



CRUMPLINS
solicitors

142 Gloucester Avenue

Primrose Hill

London NW1 8JA

telephone 020 7483 0282

facsimile 020 7483 0257

DX 96858 Primrose Hill

Email: Paul@crumplinsolicitors.fsnet.co.uk

www.crumplinsolicitors.fsnet.co.uk

Phil Ashford
London Borough of Lewisham
Planning Services
5th Floor
Laurence House
1 Catford Road
London SE6 4RU

LONDON BOROUGH OF LEWISHAM PLANNING SERVICE	
DATE REC'D	18 OCT 2011
CASE No
REGD No

13 October 2011

Dear Mr Ashford

Baring Hall Hotel, 368 Baring Road, London SE12 0DU
Direction under Article 4(1) Town and Country Planning (General Permitted Development) Order 1995

We are instructed by the owners of the former Baring Hall Hotel ("BHH").

We refer to the Article 4(1) direction made on 15 September 2011 with respect to BHH and to the notice of that direction of the same date.

Our clients object to the making of the direction and to its possible confirmation. Their grounds for objection are set out in the two letters of objection we submitted prior to the meeting of the Mayor and Cabinet on 14 September 2011.

We note from the minutes of the meeting on 14 September 2011 that, amongst other things, the Mayor and Cabinet did not discuss your own prior advice (letter dated 9 March 2011) that the BHH is *not* of special architectural or historic interest.

Moreover, we fail to understand this aspect of the minutes: "The Mayor received advice from the Head of Law that any refusal of an Article 4 direction could not be over-ridden by financial considerations." This letter is being copied to the Head of Law, from whom we invite prompt clarification.

Yours sincerely,


CRUMPLINS SOLICITORS

cc: Kath Nicholson, Head of Law, London Borough of Lewisham, Town Hall, Catford, London SE6 4RU



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www.crumplinsolicitors.fsnet.co.uk

OUR REF: PC/SJ/5191

YOUR REF: PA

LONDON BOROUGH OF LEWISHAM PLANNING SERVICE	
DATE REC'D	13 SEP 2011
CASE No
REGD No

Phil Ashford
Design and Conservation Manager
Planning Service
London Borough of Lewisham
Laurence House
1 Catford Road, London SE6 4SW

Sept
13 August 2011

Dear Mr Ashford

Former Baring Hall Hotel

Meeting of the Mayor and Cabinet, 14 September 2011

We are instructed by the owners of the former Baring Hall Hotel ("BHH").

We refer to our letter to the Council's Geoff Whittington dated 24 August 2011 and to your letter of the same date. This letter supplements the points already made in opposition to the possible local listing of the BHH and in opposition to the possible Article 4 direction. Please ensure that this letter and our letter dated 24 August 2011 are brought to the attention of the Mayor and Cabinet prior to and during the meeting on 14 September 2011.

Possible local listing

Paragraph 15 of the Guide to PPS5 emphasises the plan-making process as the most appropriate mechanism for identifying heritage assets and locally listing them. This mechanism is again emphasised in paragraph 27 in the guide to Policy HE2 in PPS5. The

Core Strategy and other development plan documents are further emphasised in paragraph 43 of the Guide.

The Council has only recently adopted its Core Strategy. Suffice it to say perhaps that the former BHH was not locally listed as a result of the lengthy process culminating in the adoption of the Core Strategy in 2011. This is a clear indication that the former BHH does not merit local listing. Nothing has changed since to cause the Council to reach the opposite conclusion.

You refer to Core Strategy Policy 16 in your letter. There is nothing in this policy or its accompanying text to support *additional* local listing above and beyond the already locally listed heritage assets which “will continue to be monitored, reviewed, enhanced and conserved”. You do not point to any government planning policy guidance, or any aspect of the London Plan policies, local policy or English Heritage best practice to support the new local listing of the former BHH after the adoption of the Core Strategy. The policy justification for Core Strategy 16 (paragraphs 7.159 to 7.166) refers to a wide number of documents including documents forming the Council’s heritage asset evidence base. It is telling that the former BHH was not locally listed as part of the Core Strategy process despite this evidence.

