years. The appellants would prefer not to be subject to a temporary permission, but if one were imposed it should not be shorter than 6 years, as this would allow the capital costs of about £90,000 to be written off. To my mind, 6 years is a long time for which to grant a temporary permission for a trial period. However, having regard to the benefits of the scheme to the Town Centre, I consider that in this case it would be appropriate. In my view such permission would respect the amenity provisions of Policy BE1 of the UDP.
15. I do not consider that a personal permission would meet the advice in Circular 11/95. Details of lighting would be necessary to minimise the effect of lighting on the neighbours. Details and samples of all materials would be necessary to ensure that the design fitted in with the conservation area. A condition limiting the use to the area applied for is unnecessary as enforcement action could be taken against encroachment into the gardens. A condition preventing the use of loudspeaker equipment is necessary to reduce the potential for disturbance.

Other Matters and Conclusions

16. I have considered the comments made regarding the tree. Most of the branches are on the side away from the proposed seating area. A temporary permission would enable the effect on the tree to be monitored. A condition requiring a method statement would be necessary to ensure that rain water reached the roots and that the piling system used did not interfere unnecessarily with the root system. To my mind, the railings proposed would not be out of keeping with the conservation area.
17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

18. I allow the appeal, and grant planning permission for installation of decking with umbrellas, lighting and fencing and use of the land for the placing of tables and chairs on land adjacent to Abbaye, Queens Gardens, Kentish Way, Lownds Avenue, Bromley, BR1 1NG in accordance with the terms of the application, Ref DC/06/00916/FULL1, dated 13 March 2006, and the plans submitted with it, subject to the following conditions: