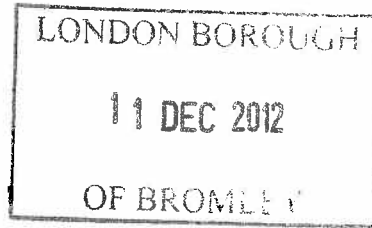




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Date 10 December 2012
Our ref 10194/03/JF/PS/3325763v1
Your ref

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

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