The report to the Mayor and Cabinet refers to the criteria for local listing, adopted in 2009. The Core Strategy was adopted in 2011. It is significant that the BHH was not included in the local list despite the adoption of the Core Strategy two years *after* the adoption of the criteria for local listing. To repeat, nothing has changed since the adoption of the Core Strategy to merit the local listing of the BHH after the event.

The officer report selectively quotes from English Heritage’s 10 January 2011 decision letter rejecting statutory listing. It fails to refer to your own follow-up letter of 9 March 2011 (copy enclosed). It is clear from this letter that you adopted English Heritage’s conclusion that the building is *not* of special architectural or historic interest. That is why you ruled out a building preservation notice. Moreover, you did not in any way suggest that the BHH merited local listing. Nothing has changed in the few short months since your own letter to have caused you (or the Council) reasonably to have changed your (or its) mind. In short, a building that was not of special architectural or historic interest as recently as March of this year cannot somehow have become a building of special architectural or historic interest a few short months later. The assertion in the officer report that the BHH meets the criteria for local listing is unsustainable and is completely contradicted by your own letter of only a few months ago.

Contrary to the terms of the officer report and recommendation, locally listing the BHH will not contribute to the “Clean, green and liveable” objective in the Sustainable Community Strategy. The BHH is derelict and vacant, and has been for over two years. There is no prospect of it being “liveable” again. Adding the BHH to the local list will only serve to increase the prospect of it remaining derelict and vacant. The redevelopment of the BHH, if permitted, would be sustainable and it would, to use your own words in your own letter,

provide much needed new homes. That is an important consideration in these difficult economic times.

Locally listing the former BHH now would therefore run entirely counter to the Council's own evidence base, its adoption of the Core Strategy, the terms of and justification for Policy 16, PPS5, your previous and recent advice on the building and the Council's Sustainable Community Strategy. We note again in this context that the proposal to locally list formed no part of the officer report or recommendation into the recently determined application for planning permission.

Article 4 direction

We are pleased to note the recommendation that the BHH should not be made the subject of an Article 4 direction.

We can confirm that our clients fully intend to make a substantial claim for compensation against the Council in the event of an Article 4 direction contrary to that recommendation.

Leaving aside the very important issue of compensation, there is no justification for an Article 4 direction in principle. We refer again to our letter dated 24 August 2011, and in particular the advice of Kevin Chadd in the Council's Legal Services department to the effect that the Council stands by its substantive determination that prior approval is not required for the demolition of the BHH.

We would also refer to paragraph 47 of the Guide to PPS5, in particular to the test of "fully and properly justified" in connection with proposed Article 4 directions. That test is plainly not met in this case.

General

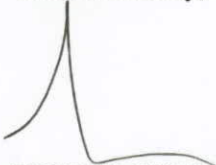
So far as both issues above are concerned, you will appreciate that the former BHH is a derelict and vacant former public house. It was closed by the former owners, Punch Taverns, in August 2009 following an incident of arson. Punch Taverns tried in vain to secure a new tenant/manager but was hamstrung by the public house's poor reputation. The previous two managers had been violently attacked with pool cues. The public house was synonymous with anti-social behaviour and worse, and the police would doubtless oppose its reopening. There is in any event no prospect of its reopening. The building was marketed by Christies for over two years without success. An earlier marketing report commissioned by Punch Taverns likewise concluded that no-one wanted to take on the lease. By contrast, the proposed development the subject of the refused planning application would bring with it significant regeneration benefits. If the building is not permitted to be redeveloped it will simply remain vacant and derelict.

We are very surprised and concerned that the report to the Mayor and Cabinet fails to highlight the officer support for the proposed redevelopment of the former BHH as a result of its merits. There is no reference in the report to the officer support for and recommendation of planning permission both at the initial planning committee meeting on 30 June 2011 and at

the subsequent meeting on 11 August 2011. Prior to this and support recommendation, the design, scale, siting and impact of the proposed redevelopment were discussed and agreed in the course of multiple pre-application discussions.

We trust that reason and evidence will prevail, and that the Council will decline to locally list the building and that it will decline to make an Article 4 direction.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a horizontal line.

