

Philip Elliott
London Borough of Haringey
Planning Department
Level 6
River Park House
Wood Green
London N22 8HQ

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Our ref: 64605/01/BK/GCr/26914903v1

Dear Phil

1 Berol Yard (The Gessner): Application for Material Amendments to planning application ref. HGY/2017/2044 to facilitate the Change of Use of Commercial Unit

On behalf of our client, Berol Quarter Limited, we have submitted, via the Planning Portal (ref. PP-12435205), an application made under Section 73 of the Town and Country Planning Act 1990 for a Material Amendment to planning permission ref. HGY/2017/2044 (as amended)). The application seeks to change the use of the commercial unit at 1 Berol Yard (The Gessner) to Class E as set out below.

Background

A hybrid planning permission (ref: HGY/2017/2044) was granted on 8 June 2018 for:

Full planning permission for the demolition of the existing buildings within the Berol Yard site and retention of Berol House. Erection of two buildings between 8 and 14 storeys providing 166 residential units, 694 sqm (GEA) of commercial floorspace (Class A1/A3/B1), 7,275 sqm (GEA) of education floorspace (Class D1), car and cycle parking, open space, landscaping and other associated works.

Outline planning permission (all matters reserved) for the alteration and conversion of ground, first and second floors of Berol House with up to 3,685 sqm (GEA) of commercial floorspace (A1/A3/B1) and the introduction of a two-storey roof level extension introducing up to 18 residential units, cycle parking and other associated works.

The approved scheme includes non-residential uses on the ground floor (and associated mezzanine level) for Use Class A1/A3/B1, however, condition 13 restricts this use to Class B1 at the Gessner.

Since the original planning permission was granted there have been several non-material amendments (Section 96a) that have amended the scheme.

A Non-Material Amendment application was submitted in December 2021 (ref. HGY/2022/0016), seeking the change of use of the commercial unit at 1 Berol Yard, known as The Gessner, from Use Classes B1/A1/A3 to Use Class E. The application was withdrawn in February 2023.

Most recently, a Section 73 application (ref. HGY/2023/0241) was submitted to delete and amend existing conditions and add a condition to ensure that Phases 3, 4 and 5 of the development will be severed from the original permission ref. HGY/2017/2044 upon implementation of any new planning permission being granted in respect of these phases. This application does not make any amendments to 1 Berol Yard which has already been built out under Phase 1 of planning application ref. HGY/2017/2044. This application is pending determination.

The Planning Conditions provide Officers with the opportunity to allow Class E, and other alternative uses with agreement. This reflects the anticipated need to provide the Applicant with the required flexibility to respond to the changing conditions in the letting market.

Proposed amendment

This application seeks to secure consent for the ground floor commercial space and associated mezzanine at 1 Berol Yard (The Gessner) to become Use Class E flexible commercial space, under the Use Class Order introduced through an amendment to the Town and Country Planning (Use Classes) Order 1987 (as amended in 2020). The unit was completed in August 2021.

The proposed change relates to the commercial unit only. The rest of the ground floor at The Gessner features ancillary internal residential amenity space relating to the Build to Rent use and would not be affected by changes to the commercial unit as it is not commercial space.

To facilitate the change of use, we propose to:

- 1 adopt two drawings for ground and mezzanine floor into the list of approved drawings provided at Condition 7 of the permission, to identify the unit as Class E floorspace; and
- 2 vary the wording of Condition 13 which currently restricts the use of the Gessner to B1 workspace, as set out below.

Condition 7: Development in Accordance with Approved Drawings and Documents

The approved drawing showing the ground floor commercial floorspace (ref. 1824-JMP-BY-00-DR-A 3501 Rev 2) does not state a Use Class on it, therefore no drawings are required to be 'substituted' to depict the change of use. There are no other changes to the commercial unit proposed.

However, for clarity and completeness, we provide new drawings for the ground and mezzanine floor levels which identify the ground floor unit and associated mezzanine floor as Use Class E. To reflect and secure the change of use, we propose that Condition 7 is amended to include these drawings in the approved drawing list.

The new drawings to be adopted into the permission are:

- Ground Floor As Built Plan (ref. BRE-DAR-XX-00-DR-A-0900_1 P1); and

- Mezzanine Floor As Built Plan (ref. BER-DAR-XX-oM-DR-A-0900_2 P1).

Condition 13: Land use (Retail)

Condition 13 of permission ref. HGY/2017/2044 requires a change to the wording to regularise references to the correct use class.

Condition 13 is currently as follows:

13.	COMPLIANCE – LAND USE (Retail) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) the non-residential space shall not include any Class A1 or Class A3 use hereby permitted, other than uses ancillary to managed B1 workspace and unless otherwise agreed by the Local Planning Authority and supported by an up-to-date assessment of existing and emerging commercial proposals or any use permitted by the above order. Reason: In order to bring the proposal into line with the mixed-use employment-led policy DM38 which requires the maximum viable re-provision of employment floorspace.
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We propose the following new wording, to enable the ground floor commercial unit at The Gessner and the associated mezzanine floor to be used for Class E uses:

13. COMPLIANCE – LAND USE (Retail)

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) the non-residential space shall not include any Class A1 or Class A3 use hereby permitted, other than uses ancillary to managed B1 workspace, except for 1 Berol Yard which shall be used as Use Class E as hereby permitted.

Reason for amendment

Need for flexibility at new mixed use development

There is a clear opportunity for the site to contribute to a high-quality mixed-use redevelopment as confirmed by the extant permission and as is being delivered on site via the various planning permissions currently under construction and built out. This includes the introduction of flexible commercial floorspace which meets modern standards, has attractive active frontages and is lettable. The commercial element of the mixed-use development is crucial to the success of the wider Ashley Road South Masterplan.

The current restriction of uses in the permission, limiting the commercial unit at 1 Berol Yard to B1 only, is overly prescriptive and has restricted interest in the letting out the unit for a number of years despite active marketing of the site by BSD. This has resulted in the continued vacancy of the unit, which is harming the townscape and vitality of the area. The empty unit undermines the high-quality developments being provided around the site.

The intention of this application seeking flexibility is to avoid the continued vacancy of this prominent unit and for it to better contribute to the high quality residential and commercial accommodation in this location.

As Officers are aware, application ref. HGY/2023/0261 recently secured a resolution to grant at committee for the Berol Quarter and will provide new Class E space across the entire ground floor. This application also included a comprehensive Community, Culture and Commercial Strategy which detailed how a mixed-use commercial scheme could be delivered across Berol House, 1 and 2 Berol Yard. This report details how greater flexibility is needed to enable the area to thrive and deliver jobs and places for visitor and residents to dwell, shop and work.

The Community, Culture and Commercial Strategy has demonstrated that there is still a commitment to provide office space at Berol House. This continuing the aspiration to include employment floorspace across the site and this can be seen through the additional floors proposed to Berol House for office use, under the Berol Quarter application. Berol House is a more appropriate located for office use, whereas despite 2 years of continuous marketing, 1 Berol Yard has proven not to be a viable unit for office accommodation.

Overall, the Berol Quarter is set to become rich in vibrant and necessary commercial and civic activity, which includes office and employment floorspace at the appropriate junctures. The vibrancy and vitality associated with this, however, is dependant on the letting of all spaces. On the basis the commercial units in the Berol Quarter are Class E, the Applicant is confident these can be let out. If the unit at the Gessner is left as B1, it is likely that this will remain empty, detracting from vibrancy of the surrounding area. It is surely appropriate to apply a consistent approach to land use across the wider Berol Yard and Ashley Road South developments.

Macro-economic trends

The Commercial office market has been facing many challenges that have been well documented in recent years, following the approval of HGY/2017/2044, as consumer habits change.

The changing face of work began years ago with the emergence of the 'WeWork' type of flexible workspace product. Proliferating throughout the major cities in the world, this new pattern of work was beginning to challenge the traditional corporate definition of the office and workplace behaviour.

The Covid-19 pandemic then has hastened the work from home initiative and created new and unprecedented challenges to retail, leisure and business sectors, especially in terms of property and real estate.

The lack of interest from offices and businesses in the B1 market for the space at 1 Berol Yard is evident of this decline in the office market and clearly linked to wider trends that continue to be experienced in the sector. The Applicant has worked with the Council's Economic Development Officer to demonstrate the marketing undertaken and also the current state of the lettings across their portfolio of sites in Tottenham Hale, detailing the 50% vacancy rate in the office lettings.

