

**ST MARKS CHURCH, NORTH AUDLEY STREET, LONDON, W1
APPEAL BY HAMMER HOLDINGS LIMITED**

PUBLIC INQUIRY COMMENCING 7TH OCTOBER 2009

(PINS REFS: APP/X5990/E/09/2104912/NWF; APP/X5990/A/09/2104913)

**OPENING STATEMENT ON BEHALF OF
SAVE ST MARKS ACTION GROUP**

INTRODUCTION

1. The Save St Marks Action Group (“SSMAG”) is a single issue campaign group dedicated to saving the Church as a place of worship and a community facility. It came together following the submission (in October 2007) of the applications, the subject of this Inquiry. It does not have a membership and does not campaign on behalf of any particular interest. However, through its efforts it is clear that the local community, equally, supports its campaign objectives, as reflected both in the petitions of objection submitted to Westminster City Council late last year, and, the resolutions passed by the local residents groups¹ for the purposes of this appeal; for contrary to a certain perception, there is a large and vibrant local community within Mayfair which comes from diverse socio-economic backgrounds with areas of social housing. There is also the working population.
2. The case that will be presented by SSMAG will focus upon the following material issues:
 - The categorisation of the proposed use
 - The policy presumptions in favour of retaining the building as a community facility
 - The impact of the alterations themselves
 - The inadequacies of the proposed safeguards

¹ Grosvenor and Mayfair Residents Association; Soho Society; Mayfair Action Group etc

THE MATERIAL ISSUES

(1) The categorisation of the proposed use

3. Somewhat confusingly, the description of the proposed development is: “*composite use of Class D1 Non-residential Institutional Use’ (specifically complementary medical health centre use) and Class D2 Assembly and Leisure Use (specifically recreational use) including ancillary retail area*”, a mixed use class categorisation to which the Appellant’s principal witness, Mr Waters, in his written evidence², continues to express an affinity.
4. Notwithstanding that description of the development, I note that Mr Quayle, on behalf of Westminster City Council, confirms³ that the categorisation of that composite use is as a “*sui generis*” activity. That must be correct, given the clear advice in ODPM Circular 03/2005 (The Town & Country Planning Use Classes Order 1987) (para. 13): “*Where the primary use of land or premises is a mixture of different uses, such mixed use does not fall into any of the classes set out in the amended Order. The use will therefore be sui generis*”.
5. In his Proof, Mr Parmiter goes further and explains why the proposed “Wellness Centre is truly *sui generis* (i.e. of its own kind) and not a mixed or composite use. Indeed, the varied nature of the proposed activities to be undertaken within “the Wellness Centre”, throughout the building underlines the appropriateness of that *sui generis* classification i.e. commercial uses covering quasi-medical, entertainment, leisure and ancillary retail.
6. It also highlights the fact that what is proposed is neither, in terms of classification, nor generically a use that provides a “community facility”.
7. Accordingly, it is essential that the Inspector makes an express finding on this categorisation point.
8. Such a finding will also help inform the Inspector as to the extent to which, as part of the confusing and protracted history of this building, delivery of the much needed

² Para. 4.1 (ix): “The supporting/ancillary recreational elements might make the proposed mixed or *sui generis* development”

³ Para. 3.4; 4.12

repairs will actually be secured by the implementation of the appeal proposals, as explained by me later in this Statement.

(2) The policy presumptions in favour of retaining the building as a community facility

9. It must be recognised that what is proposed is a departure from development plan policy⁴ as it removes an existing community facility without providing an adequate replacement. Accordingly, the burden⁵ is upon the Appellant to demonstrate what other material considerations outweigh the identified policy breaches. SSMAG will submit that none do so.
10. The suggestions made in the Appellant's evidence that community use of the building by the Commonwealth Christian Fellowship ("CCF") was "minimal"⁶ are without foundation and run counter to the substantial body of material, currently in the form of written representations, which testify to the contrary, for example, the Statement from the current pastor, Rev'd Rod Anderson (attached to Mr Parmiter's proof) when set against Mr Bye's very limited and incomplete account⁷. This cannot possibly compare with the limited and contrived public access arrangements which are to be offered by the Appellant.
11. It should also be borne in mind that the Planning Brief for the building contemplated its priority use as a place of worship. It also cannot be sensibly contended that there is an absence of demand, given that (i) a growing worshipping congregation (CCF) was removed from the building (despite its offer to pay a commercial rent greater than that which the London Diocesan Fund ("LDF") was seeking to secure from the Appellant at that stage⁸) and (ii) another worshipping congregation (Holy Trinity Brompton – "HTB") wishes to use the building, and, has the means to restore it. Indeed, the very word "redundancy" needs to be carefully considered, differentiating

⁴ UDP policy SOC1(D) and 1(E) and STRA 19

⁵ S.38(6) of the Planning and Compulsory Purchase Act 2004

⁶ Waters, Proof, para. 5.1xxviii

⁷ Bye, Proof, para.13a. to 2006

⁸ Anderson, Statement, p.11 sub-para.3, sub-para.12

between its use by Mr Bye in an ecclesiastical context (i.e. its use as an Anglican place of worship and the cessation of the parish of St Marks)⁹ and by Mr Waters' erroneous use in a planning/heritage context¹⁰.

12. The willingness of HTB to take on the building demonstrates that even the claimed benefit of rescuing a Grade 1 building is not unique to the appeal proposal. SSMAG also challenges whether such a benefit would be forthcoming to which any certainty can attach (as I will explain later).
13. Finally, it is contended by Mr Waters¹¹ that as, under the (recently granted) Lease the building is now in the hands of a commercial body which has no religious objectives there is no prospect, irrespective of the result of these appeals, of it being re-used as a place of worship. However, Mr Waters forgets that the terms of both the user covenant in the lease and the terms of the Redundancy Scheme to which I will make further reference later in this Statement do not cover the proposed or any *sui generis* use (save a private members club). The user covenant also envisages the continuation of worship, Christian or otherwise, in the Church.

(3) The impact of the alterations themselves

14. As Listed Building Consent is necessary to accommodate the Appellant's proposed use we submit that the two issues of use and adaptation cannot be artificially separated; for they are necessary for the new use. Many of the unacceptable changes arise from the need to re-order much of the plan form and the use of sacred areas for recreational purposes¹² whilst others are objectionable in their own right¹³.

⁹ Bye, Proof, para. 2(e)(i) & (vi)

¹⁰ Waters, Proof, para. 5.1(xxxii)

¹¹ Waters, Proof, para. 6.1iv

¹² Parmiter, Proof, para. 7.7

¹³ Parmiter, Proof, para. 7.8

15. It also needs to be borne in mind that the current, supporting stance of English Heritage has been conditional upon its understanding that the Appeal Proposals were the only realistic proposal on the table for the restoration of the building¹⁴. Given the matters of recent discovery mentioned next we can only speculate whether even the former's conditional response would ebb away completely. In contrast, SAVE has taken the view that the scheme should be rejected outright¹⁵; and the Victorian Society has now written expressing its preference for the HTB scheme as being much superior in conservation terms¹⁶.

(4) The inadequacies of the proposed safeguards

16. In the absence of a concluded section 106 agreement this issue remains very much at large. SSMAG maintains that only with the security of a financial bond can the appropriate level of certainty be provided that could, exceptionally, justify the grant of planning permission for the appeal proposal. However, it is questionable whether even that safeguard would be adequate in the particular circumstances; for there is also the issue of successful enforcement of the obligations themselves.
17. After much pressing and probing for the relevant documents, following the disclosure of proofs, what remains telling is the absence of any such commitment by the Appellant itself, and, the equal absence of enforceable commitment by either the off-shore company which, since September 4th 2009, now leases the property (Mayfair Land Limited) and, another off-shore company (Sigma 2004 Limited) that is meant to guarantee its performance even over the repairing obligations. This is explained in a letter from SSMAG's solicitor, Mr Streater¹⁷. Suffice to say is that the Lease places no obligation upon Mayfair Land, as the tenant to restore the building, merely to repair it; and given the recent ability of the Hammer organisation to hire out the building for a London Fashion Week Event on Sunday, 20th September, arguably another *sui generis* use, how much repair work would, in fact, need to be undertaken.

¹⁴ EH Written Representation, para. 5.17

¹⁵ Letter dated 17.09.09

¹⁶ Letter dated 06.10.09

¹⁷ Letter dated 05.10.09

18. In any event, the terms of the lease entitle the Tenant (Mayfair) to purchase Sigma's guarantee¹⁸ and also purchase the requirement to pay any future rent for a mere £192,000. As to Sigma's guarantee, were it to be enforced by the LDF, upon further investigation the first property offered as security for the guarantee turned out to be valueless, as it was already charged to a bank¹⁹, and it has yet to be demonstrated whether the further two properties now the subject of a charge in favour of the LDF²⁰ would recoup the £6m held against them.
19. Such oversights, to say the least, hardly engender any confidence in the capabilities of the LDF as a charitable body to manage this property, even less when its surveyor, Mr Bye, upholds another Hammer property, the former Holy Trinity Marylebone Road, as an exemplar but which, again, has been subject to lease arrangements with the LDF through a series of off-shore companies, which has led to a succession of transfers and a winding up. Currently, that building is used as a function room facility (expressly stated in the consent to be *sui generis*) under a short temporary permission²¹.
20. There is also the continuing jurisdiction which the Church of England still exercises over the building through ecclesiastical law. Given that the sealed Redundancy Scheme by the Church Commissioners does not include the "Wellness Centre" as a permitted activity, and, that the Church Commissioners have made clear²² that their preferred use for the building is still as a place of worship, a fresh Scheme will be needed before the appeal proposals can be legally implemented. Indeed, the Commissioners have gone so far as to urge the Diocese of London to secure the return of the building as an Anglican Church by HTB. Accordingly, as matters stand at present, it seems highly unlikely that either the LDF or the Appellant would clear that hurdle this time.

¹⁸ Schedule 5, para.3

¹⁹ The Bristol property referred to in clauses 5.2/5.3 of the Agreement for lease dated 22nd April 2008

²⁰ Peterborough and Covent Garden

²¹ WCC has advised Mr Parmiter that on 9th June 2009, permission was granted for the continued temporary use of the building for functions (*sui generis* use) until 31 March 2010(Ref 09/02959/FULL) .This permission limited function use between the hours of 07.00 and 24.00 (midnight).

²² Letter dated July 20,2009, paras. 3 & 9-10

21. When one also notes that the user covenant²³ in the recently executed Lease of the Church to the tenant, Mayfair Land Limited, an off-shore company with no immediate link to the Appellant, Hammer Holdings Limited, remarkably, does not expressly identify the “Wellness Centre” as a permissible activity, this requirement should be taken seriously. Indeed, given the expressed desire of the Church Commissioners as to the building’s future, and, the extraordinary state of affairs catalogued above, it is highly questionable, even at this stage, that the necessary licences would be forthcoming.

CONCLUSION

22. For these reasons I will be submitting, in due course, that these two appeals should be dismissed.

JOHN PUGH-SMITH

October 7, 2009

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²³ Clause 4.12.1 but subject to the grant of a licence by the LDF if another planning permission is obtained (see Clause 4.27.2)