CRUMLINS SOLICITORS

Enclosed: your letter dated 9 March 2011

cc Kevin Chadd, Legal Services



CRUMPLINS
solicitors

142 Gloucester Avenue

Primrose Hill

London NW1 8JA

telephone 020 7483 0282

facsimile 020 7483 0257

DX 96858 Primrose Hill

Email: Paul@crumplinsolicitors.fsnet.co.uk

www.crumplinsolicitors.fsnet.co.uk

Geoff Whittington

London Borough of Lewisham

Planning Service

Laurence House

1 Catford Road

London SE6 4SW

24 August 2011

Your ref: LE/302/M/TP

Dear Mr Whittington

BARING HALL HOTEL, 368 BARING ROAD, LONDON SE12 0DU

TOWN AND COUNTRY PLANNING ACT 1990

**TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
ORDER 1995 ("1995 Order"), SCHEDULE 2, PART 31**

We are instructed by Stuart Jackson and Daire Gilmore. We refer to their previous application received by you on 18 July 2011, and to the consent order whereby the determination dated 10 August 2011 is quashed.

Part 31 of Schedule 2 to the 1995 Order

Our clients hereby pursue their application for a determination under Part 31 of Schedule 2 to the 1995 Order as to whether the prior approval of the Council is required in connection with the proposed demolition of the Baring Hall Hotel followed by restoration. We enclose, simply for completeness, the original application form, drawing numbers 400-403 and 600, Method Statement, prior validation, prior payment receipt and Building Control checklist. We also enclose a photograph of a fresh site notice, which was posted on site on 23 August 2011 and which will be clearly and correctly displayed on site and in place for not less than 21 days in the period of 28 days beginning with the date on which the pursued application was submitted. The site notice indicates the revised date on which the applicants propose to

carry out the demolition. The expected completion date is five weeks after the proposed commencement date of 21 September 2011. You have previously been supplied with a written description of the proposed development, which is unchanged.

Given the Council's error in determining the original application, there can be no question of a further fee.

Please confirm by return that the resubmitted application is in order. You will note that the consent order does not preclude a resubmitted application at this stage.

Please ensure that this resubmitted application is determined in due course, in accordance with the 1995 Order and the consent order, by the officer with delegated authority under the Council's scheme of delegation.

We can see no reason why the Council should not again determine that prior approval for the demolition of the Baring Hall Hotel followed by restoration is not required.

When the Council has again determined that prior approval for the demolition of the Baring Hall Hotel followed by restoration is not required, please forward to this firm written notice of that determination (Condition A.2(b)(v)(aa) of Part 31, Schedule 2 to the 1995 Order).

Local listing

Your officer report dated 11 August 2011 (applications DC/10/75499, as amended, and DC/10/75499B) did not recommend the "local listing" of the Baring Hall Hotel. Nevertheless, we understand that at the Planning Committee A meeting on that date members purported, without consulting our clients, to add the Baring Hall Hotel to the Council's "local list" or to recommend that it should be so added. Are you able to confirm our understanding? You will recall that the Council's own specialist officer has previously advised against local listing of the building, and that English Heritage has previously refused to add the building to the statutory list of listed buildings.

Please provide details of the statutory or policy basis for the Council's "local list" together with details of the procedure ordinarily adopted by the Council for the "local listing" of a building.

Please also provide the minutes of the meeting on 11 August 2011, together with a copy of the formal decision notice or notices in connection with the above applications.

Injunction Order

On 19 August 2011, Mr Justice Wyn Williams ordered that the injunction order made on 16 August 2011 shall continue until the hearing of the claim for judicial review or further order.

In the light of the consent order, there will be no hearing of the claim for judicial review.

Our clients hereby give a formal undertaking that the Baring Hall Hotel will not be demolished until one of the events in Condition A.2(b)(v) of Part 31, Schedule 2 to the 1995

Order has occurred. In the light of that undertaking, we invite the Council to consent to a further court order whereby the injunction order is discharged. We can see no reason why the Council would not consent given that formal undertaking. If the Council does not consent, please provide reasons for withholding consent. We reserve the right to draw this letter to the attention of the court on the question of costs, should our clients need to submit a contested application for the discharge of the injunction order. If the Council (and the Grove Park Community Group) does consent, we will supply a draft consent order for signing and then filing at court.