Statutory flexibility provided

Well before the outbreak of Covid-19, the planning system was identified as crucial in the High Streets and Town Centres in 2030 (February 2019) report from MHCLG's committee looking at the challenges facing high streets, town centres and retail premises. It recommended that the Government undertake a comprehensive review of planning policy as it relates to the high street (and retail more broadly), including focusing on use classes and permitted development rights overall increasing flexibility to future-proof retail assets.

Flexibility is now allowed and encouraged in strategic planning policy (in both the NPPF, 2019, and London Plan, 2021), in recognition of the fact that diversification is key to the long-term vitality and viability of the retail and commercial sector and in response to the uncertain future of many commercial spaces and uses. The update to the Use Class Order in 2020 introduced Use Class E as a flexible commercial use class. This Use Class reflects and replaces the uses allowed within the existing permission but expands them in line with the new Use Class Order and allow greater and necessary flexibility in the context of the macro-economic trends summarised above.

There have been wider changes to the planning system, both adopted and further reforms proposed, to maximise flexibility and utilise the role of the planning system to facilitate national recovery from the Covid-19 pandemic and economic downturn. Flexible planning methods exist and can be used to ensure planning permissions are agile, future-proof and allow adaptability for sites and assets in recognition of the issues that restrictive permissions can cause in the current economic climate.

In line with the updated Use Classes and the spirit of the flexibility allowed, the unit can continue to be marketed for and occupied by an office or employment business. It can also be utilised as space for a café/bar, retail premises, gym or leisure facility or other appropriate commercial uses, in line with demand in the letting market.

Marketing evidence

The unit was completed in August 2021 and, as noted earlier, has been subject to marketing by CF Commercial, alongside the wider "Berol Yard" properties for B1 uses, as permitted under the current permission.

Despite wide marketing of the unit, via a dedicated website, CGIs and a 3D virtual tour, and wide publicisation of the availability of the unit, there has been limited interest in letting the floorspace from any relevant operators.

This application is supported by a letter prepared by CF Commercial comprising a Marketing History Review. This letter details the site's marketing history and the strategies utilised to seek to gain a tenant for the unit since 2021, then summarises the interest received from these activities confirming that the only significant interest received for the employment floorspace was from one potential occupier, the proposals for which, following several months of negotiations, was found unviable.

Interest from a retail occupier and a restaurant was received however these discussions have not been able to progress due to the existing restrictions on use which has left the unit vacant.

The letter then sets out evidence from CF Commercial's professional experience regarding the current commercial market and likely reasons for the lack of interest in the employment floorspace, including

the status of the London office market post-Covid 19 pandemic; polarisation between Prime Grade A buildings and the Rest of the Market; occupational downsizing; and a weakening tech sector. These factors have clearly created fundamental shifts in office market demand.

Summary

Considering the position outlined within this letter, we summarise the reasons in favour of the amendment to enable the commercial unit at 1 Berol Yard below:

- 1 There has been a lack of interest to date from employment occupiers despite extensive marketing since August 2021 demonstrating the limited likelihood of securing an office tenant.
- 2 Flexibility is now allowed and encouraged in strategic planning policy. The updating of the uses allowed at the unit would bring the permission into line with statutory approach to flexible commercial space.
- 3 The regeneration of the area is now at a crucial stage where placemaking is of paramount importance. There is a need for flexibility to ensure the unit no longer remains empty given its key location within the new mixed-use development.
- 4 The commercial office market has been facing many challenges that have been well documented in recent years and the issues that restrictive permissions can cause in the current economic climate are widely recognised.
- 5 CF Commercial has provided their professional review of the marketing of the site which provides crucial evidence regarding the difficulties letting the unit.

A Section 73 amendment application is submitted, given 'flexibility' is provided by statute to allow scheme changes to be made, such as this, ensuring development and investment can continue to move forward.

We trust that the enclosed information is sufficient to ensure that this application can be validated. Please do not hesitate to contact me or my colleague Ben Kelway should you have any queries or require further information.

Yours sincerely



Jonathan Hoban
Associate Director
MPlan (Hons) MRTPI