Article 4 direction

We note (letter dated 23 August 2011) that the Grove Park Community Group is pursuing its request that the Council makes an Article 4 direction (subject to immediate effect under Article 6) pursuant to the 1995 Order.

There is no merit in this request.

As Mr Chadd has previously explained (his letter of 18 August 2011), the only reason the Council consented to the quashing of the 10 August 2011 letter was because of the technicality that the wrong officer determined our clients' application. It follows that the Council stands by its substantive determination that prior approval is not required.

The meeting of Planning Committee A on 11 August 2011 does not justify an Article 4 direction. As Mr Chadd also explained in his letter, the refusal of planning permission does not removed permitted development rights granted by the 1995 Order. Moreover, the purported resolution as to local listing at the meeting was carried without any recommendation to that effect, it was contrary to the advice of the Council's specialist officer and it was carried without reference to our clients. It remains to be seen whether that purported resolution was also contrary to the Council's own policy and procedure for local listing.

We would remind you of the terms of Appendix D to Circular 9/95, which makes it clear that permitted development rights have been endorsed by Parliament, that they should not be withdrawn locally without compelling reasons and that generally they should be withdrawn only in exceptional circumstances.

Our clients reserve the right to challenge any Article 4 direction.

Secretary of State screening direction

We note that the Grove Park Community Group has now requested a screening direction from the Secretary of State as to whether or not the proposed demolition and redevelopment of the Baring Hall Hotel is EIA development, albeit without pointing to any legal provision entitling it to make such a request. We trust that, like our clients, the Council will be writing to the Secretary of State to oppose that request.

Status of Grove Park Community Group

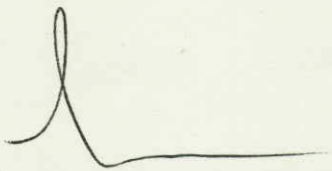
We note that the Grove Park Community Group is an unincorporated association and registered charity, which receives much of its funding from the Council. We are concerned by the fact that we have seen no evidence that the Group has had prior authorisation or advice from the Charity Commission in connection with its litigation and actions to prevent the demolition and redevelopment of the Baring Hall Hotel. We are further concerned by the fact that we have seen no evidence that the charity's trustees have authorised this litigation and actions. It is our understanding that the trustees should have been made parties to the litigation. We are also concerned by the fact that the Group's litigation and actions appear to fall outside its charitable purposes. We suggest that these matters ought to be drawn to the attention of those officers or members responsible for the Group's funding.

Conclusion

Given that this letter raises a number of legal issues, and given that there has been prior solicitor-solicitor correspondence, a copy has been supplied to Kevin Chadd in the Council's Legal Services department. We appreciate that he may be best placed to respond to some of the points in this letter.

We await hearing from you.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line extending to the right.

CRUMPLINS SOLICITORS



Mr S F Kenny
189 Baring Road
Lee
London SE12 0LD

Phil Ashford
Planning Service
Laurence House
1 Catford Road
London SE6 4SW

direct line 020 8314 8533
fax 020 8314 3127
phil.ashford@lewisham.gov.uk

date 9 March 2011
our reference
your reference

Dear Mr Kenny

Re: Baring Hall Hotel

Thank you for your letter of 21 February and I apologise for not having replied earlier.

I note your comments about the building but the Council does not have the powers to 'spot list' it. Listing is carried out by central government on advice from English Heritage who as you know have already been asked to list the building but do not consider that it merits it.

It would also be improper for the Council to serve a building preservation notice, effectively a temporary form of listing, on the building in the knowledge that English Heritage do not consider it to be of special architectural or historic interest.

The merits for and against the retention of the building, and the quality of its proposed replacement, will be given due consideration in the forthcoming report on the application to the Planning Committee. I appreciate your argument about the building's contribution to the area's character, but should planning permission for its redevelopment be granted, then perhaps its replacement will also come to be seen as a familiar landmark in time, as well as providing much needed new homes.

Yours sincerely

Phil Ashford
Conservation and Urban Design Manager

Cc Geoff Whittington